

31, 1946

No. 77 of 1946.

In the Privy Council.

ON APPEAL
FROM THE SUPREME COURT OF THE ISLAND

UNIVERSITY OF LONDON
W.C.1.

-9 OCT 1956

INSTITUTE OF ADVANCED
LEGAL STUDIES

44489

BETWEEN

THE BANK OF CHETTINAD, LIMITED OF COLOMBO *Appellant*

AND

THE COMMISSIONER OF INCOME TAX, COLOMBO - *Respondent*

RECORD OF PROCEEDINGS.

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Solicitors for Respondent.

In the Privy Council.

ON APPEAL
FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.

BETWEEN

THE BANK OF CHETTINAD, LIMITED OF COLOMBO *Appellant*

AND

THE COMMISSIONER OF INCOME TAX, COLOMBO *Respondent.*

RECORD OF PROCEEDINGS.

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In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.

BETWEEN

THE BANK OF CHETTINAD, LIMITED OF COLOMBO *Appellant*

AND

THE COMMISSIONER OF INCOME TAX, COLOMBO - *Respondent*.

RECORD OF PROCEEDINGS.

10

No. 1.

Paragraph 201 Rule 1 of Income Tax Rules.

No. 1.
Rule 1,
Income
Tax Rules.

201 *Rule 1.—Method of Ascertainment and Determination of the Profits of Ceylon Branches of Non-resident Bankers.*

(1) In this rule unless the context otherwise requires—

“bank” means any non-resident banker within the meaning of these expressions as defined in section 2 of Ordinance No. 2 of 1932 ;

“Ceylon branch” means the business carried on in Ceylon by any such bank ;

20

“other branch” means the business carried on by a bank in any country outside Ceylon, including that carried on at its principal place of business.

(2) Where any accounts prepared by a bank for its own purposes disclose, in the opinion of the Commissioner, the true profits of the Ceylon branch the profits of the Ceylon branch shall for the purposes of assessment be computed on the basis of such accounts.

(3) Where no accounts are prepared which in the opinion of the Commissioner disclose the true profits of the Ceylon branch, the following provisions shall apply to the determination of the said profits :—

30

(A) Where any security or investment of the Ceylon branch is realised, the difference between the sum realised and the original cost of such security or investment shall be treated as a profit or loss of the period in which the realisation takes place.

(B) All interest and dividends arising on loans and investments of the Ceylon branch, other than interest or dividends arising on money owing by the other branches, shall be deemed to be profits of the Ceylon branch. -

(C) In place of the interest credited or debited in the books of the Ceylon branch in respect of money which that branch owed to or was owed by other branches, there shall be taken into account interest arrived at in accordance with the following provisions :—

(i) There shall be calculated in respect of each accounting period as nearly as may be the average of the daily balances which the Ceylon branch owed to or was owed by other branches. 10

(ii) There shall be ascertained as nearly as may be the average rate of interest which was or would have been allowed by the Ceylon branch during the accounting period on deposits for terms of not less than one year.

(iii) Where calculation under paragraph (i) shows that the Ceylon branch was owed an average amount by other branches, there shall be credited interest on the said amount at the rate arrived at under paragraph (ii).

(iv) Where the calculation under paragraph (i) shows that the Ceylon branch owed an average amount to other branches, the said amount shall be deemed to consist of :—

(A) capital of the bank, and

(B) money lent to the bank,

in the proportion which, at the commencement of the accounting period in question, the paid-up capital of the bank bore to the total sum lent to or deposited with the bank, excluding from such sum the amounts lent to or deposited with the Ceylon branch. No deduction shall be allowed for interest on the said amount, in so far as it is deemed to consist of capital of the bank : 30 but there shall be allowed in respect of the said amount, in so far as it is deemed to consist of money lent to the bank, interest at the rate arrived at under paragraph (ii).

(4) This rule shall apply to the determination of all assessments relating to non-resident bankers which, at the time when it comes into force, have not become final and conclusive within the meaning of section 75 of Ordinance No. 2 of 1932.

APPEAL MINUTE of Commissioner of Income Tax (Annexure M. 1 to Case stated).

DETERMINATION AND REASONS UNDER SECTION 71 (2) OF THE INCOME TAX ORDINANCE.

No. 2.
Appeal
Minute of
Commissioner of
Income
Tax
(Annexure
M 1),
24th
January
1944.

Appeal of the Bank of Chettinad Limited, against an assessment made on it for the year of assessment 1940-41, heard by the Commissioner of Income Tax on 14th December, 1943.

For the Appellant : Mr. J. E. M. Obeyesekere, Advocate instructed by Mr. John Wilson, Proctor.

10 Mr. C. P. A. Nair, Accountant of Messrs. Kesavan & Company.

Supporting the

Assessment : Mr. T. H. Burah, Assessor.

Productions :

A1—Memorandum & Articles of Association of the Appellant Company ;

A2—Balance Sheet and Profit & Loss Account as at 31st March, 1940 ;

A3—Statement of Deposit and Loan Accounts ;

A4—List of Shareholders of the Appellant Company ;

20 • A5—List of Shareholders of the Chettinad Corporation Limited.

Income Assessed : Rs.110,476·00

Tax : Rs.19,884·36

Tax in dispute : Rs.10,646·30

Grounds of Appeal.—That a sum of Rs.53,226/- interest paid to the Head Office in Rangoon in respect of the year ended 31st March, 1940, should be allowed as a deduction under Rule 1 of the Rules made by the Board of Income Tax as applicable to companies carrying on the business of banking. (See Income Tax Manual, paragraph 201.)

30 *Facts.*—(1) The Appellant Company's main activities in Ceylon consist of the lending of money on promissory notes or on the mortgage of immovable property in Ceylon and the management of estates and house properties owned in Ceylon. The gross income of the company arising in Ceylon for the year in question consisted mainly of the following items :—

	Rs.
Income from house property	29,952
Income from estates	92,836
Profit on re-sale of properties	47,033
40 Interest received	90,105

(2) The company was financed mainly from its Head Office in Rangoon and a sum of Rs.81,792/- is shown in its Profit & Loss Account as interest payable to the Rangoon Head Office.

(3) The production A3 shows that the only current and deposit accounts with the Appellant Company were those of the Chettinad

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Minute of
Commissioner of
Income
Tax
(Annexure
M 1),
24th
January
1944,
continued.

Corporation Limited, and seven other persons. These seven persons are stated to have closed their accounts during the year. Thus the only current and deposit accounts as at 31st March, 1940, were those of the Chettinad Corporation and these show a debit balance.

(4) Production A4 and A5 show that Chettinad Corporation and the Appellant Company are closely connected for the reason that, taking the shareholdings of five principal shareholders in the two concerns, it is found that these same five shareholders hold 99% of the issued capital of the Chettinad Corporation and 95% of the issued capital of the Appellant Company.

10

(5) On these facts it would not appear that the Appellant Company "carries on as its principal business the accepting of deposits of money on current account" within the meaning of section 330 of the Companies Ordinance. No. 51 of 1938. In point of fact as at 31st March, 1940, there were no depositors with credit balances on current account in Ceylon.

(6) No cheque books are issued by the Appellant Company, and there is no evidence that monies in deposit, if there should be any, may be withdrawn "by cheque, draft, or order" within the meaning of section 330.

(7) Counsel for the Appellant on instructions stated that the Head Office in Rangoon did carry on the business of banking. His main contention was that even though the company did not carry on the business of banking in Ceylon, provided that the Head Office carried on the business of banking, it would come within Rule 1.

(8) The 11th Schedule of the Companies Ordinance. No. 51 of 1938, contains a list of banks excluded from the operation of sections 337 and 339, of the Ordinance. A copy of the Ordinance printed prior to December 1939, was produced before me which contained the name of the Appellant Company in the schedule. The Appellant Company's name is, however, omitted from subsequent publications of the Ordinance because by notification published in the Gazette of December 15, 1939, its name was deleted from the list of Banks. On inquiries made by me from the Registrar of Companies as to the reasons for this deletion, he sent me a copy of a letter dated 4th August, 1939, addressed to him by Mr. John Wilson, Proctor, stating that the Appellant Company's name had been incorrectly entered in the Schedule. The letter states—"I am instructed by the Bank of Chettinad Ltd., to inform you that the principal business of my client is not the accepting of deposits of monies on current account or otherwise subject to withdrawal by cheque, draft or order . . . In this connection I would like to add that a similar application was made by the Head Office in Burma and my client's contention that they were not a banking company was accepted by the Registrar of Joint Companies, Rangoon, and the Controller of Currency, Calcutta." As a result of this letter the Registrar deleted the Appellant Company's name from the 11th Schedule. It is, to say the least, unfortunate that Counsel should have been instructed in this appeal to state as a fact that the Appellant Company was carrying on the business of banking in Rangoon when an entirely contrary statement is made in his proctor's letter of August, 1939. A copy of this letter is hereto annexed, marked "X."

40

Arguments for the Appellant.—On a strict interpretation of the wording of Rule 1 made by the Board of Income Tax where a non-resident company is a banker, i.e. carries on the business of banking anywhere in the world even though it does not carry on the business of banking in Ceylon, the Rule applies for the reason that “Ceylon Branch” is defined as a business carried on in Ceylon by any such bank and not as a banking business carried on in Ceylon.

Commissioner’s decision.—The assessment is confirmed subject to a reduction of the assessable income of Rs.4,809/- agreed with the Assessor.

- 10 *Reasons for the decision.*—Where a non-resident concern carries on business in Ceylon other than banking, interest payable to its Head Office is not an allowable deduction, because it is interest paid to itself. Under the Rule made by the Board of Income Tax where the person in question is a banker, i.e. a company carrying on the business of banking, such interest is allowable. I think that the Rule clearly applies only to a case where a non-resident company carries on the business of banking in Ceylon. It was not seriously contested that the Appellant does not carry on a banking business in Ceylon. Counsel’s argument, however, was that it carried on the business of banking at its Head Office in Rangoon until
- 20 the occupation of Burma by the enemy. The Assessor was not in a position at the hearing to refute this fact. It has, however, been very definitely refuted by the letter dated August 4, 1939, of the Appellant Company’s proctor, referred to above. The period we are concerned with is the year from 1st, April, 1939, to 31st March, 1940. I prefer to accept the statements in this letter, which is contemporaneous, to the effect that the Rangoon Head Office did not carry on banking business, rather than the statement now made to the contrary.

(Signed) T. D. PERARA,

Commissioner of Income Tax.

30 Colombo, January 24, 1944.

No. 3.

LETTER constituting Notice of Appeal by Appellant to Income Tax Board of Review (Annexure M 2 to Case stated).

256, Sea Street,

Colombo, 16th February, 1944.

The Clerk to the Income Tax Board of Review,

P.O. Box No. 515, Colombo.

Dear Sir,

The Bank of Chettinad Limited,

Assessment 1940-41—Appeal.

40

With reference to the Determination and Reasons forwarded to us by the Commissioner of Income Tax with his letter No. 8/127 of the 24th ultimo, we hereby give notice of Appeal therefrom to the Income Tax Board of Review.

The following will be the grounds of Appeal:—

(1) The Commissioner has wrongly presumed that Rule 1 of the Rules made by the Board of Income Tax is applicable only to Companies carrying on the business of Banking and has for a definition of the Company carrying on business of banking taken Section 330 of the

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Companies Ordinance ; whereas Rule 1 applies to any banker, who need not necessarily be a banking company, according to the definition given in the Income Tax Ordinance. The definition of a banker for the purpose of income tax cannot be restricted to the definition laid down for the banking business in the Companies Ordinance. Upon the facts placed before him, that the Bank of Chettinad has been doing the business of bankers, namely of accepting deposits in current account, fixed deposits and lending money with or without securities, he should have held that the said Bank is a banker within the meaning of the Income Tax Ordinance.

(2) During the year under reference, the Ceylon Branch has been essentially carrying on the business of money lending. In his reasons for the decision, the Commissioner states that when a non-resident Company carries on the business of Banking in Ceylon the Rule applies. His inference that the Ceylon Branch of the Bank of Chettinad Limited is not a Banker is contrary to facts, as it is not quite essential that a Banker should carry on all the functions of a Banker to be styled as a Banker.

(3) The inference drawn by the Commissioner from the letter dated 4th August, 1939, which states that the said Bank under special circumstances is not a Banking Company as defined by the Ordinance 51 of 1938, is incorrect, as the said Bank does not forfeit its character and functions of a Banker as defined in the Income Tax Ordinance because it has ceased to accept deposits subject to withdrawal by cheques. The conclusions drawn by the Commissioner are therefore on wrong premises.

(4) Having been carried away by the definition given in the Companies Ordinance, the Commissioner has not tried to get correct definition of the business of Banking in order that a body of persons may be called a Banker. The Bank of Chettinad has been accepting large deposits at its Head Office and has been lending money in Ceylon as stated above. The essential difference between a money lender and a Banker is that the money lender lends his own moneys whereas a Banker lends other moneys. Rule 1 under the Income Tax Ordinance refers to the allowance of a certain portion of interest paid by the Branch to a Head Office in proportion of the borrowed capital to the paid up capital in the case of Banker. So that the essential principle underlying this Rule is that where a Banker finances his Branch business out of deposits received at the Head Office, the interest earned by such Branch should be subject to a deduction of proportionate interest it would have paid on the borrowed capital. This is not allowed in the case of any other business presumably because other businesses do not deal in money as such. The intention of the makers of the Rule must be that because a concern makes money with money out of money borrowed at the Head Office, such money income be subject to a deduction of interest payable on such borrowed money. Or in other words the income assessable must be only the difference of interest earned by that concern. Only a Banker does this kind of business, hence the Rule is applicable to the Banker. On such an interpretation of the Rule Bank of Chettinad Limited must also get the benefit of the Rule.

Yours faithfully,

THE BANK OF CHETTINAD LIMITED. 50

(Signed)

Attorney and Manager.

DECISION of Income Tax Board of Review (Annexure M 3 to Case stated).

Appeal to the Board of Review—Income Tax.
The Bank of Chettinad Limited.

Assessment File No. 8/127.

No. BRA-172.

No. 4.
Decision
of Board of
Review
(Annexure
M 3),
22nd
August
1944.

Members of the Board : W. S. de Saram Esquire (Chairman).
Roselyn Koch Esquire.
Gate Mudaliyar.
A. G. Tillekeratne.

10

Dates of Hearing : Friday the 23rd June, 1944.
Monday the 10th July, 1944.

Present :

For the Appellant : J. E. M. Obeyesekera Esquire.
S. J. Kadingamar Esquire, instructed by
C. A. S. Mather Esquire.

Supporting the assessment : C. B. E. Wickremasinghe Esquire, Assessor.

Decision of the Board :

This appeal raises important questions of law in addition to questions
20 of fact, the point at issue being whether the Appellant is entitled to
deduction of a sum of Rs.53,226/- under Rule 1 of the Rules made by the
Board of Income Tax.

To determine this point it is necessary to decide whether the Appellant,
the Bank of Chettinad Limited, admittedly a branch of the Bank of
Chettinad Limited at Rangoon, carrying on business in Ceylon, must be
proved to be carrying on a banking business in Ceylon and the question
has also been raised as to whether the Head Office at Rangoon itself carries
on the business of Bankers.

The case for the Commissioner of Income Tax is that the Appellant
30 does not carry on the business of banking in Ceylon ; that although it
is the Ceylon Branch of the Business at Rangoon, before a deduction can be
claimed under Rule 1 it must be proved not only that the Ceylon Branch
carries on a business in Ceylon but that it should be a banking business ;
that in Rule 1 in the definition "Ceylon Branch" means the business
carried on in Ceylon by any such bank, the word "business" means
"Banking business."

