PRIVY COUNCIL.

P.C.* 1891 June 9.

MUTIA CHETTI AND OTHERS (DEFENDANTS) *v.* A. V. SUBRAMANIEM CHETTI AND OTHERS (PLAINTIFFS).

[On appeal from the Court of the Recorder of Rangoon.]

Partnership shares—Interest—Civil Procedure Code—Act XIV of 1882, s. 32.

The parties to the suit, the heirs and representatives of the original partners, a family carrying on a banking business, made and acted upon a new arrangement of their shares, the amounts of which were found in the first Court, and affirmed on appeal. A decree for an account, and an award of interest at twelve per cent. on the amounts found to be due upon the shares from the date of the closing of the business was maintained.

APPEAL from a decree (12th August 1885) of the Recorder of Rangoon.

The three plaintiffs, representing Subramaniem Chetti, deceased in 1864, filed their suit on the 1st December 1882, for partnership accounts with interest against the defendants, representing Peria Carpen Chetti, and his son-in-law, Sethumbram Chetti, by whom a banking business had been carried on in Rangoon from 1863 to 10th May 1869.

Mutia Chetti, on behalf of himself and his brothers, admitted the original partnership, and an adjustment, alleged to have taken place among the partners on the 11th May 1869, but that a new partnership or an alteration of the amounts of the shares had taken place was denied, the same business according to the defendant's case having been continued with the shares at the same amounts, until the death of Sethumbram Chetti in August 1877.

The fourth defendant filed a statement supporting the plaint.

The Recorder (Mr. R. S. T. MacEwen) considered the suit as one between the plaintiffs, with the fourth defendant, on the one side, and the rest of the defendants on the other. He therefore directed that the fourth defendant should be made a plaintiff under section 32 of the Code of Civil Procedure. He found that the plaintiffs had established the new arrangement of the 10th May 1869 set up by them, and that their shares under that arrangement were as follows:—Sethumbram Chetti, now represented by the

* *Present:* LORDS HOBHOUSE, MACNAGHTEN, and MORRIS, SIR R. COUCH, and MR. SHAND (LORD SHAND).

first three defendants, had four shares; Annamally, and the second and third plantiffs, had two and-a-half shares; Arnachellum, fourth defendant, had one and-a-quarter shares; to the deities or, in other words, to be spent in charity, were assigned more than one-sixteenth of the whole. Each share represented Rs. 4,000. An account was directed.

He awarded interest at 12½ per cent. to the plaintiffs, from the 27th January 1878, when the business was closed, till the institution of the suit on the 1st December 1882. Upon an account, it was found that the defendants had to pay to the three plaintiffs Rs. 4,680 and to the 4th plaintiff Rs. 8,929, and a decree accordingly followed.

On this appeal—

Mr. *J. D. Mayne* appeared for the appellants.

Mr. *Asquith, Q.C.*, and Mr. *A. Agabeg* for the respondents.

For the appellants it was argued that the Court ought to have found that the partnership had continued throughout, without any change of shares, and that the interest should not have been awarded as it had been.

For the respondents it was argued that the evidence had established the partnership shares from May 1869 to have been as found, and that the rate of interest allowed by the Court was not excessive.

Mr. *J. D. Mayne* replied.

Afterwards (June 9th) their Lordships' judgment was delivered by

MR. SHAND.—The appeal in this case relates to a banking business which was carried on in Rangoon from 1863 to 1878 by Sethumbram Chetti and others, members of a family living in the neighbourhood of Madura, in the Madras Presidency, and in which considerable profits were realized on the amount of capital employed. The parties are agreed as to the terms on which the co-partnership existed from 1863 to 1869. They are further agreed that in the latter year an account was made up showing the profits which had been realized during the six preceding years, and bringing out as at that date the sums of capital and profits belonging to each of

1891

MUTIA CHETTI v. A. V. SUBRAMANIEM CHETTI.

the partners. The controversy between them has reference to the period from May 1869 until January 1878, when, in consequence of the death of Sethumbram Chetti, who had much the largest interest in the business, the co-partnership was dissolved and had to be wound up.

The plaintiffs in their plaint averred that it had been agreed between the partners that after the 10th of May 1869 each share of the business should be of the amount and value of Rs. 4,000; that Sethumbram Chetti, now represented by the 1st, 2nd, and 3rd defendants, should have four shares; that Annamally Chetti, the 1st plaintiff, and the 2nd and 3rd plaintiffs should have $2\frac{1}{2}$ shares; that the 4th defendant, Arnachellum Chetti, who was afterwards made a plaintiff in the suit, should have $1\frac{1}{4}$ shares; and that a small part of a share should be set aside for charitable purposes. It was further alleged that the business had been carried on until its close upon this agreement; and the plaintiffs claimed to have the partnership accounts ascertained and stated on that footing accordingly. The learned Recorder of Rangoon by his judgment and decree has given full effect to this claim. A detailed investigation into the partnership accounts has followed, and judgment and decree has been granted in the plaintiffs' favour for the sums brought out as due to them, respectively, interest having been allowed to each of the partners at the rate of $12\frac{1}{2}$ per cent. on the sums at their credit from the date on which the business was closed till the institution of the suit in the Court of Rangoon.