It is contended therefore that even though the Head Office at Rangoon
may carry on the business of bankers, if this Ceylon Branch does not carry
on the business of banking in Ceylon, the Rule will not apply and, therefore
40 no deduction could be claimed under Rule 1.

Now in Rule 1 a bank, for the purpose of the Rule, is defined to mean
any non-resident banker within the meaning of those expressions as
defined in section 2 of Ordinance No. 2 of 1932, which is the Income Tax
Ordinance, 1932. There can be no doubt that so far as the Head Office
at Rangoon is concerned, the Appellant must establish that the Head
Office carries on the business of a banker within the meaning of that
Ordinance.

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of Board of
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We are unable to accept the contention that the word "business" in the definition of "Ceylon Branch" means "banking business." It is a well established principle of law that where a word is used in an Act or Ordinance the ordinary meaning of that word in the English language should be accepted, and Judges are not expected to embark on voyages of discovery in order to ascertain whether the word used bears some other meaning. There are of course well known exceptions to the rule, for instance, where a word has certain meanings according to the custom or usage of trade. In this Rule where reference is intended to be made to a banker, the word "banker" is used, and bankers in the course of their trade or business as bankers carry on numerous and varying transactions so long as they fall within the scope of, in the case of limited liability companies, their Memorandum and Articles of Association. It is competent for a banker carrying on the business of banking in one country to have a branch in another country, which branch engages in business other than that of banking. It is admitted that the Ceylon Branch, the Appellant, carries on business in Ceylon. We would hold that the word "business" in the definition of "Ceylon Branch" is not restricted in its meaning to a banking business. We would therefore hold that for the purposes of this appeal it is not necessary to decide whether or not the Appellant carries on a banking business in Ceylon. However, we will consider the question as to whether in fact the Appellant does carry on the business of banking in Ceylon. If so, in any event, Rule 1 would become operative provided, of course, the Head Office at Rangoon also carries on the business of banking.

We propose, therefore, in the first instance to consider the questions of fact as to whether :—

(1) The Head Office at Rangoon carries on the business of banking; and

(2) Whether its Ceylon Branch, the Appellant, carries on the business of banking in Ceylon.

Certain documents have been produced and referred to. We have examined them and are satisfied as a result that both the Head Office at Rangoon and its Ceylon Branch, the Appellant in Ceylon, carry on the business of banking at those respective places. To refer to those documents in detail, the Memorandum and Articles of Association of the Bank of Chettinad Limited, registered under the Indian Companies Act 1913, have been put in evidence (document A1). The objects set out are *inter alia*, to establish, carry on and promote in India and elsewhere in any part of the world all or any of the following businesses, namely; the business of bankers, etc. and to carry on the business of banking in all its branches, etc. It is clear, therefore, that the business of banking is authorised. The question remains for consideration whether in pursuance of such powers the business of banking was in fact carried on.

The Profit & Loss Account for the year ended March 31, 1940, of the Bank of Chettinad Limited, Rangoon, has been produced in evidence (document A2). This shows—

To Depositors the sum of Rs.290,856/1/7, and

By interest—constituents Rs.649,275/12/10.

Again in the Balance Sheet as at March 31, 1940 (a part of document A2) under Capital and Liabilities appear the items—

Loans from Banks, and Deposits Fixed, Current and other Liabilities Rs.19,179,341/12/10;

and again, under Loans, Overdrafts and other Debts Rs.14,614,034/2/1. This document is a true copy of the accounts bearing the certificates of the various Accountants. Therefore, although the books of the Company have not been produced there is no reason to reject the accuracy of these entries which have been duly audited and found correct. For the Commissioner it has been contended that the Appellant should have produced the books of the Head Office at Rangoon. It appears to have been accepted at the Commissioner's enquiry that owing to the Japanese invasion of Burma the books could not be produced but at this hearing

10 it has been suggested that the books may have been removed before the invasion and occupation. It is, however, admitted that the Appellant was given no notice to produce such books. It therefore appears to be too late in the day now to raise that point. It seems clear that the Head Office at Rangoon was in fact engaged in, amongst other operations receiving deposits from constituents to a large extent, paying considerable amounts to such constituents by way of interest on such loans. Of course, it does not prove that such depositors or creditors of the Head Office at Rangoon received cheque books or operated their accounts with the Head Office by means of cheques. For reasons we will give

20 later in dealing with questions of law that have arisen, we would hold that the issue of cheque books and the operation by constituents on their deposits with the Head Office by means of cheque would not be an essential ingredient of the business of banking, so that in their absence the Head Office at Rangoon could not be held to be carrying on the business of bankers within the meaning of the Income Tax Ordinance, 1932, which is the Ordinance relevant to the construction of Rule 1. It will be noted that it is distinctly laid down in Rule 1 that the meaning of these expressions is to be taken as defined in the section of Ordinance No. 2 of 1932. There is no reference in the Rule to the definition of "banking company"

30 within the meaning of section 330 of the Companies Ordinance, No. 51 of 1938. In fact the Income Tax Ordinance of 1932 came into operation long before the Companies Ordinance, No. 51 of 1938. It seems clear that for the purpose of considering the interpretation of the terms used in Rule 1, reference cannot be properly made to the Companies Ordinance but to the Income Tax Ordinance. And under the Income Tax Ordinance section 2, a banker is defined to mean "any company or body of persons carrying on the business of banking." Therefore, in order to consider whether the Head Office at Rangoon carried on the business of banking, the meaning of the term must be sought quite apart from any restrictive

40 meaning that may be found to the term "banking company" in section 330 of the Companies Ordinance. The same remarks apply with regard to this point in connection with the Ceylon Branch, the Appellant. We will now consider the documents placed before us in support of the Appellant's contention that the Appellant was carrying on the business of banking in Ceylon. Extracts have been produced from the books of the Appellant (document A7). These show the debit and credit of the current account of a constituent from the Ledger showing that he was credited with interest at 9 per cent. There is another entry of credit of interest at 6 per cent. It has been contended for the Commissioner

50 that these rates of interest are not the usual bank rates of interest and that, therefore, these transactions were not the ordinary bankers' transactions. We do not think however that this disproves the

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Appellant's contention that he did carry on the business of bankers in Ceylon. Current accounts with banks may or may not carry interest. It depends on the arrangements made with the customers. Similarly, special rates of interest may possibly be arranged for. Again, the number of current accounts on 1.4.1939 taken from the Ledger has been produced (document A3) showing the names of persons who operated and then closed their current accounts during the year 1939/1940. Here again it has been contended on behalf of the Commissioner that the books of the Appellant have not been produced, and here again the answer is that the Appellant was not noticed to produce any books. It seems to me, judging from the nature of the enquiry by the Commissioner, that all these documents were not contested in view of a letter written by Mr. John Wilson, Proctor, to the Registrar of Companies, Colombo, on 4th August 1939 (document X). We will refer to that letter later, but it appears clear that in view of that letter the Commissioner came to the conclusion that neither the Head Office at Rangoon nor its Branch in Ceylon, the Appellant, were carrying on the business of banking and he was, on the strength of that letter, satisfied that neither were bankers and therefore did not investigate the implications contained in the documents produced and referred to above.

We will now consider the questions of law which have been raised. There is no proof that either the Head Office at Rangoon or the Ceylon Branch, the Appellant, issued cheque books, or that monies deposited with either of them were drawn out by cheques. This was admitted. For the Commissioner reliance has been placed on the provisions of section 330 of the Companies Ordinance, No. 51 of 1938. In that section "banking company" is defined to mean a company which carries on as its principal business the accepting of deposits of money on current account or otherwise, subject to withdrawal by cheque, draft or order, notwithstanding that it engages in addition in any one or more of the following forms of business, etc., etc. The contention of the Commissioner is that so long as the Head Office or its Ceylon Branch issue no cheque books and so long as their constituents do not withdraw deposits by cheque, neither would fall within the definition of "banking company" within the meaning of section 330. We doubt the soundness of this contention, because the requirement under section 330 with regard to withdrawal is not confined to withdrawal by cheque but withdrawal by draft or order. Apparently, therefore, if no cheque books were issued and no withdrawals made by cheque, but if withdrawals were made by order, a company may yet come within the definition of "banking company" within the meaning of section 330. However that may be, as already pointed out, it is not the definition of "banking company" in section 330 of the Companies Ordinance which has to be considered, but the definition of a "banker" in section 2 of the Income Tax Ordinance, 1932. That definition obviously could not refer to the definition in section 330 of the Companies Ordinance which had not yet been passed, and the definition in the Income Tax Ordinance does not refer in fact to any definition contained in any other Ordinance. And Rule 1 itself expressly in its definitions refers to the meaning of these expressions as defined in section 2 of the Income Tax Ordinance, No. 2 of 1932. Therefore, to decide whether either the Head Office or the Ceylon Branch was a company carrying on the business of banking, one has to see what is the meaning of the word "banking" quite apart from any definition in the Companies Ordinance.

We would refer to the case of the Official Assignee of Madras *versus* Ramaswamy Chetty (1920 Indian Law Reports, 43, Madras, page 747). One of the questions raised in that case was whether the garnishee was entitled as a banker to retain certain deposits. At page 749 Coutts Trotter, J., said this :

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of Board of
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continued.

10 "It is not very easy to give a definition of 'banker.' Dr. Heber Hart in his Law of Banking says: 'A banker is one who in the ordinary course of his business honours cheques drawn upon him by persons from, and for whom he receives moneys on current account.' That no doubt emphasises the aspect of a banker's business which is most familiar in modern commercial conditions. But, there were bankers before cheques, and one has to get further below the surface of things and seek for something more fundamental. Dr. Thomas Hodgkin says . . . speaking of the bankers and money-lenders of the later Roman Empire: 'The essential difference between a banker and a money-lender is that a money-lender lends his own money and a banker lends other peoples.'"

20 That seems to me to express with great insight the distinguishing feature of a banker's business, and every one knows that a Nattukottai Chetti, while he may have a lot of his own money invested in his business, habitually lends other people's money along with it. Dr. Heber Hart says: "A banker is also a lender of money. The profitable conduct of the business of banking necessarily involves the lending or advancing of money by way of allowing overdraft on current account, making loans in the form of advances, or discounting bills." I may add that in Kunhan Mayan *versus* The Bank of Madras, a loan of money on a pledge of jewels was recognised as a legitimate banking operation to which the general lien of bankers attached.

30 It seems to me to make no difference to the essence of the matter that the loan in the case of the Bank of Madras would take the form of opening of a credit in the dealer's favour on which he could draw by cheque, whereas in the case of a Nattukottai Chetti it would take the form of an advance of hard cash. The fact that the transaction is more primitive, or more direct, does not seem to me to affect its real character. One has to have regard to the customs and state of advancement of the people on whose affairs one has to adjudicate and there are hundreds of rich merchants in Madras carrying out every week of their lives commercial transactions on a large scale with a complicated system of mercantile credit who have

40 never drawn or had drawn in their favour a single cheque during their whole career. Further, in Vellayappa Chettiar *versus* Unnamalai Achi, "This court has expressly recognised that a Nattukottai Chetti of the ordinary type does exercise the functions of a banker. I am therefore of opinion that the relations of the garnishee to Muthiah Chetti in this case may properly be regarded as those of banker and customer."

This judgment was upheld in appeal by Wallis C.J.—See his judgment at page 759.

50 Therefore it seems clear that for the purpose of the definition of "banker" contained in the Income Tax Ordinance, both the Head Office at Rangoon at the Ceylon Branch, the Appellant, should be held to be carrying on the business of banking although no cheque books were issued or withdrawals made by cheque.

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We would like to refer to the case of *Foley versus Hill* (1848) 2 House of Lords Cases, page 28. The head note is as follows: "The relation between a banker and customer who pays money into the bank, is the ordinary relation of debtor and creditor, with a super-added obligation arising out of the custom of bankers to honour the customer's draft; and that relation is not altered by an agreement by the banker to allow the interest on the balances in the bank."

The Lord Chancellor at page 35 referred to the relation between principal and factor, where goods remained the goods of the owner or principal until the sale took place and where the moment the money was received the money remained the property of the principal, and at page 36 he said this: "The analogy entirely fails . . . when you come to consider the relative situation of a banker and his customer; . . . Money, when paid into a bank, ceases altogether to be the money of the principal; it is then the money of the banker, who is bound to return an equivalent by paying a similar sum to that deposited with him when he is asked for it. The money paid into the banker's is money known by the principal to be placed there for the purposes of being under the control of the banker. It is then the banker's money, he is known to deal with it as his own; he makes what profit of it he can, which profit he retains to himself, paying back only the principal, according to the custom of bankers in some places, or the principal and a small rate of interest, according to the custom of bankers in other places."

Lord Brougham at page 43 said this: "I am now speaking of the common position of a banker, which consists of the common case of receiving money from his customer on condition of paying it back when asked for, or when drawn upon, or receiving money from other parties, to the credit of the customer, upon like conditions to be drawn out by the customer, or, in common parlance, the money being repaid when asked for, because the party who received the money has the use of it as his own, and in the using of which his trade consists, and but for which no banker could exist, especially a banker who pays interest." And at page 44, "This trade of a banker is to receive money, and use it as if it were his own, he becoming debtor to the person who has lent or deposited with him the money to use as his own, and for which money he is accountable as a debtor."

It will be seen therefore that the trade or business of a banker can be constituted without any question of the existence of cheques.

Again in *Copland versus Davies* (1872) Law Reports English & Irish Appeals, Volume V, 1871-72, page 358, in the headnote appears this passage:—

"Though the preamble of one Act may appear to be directed against a particular evil, and though another Act may be passed to aid its application, the enactments of the second Act are not necessarily to be confined to the special purpose which seemed to be the particular object that the first had in view. Its own words must be considered as explaining and defining its objects and its means. The 33 George 2, C.14 (IR) . . . does not relate exclusively to persons who carry on the business of banking in the way of banks of issue, but to all bankers whatever."

The Lord Chancellor at page 375 said this: "With regard to Mr. Kennedy, it is not disputed that he was a banker in the ordinary sense

of the word, as receiving people's moneys and giving them receipts—receipts not as for transfers of property, or for anything of that kind, but receipts acknowledging the receipt of money, and issuing pass books and cheque books, and dealing with them in the ordinary way of a banker ; that in every other sense he was a banker, but not in the sense of issuing notes for circulation.”

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At page 377 “ I do not think I need make any further remarks upon that Act, because this Act of George 2 seems to be plain and explicit in its sections as relating to all bankers.”

10 At page 378 “ It recites the previous Act, and then, when it comes to the enacting part, it says this explicitly, without any words whatever by which you can confine it to banks of issue : ‘ Be it enacted that all persons carrying on the trade or calling of a banker ’ (that was the expression), and so it goes on ; . . . But the expression used in the Act, is—‘ All persons carrying on the trade, business, or calling of a banker.’ That is the expression which is used throughout the Act. There is nothing in the Act to confine it to bankers issuing notes only . . . Unless we were absolutely obliged by the structure of this Act to do so, it would be impossible, I think, to reason in this way, to say, that because the Act of
20 George 1 struck at Banks of issue (supposing that to be the case), and the Act of 33 George 2 is to be taken to be as having been enacted in aid of that Act, therefore, when a general expression is used in the later Act it is to be referred only to the particular grievance which is mentioned in the former Act, and is not to be extended to the whole class of persons to whom the words of the later Act itself clearly and sufficiently apply.”

At page 390 Lord Chelmsford says this : “ These different clauses of the Act satisfy me that the Act was intended to apply generally to all persons following or exercising the trade or business of a banker, and that the general words ‘ all bankers ’ and ‘ any banker ’ cannot be restricted
30 to a particular class, as contended for by the Appellant.”

At page 392 Lord Westbury says this : “ The word seems to be designedly extended to all classes of bankers, whether bankers of issue or bankers of deposit only. I think, therefore, that the idea that you could limit the latter statutes by the former is one without any kind of foundation.”

In the present case the contention that for a definition of “ bank ” or “ banker ” reference can be made to section 330 of the Companies Ordinance must fail. In the present appeal the Appellant’s case is really much stronger, because Rule 1 expressly refers to the definition in the
40 Income Tax Ordinance, and moreover the Companies Ordinance was a later provision of the Legislature. The definition “ banking company ” is a definition in connection with the matters dealt with in that Ordinance, quite apart from having nothing to do with the Income Tax Ordinance.

We now refer to the London Joint Stock Bank Limited *versus* Macmillan (1918) Appeal Cases page 777. Lord Finlay, L.C. at page 789 says this : “ The relation between banker and customer is that of debtor and creditor, with a super-added obligation on the part of the banker to honour the customer’s cheques if the account is in credit. A cheque drawn by a customer is in point of law a mandate to the banker to pay the amount
50 according to the tenor of the cheque.”

Again at page 830 Lord Parmoor says this : “ The relationship between a customer and a banker is that of creditor and debtor—Foley

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versus Hill . . . In ordinary business the customer issues his mandate as a cheque on cheque form." At page 831 reference is made to a judgment of Fletcher Moulton, L.J. . . . where he said this: "The law stands thus. If a person signs a piece of paper and gives it to an agent with the intention that it shall in his hand form the basis of a negotiable instrument . . ."

It will be seen that it is the relation of debtor and creditor which is the main test. Cheques may be used as in most modern transactions, but a piece of paper might do. Sometimes customers may draw their money on a loose-leaf cheque. But a cheque is not necessary in order 10 to draw the money, or in other words, to obtain repayment of a debt. All the above decisions, except the Madras decision, were decisions by the House of Lords.

We would also refer to Joachimson *versus* Swiss Bank Corporation (1921) 90 L.J., K.B. p. 973. In this case reference was made to Foley *versus* Hill, and the London Joint Stock Bank *versus* Macmillan. In this case the question that arose for decision was whether a demand for payment should be made by a customer before he had a cause of action against the banker. It was sought to differentiate the case of a banker, but it was held that the relationship being that of debtor and creditor, demand was 20 a necessary condition precedent.

We would refer to Stroud's Judicial Dictionary, heading "Banker"; Grant's Law of Banking, page 1; and Hailsham—Definition of Banker, sections 1273 and 1309.

We would therefore hold that although cheques may not have been used by either the Head Office or the Ceylon Branch, the Appellant, both the Head Office and the Ceylon Branch, the Appellant, carried on the business of banking and were bankers within the meaning of the Income Tax Ordinance, 1932.

We will in conclusion refer to Mr. John Wilson's letter (X) already 30 alluded to. It seems to us quite clear that the position taken up in that letter was that neither the Head Office nor the Ceylon Branch, the Appellant, were banking companies within the meaning of Section 330 of the Companies Ordinance, No. 51 of 1938. The letter refers to matters required to be done under the Companies Ordinance, and he says this: "With regard to the returns due in terms of the above Ordinance by Banking Companies under the provisions of Chapter 13 of the Ordinance (referring to the Companies Ordinance) I am instructed by the Bank of Chettinad Limited to inform you that the principal business of my clients is not the accepting of deposits of moneys on current account or otherwise 40 subject to withdrawal by cheque, draft or order. In these circumstances my clients are not a Banking Company as defined by the Ordinance . . . In this connection I should like to add that a similar application was made by the Head Office in Burma and my client's contention that they were not a Banking Company was accepted by the Registrar of Joint Companies, Rangoon, and the Controller of Currency, Calcutta."

Apparently the Commissioner interpreted this letter to mean that the Appellant was taking up the position that they were not bankers. That interpretation is not correct. The Appellant Company was merely taking up the position that it was not a banking company within the meaning of 50 the Companies Ordinance for the reason that its principal business was not so and so, within the meaning of that Ordinance.

This Board holds that the appeal should be allowed and that the Appellant should be allowed the sum of Rs.53,226/- as a deduction under Rule 1 of the Rules made by the Board of Income Tax.

(Signed) W. S. DE SARAM,

Chairman.

Colombo, August 22, 1944.

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Decision
of Board of
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M 3),
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continued.

No. 5.

CASE stated by Income Tax Board of Review for opinion of the Supreme Court.

No. 5.
Case stated
by Board of
Review,
7th
November
1944.

10 Under the provisions of the Income Tax Ordinance No. 2 of 1932 for the opinion of the Hon'ble the Supreme Court of the Island of Ceylon upon the application of The Commissioner of Income Tax, Ceylon, Appellant.

1. The Bank of Chettinad Limited, had its Head Office at Rangoon, in Burma, until the occupation of Burma by Japan. The Bank has had a branch in Ceylon at the material dates. In the course of carrying on its business in Ceylon the Ceylon Branch paid a sum of Rs.53,226/- to the Head Office in Rangoon by way of interest for the year ended 31st March, 1940. This sum was credited in the books of the Ceylon branch as a payment to the Head Office by way of interest for that year. The Bank
20 claimed that this sum should be allowed as a deduction under Rule 1 of the Rules made by the Board of Income Tax, in assessing the Bank for Income Tax, in respect of the Year of Assessment 1st April, 1940, to 31st March, 1941. The income of the local Branch was assessed at Rs.110,476/-; the tax assessed as being payable for that Year of Assessment was Rs.19,884/36.

2. The Assessor disallowed the claim of the Bank. In the result the amount of the tax in dispute is Rs.10,646/30.

3. The Bank appealed to the Commissioner of Income Tax under the provisions of the Income Tax Ordinance against the disallowance of the deduction claimed. At the hearing before the Commissioner it was
30 not disputed that the Ceylon branch had been mainly carrying on the business of lending money on promissory notes or on the mortgage of immovable property in Ceylon and the management of estates and house properties owned by the Bank in Ceylon. The exhibit A(3) shewed that the only Current and Deposit Accounts with the local branch were those of the Chettinad Corporation Limited, and seven other persons. These seven persons were stated to have closed their accounts during the year ending 31st March, 1940; thus the only current and deposit accounts as at that date were those of the Chettinad Corporation Limited, and these
40 showed a debit balance as at that date. That the branch was financed mainly from its Head Office in Rangoon appeared from the books. The Profit and Loss Account showed a sum of Rs.81,792/- payable as interest by the local branch to the Head Office.

4. No cheque books have been issued by the Bank and no evidence was placed before the Commissioner that any moneys in deposit could have been withdrawn by cheque draft or order. At the hearing Counsel for the Appellant stated, on instructions, that the Head Office in Rangoon

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did carry on the business of banking. His contention was that even though the local branch did not carry on as its principal business the accepting of deposits of money or current account within the meaning of Section 330 of the Companies Ordinance No. 51 of 1938—yet the Bank could claim the deduction, under Rule 1 of the Rules framed by the Board of Income Tax, provided the Head Office carried on the business of banking.

5. The Eleventh Schedule of the Companies Ordinance contains a list of banks excluded from the operation of Sections 337 and 339 of the Ordinance. This Bank's name does not appear in the current print of the Ordinance although it has appeared in that Schedule in copies of the Ordinance printed prior to December, 1939. The deletion was upon representations contained in a letter dated 4th August, 1939, by Mr. John Wilson, Proctor, stating that the Bank's name had been incorrectly entered in that schedule. A copy of the Appeal Minute made on the hearing before the Commissioner is annexed to this Case Stated marked "M1." A copy of the above letter marked "X," and the exhibits produced before the Commissioner, and marked "A1" to "A5," are also annexed to this Case Stated. 10

6. The Commissioner, after hearing argument, confirmed the assessment subject to a reduction of the assessable income by Rs.4,809/- agreed to by the Assessor. The Reasons for the Decision of the Commissioner appear in the copy of the Appeal Minute. 20

7. The Bank thereupon appealed to the Board of Review constituted under the Income Tax Ordinance upon the grounds of appeal set out in the Bank's letter of the 16th February, 1944. A copy of this letter is annexed to this Case Stated marked "M2." The contention on behalf of the Bank is that Rule 1, mentioned earlier, applies to any banker not necessarily only to a company registered under the Companies Ordinance of 1938 which does the business of banking; the definition of "Banker" in the Income Tax Ordinance was relied on by the Bank. It was argued that as the Bank was doing the business of banking, namely, the opening of current accounts, the receiving of money on fixed deposits and the lending of money, the Commissioner should have held that the Bank was a "banker" within the meaning of the Income Tax Ordinance. A Bank, it was urged, need not carry on all the functions of a banker at all its branches to fall within the definition in the Income Tax Ordinance. That it had ceased to accept deposits or that accounts could not be operated on by cheques was said to be unimportant, and that the Bank was not a banking company within the definition of the Companies Ordinance was also not material to the question whether the assessee was a banker under Income Tax law. The case of the Official Assignee *versus* S.R.M.M.R.M. (1920) Indian Law Reports 43 Madras 747 was relied upon in support of the assessee's argument. 30 40

8. The Board of Review upheld the arguments of the Bank and allowed the sum of Rs.53,226/- as a deduction under Rule 1 of the Board of Income Tax Rules. A copy of the Decision of the Board is annexed marked "M3."

9. The Commissioner of Income Tax has now requested the Board of Review to state a case for the opinion of the Honourable the Supreme

Court on questions of law. The Board of Review has come to the following conclusions on the questions argued before it, namely, that :—

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(A) The Bank of Chettinad Limited, was at the material dates a “ Non-resident banker ” within the meaning of Rule 1 of the Rules made under Section 90 of the Ordinance, in that it carried on the business of a banker at its Head Office in Rangoon ;

(B) The Ceylon Branch also carried on the business of a banker, on the facts before the Board ;

10 (C) It is not necessary—in order to be entitled to the deduction claimed—that the business in Ceylon of the non-resident banker should be banking business.

If conclusion (A) is erroneous then the deduction would have to be disallowed whether or not conclusions (B) and/or (C) are correct. If conclusion (A) is correct then the deduction would have to be allowed in the event of either conclusion (B) or conclusion (C) being also held to be correct ; but if (A) is correct and both (B) and (C) are incorrect then the deduction should be disallowed.

10. We have accordingly stated and signed this case.

Colombo this 7th day of November, 1944.

20

1. (Signed) W. S. DE SARAM
2. (Signed) ROSSLYN KOCH
3. (Signed) A. G. TILLEKERATNE

Members of the Board of Review.

No. 6.

JUDGMENT of the Supreme Court.

Supreme Court No. 84-S.

Income Tax.

*In the
Supreme
Court of
Ceylon.*

30 CASE STATED UNDER THE PROVISIONS OF THE INCOME TAX ORDINANCE NO. 2 OF 1932 FOR THE OPINION OF THE HONOURABLE THE SUPREME COURT OF THE ISLAND OF CEYLON UPON THE APPLICATION OF THE COMMISSIONER OF INCOME TAX, CEYLON.

No. 6.
Judgment
of the
Supreme
Court,
17th
January
1946.

Present : SOERTSZ, Acting Chief Justice and ROSE, J.

Counsel : H. H. Basanayaka, Solicitor General with
T. S. Fernando, Crown Counsel, for the
Commissioner of Income Tax

Appellant.

H. V. Perera, K.C., with N. Nadarajah, K.C.,
and S. J. Kadiragamar for the Assessee

Respondent.

Argued on : 19th & 20th December, 1945.

Delivered on : 17th January, 1946.

40 ROSE, J. : This is a case stated under Section 74 of the Income Tax Ordinance (Chapter 188). The matter concerns the interpretation to be given to Rule 1 (1) of the Rules made by the Board of Income Tax in accordance with the provisions of Section 90 of the Income Tax Ordinance.

*In the
Supreme
Court of
Ceylon.*

No. 6.
Judgment
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continued.

The Bank of Chettinad Limited at the material time had its Head Office at Rangoon and a branch in Ceylon. In the course of carrying on its business in Ceylon the Ceylon Branch paid a sum of Rs.53,226/- to the Head Office in Rangoon by way of interest on money advanced by the Head Office during the financial year ending 31st March, 1940. This sum was credited in the books of the Ceylon Branch as a payment to the Head Office by way of interest for that year. The Bank claims that this sum should be allowed as a deduction under Rule 1 of the Board of Income Tax Rules in assessing the income tax payable by the Bank in respect of the year of assessment, 1st April, 1940, to 31st March, 1941. 10
The assessor disallowed the Bank's claim. There was no argument before us as to the actual figures involved, it being common ground that if the claim is sustainable the amount of tax payable for the year in question should be reduced by Rs.10,646/30.

The relevant definitions in Rule 1 (1) are as follows:—" 'Bank' means any non-resident banker within the meaning of these expressions as defined in section 2 of the Income Tax Ordinance. 'Ceylon Branch' means the business carried on in Ceylon by any such Bank." It was contended before the Board of Review and held by them that provided the Bank was able to establish that it was a non-resident bank in Rangoon 20 within the meaning of the above definition, it was immaterial whether the Ceylon Branch carried on banking business or not, so long as it performed some kind of commercial activity. This proposition, which in my opinion has only to be stated to show that it cannot be sustained, was not seriously argued before this Court by Counsel for the Bank, counsel contenting himself with the proposition that while the Branch must be shown to perform some banking functions it need not necessarily be shown to perform all the functions of a bank.

It is necessary therefore for the Bank to establish two matters, first that the Head Office in Rangoon carried on the business of banking in 30 Burma and secondly that the Ceylon Office did likewise in Ceylon. In order to decide this question it is necessary to discover what the legislature means by the words "bank" and "Banking." The definition of "banker" contained in section 2 of the Income Tax Ordinance carried the matter no further and reads as follows:—" 'banker' means any company or body or persons carrying on the business of banking."

Counsel for the Bank contends in the first place that a wide interpretation should be given to the word "bank" and suggests that the true test as to whether an institution is a bank or not is whether it utilizes for profit its own monies or the monies of other persons and refers to 40 volume 4 of the Supplement to Stroud's Judicial Dictionary at page 51 where reference is made to a statement by FitzGibbon, L.J., that for the purpose of the Irish Act, 33 G.2, c. 14, a "Banker" is one "who traffics with the money of others for the purpose of making profit" even, apparently, though he issues no cheque books and does not honour drafts on demand.

Whatever may be the position under the Irish Law, it seems to me that that is too wide a conception of a bank according to the law of England and Ceylon. It is to be noted that section 330 of the Companies Ordinance No. 51 of 1938 gives the following definition: "A 'banking company' means a company which carries on as its principal business 50 the accepting of deposits of money on current account or otherwise,

subject to withdrawal by cheque, draft or order, notwithstanding that it engages in addition to any one or more of the following forms of business . . . ” It is no doubt true, as Counsel for the Bank pointed out, that the Companies Ordinance was enacted in 1938 whereas the Income Tax Ordinance was enacted some six years earlier. The learned Solicitor-General contends, however, that section 330 of the Companies Ordinance merely crystallized what was already the legal conception of a “bank” in Ceylon which he says is substantially the same as that of English Law. The relevant definition in Mr. Hart’s book on the Law of Banking at page 1 reads as follows : “ A Banker or Bank is a person or company carrying on the businesses of receiving monies, and collecting drafts, for customers subject to the obligation of honouring cheques drawn upon them from time to time by the customers to the extent of the amounts available on their current accounts.” It is also perhaps helpful to turn to a layman’s view of the matter to be found in an English Dictionary of wide currency and acceptance, the Concise Oxford Dictionary, which defines a “bank” as an “establishment for custody of money, which it pays out on customer’s order.”