The defendants who have appealed from these judgments have maintained, as they did in the Court at Rangoon, that the business having been admittedly carried on from 1863 to 1869 on the agreement that Sethumbram Chetti should have $2\frac{1}{16}$th shares, Subramaniem Chetti, the ancestor and predecessor of the three original plaintiffs, $\frac{13}{16}$ths of a share, and Peria Carpen Chetti, now represented by certain of the defendants, $\frac{5}{16}$ths of a share, no such change took place in the latter year in the arrangements and agreement of the partners as the plaintiffs allege, but that what occurred in 1869 was merely that an account showing the shares of capital and accruing profits of each partner, after debiting their respective drawings, was made up, the profits being only apportioned,

1891

MUTIA CHETTI v. A. V. SUBRAMANIEM CHETTI.

and allowed to remain as capital, without any further change being made in the partners' interests, and that capital was not drawn out or added to by any of the partners.

The appeal raises no point of law. The question is one of fact to be determined entirely on the evidence written and parol adduced before the Court in Rangoon. Their Lordships having heard a full argument and considered that evidence, have found no reason for holding that the judgment of the Court of Rangoon, in favour of the plaintiffs, ought to be set aside. They are further of opinion that the judgment is sound, and in accordance with the great preponderance of the evidence. This being so, it is unnecessary to go over in detail the matters on the proof bearing on the question of the alleged new arrangement in 1869 for a modification of the shares of the partners in the future capital and profits of the business. Their Lordships are satisfied that the Recorder was right in finding it to have been proved that there was such a new arrangement in that year, and that to the effect alleged by the plaintiffs. They agree in holding that this arrangement was reduced to writing by the witness Pallaneappa Chetti that the agreement, or "pungadu," was written by him on a "cadjan" or palm leaf, and was signed by the parties interested, at first by Sethumbram Chetti and Annamally Chetti, and at a later time by Arnachellum Chetti; and they regard the evidence of the plaintiffs on this point as most materially strengthed, not only by the evidence of certain of the arbitrators who were called in to settle disputes which arose between the partners in their accounts, and who depose that they had the written agreement before them, but also by the fact that the defendants refrained from adducing Mootiah Chetti, one of themselves, as a witness in the proceedings at Rangoon, after a body of evidence had been led tending strongly to show that the deed had passed into his hands after the death of his father, Sethumbram Chetti, into whose custody it had been given.

Their Lordships are also of opinion that it has been proved that the deed making the new or modified arrangement was acted on by the parties (first) by the withdrawal by Sethumbram Chetti of the surplus capital beyond 16,000 rupees, representing his four shares in the business after 1869, or at least of the

1891

MUTIA CHETTI v. A. V. SUBRAMANIEM CHETTI.

greater part of that surplus, and by the other partners making up and putting into the business the sums required to complete their shares; and (secondly) by the partnership accounts made up seven years after the new arrangement was made, in accordance with which the profits were ascertained and divided.

It may be added that the new arrangement appears to have only a natural and reasonable one, inasmuch as it gave somewhat larger advantages to Annamallay Chetti and Arnachellum Chetti than they would have obtained under the original partnership, for it was contemplated that with an increasing business they should in future give a personal superintendence, such as they had not previously done, as in point of fact they did; and it is difficult, if indeed possible, to reconcile the actings of the partners in their dealings with their accounts after 1869,—the withdrawal by Sethumbram Chetti of 7,000 rupees from the business, and the payment in of sums by the other partners to make up their capital,—with the view maintained by the defendants that the interests of the partners were not to undergo any change.

Their Lordships will humbly advise Her Majesty to dismiss the appeal, and to affirm the decrees complained of, including the award of interest to the plaintiffs, as to which they see no reason to differ from the view taken by the Recorder. The appellants must pay the costs of the appeal incurred by the respondents who have appeared.

Solicitor for the appellants: Mr. *R. T. Tasker.*

Solicitors for the respondents: Messrs. *Bramall and White.*

C. B.

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*P.C.** 1891 *April* 24, 25, 28, *and July* 4.

THE IRRAWADDY FLOTILLA COMPANY (DEFENDANT) *v.* BUGWANDAS (PLAINTIFF).

[On appeal from the Court of the Recorder of Rangoon.]

Common carrier—Liability for non-delivery not affected by sections 148, 151, *and* 152 *of the Contract Act, IX of* 1872—*ss.* 148, 151, 152, *Carriers' Act, III of* 1865—*Construction—The Railways Acts, IV of* 1879 *and IX of* 1890, *as to the liability of carriers by railway.*

That the duties and liabilities of a common carrier are governed in India by the principles of the English common law on that subject,

* *Present:* LORD HOBHOUSE, LORD MACNAGHTEN, LORD MORRIS, SIR R. COUCH, and MR. SHAND.