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I am of opinion that the contention of the learned Solicitor-General is correct and that the test to be applied is that stated, so far as companies are concerned, in section 330 of the Companies Ordinance, and therefore a banker means a company or person carrying on as its or his principal business the accepting of deposits of money on current account or otherwise, subject to withdrawal by cheque, draft or order.

Now, whether the Head Office of the Chettinad Bank in Rangoon and its branch in Ceylon satisfy this test is no doubt, in part at least, a question of fact and Mr. H. V. Perera, Counsel for the Bank, contends that the Board of Review have come to findings with which it would be wrong for us to interfere as our functions are limited in these matters to questions of law. He referred to a passage in the judgment of Scrutton, L.J., in *Currie v. Inland Revenue Commissioners*, 1921, 2 K.B.D. at page 339, in which after quoting the following words from a judgment of Lord Parker : “ It may not always be easy to distinguish between questions of fact and questions of law for the purpose of the Taxes Management Act, 1880, or similar provisions in other acts of Parliament. The views from time to time expressed in this House have been far from unanimous,” Scrutton, L.J., goes on to say, “ I think the reason is, as has been suggested by the Master of the Rolls, that there has been a very strong tendency, arising from the infirmities of human nature, in a judge to say, if he agrees with the decision of the Commissioners, that the question is one of fact, and if he disagrees with them that it is one of law, in order that he may express his own opinion the opposite way.”

While giving full weight to this wise and witty pronouncement which, in my opinion, might well be taken to heart by Appellate Courts in matters coming before them even otherwise than by case stated, I consider nevertheless that the question as to whether by the evidence adduced before the Board the Chettinad Bank and its Branch can reasonably be held to have satisfied the test to which I have referred is a matter of law, or at least of mixed fact and law, to which it is proper that this Court should apply its mind.

It must be borne in mind that it is for the person claiming relief to establish affirmatively that he is a “bank” within the meaning of the

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Rule. As regards the Ceylon Branch, as is pointed out in the case stated, it was not disputed at the hearing before the Commissioner that it had been mainly carrying on the business of lending money on promissory notes or on mortgage of property in Ceylon and the management of estates and house property owned by the bank in Ceylon. Further, no cheque books had been issued by the Branch and there was no evidence before the Commissioner that any monies on deposit in any shape or form could have been withdrawn by cheque, draft or order; or *a fortiori* that any such monies were in fact so withdrawn. The only exhibit produced which can be said to have any bearing on the matter, exhibit A3, shows that at the material time the only current and deposit accounts with the Branch were those of the Chettinad Corporation Limited and seven other persons, which seven were shown to have closed their accounts during the financial year ending the 31st March, 1940. Thus, as is pointed out in the case stated, the only current and deposit accounts at that date were those of the Chettinad Corporation Limited which at that time showed a debit balance. 10

It seems to me, with all respect to the Board of Review, that it is impossible on this material to say that it can reasonably be held that the Bank has shown that the Ceylon Branch has satisfied the test as set out above. The Bank having therefore failed to show that the Ceylon Branch was carrying on the business of banking it becomes unnecessary to consider whether the Head Office of the Chettinad Bank in Rangoon was doing so. I will therefore express no opinion on that matter but would merely observe that in a letter dated the 4th August, 1939, addressed to the Registrar of Companies, Colombo, the Proctor of the Chettinad Bank Limited stated as follows: "I am instructed by the Bank of Chettinad Limited to inform you that the principal business of my clients is not the accepting of deposits of monies on current account or otherwise subject to withdrawal by cheque, draft or order. In these circumstances my clients are not a Banking Company as defined by the Ordinance and I have to point out that their name has been incorrectly entered in the 11th schedule to the above ordinance. In this connection, I should like to add that a similar application was made by the Head Office in Burma and my client's contention that they were not a Banking Company was accepted by the Registrar of Joint Companies, Rangoon and the Controller of Currency, Calcutta." In the light of this statement of the position made by the Chettinad Bank's Proctor, it would seem, if it was necessary for the point to be decided, that the Chettinad Bank might well experience difficulty in establishing that their Head Office in Rangoon was carrying on a banking business in the sense attributed to that term in Ceylon. 20 30 40

For these reasons I am of opinion that the Chettinad Bank Limited is not entitled to the relief it claims. It must pay the costs of the proceedings in this Court, before the Board of Review and before the Commissioner.

(Signed) ALAN ROSE,

Puisne Justice.

SOERTSZ, Senior Puisne Justice.

I agree,

(Signed) F. J. SOERTSZ,

Senior Puisne Justice. 50

No. 7.

DECREE of the Supreme Court.

BANK OF CHETTINAD, LIMITED - Respondent

against

THE COMMISSIONER OF INCOME TAX - Appellant.

Income Tax.

*In the
Supreme
Court of
Ceylon.*No. 7.
Decree
of the
Supreme
Court,
17th
January
1946.

10 This cause coming on for hearing and determination on the 19, 20 December, 1945, and 17th day of January, 1946, and on this day, upon an appeal preferred by the Appellant before the Honourable Mr. F. J. Soertsz, K.C., and the Honourable Mr. A. E. P. Rose, Puisne Justices of this Court, in the presence of Counsel for the Appellant and Respondent.

It is considered and adjudged that the Order entered in this action by the Board of Review Income Tax and dated the 22nd day of August, 1944, be and the same is hereby set aside and it is declared that the Chettinad Bank Limited is not entitled to the relief it claims.

And it is further ordered and decreed that the Respondent do pay to the Appellant his taxed costs of the proceedings in this Court, before the Board of Review and before the Commissioner.

20 Witness the Honourable Sir John Curtois Howard, Kt., K.C., Chief Justice, at Colombo, the 17th day of January, in the year of our Lord One thousand Nine hundred and Forty-six and of Our Reign the Tenth.

(Signed) N. NAVARATNAM,

Deputy Registrar,

Supreme Court.

No. 8.

**PETITION for Conditional Leave to Appeal to His Majesty in Council,
5th February 1946.***(Not printed.)*

No. 8.

No. 9.

**ORDER granting Conditional Leave to Appeal to His Majesty in Council,
12th February 1946.***(Not printed.)*

No. 9.

30

*In the
Supreme
Court of
Ceylon.*

No. 10.

No. 10.

PETITION for Final Leave to Appeal to His Majesty in Council, 8th March 1946.

(Not printed.)

No. 11.
Decree
granting
Final Leave
to Appeal
to His
Majesty
in Council,
19th March
1946.

No. 11.

DECREE of the Supreme Court granting Final Leave to Appeal to His Majesty in Council.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

THE COMMISSIONER OF INCOME TAX COLOMBO Respondent.

Against

THE BANK OF CHETTINAD LIMITED COLOMBO

Assessee-Petitioner. 10

Supreme Court No. 84 (Inty.).

In the matter of an application by the Assessee above-named dated 8th March, 1946, for Final Leave to appeal to His Majesty the King in Council against the decree dated 17th January 1946.

This matter coming on for hearing and determination on the 19th day of March 1946, before The Honourable Mr. A. R. H. Canekeratne, K.C. and the Honourable Mr. M. W. H. de Silva, K.C., Puisne Justice of this Court, in the presence of Counsel for the Petitioner and Respondent.

The Petitioner having complied with the conditions imposed on him by the Order of this Court dated 12th February 1946, granting Conditional 20 Leave to appeal.

It is considered and adjudged that the Petitioner's application for Final Leave to appeal to His Majesty the King in Council be and the same is hereby allowed.

Witness the Honourable Sir John Curtois Howard, Kt., K.C., Chief Justice, at Colombo, the 19th day of March in the year of Our Lord One thousand Nine hundred and forty Six and of our Reign the tenth.

(Sgd.) N. NAVARATNAM,

Dy. Registrar, Supreme Court.

ANNEXURES TO CASE STATED.

Annexures.

CERTIFICATE OF INCORPORATION.

No. 19 of 1929-1930.

I hereby certify that "The Bank of Chettinad, Limited" is this day incorporated under the Indian Companies Act, 1913, and that the Company is Limited.

Given under my hand at Madras this Thirteenth day of September, One Thousand Nine Hundred and Twenty-Nine.

(Signed) V. S. CHENGALVARAYA PILLAI,

Certificate
of Incorporation,
13th
September
1929.

10 Assistant Registrar of Joint Stock Companies.

Joint Stock Companies
The Seal of
* the Assistant *
Registrar
Madras City.

"X"—LETTER, John Wilson to Registrar of Companies.

4th August, 1939.

The Registrar of Companies,
Colombo.

20 Companies Ordinance 51 of 1938.

BANK OF CHETTINAD LIMITED.

With reference to the requirements of Section 143 of the above Ordinance I am instructed by the Bank of Chettinad Limited to request that all documents be exempted in as much as all information regarding the affairs of the Company will be available on the returns which the Bank of Chettinad Limited is liable to furnish under Section 318 (b) and 320 of the above Ordinance. Furthermore the Bank of Chettinad Limited is a private Company as defined by the Ordinance.

30 With regard to the returns due in terms of the above Ordinance banking Companies under the provisions of Chapter 13 of the Ordinance I am instructed by the Bank of Chettinad Limited to inform you that the principal business of my clients is not the accepting of deposits of monies on current account or otherwise subject to withdrawal by cheque, draft or order. In these circumstances my clients are not a Banking Company as defined by the Ordinance and I have to point out that their name has been incorrectly entered in the 11th Schedule to the above Ordinance.

In this connection I should like to add that a similar application was made by the Head Office in Burma and my client's contention that they were not a Banking Company was accepted by the Registrar of Joint
40 Companies Rangoon and the Controller of Currency, Calcutta.

I am, Sir,

Your obedient servant,

(Signed) JOHN WILSON.

X.
Letter,
John
Wilson to
Registrar of
Companies,
4th August
1939.

Annexures. NOTIFICATION under the Companies Ordinance published in the Government Gazette of December 15, 1939.

Notification
in Govern-
ment
Gazette,
15th
December
1939.

GOVERNMENT NOTIFICATIONS

L.D.—B 28/39.

M/L.I.C./CG 4.

The Companies Ordinance No. 51 of 1938.

By virtue of the powers vested in me by Section 338 of the Companies Ordinance, No. 51 of 1938, I, Andrew Caldecott, Governor of Ceylon, do by this Notification amend the Eleventh Schedule to the Ordinance as follows :—

(1) by the omission therefrom of the following :—

10

“ 2. Bank of Chettinad, Madras.

“ 4. Central Bank of India ” ; and

(2) by the renumbering of items 3, 5, 6, 7, 8, 9, 10, 11 and 12 as items 2, 3, 4, 5, 6, 7, 8, 9 and 10, respectively.

A. CALDECOTT,

Governor.

Kandy, December 12, 1939.

A1.
Memoran-
dum and
Articles of
Association
Association
of
Appellant.

A1.—MEMORANDUM AND ARTICLES OF ASSOCIATION OF APPELLANT.

The Indian Companies Act, 1913.

COMPANY LIMITED BY SHARES.

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MEMORANDUM AND ARTICLES OF ASSOCIATION OF THE BANK
OF CHETTINAD LIMITED
1929.

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The Indian Companies Act, 1913.

COMPANY LIMITED BY SHARES.

MEMORANDUM OF ASSOCIATION
OF
THE BANK OF CHETTINAD, LIMITED.

Annexures.

A1.
Memorandum and
Articles of
Association
of
Appellant,
continued.

1. The name of the Bank is "The Bank of Chettinad, Limited," and the Bank is hereinafter and in the Articles of Association hereto annexed referred to as "the Bank." Name.

Amended as per Special Resolution of the Shareholders of the Bank at the Extraordinary General Meeting held on 24.1.1937.

2. The Registered Office of the Bank will be situate in the province of Burma. Registered
Office.

3. The objects for which the Bank is established are :

Objects.

To establish, carry on and promote in India and elsewhere in any part of the world all or any of the following businesses, namely : the business of bankers, financiers, financial agents, trustees, executors and administrators of intestate estates, general agents, land owners, estate-owners, mill-owners, mine-owners, warehouse men, forwarding and commission agents, insurance agents, mercantile agents, under-writers, importers and exporters of all manner of merchandise, manufactured goods, materials, provisions, dealers in produce of all kinds, manufacturers of goods of any description or any one or more of such businesses in all or any of the respective branches and agencies of the Bank and any other trades or businesses which may seem to the Bank capable of being carried on in connection with or as incident to any of the above-mentioned businesses and calculated to enhance the value or render profitable any of the properties or rights of the Bank, and in particular and without prejudice to the generalities foregoing :—

20

30

(A) To carry on the business of banking in all its branches and departments including all financial and monetary transactions and other businesses which now are or at any time during the existence of the Bank may be usually or commonly carried on by Indian, British, Foreign, or Colonial Banks, whether private partnerships or public companies in the Madras Presidency and in such place or places in India and elsewhere as the Directors may, from time to time, determine, and with such branches and agencies in India and elsewhere as may from time to time be determined upon by the Directors.

40

(B) To receive moneys on deposit, accounts current or otherwise with or without allowance of interest and to receive on deposit securities, properties and valuables of every description on pledge or otherwise.

(C) To raise and borrow money, and secure the payment of money by such means, upon such terms and conditions and in such

Annexures.

A1.
Memorandum and
Articles of Association
of
Appellant,
continued.

manner as may be determined, and particularly, by endorsing and transferring by way of security, bills of exchange, promissory notes, or other negotiable instruments executed in favour of the Bank by customers and others; by pledge of goods and other moveable properties of the Bank, and also by creating sub-pledges and sub-mortgages of other securities delivered to the Bank by customers and others (pledged articles or goods or other moveables and documents of title relating to moveable and immoveable properties delivered with intent to create a security thereon in favour of the Bank), by the creation of mortgages over immoveable properties of the Bank, and by the issue of bonds, debentures, debenture stock or other securities, either perpetual or terminable, and charged specifically, or by way of floating charge, or otherwise, upon all or any part of the undertaking, property and rights of the Bank (either present or future or both), including its uncalled capital, if any. 10

(D) To advance and lend money, open cash credits, allow overdrafts to any person, association, firm or company with or without security or wholly or partly secured, on any terms, in any manner, upon any description of property moveable or immoveable, existing and future produce and securities of all kinds, policies, shares, bonds, debentures, debenture stock, letters of credit, promissory notes, bills of exchange and other negotiable instruments or instruments or on the deposit of title deeds, goods, wares and merchandise, bills of sale, bills of lading and other mercantile indicia or tokens and to deposit money with or without security with other companies, whether banking companies or not, or with any person, association of individuals, or firm, upon such terms as may be thought proper, and from time to time to vary such transactions, in such manner as the Bank may think fit. 20 30

(E) To tender for and to farm revenues, taxes, privileges, dues, customs and duties of any Government, State, Municipality or person.

(F) To contract for public or private loans and to negotiate and issue the same, and to negotiate loans of every description.

(G) To act as agent for any Government or other authority and for public or private bodies or persons.

(H) To issue, subscribe for, conditionally or unconditionally or absolutely, purchase, hold, underwrite, negotiate and deal in loans, stocks, bonds or obligations of any Government, Native State or Province, local authority, Port Trust, Municipal Body, incorporated or not, or any company or other corporation, and the shares, stock, debentures and debenture stock (whether perpetual or terminable) of any joint stock company or co-partnership and investment of all kinds. 40

(I) To acquire, issue and use, deal in and pledge, mortgage, transfer, assign, sell and negotiate mercantile documents of every kind or description, and, without prejudice to this generality, to draw, make, accept, endorse, execute, issue and negotiate and assign, and to discount, buy and sell and deal in cheques, bills of 50

lading, railway receipts, promissory notes, drafts, hundis, warrants, debentures, certificates, scrips and instruments and securities whether transferable, negotiable, or treated as not negotiable in India or elsewhere and other documents of every description.

Annexures.

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A1.
Memorandum and
Articles of
Association of
Appellant,
continued.

(J) To grant and issue letters of credit, circular notes, bills, drafts and other instruments and securities whether payable to bearer or otherwise, and to make the same or any of them assignable free from equities.

10

(K) To have adathi dealings and transactions with other bankers, money-lenders, traders, merchants, firms, companies, and other associations of individuals, and persons and individuals, according to the Nattukottai Chetti custom and practice.

(L) To negotiate loans and advances, and to purchase, sell, endorse and surrender for renewal any Government promissory notes, Government War Loan Bonds and other securities of the Government of India and any other Government, whether within or without the British Empire.

(M) To buy, sell and deal in bullion, specie and other representatives of value, and to assay and refine precious metals.

20

(N) To transact, deal in or carry on all kinds of agency business, commonly carried on by bankers, financiers, concessionaires and capitalists, and in particular, in relation to the collection, payment, remittance and transmission of moneys, securities and valuables, and the investment of the same, the purchase, sale and improvement, development and management of property including business concerns and undertakings.

30

(O) To carry on all kinds of guarantee and indemnity business, and in particular to guarantee the payment of any money and the discharge or performance of any contract or engagement entered into by any company or person, discharge any debt or other obligation, of or binding upon the Bank or any other company by creating a mortgage or charge upon all or any part of the undertaking, property and rights of the Bank (either present or future or both including its uncalled capital, if any).

40

(P) To undertake and execute any trusts, and to hold, administer, manage, execute the trusts of, sell, realise, invest, dispose of, and deal with the moneys and properties, both moveable and immoveable, comprised or included in any estate of which the Bank is the executor or administrator, or in any trust of which the Bank is the trustee or of which the Bank is the administrator, guardian, arbitrator, receiver, manager, committee, liquidator, attorney, or treasurer, and to carry on, manage, sell, realise, dispose of and deal with any business comprised or included in any such estate or trust.

50

(Q) To purchase, take on lease for the purpose of exchange, or otherwise acquire, any lands and buildings, and any estate or interest in, and any rights connected with such lands and buildings, and any real or personal property and moveable or immoveable property and any rights or privileges, easements, machinery, plant and stock in trade, and to take or give in exchange, hire or otherwise

Annexures.

A1.
Memorandum and
Articles of Association
of
Appellant,
continued.

acquire any immovable or moveable properties, businesses, rights or privileges which may seem suitable or convenient for the purpose of the business or businesses of the Bank.

(R) To sell, mortgage, let, exchange, manage, improve, cultivate, develop, dispose of, turn to account or otherwise deal with all or any part of the properties, rights, and privileges of the Bank, upon any terms, and for any consideration.

(s) To acquire and take by purchase, amalgamation, grant, concession, lease, licence, barter or otherwise, either solely or jointly with others and to improve, develop, work, cultivate, turn to account, and otherwise deal with any real or personal, moveable or immovable property, rights or privileges, including houses, lands, farms, forests, forest-rights, timber estates, mines, quarries, water-rights, privileges, rights and hereditaments, estates, plantations and other lands in freehold, leasehold or other tenure, and in particular, lands producing or likely to produce paddy, cocoanuts, coffee, fibres, rubber, spices, sugar, tapioca, tea, tobacco, and other produce and minerals of any kind (including plumbago and oil) and also grants, concessions, claims, licenses and authorities of any such lands, and any partial, joint or other interest therein and either absolutely, optionally or conditionally, and also acquire any tract or tracts of country in India and elsewhere, together with such rights as may be agreed upon and granted by Government, or the rulers, or the owners thereof; and to expend such sums of money as may be deemed requisite and advisable in the exploration, survey, development and working thereof. 10

(T) To purchase or otherwise acquire, undertake and carry on the whole, or any part of the business, goodwill, property, assets and liabilities of any person or persons, firm or company carrying on businesses in India or elsewhere, any business of a nature altogether or in part similar to any business which the Bank is authorised to carry on, or possessed of property suitable for the purposes of the Bank, and to pay for the same and all other properties or rights of whatsoever kind acquired by the Bank in cash or in shares, debentures, debenture-stocks of the Bank, and to carry on, pending a sale or realisation, any business which the Bank may as mortgagees have taken possession of, or acquired by foreclosure. 30

(U) To insure with any person, firm, association or company against losses, damages, risks and liabilities of any kind which may affect the Bank either wholly or partially and if thought fit, to effect any such insurance by joining or becoming a member of any mutual insurance, protection or indemnity association, federation or society, and to accept any such insurance or any part thereof for the account of the Bank. 40

(V) To establish, promote, form and subsidize or otherwise assist in establishing, promoting, forming and subsidizing any other company and to prosecute or assist in the prosecution of any other undertakings or enterprises of any description and to secure by underwriting or otherwise the subscription of all or any part of the share, loan or other capital, including any stocks, shares, debentures, debenture stock, or other securities of the Bank or any other 50

company, and to pay and receive any commission, brokerage or other remuneration in connection therewith and to obtain a settlement of quotation upon any exchange of any share, loan or other capital of the Bank or any other company.

Annexures.
—
A1.
Memoran-
dum and
Articles of
Association
of
Appellant,
continued.

10 (w) To amalgamate, enter into partnership or any arrangement, whether terminable or otherwise, for sharing profits, union of interests, joint adventure, reciprocal concessions or co-operation, or otherwise with any person, firm, association or company carrying on, or engaged in, or about to carry on or engage in, any business or transaction which this company is authorised to carry on, or engage in, any business or transaction capable of being conducted so as directly or indirectly to benefit the Bank, and to lend money to and to guarantee the contracts of and to subsidize or otherwise assist any such person, firm, association or company, to subscribe for and to take and otherwise acquire shares and hold shares, or other interest in securities of any other company, and to sell, hold, re-issue, with or without guarantee or otherwise deal with the same and to accept other shares in exchange for the same.

20 (x) To effect insurances and assurances on the lives of any debtors to the Bank or on the lives of any other person or persons in whom the Bank may have an assurable interest and to pay the premiums and other moneys required to keep up the policies of assurance out of the moneys of the Bank.

(y) To procure the Bank to be registered or recognised in any place outside British India, and in connection therewith to establish and maintain local registries and agencies.

(z) To carry on any of the foregoing businesses together or separately.

30 (AA) To establish branches and appoint agencies for or in connection with any of the objects of the Bank in any part of the world provided however that the Directors may always circumscribe the scope of business in a particular place and authorise the agent of each such business to carry on only business of a specified nature, and execute power or powers of attorney to the agent of each business defining the limits of his authority in the carrying on of business.

(BB) To distribute among the members of the Bank, in specie any of the properties of the Bank.

40 (CC) To provide for the welfare of persons in the employment of the Bank or formerly engaged in any business acquired by the Bank, and the dependants of such persons by a Provident Fund or Funds, grants of money, pensions or otherwise in such manner as the Bank may deem fit.

(DD) To take or concur in taking all such steps and proceedings as may seem best calculated to uphold and support the credit of the Bank and to obtain and justify public confidence and to avert or minimise financial disturbances which might affect the Bank.

(EE) To carry out all or any of the foregoing objects in any part of the world as principals, or agents, and by or through trustees,

Annexures.

A1.

Memorandum and Articles of Association of Appellant, *continued.*

agents, or otherwise, and either alone or in co-partnership with or upon a joint account, or as a joint adventure with any corporation, person, firm or association.

(FF) To do all such other things as incidental or conducive to the attainment of the foregoing objects.

AND IT IS HEREBY DECLARED that the objects specified in each paragraph of this clause shall be regarded as independent objects, and accordingly shall in no wise be limited by reference to any other paragraph or by the name of the Bank.

Limited Liability. Capital.

4. The liability of the members is limited.

10

5. The capital of the Company is Rs.3,00,00,000 (with power to increase or reduce such capital) divided into 30,000 shares of Rs.1,000 each.

Shares.

6. Any of the said shares and any new shares hereafter to be created may, from time to time, be divided into shares of several classes in such manner as the Articles of Association of the Bank may prescribe or allow, and so that the shares of each class may have or confer such preferred, deferred or other special rights and privileges and may be issued under such restrictions, and conditions whether in regard to dividend, voting, return of capital or otherwise, as shall have been assigned thereto by or under the provisions of the Articles of Association, but so that the special rights or privileges belonging to holders of any shares issued with preferred or other rights shall not be varied or abrogated or affected except with such sanction as is provided for by the Articles of Association of the Bank for the time being.

WE, the several persons whose names, addresses and descriptions are subscribed are desirous of being formed into a company, in pursuance of this Memorandum of Association and we agree to take the number of shares in the capital of the Bank set opposite to our respective names :—

Names, Addresses and description of subscribers.	Number of shares to be taken by each subscriber.	30
(Sd.) RAJAH SIR ANNAMALAI CHETTIAR of Chettinad, Natana Vilas, 38, Police Commissioner's Office Road, Madras. Landholder & Banker.	One Thousand Shares	
(Sd.) KUMARARAJAH MUTHIAH CHETTIAR Of Chettinad, Natana Vilas, 38, Police Commissioner's Office Road, Madras. , Landholder & Banker.	One Thousand Shares	40
Total	2,000 shares	

Dated this thirteenth day of September, 1929.

Witness to all the above signatures :—

Sd. M. SUBBARAYA AIYAR
Advocate, Pelatope, Mylapore,
Madras, 13.9.1929.

*The Indian Companies Act, 1913.**Annexures.*

COMPANY LIMITED BY SHARES.

A1.
Memorandum and Articles of Association of Appellant, continued.

ARTICLES OF ASSOCIATION

of

THE BANK OF CHETTINAD, LIMITED.

PRELIMINARY.

1. The Regulations of Table A in the First Schedule to the Indian Companies Act, 1913, shall not apply except so far as they are repeated or contained in these Articles. Table A not to apply.

10 2. In these Articles, unless inconsistent with the context :—

(A) The word "Rajah's family" shall mean and include the following persons :— "Rajah's Family."

(i) The Hon'ble Rajah Sir Annamalai Chettiar of Chettinad.

(ii) Rani Sreemathi Seethai Achi of Chettinad.

(iii) Kumararajah Muthiah Chettiar of Chettinad, first son of Rajah Sir Annamalai Chettiar of Chettinad.

(iv) Kumarani Sreemathi Meyyamai Achi of Chettinad.

20 (v) M. R. M. Ramanathan Chettiar, second son of Rajah Sir Annamalai Chettiar of Chettinad and adopted to the late Diwan Bahadur S. R. M. M. R. M. Ramaswami Chettiar.

(vi) M. A. Chidambaram Chettiar, third son of Rajah Sir Annamalai Chettiar of Chettinad.

(vii) Sreemathi Valliammai Achi, first daughter of Rajah Sir Annamalai Chettiar of Chettinad.

(viii) Sreemathi Meenakshi Achi, second Daughter of Rajah Sir Annamalai Chettiar of Chettinad.

(ix) Sreemathi Unnamalai Achi, third daughter of Rajah Sir Annamalai Chettiar of Chettinad.

30 (x) Sreemathi Lakshmi Achi, fourth daughter of Rajah Sir Annamalai Chettiar of Chettinad.

(xi) The wives of the sons of Rajah Sir Annamalai Chettiar of Chettinad and of his descendants tracing their decent through males.

(xii) The wife of M. R. M. Ramanathan Chettiar aforesaid and the wives of the sons of M. R. M. Ramanathan Chettiar and of his descendants tracing their descent through males.

(xiii) Lineal descendants, male and female of persons (i) to (xii) above-named.

40 (B) The "Act" means the Indian Companies Act, 1913 and any and every Act for the time being in force in British India concerning joint stock companies with limited liability, and any reference to any provision thereof shall be read as a reference to such provision as amended or re-enacted by any Statute for the time being in force. "Act."

(C) "Special Resolution" shall have the same meaning as in the Act. "Special Resolution."

Annexures.

A1.
Memorandum and
Articles of
Association
of
Appellant,
continued.
" Register."
" Office."
" Month."
" Writing."
" Paid up."

" Dividend."
" Board."

" Extra-
ordinary
Resolution."

Number.

Gender.
Person.

Private
Company.

Limitations
on transfer.

Number of
shareholders
limited.

Head and
Registered
Office.

Business.

(D) " The Register " means, in the case of members, the register of members to be kept in accordance with Section 31 of the Act and in the case of holders of debentures, the register of such holders at any time, or from time to time kept by the Bank.

(E) The " Office " means the Registered Office for the time being of the Bank.

(F) " Month " means calendar month according to the English Calendar.

(G) References to " writing " shall be construed as also to include references to printing, typewriting, lithography, photo- 10
graphy and other modes of representing or reproducing words in a visible form.

(H) " Paid up " means paid up or credited as paid up.

(I) Expressions defined in the Act or any statutory modification thereof for the time being in force have the meanings so defined.

(J) " Dividend " includes bonus.

(K) " Board " or " the Directors " shall mean a quorum of the Directors for the time being assembled at any place in accordance with the Regulations.

(L) " Extraordinary Resolution " shall, in the case of a meeting 20
of the shareholders, mean a resolution passed by a majority consisting of not less than three-fourths of the votes given upon the resolution.

(M) Words importing the singular include the plural, and vice versa.

(N) Words importing the masculine gender include feminine.

(O) Words importing persons include firms and bodies corporate.

3. The Bank is incorporated as a Private Company within the meaning of the Indian Companies Act, 1913, and—

(A) The right to transfer shares is restricted in the manner hereinafter appearing. 30

(B) The number of members of the Bank is limited to fifty, provided that, for the purpose of this article, where two or more persons hold one or more shares in the bank jointly, they shall be treated as a single member.

(C) Any invitation to the public to subscribe for any shares or debentures or debenture stock of the Bank is prohibited.

(D) If there shall be any inconsistency between the provisions of this Article and the provisions of any other Article, the provisions of this Article shall prevail.

BUSINESS. 40

Amended as per special Resolution of the Shareholders of the Bank at the Extraordinary General Meeting held on 24.1.1937.

" 4. The Head and Registered Office of the Bank shall be in the province of Burma."

5. The business of the Bank shall include the separate objects mentioned in or within the scope of the meaning of the Memorandum of Association and all matters incidental thereto ; and the business shall be carried on in India, the Colony of Ceylon, and its Dependencies, Burmah, Straits Settlements, Malay States, French Cochin China and in such other countries and places as may be desired, and shall (subject to the provisions 50

of these Articles) be carried on by or under the management or control of the Directors, and according to such regulations as they may from time to time prescribe, subject only to such control by the members at General Meetings as is provided for by these Articles or by any Act of the Legislature, and all acts done in relation to the Bank by the Directors shall be deemed to be the acts of the Bank.

6. The business of the Bank may be commenced, notwithstanding that shares may not have been issued and calls for shares may not have been issued and calls for shares may not have been paid up.

10 7. No person, unless thereto expressly authorised under a Power of Attorney signed by two Directors or by one Director and countersigned by the General Manager or by some other person appointed by the Directors for the purpose and acting within the limits of any further special authority which may be conferred on him by two Directors or by one Director and the General Manager or by some other person appointed by the Directors for the purpose whether telegraphic or otherwise, shall have any authority to draw, accept, make or endorse any cheque, promissory note, or bill of exchange, or other negotiable instrument on behalf of the Bank, or to enter into any contract, or to make any representation so as
20 to impose thereby any liability on the Bank, or otherwise to pledge the credit of the Bank.

SHARE CAPITAL.

8. The capital of the Bank is Rs.3,00,00,000 divided into shares of Rs.1,000 each.

9. None of the funds of the Bank shall be employed in the purchase of the shares of the Bank.

10. The shares shall be under the control of the Directors, who may issue, allot or agree conditionally or absolutely to issue, allot or otherwise dispose of the same at such times, and in such manner and upon such terms
30 and conditions as they shall think fit. Provided that all the shares of the Bank shall be issued and allotted only to the Hon'ble Rajah Sir Annamalai Chettiar of Chettinad, and the members of his family as defined in Article 2, clause (A) Sub-Clauses (i) to (xiii) aforesaid.

(11 to 22 inclusive not printed.)

TRANSFER AND TRANSMISSION OF SHARES.

23. No transfer of any share in the capital of the Bank shall be made or registered except in accordance with the following conditions:—

(A) Any shareholder proposing to transfer his share or shares (hereinafter called a retiring shareholder) is bound to issue notice in writing (hereinafter described as a sale notice) to the Bank declaring his willingness to sell all or any of his shares, and requesting the Bank to effect a sale. Every sale notice shall specify the denoting numbers of the shares which the retiring shareholder desires to sell, and shall constitute the Bank the agent of the retiring shareholder for the sale of such share or shares at the fair value to be fixed as hereinafter provided. No sale notice shall be withdrawn except with the sanction of the Directors.

50 (B) The Bank shall thereupon cause such notice to be sent to every shareholder belonging to the Rajah's family other than the retiring shareholder offering such share or shares as nearly as may

Annexures.

A1.

Memorandum and Articles of Association of

Appellant, continued.

Commencement of business.

Limitation of Power and Authority to draw, accept bills.

Share Capital.

Bank not to buy its own shares.

Allotment of shares.

Transfer of Shares.

Notice to Bank of intention to sell.

" Offer to members of Rajah's family " and sale.

Annexures.

A1.
Memorandum and
Articles of
Association
of
Appellant,
continued.

be in proportion to the existing shares held by them respectively, limiting a period of three months within which such offer if not accepted will be deemed to have been declined. If any such shareholder does not claim his proportion or if he declines expressly or impliedly as aforesaid, the Bank shall sell the shares to the other shareholders belonging to the Rajah's family as nearly as may be proportionate to the shares held by them respectively. Any such shareholder who is willing to purchase such share or shares, may, within three months of the receipt of such notice, communicate to the Bank his willingness to purchase such share or shares at the fair value to be fixed in the manner hereinafter provided. 10

The Directors shall also make such arrangements as regards the finding of a purchasing shareholder for any shares not accepted by shareholders belonging to the Rajah's family to whom they shall have been so offered as aforesaid, as they shall think just and reasonable.

The Bank shall effect the sale not later than six months from the date on which the sale notice of the retiring shareholder was received by the Bank.

The Bank on finding a shareholder or other person willing to purchase any share (herein referred to as a purchasing shareholder) shall give notice thereof to the retiring shareholder; and the retiring shareholder shall be bound, upon payment of the fair value as is referred to in clause (c) of this Article, to transfer the share to the purchasing shareholder who shall be bound to complete the purchase within one month or such further time as may be granted by the Bank, provided that the time granted to the purchasing shareholder to pay the fair value and complete the purchase shall not exceed six months from the date of the sale notice. 20

Fair value
how
determined.

(c) The Bank, shall, every year, at its Ordinary General Meeting, determine the fair value of a share for the purpose of clause (b) of this Article; and the said fair value shall be in force till the next Ordinary General Meeting of the Bank. 30

In the event of the retiring shareholder failing to carry out the sale of any shares which he shall have become bound to transfer as aforesaid, the Directors may levy a penalty of a sum not exceeding Rs. 5/- per share in respect of which the sale notice is given and the penalty so levied against him shall be deemed a debt due by him to the Bank.

Sale to
outsiders.

(d) If the Bank is unable to effect a sale of such share or shares at or above the fair value to any member of the Rajah's family within the said period of six months, the retiring shareholder after receiving an intimation in writing from the Bank of its inability to sell the said share or shares, shall be at liberty to sell his share or shares to any person; 40

Provided that such transferee not being a member of the Rajah's family shall be entitled only to the dividend, if any, but none of them shall be entitled to attend or to vote at any meeting of the shareholders of the Bank.

The Directors
may decline
to register.

24. Subject and without prejudice to the foregoing provisions relating to transfer of shares, the Directors may at any time, in their discretion, decline to register any transfer of shares without assigning 50

Annexures.
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 A1.
 Memorandum and
 Articles of
 Association
 of
 Appellant,
continued.

any reason for such refusal whether to a shareholder or not, or to register any person becoming entitled to a share otherwise than by transfer, whether a shareholder or not (A) where the Bank has a lien on the share, or (B) where it appears that the transferee is not a responsible person; or (C) where the Directors are of opinion that the proposed transferee is not a desirable person to admit to membership, provided always that clauses (B) and (C) of this Article shall not apply to a transfer made pursuant to Article 23 to a shareholder belonging to the Rajah's family. In cases covered by clauses (B) and (C) of this Article, the transferee may call upon the Bank
 10 to sell the shares at the fair value fixed under Article 23 (C) aforesaid and the Bank shall find a purchaser accordingly. In any case where if a transfer were registered the number of shareholders would be increased beyond the prescribed maximum number, the Directors shall refuse to register such transfer.

(25 to 35 inclusive not printed.)

INCREASE AND REDUCTION OF CAPITAL, ETC.

36. The Bank may, by an extraordinary resolution, from time to time, increase the share capital by such sum, to be divided into shares of such amounts as the resolution shall prescribe.

Increase of
 Capital.

20 The new shares shall be issued upon, and subject to such terms, restrictions, and conditions and with such rights and priorities and privileges, as shall be prescribed by the resolution sanctioning the increase of capital :

Provided also that the new shares shall be issued only to the members of the Rajah's family.

The new shares shall (except so far as otherwise provided by the conditions of issue) be subject to the same provisions with reference to the payment of calls, transfer, transmission, surrender, lien and otherwise, as are the shares in the original share capital.

30 37. The Bank may, from time to time, by Special Resolution,
 (A) consolidate and divide its capital into shares of greater or smaller amount than its existing shares ;

Reduction
 of Capital,
 etc.

(B) cancel any shares not taken or agreed to be taken by any person ;

40 (C) by sub-division of its existing shares or any of them, to divide the whole or any part of its share capital into shares of smaller amount than is fixed by its Memorandum of Association, and so that, as between the holders of the resulting shares, one or more of such shares may, by the resolution by which the sub-division is effected, be given any preference or advantage as regards dividends, capital, voting, or otherwise over the others or any other of such shares, and

(D) reduce its capital in any manner authorised and subject to any conditions prescribed by the statutes.

MODIFICATION OF RIGHTS.

38. All or any of the rights or privileges belonging to any class of shares forming part of the capital for the time being of the Bank may be affected, modified, dealt with or abrogated in any manner with the sanction of a special resolution passed at a separate General Meeting of the Members

Power to
 modify
 rights.

Annexures. of that class by a majority in number of shareholders of that class holding three-fourths of the share capital of that class.

A1.

Memoran-
dum and
Articles of
Association
of
Appellant,-
continued.
Borrowing
powers.

BORROWING, POWERS.

39. The Directors may raise or borrow money from time to time by bonds, debentures, promissory notes, bills, hundis and other negotiable securities, and by opening current accounts, cash credits, overdrafts and by receiving advances with or without security and by mortgaging any lands, buildings, goods and other property of the Bank, or by the security of the whole or any part of the undertaking or assets present or future of the Bank including its uncalled capital, and for such purpose may give, execute and issue such perpetual, or redeemable debentures, mortgages and securities upon terms and covenants as the Directors may think fit. 10

(40 to 61 inclusive not printed.)

DIRECTORS.

Amended as per Special Resolution of the Shareholders of the Bank at the Extraordinary General Meeting held on 24.2.1937.

Number of
Directors.

“ 62. The number of Directors shall not be less than five nor more than nine, unless otherwise determined by General Meeting of the Company.”

First
Directors.

63. The first Directors shall be 20
(I) The Hon'ble the Rajah Sir Annamalai Chettiar of Chettinad.
(II) Rani Sreemathi Seethai Achi, wife of the Hon'ble Rajah Sir Annamalai Chettiar of Chettinad.
(III) Kumararajah Muthiah Chettiar of Chettinad.
(IV) Diwan Bahadur A. M. M. Murugappa Chettiar.
(V) Mr. S. M. N. R.M. L. Letchumanan Chettiar.

The Hon'ble Rajah Sir Annamalai Chettiar of Chettinad shall be the Chairman of the Board of Directors and of the General Meetings of the Bank at the first and second Ordinary General Meetings of the Bank.

Subject as aforesaid, the shareholders at each Ordinary General Meeting of the Bank shall elect a Director as Chairman of the Board of Directors, who shall hold office until the next Ordinary General Meeting and shall also preside at such next Ordinary General Meeting. 30

Qualifica-
tion of
Directors.

64. The qualification of the Directors who belong to the Rajah's family shall be the holding of at least 25 shares in the Bank.

A Director may act before acquiring his qualification but he shall qualify himself within two months of his appointment or election as Director.

Amended as per Special Resolution of the Shareholders of the Bank at the Extraordinary General Meeting held on 24.2.1937. 40

“ 64. (Sub-para. 3). In the case of persons not belonging to the Rajah's family who may be appointed or elected as Directors, no qualification shall be necessary.”

(65 to 71 inclusive not printed.)

POWERS OF DIRECTORS.

General.

General
Powers.

72. The management of the business of the Bank shall be vested in the Directors, who, in addition to the powers and authorities by these

presents or otherwise expressly conferred upon them, may exercise all such powers, give all such consents, make all such acts and things as are and shall be, by the Indian Companies Act, 1913, and the Memorandum of Association and Articles of the Bank, directed or authorised or implied to be exercised, given made or done by the Bank and as are not hereby or by law expressly directed or require to be exercised, given, made or done by the Bank in General Meeting, but, subject nevertheless to the provisions of the said Act and of these Articles and to any regulations, being not inconsistent with the aforesaid regulations or provisions (if any) as from time to time may be prescribed by the Bank in General Meeting ; provided that no regulation so made by the Bank in General Meeting shall invalidate any prior act of the Directors which would have been valid if such regulation had not been made.

Annexures.
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A1.
Memoran-
dum and
Articles of
Association
of
Appellant,
continued.

Special.

73. Without prejudice to the general powers conferred by the last preceding Article, and so as not in any way to limit or restrict these powers and without prejudice to the other powers expressly conferred by these presents, it is hereby expressly declared that the Directors shall have inter alia the following powers and authorities, that is to say, power :—

Special
Powers.

(A) To pay, and to charge to the Revenue or Capital accounts of the Bank, as the Directors may deem expedient, all fees, costs, charges and expenses of and incidental to the promotion, registration, formation and establishment of the Bank, including therein the stamps and fees paid in respect thereof, and the costs, charges and expenses of advertising, drafting documents, drawing up books, printing, postage, stationery, establishment, travelling expenses, brokerage, commission or other charges and furniture and fitting of offices, and also all costs, charges and office expenses attendant upon the formation or establishment of agencies or opening or establishment of branches from time to time, and any other costs, charges or expenses which, in the opinion of the Directors, may fairly be deemed and treated as preliminary and/or Amalgamation Expenses.

To pay
preliminary
expenses.

(B) To purchase, take on lease or exchange or otherwise acquire on account of and for the purpose of the Bank any property of the nature specified in clause 3 (q) of the Memorandum of Association, from any person including a Director of the Bank with or without any building or buildings thereon in India and elsewhere, and to erect, construct, build or alter any building or buildings for the purpose of the business or businesses of the Bank or as residence for the General Manager, Managers, Agents or Sub-Agents, Accountants or any other person in the employ of the Bank.

To acquire
property.

(C) To exercise all powers of sale mentioned in or to be implied from the Memorandum of Association including the power to sell all or any part of the Bank's undertaking, business, or rights, property or assets and the powers of distribution of proceeds and also the Bank's powers of acquiring any business, properties, rights and privileges.

To sell
property.

(D) To nominate and appoint from time to time and at any time a General Manager, Assistant Managers, Inspectors, Agents,

To appoint
officers.

Annexures.

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 A1.
 Memorandum and
 Articles of
 Association
 of
 Appellant,
continued.

Sub-agents, Assistants, Cashiers, Accountants and other officers and all other employees of the Bank (who may be shareholders, Directors of the Bank or outsiders) for permanent, temporary or special services and to invest them with any of the powers, authorities and discretions for the time being vested in the Directors, and any such appointment may be made in such terms and subject to such conditions including power to sub-delegate as the Directors may think fit, to fix their salaries, bonuses or commissions or "saman," emoluments and perquisites based upon the profits of any particular branch of the Bank or of any particular business or transaction 10 of the Bank or upon the general profits of the Bank and also to provide for free residence, messing, clothing, travelling and other customary personal charges and expenses of the said officers and employees of the Bank all of which shall be treated as working expenses of the Bank, and to frame rules in respect to leave, payment of bonuses, commissions and "saman" and emoluments, etc., to determine the said officers' and employees' duties and to require security in such instances, of such nature, and to such amount as the Directors may think fit.

To suspend
 remove
 officers etc.

(E) At pleasure and at any time to suspend, remove or dismiss 20 any such officer or employee appointed as aforesaid as the Directors may deem best for the management of the business of the Bank.

To appoint
 Trustees.

(F) To appoint at any time and from time to time an officer of the Bank to act as Trustee, Executor, Receiver or Treasurer.

To bring and
 defend
 actions.

(G) To institute, conduct, defend, compound or abandon any legal proceedings by or against the Bank or its Directors or officers or employees or otherwise concerning the affairs of the Bank, and also to compound and allow time for payment or satisfaction of any debts due and of any claims or demands by or against the Bank. 30

To refer to
 arbitration.

(H) To refer any claims or demands by or against the Bank to arbitration, and observe and perform the awards; and also to act as arbitrators in any matters referred to them and give awards.

To act for
 Bank in
 Insolvencies.

(I) To act on behalf of the Bank in all matters relating to bankrupts and insolvents.

To give
 receipts.

(J) To make and give receipts, releases and other discharges for moneys payable to the Bank and for the claims and demands of the Bank.

To give
 guarantees
 and
 indemnities
 in re Bank's
 transactions.

(K) To affect and obtain or to give such guarantees and indemnities and sureties and counter guarantees and counter 40 indemnities as may generally seem expedient to the Directors, to guarantee the fidelity of officers and employees of the Bank only in regard to the transactions of the Bank which may be entered into by the Bank's officers and employees in the course of their ordinary duties and obligations and in the due performance and discharge of their respective duties and obligations.

To guarantee
 title.

(L) To guarantee the title to or quiet enjoyment of property alienated or in any way transferred by the Bank either absolutely or subject to any qualification or conditions, and to guarantee persons interested or about to become interested in any property 50

of the Bank against any loss, actions, proceedings, claims or demands in respect of any insufficiency or imperfection or deficiency of title of the Bank or in respect of any incumbrances, burdens or outstanding rights in respect thereof. *Annexures.*

A1.
Memorandum and Articles of Association of Appellant, *continued.*
To give credit.

10 (M) With or without security to give credit or deal upon credit with any person including a member of the Bank to such amount, upon such terms and conditions as they shall think fit, provided however that no member, including a Director, shall be entitled to demand as of right a cash or other credit, and it shall be entirely in the discretion of the Directors whether such credit shall be given or not.

(N) To accept any person or persons as a general surety or sureties for all or any particular transactions introduced by such person or persons, and to give to them, such percentage, as the Directors may deem fit, out of the profits realised by those transactions as commission or remuneration. To accept surety.

20 (O) To make temporary advances, to deposit money on security or otherwise with other persons or companies whether Banking companies or not and to invest any funds of the Bank not required for the time being for the general purposes of the Bank in such investments as may be thought proper and in particular to customers and others having dealings with the Bank, and to hold, sell, exchange, vary and dispose of or deal with any of the investments of the Bank as may seem expedient. To deposit.

(P) From time to time, create, modify and repeal rules and bye-laws for the regulation of the business of the Bank, its officers and employees and servants, or the members of the Bank, or any section thereof or any matter pertaining to the Bank. To make rules and bye-laws.

30 (Q) To enter into all such negotiations and contracts for purchase or otherwise, and rescind and vary all such contracts and execute and do all such acts, deeds and things in the name and on behalf of the Bank as they may consider expedient for or in relation to any of the matters aforesaid, or otherwise, for the purpose of the Bank. To enter into contracts.

40 (R) To establish, maintain and discontinue any branches or agencies, and delegate to the manager or other officers employed at any branch such powers as they think fit with regard to the business of the branch, to establish branches and appoint agencies for or in connection with any of the objects of the Bank in any part of the world provided however that the Directors may always circumscribe the scope of business in a particular place and authorise the agent of each such business to carry on only business of a specified nature, and execute power or powers of attorney as prescribed by these Articles to the agent of each business defining the limits of his authority in the carrying on of business. To establish Branches or Agencies.

50 (S) To insure, or keep insured, if deemed expedient, all or any of the buildings, goods, stores or other property, or any securities of the Bank either separately or conjointly for such period and to such extent as the Directors may think proper, and to sell, assign, surrender, or discontinue any policies of insurance effected in pursuance of this power. To insure.

Annexures.

A1.

Memorandum and Articles of Association of Appellant, *continued.*

To carry out objects of the Bank.

Accounts to be kept.

(T) To exercise and carry into effect any or all of the objects and powers mentioned or referred to in the Memorandum of Association.

(74 to 87 inclusive not printed.)

ACCOUNTS.

88. The Directors shall cause true accounts to be kept (a) of the sums of money received and expended by the Bank, and the matters in respect of which such receipts and expenditure take place and (b) of the properties, assets, credits and liabilities of the Bank and of all other matters necessary for showing the true state and condition of the Bank. 10

The books of account shall be kept at the Head Office of the Bank or at such places as the Directors may determine. The current business books of each branch shall be at the respective places of business excepting when required elsewhere. The said books shall always be open to the inspection of the Directors.

(89 not printed.)

Profit and Loss Account.

90. At the Ordinary General Meeting in each year, the Directors shall lay before the meeting a profit and loss account for the period since the preceding account, or (in the case of the first account since the incorporation of the Bank), made up to a date not more than six months before 20 such meeting. At each such General Meeting, the Directors shall also lay before the meeting a Balance Sheet, made up to a similar date with Auditor's report attached, and accompanied by a report of the Directors as to the state of the Bank's affairs and the amount which they recommend to be paid by way of dividend and the amount, if any, which they propose to carry to a reserve fund.

AUDIT.

Audit.

91. The First Auditors of the Bank may be appointed and their remuneration fixed by the Directors and shall hold office until the First Ordinary General Meeting. Subsequent Auditors shall be appointed and 30 their remuneration fixed at the Annual General Meeting but the Directors shall have power to fill a casual vacancy in the Office of the Auditor.

Once at least in every year, the accounts of the Bank shall be examined and the correctness of the Profit and Loss account and the Balance Sheet ascertained by one or more Auditor or Auditors.

(92 to 95 inclusive not printed.)

Annexures.

A2.
Profit and
Loss
Account
and
Balance
Sheet,
31st March
1940.

A2.—PROFIT AND LOSS ACCO

THE BANK OF CHETTI

PROFIT & LOSS ACCOUNT FOR T

To INTEREST	290,856	1	7
Branches .. 418,341 15 4			
Depositors	290,856	1	7
Difference in exchange			
ESTABLISHMENT	221,292	1	6
Salary and wages	114,334	7	6
Bonus	12,277	7	0
Allowances and perquisites	21,797	8	5
Mess	72,882	10	7
Rent Rates and taxes	22,500	1	5
Stationery	5,826	13	9
Postage	4,369	15	0
Stamp expenses	1,269	9	0
Discount	1,483	1	10
Commission	290	13	0
Travelling	29,929	3	6
Charity and presents	9,093	5	0
Contingencies	24,761	1	2
Depreciation	30,115	4	9
Litigation expenses	7,755	0	0
Bad Debts	561,400	3	1
Lawyers fees	2,893	0	0
Income tax fees			
Audit fees	2,050	0	0
EXPENSES ON INVESTMENTS	568,678	2	7
Land and Estates	472,202	6	5
Houses and Sites	76,010	12	2
Godowns	6,629	15	3
Mills	13,300	11	6
Oil Wells	73	6	6
Others	460	14	9
Loss on sale produce	2,704	7	2
To LOSS ON SALE OF INVESTMENTS	173,026	12	9
Lands and Estates	3,203	4	0
Houses and Sites	135,116	10	7
Godowns	9,622	7	3
Mills and Machinery	20,401	14	0
Jewels	181	9	0
Others	4,500	15	11
NETT PROFIT	524,503	4	1
	<u>2,484,798</u>	<u>5</u>	<u>2</u>

Signed C. T. Kasi Chettyar,
Secretary.

INCOME STATEMENT AND BALANCE SHEET.

NAD LIMITED RANGOON.

THE YEAR ENDED MARCH 31, 1940.

Annexures.

							A2. Profit and Loss Account and Balance Sheet, 31st March 1940.		
By INTEREST	..	..	..	..	..	..	921,989	10	7
Branches	..	418,341	15	4					
Constituents	..	..	..	..	649,275	12	10		
Others	..	..	..	..	272,713	13	9		
Discount	..	..	..	..	..	..	..	22,485	0
Commission	..	..	..	..	..	..	..	3,797	7
Stamp receipts	..	..	..	..	..	..	..	3,685	11
Difference in exchange	..	..	..	..	..	..	..	3,486	5
Dividends	..	..	..	..	..	..	..	1,349	5
Rent for business premises	..	..	..	..	..	..	..	1,231	14
Sundries and Refunds	..	..	..	..	..	..	..	5,013	8
INCOME FROM INVESTMENTS	..	..	..	..	..	..	..	1,277,733	11
Lands and Estates..	..	..	..	..	1,018,130	7	0		
Houses and Sites	..	..	..	..	178,701	5	6		
Godowns	..	..	..	..	1,841	7	6		
Mills	..	..	..	..	43,076	14	6		
Oil Wells	..	..	..	..	8,980	4	3		
Government Securities	..	..	..	..	18,603	2	0		
Debentures	..	..	..	..	4,806	1	0		
Others	..	..	..	..	3,594	1	6		
PROFIT ON SALE OF PRODUCE	..	..	..	..	..	..	..	178,203	12
PROFIT ON SALE OF INVESTMENTS	..	..	..	..	..	..	..	65,821	11
Lands and Estates..	..	..	..	..	51,950	2	0		
Houses and sites	..	..	..	..	3,763	10	0		
Oil Wells	..	..	..	..	687	8	0		
Mills and Machinery	..	..	..	..	3,212	8	0		
Jewels	..	..	..	..	3,689	5	3		
Others	..	..	..	..	2,518	10	8		
NETT LOSS									

2,484,798 5 2

Signed A. Thiruppathi Chettiar,
Signed R. M. Renganathan Chettiar,
Signed P. L. Muthiah Chettiar,

Directors.

Signed Sitaram and Venkatram,
Public Accountants
and Auditors.

Signed Patel & Patel,
Registered Accountants.

Annexures.

THE BANK OF CHETTI

A2.
Profit and
Loss
Account
and
Balance
Sheet,
31st March
1940,
continued.

BALANCE SHEET AS

CAPITAL AND LIABILITIES				
CAPITAL				
AUTHORISED				
	30,000 shares of 1,000 each	30,000,000/-		
ISSUED AND SUBSCRIBED				
	20,000 shares of Rs. 1,000/- each	20,000,000/-		
CALLED AND PAID UP :				
	20,000 shares Rs. 500 paid up	.. .. .	10,000,000	0 0
GENERAL RESERVE	.. .. .	.. .. .	848,755	6 6
	On 31.3.39	708,465 3 6		
	Additions during the year	140,290 3 0		
			<hr/>	
RESERVE AGAINST INVESTMENTS			650,000	0 0
RESERVE FOR BAD AND DOUBTFUL DEBTS	.. .. .		1,200,000	0 0
RESERVE FOR DOUBTFUL INTEREST AND RENT	.. .. .		50,466	5 9
LOANS : FROM BANKS	.. .. .	.. .. .	649,084	13 5
	(A) On security of Govern- ment Securities and Debentures	.. .. .	325,646	9 2
	(B) Unsecured	.. .. .	323,438	4 3
			<hr/>	
DEPOSITS : Fixed, current and other liabilities	.. .. .		19,179,341	12 10
AMONG THE ABOVE ITEMS ARE INCLUDED :				
	Advances by Directors	.. .. .	3,724	1 6
			<hr/>	
OTHER LIABILITIES	.. .. .	.. .. .	117,036	8 0
	(A) Liability for expenses	.. .. .	29,767	7 2
	(B) Earnest Money	.. .. .	79,865	14 4
	(C) Liability for acceptance	.. .. .	7,403	2 6
Commitment on account of				
	Guarantee	.. .. .	100,000	0 0
			<hr/>	
ADVANCES	.. .. .	.. .. .	24,177	10 9
	For rents	.. .. .	23,568	12 6
	For interests	.. .. .	608	14 3
			<hr/>	
	Carried over	.. .. .	32,818,862	9 3

NAD LIMITED BANGOON

AT MARCH 31, 1940

Annexures.

A2.
Profit and
Loss
Account
and
Balance
Sheet,
31st March
1940,
continued.

PROPERTIES AND ASSETS.				
FIXED CAPITAL EXPENDITURE :				
BANK PREMISES	..	..	..	146,536 12 3
Cost up to 31.3.39	..	..	288,984 10 1	
Additions during the year and which was brought to be used as business premises	..	..	5,883 13 2	
Exchange difference in Bentong Property	..	..	42 8 6	
			294,910 15 9	
Sale during the year and which ceased to be used as business premises	..	..	38,704 7 6	
			256,206 8 3	
Depreciation written off to date	..	..	109,669 12 0	
			29,799 5 3	
Furniture	..	..	..	29,799 5 3
Cost up to 31.3.1939	..	..	47,500 12 11	
Addition during the year	..	..	2,551 12 10	
Exchange difference in Bentong furniture	..	..	12 2 2	
			50,064 11 11	
Sale during the year	..	..	1,421 1 3	
			48,643 10 8	
Depreciation written off to date	..	..	18,844 5 5	
			143,461 5 3	
MILLS AND MACHINERY	..	..	..	143,461 5 3
Cost up to 31.3.39	..	..	269,136 3 6	
Addition during the year	..	..	40,055 6 9	
			309,191 10 3	
Sale during the year	..	..	71,288 9 9	
			237,903 0 6	
Depreciation written off to date	..	..	94,441 11 3	
			319,797 6 9	
Carried over	..	..	..	319,797 6 9

<i>Annexures.</i>		Brought forward		32,818,862	9	3
	A2.	PROFIT AND LOSS ACCOUNT		470,735	14	2
Profit and Loss Account and Balance Sheet, 31st March 1940, <i>continued.</i>		Profit for the year	524,503	4	11	
		<i>Less</i> Debit on 31.3.39	53,767	5	11	
			<hr/>			
		There is a contingent liability of Rs. 511,975/- on partly paid shares in Joint Stock Companies				

Carried over		<hr/>	33,289,598	7	5
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	Brought forward	319,797	6	9	<i>Annexures.</i>
PLANT & FITTINGS	10,632	0	11	—
Cost up to 31.3.39	14,021	4	9		A2.
Addition during the year	..	..	1,742	1	9		Profit and Loss
			<hr/>				Account and Balance Sheet,
Sale during the year			15,763	6	6		31st March 1940,
			3,950	13	0		<i>continued.</i>
			<hr/>				
Depreciation written off to date	..	..	11,812	9	6		
	..	..	1,180	8	7		
			<hr/>				
LIVESTOCK AND VEHICLES	..	..	..	30,526	15	3	
VEHICLES							
Cost up to 31.3.1939	..	..	6,711	13	0		
Addition during the year	..	..	491	6	0		
			<hr/>				
Sales during the year	..	..	7,203	3	0		
			760	10	0		
			<hr/>				
Depreciation written off to date	..	..	6,442	9	0		
	..	..	3,499	15	0		
			<hr/>				
			2,942	10	0		
LIVESTOCK	..	..	27,584	5	3		
			<hr/>				
BOOKS	..	..	..	1,237	9	5	
STOCK IN TRADE: PRODUCE AT COST	..	..	..	909,571	10	4	
STORES	..	..	..	9,192	12	0	
LOANS, OVERDRAFTS & OTHER DEBTS	..	..	..	14,614,034	2	1	
(1) DEBTS CONSIDERED GOOD in respect of which the Bank is FULLY SECURED	..	..	4,518,040	9	1		
(2) DEBTS CONSIDERED GOOD and for which the Bank HOLDS:							
(A) Joint and Several Promissory Notes	..	..	5,104,862	12	8		
(B) Other debts for which there are no promissory notes including overdrafts	..	..	4,294,219	9	6		
(3) BAD & DOUBTFUL DEBTS	..	..	696,911	2	10		
			<hr/>				
AMONG THE ABOVE ITEMS ARE INCLUDED:							
Debts due by Directors including temporary overdrafts and considered good	..	..	8,556	11	0		
			<hr/>				
Carried over	..	..		15,894,992	8	9	

Annexures.

Brought forward 33,289,598 7 5

A2.
Profit and
Loss
Account
and
Balance
Sheet,
31st March
1940,
continued.

33,289,598 7 5

As per our report annexed.

Signed Sitaram & Venkatram,
Public Accountants & Auditors.

	Brought forward	..	..	15,894,992	8	9	<i>Annexures.</i>
ADVANCES TO STAFF	..	..	..	27,311	7	10	—
ADVANCES TO ESTATES	..	..	..	1,539	15	0	A2.
SUNDRY ADVANCES : income tax paid on account of a non- resident (in dispute)	..	..	..	269,406	2	3	Profit and Loss Account and Balance Sheet,
Commitment on account of Guarantee	..	..	..	100,000	0	0	31st March 1940,
INVESTMENTS	..	..	..	15,331,045	5	1	<i>continued.</i>
Lands and Estates at cost	..	9,843,959	0 9				
Houses and sites at cost	..	2,963,127	14 8				
Godowns at cost	..	268,451	13 3				
Oil Wells at cost	..	192,346	4 0				
Gold and Jewels	..	8,628	9 6				
Shares fully paid at cost	..	88,543	3 10				
Shares partly paid at cost	..	1,200,413	12 9				
Government Securities at cost	..	585,474	7 0				
Debentures at cost	..	173,300	0 0				
Rubber Coupons at cost	..	6,800	3 4				
Cash	..			1,497,944	0	0	
At Banks on deposit account	..	503,591	12 6				
At Banks on current account	..	654,953	2 7				
On hand	..	338,648	0 11				
Stamps on hand	..	751	0 0				
Branch adjustments	..			167,359	0	6	
				<u>33,289,598</u>	<u>7</u>	<u>5</u>	

Signed Patel & Patel
Registered Accountants

Annexures.

THE BANK OF CHETTINAD LIMITED.

A2.
 Profit and
 Loss
 Account
 and
 Balance
 Sheet,
 31st March
 1940,
continued.

Profit and Loss account for the year ended March 31, 1940 and Balance Sheet as on March 31, 1940.

REPORT OF THE AUDITORS TO THE SHAREHOLDERS OF THE BANK OF CHETTINAD LIMITED.

Rangoon, September 2, 1940.

We have examined and compared the profit and loss account for the year ended March 31, 1940, and the Balance Sheet of the Bank of Chettinad Limited as on March 31, 1940 (attached to the report) with the books of the Head Office and of the Branches in Burma and with the returns from 10 the Branches at Colombo (Ceylon) and Bentong (F.M.S.).

2. Cash Balance at the Head Office and the Rangoon Branch were checked by us on the 31st March 1940 and found correct. Cash Balances at the other Branches are as per branch cash account and certificates.

3. We have not seen Title deeds of Lands, Buildings, Oil Wells and Mills, but, we have seen certificates from the Branch Managers and Secretary that they held such title deeds. We have also seen certificates from them relating to the stock of produce, livestock, jewels, stamps on hand etc., and that they held in their possession on March 31, 1940, the documents relating to Bills on hand, securities and Promissory Notes 20 against loans, cash credits and overdrafts. We have seen the certificates for the shares in the Joint Stock Companies held by the Rangoon Branch and certificates from Banks relating to Government Securities and Debentures.

4. No depreciation has been written off the Buildings not used for the Bank's business, Machinery at Colombo Branch, Machinery Boat, etc., belonging to the "Land Estate" Department. The reserve against such investments including lands, estates and oil wells is, in our opinion, inadequate.

5. Interest on Loans etc. due by Non-Chettiar Accounts has been 30 calculated on Cash Basis. Accrued interest on Investments in Government Securities and Debentures has not been taken into account.

6. All the balances as per Bentong (F.M.S.) Branch Books have been taken at Rs.156/6 per 100 dollars.

7. The Balance Sheet discloses advances to and by Directors as on March 31, 1940, Advances made to or by those who were Directors of the Bank during the year and who ceased to be Directors before March 31, 1940, have not been separately shown.

8. Government Securities, Debentures and shares in Joint Stock Companies have been shown at cost.

9. We certify that, subject to the foregoing remarks (a) we have obtained all the information and explanations we have required; and (b) in our opinion the Balance Sheet and the Profit and Loss Account referred to in the report are drawn up in conformity with the law; and (c) such Balance Sheet exhibits a true and correct view of the state of the Bank's affairs according to the best of our information and the explanations given to us, and as shown by the books of the Bank; and (d) in our opinion books of account have been kept by the Bank as required by section 130.

Annexures.
A2.
Profit and
Loss
Account
and
Balance
Sheet,
31st March
1940,
continued.

10

(Signed) SITARAM & VENKATRAM,
Public Accountants & Auditors.

(Signed) PATEL & PATEL,
Registered Accountants.

A3.—STATEMENT of Current Accounts on 1st April 1939.

Ledger Page Number	Name	Amount		A3. Statement of Current Accounts, 1st April 1939.
		Cr.	Dr.	
55	Chettinad Corporation Colombo		158880-80	
20 63	Chettinad Corporation Kurunegala		15538-78	
69	Chettinad Corporation Karandawatta			
	Mines Account		46562-74	

**NAMES OF PERSONS WHO OPERATED AND THEN CLOSED CURRENT ACCOUNTS
DURING THE YEAR 1939-40.**

76	O.A.O.K.R.M.A.R. Chettiar Firm Colombo.
82	P.L.R.M. Chettiar Firm Colombo.
88	N.M.A.R. Chettiar Firm.
30 90	M.V.E.M.R.M. Chettiar Firm.
97	A.S.V. Ramasamy Pillay & Co.
103	P.L.K. Palanisamy Pillay.
104	S.P. Kumarappa Chettiar.

*Annexures.***A4.—LIST of persons holding shares in the Bank of Chettinad Limited.**

		Shares	Amount	
A4. List of Share- holders of Appellant.	1. The Hon'ble Rajah Sir Annamalai Chettiar of Chettinad	3000	15,00,000	
	2. Rani Srimathi Seethai Achi of Chettinad ..	6950	34,75,000	
	3. Kumararajah Sir M. A. Muttiah Chettiar of Chettinad	3000	15,00,000	
	4. Kumararani Srimathi Meyyammai Achi of Chettinad	50	25,000	
	5. M. R. M. Ramanathan Chettiar of Chettinad	3000	15,00,000	10
	6. M. A. Chidambaram Chettiar of Chettinad ..	3000	15,00,000	
	7. Srimathi Valliammai Achi of Chettinad ..	250	1,25,000	
	8. Srimathi Meenakshi Achi of Chettinad ..	250	1,25,000	
	9. Srimathi Unnamalai Achi of Chettinad ..	250	1,25,000	
	10. Srimathi Lakshmi Achi of Chettinad	250	1,25,000	

A5.
List of
Share-
holders of
Chettinad
Corporation
Limited.**A5.—LIST of persons holding shares in the Chettinad Corporation Limited.**

		Shares	Amount	
A5. List of Share- holders of Chettinad Corporation Limited.	1. Dr. Rajah Sir Annamalai Chettiar of Chettinad	15120	4,15,800	
	2. Kumararajah Sir M. A. Muthiah Chettiar of Chettinad	15120	4,15,800	20
	3. Mr. P. K. P. L. Pichaappa Chettiar	28	770	
	4. Mr. V. M. S. M. Ramanathan Chettiar ..	28	770	
	5. Rani Srimathi Seethai Achi of Chettinad ..	1876	51,590	
	6. Kumararani Srimathi Mayyammai Achi of Chettinad	56	1,540	
	7. Mr. R. Ramanathan Chettiar	8400	2,31,000	
	8. Mr. M. A. Chithambaram Chettiar	15120	4,15,800	
	9. Srimathi Valliammai Achi	56	1,540	
	10. Srimathi Mennakshi Achi	56	1,540	
	11. Srimathi Unnamalai Achi	56	1,540	30
	12. Srimathi Lakshmi Achi	56	1,540	
	13. Mr. A. L. K. M. A. L. Alagappe Chettiar ..	28	770	

A6.

A6.—STATEMENT of Current Debit and Credit Account of Colombo Chettinad Corporation Limited (not transmitted and not referred to in Record).*(Not printed.)*

**A7.—STATEMENT of the Bank of Chettinad Limited Colombo of Debit and Credit of the *Annexures.*
Current Account of Rawanna Mana Sana Gopala Kirishnan No. 216.**

Year Month	Date	Particulars	Cr.	Dr.	A7. Statement of Debit and Credit of the Account of Rawanna Mana Sana Gopala Kirishnan No. 216, 18th November 1939 to 27th February 1940.
		Ledger Page 328			
1939.					
Novr.	18	By credit from 1 cheque on Chartered Bank	5000.00		
	28	By credit on 1 Chartered Bank cheque	10000.00		
10		To Cr.	15000.00		
Decr.	21	By credit on 1 Mercantile Bank cheque	5000.00		
		By credit this too interest at 9 as per interest bill from 18th Novr. to 17 Decr. this year	87.50		
		To debit simultaneously for above		87.50	
20		Bal. Cr.	20000.00		
1940.					
Feby.	6	To debit on 1 Indian Bank given on this date		20000.00	
	27	By credit interest at 9 from 18 December 1939 to 5th inst. as per interest bill	246.25		
		To debit simultaneously for above		246.25	
30		Debits & Credits.	Closed.		

Annexures.

(No Exhibit Mark.)

Statement
of Loan
Accounts,
1st April
1939.

STATEMENT of Loan Accounts on 1st April 1939.

(With Promissory Note Security.)

Ledger Page Number	Name	Amount	
		Cr.	Dr.
53	Chettinad Corporation, Colombo ..	300000-00	
61	Chettinad Corporation, Kurunegala ..	525000-00	
67	Chettinad Corporation, Karandawatta Mines Account	65000-00	10
75	O. A. O. K. R. M. A. R. Chettiar Firm	21000-00	
77	V. R. M. V. A. Letchmanan Chettiar ..	1005-95	
79	S. R. M. Valliappa Chettiar	11062-39	
81	P. L. R. M. Chettiar Firm	5021-37	
83	A. M. R. M. Ramasamy Chettiar and A. M. R. M. Muthu Palaniappa Chettiar	15020-14	
85	R. M. P. K. R. Karuppan Chettiar ..	1950-00	
86	T. P. R. A. R. Arunachalam Chettiar	4040-66	
87	N. M. A. R. Chettiar Firm	15073-98	20
89	M. V. E. M. R. M. Periyanan Chettiar	20039-45	
91	A. V. R. A. Adicappa Chettiar ..	25180-82	
92	P. L. S. P. V. Palaniappa Chettiar ..	5000-00	
93	S. K. M. Meyyappa Chettiar	10007-67	
95	M. K. P. R. Muthiah Chettiar	1985-66	
96	S. V. C. T. Avuchi Chettiar	650-00	
140	V. P. L. V. Chettiar Firm Gampola ..	3277-37	
..	K. Nadesa Iyer	500-00	
141	Rama Subbiah	295-86	
225	R. Muthusamy	1030-30	30
227	John Wilson	5075-00	
229	C. H. Z. Fernando	8321-40	
230	M. F. P. Gunaratne	5032-00	
235	H. W. Boyagoda etc.	22999-85	
236	Do.	161-37	
238	G. Victor P. Perera and L. James Perera	788-81	
239	C. A. S. Mather	4017-33	
240	Do. Cheque Account	180-21	
241	A. M. M. Muniyandi Pillay	180-45	40
242	L. S. Thambimuthu and E. R. Thambimuthu	1021-00	
245	J. A. Perera Cheque Account	2757-50	
248	W. M. Erath Appuhamy	255-08	
249	E. C. de Fonseka Jr.	27400-34	
250	E. C. de Fonseka Snr.	62907-52	
251	E. C. de Fonseka & E. M. de Fonseka	8466-95	
252	E. M. de Fonseka Cheque Account ..	2368-17	

Ledger Page Number	Name	Amount		<i>Annexures.</i> Statement of Loan Accounts, 1st April 1939, <i>continued.</i>
		Cr.	Dr.	
253	Austin C. de Mel		799-08	
254	D. C. Wijewardene & V. Wijewardene		59072-93	
256	Mary Cecilia Fernando & J. M. Fernando		20415-28	
257	K. S. Fernando		10145-27	
10 258	Francis de Soysa and others		2857-87	
259	D. E. Fernando		1310-42	
260	C. W. Peries and other		1355-05	
261	J. A. Fernando		10306-78	
262	Do.		3549-59	
263	Charles Batuvandudawa and others		6124-77	
264	A. R. De Silva & A. D. De Silva		1393-62	
265	H. D. F. Constantine & Sons		642-65	
266	H. D. Stanli and others		1993-02	
20 267	N. C. Wijesingham & P. V. Wijesingham		420-05	

(No Exhibit Mark.)

STATEMENT of Mortgage Accounts on 1st April 1939.

Statement
of
Mortgage
Accounts,
1st April
1939.

Ledger Page Number	Name	Amount		
		Cr.	Dr.	
226	D. P. A. Wijewardene		40137-82	
228	C. Ginasena		439-38	
231	Cicila Mary Pedrick Perera & Others		16448-50	
232	J. B. M. Perera		59300-10	
30 233	do.	4000-00		
237	D. P. Senaratnam and others		35-54	
243	A. P. Casie Chetty		27666-80	
244	J. A. Perera		79415-04	
246	P. L. Don John Perera		248-11	
247	J. P. Hendrick Appuhamy and others		575-96	
255	D. C. Wijewardene		10021-35	
266	H. D. Stanley and others		1993-02	
273	Joseph Abeysinghe		9703-28	
280	Charles Edward Perera		15323-50	
40 281	M. G. Perera		62072-58	
285	D. T. T. Gunasekera		4704-49	
286	H. D. F. Constantine		43903-84	
289	H. M. Sadick Maraikar		34061-32	
291	A. M. Clement Dias		1900-00	
295	M. F. Perera		11972-00	

Annexures.

Statement of Mortgage Accounts, 1st April 1939, <i>continued.</i>	Ledger Page Number	Name	Amount	
			Cr.	Dr.
	302	P. A. L. Daies		14401-45
	303	Mrs. Jorjina Perera		5000-00
	268	M. G. Karunaratnum Cheque Account		26364-50
	269	M. G. Karunaratnum & S. T. Perera ..		3620-82
	270	M. G. Karunaratnum & C. P. Ornelis Appuhamy		5399-89
	271	D. O. S. Rodrigo & Son Thomas Rodrigo		390-00 10
	272	W. P. Silva & M. S. Silva		939-75
	274	S. Joseph Fernando & P.C. Seneviratne		1010-34
	275	T. Don Edward		4758-68
	276	K. Don Francis		3080-36
	277	J. S. Parnawidane		249-96
	278	S. P. C. David		55-40
	279	Hector Munasinghe		116-25
	282	A. R. Sivagami Ammal & N. Subbureddiar		42736-14
	283	Albert G. Sirimane		202-70 20
	284	Lilian Perera		21223-62
	287	Jaffna. P. Mathanlal		3721-04
	288	H. L. A. M. Noordin		640-20
	290	Francis F. Krishna Pillai		19542-78
	292	Hatton J. A. Ayya Thurai & Others ..		750-00
	293	Victor A. P. Nanayakara		160-77
	294	J. P. M. Perera & Cecily & M. P. Perera		2105-00
	296	Batticaloa M. Velmuru		633-20
	297	Batticaloa S. Ratnasingham		1119-25
	298	„ Francis Raja Surveyor & Others		3672-55 30
	299	„ K. Kandiah		248-11
	300	Anguruwella Don Charles		110-00
	301	H. Mendis		100-00
	304	N. M. Awulewa Marakkar		300-00
	305	Hendala S. Mahadewa		2000-00
	306	Subasingham Mudianchillage & Others		1000-00
	307	Ambalangoda W. V. P. de Silva & Others		1129-60
	308	Kalutara Madawatte Joseph		150-00 40
	309	F. G. A. Weerakoon		20-00
	311	Panadura P. C. M. Dias		4000-00
	312	S. Thambiah & Meenambiah Thambiah		877-50

In the Privy Council.

ON APPEAL
FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.

BETWEEN
THE BANK OF CHETTINAD, LIMITED OF COLOMBO *Appellant*
AND
THE COMMISSIONER OF INCOME TAX, COLOMBO - *Respondent*

RECORD OF PROCEEDINGS.

DARLEY, CUMBERLAND & CO.,
36 JOHN STREET,
BEDFORD ROW, W.C.1,
Solicitors for Appellant.

BURCHELLS,
9 BISHOPSGATE, E.C.2,
Solicitors for Respondent.