

Privy Council Appeal No. 87 of 1928.

S. P. A. Annamalay Chetty - - - - - *Appellant*

v.

B. A. Thornhill - - - - - *Respondent*

FROM

THE SUPREME COURT OF THE ISLAND OF CEYLON.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 19TH MAY, 1931.

Present at the Hearing :

THE LORD CHANCELLOR.

LORD BLANESBURGH.

LORD DARLING.

LORD THANKERTON.

[*Delivered by* LORD THANKERTON.]

This appeal is from a decree of the Supreme Court of the Island of Ceylon, dated the 13th March 1928, confirming a decree of the District Court of Ratnapura, dated the 31st August 1927 and made in Action No. 4687, in which the appellant is plaintiff, and the only question in the appeal is whether the suit is barred by reason of the proceedings in a former suit by the appellant against the respondent, which was Action No. 4122 in the same Court.

Action No. 4122 was instituted by the appellant on the 19th June 1924 to recover a balance alleged to be due by the respondent upon a running account in respect of monies advanced and goods sold and delivered, with interest to the date of the suit. The suit was instituted in the name under which the appellant carried on business, and the respondent *inter alia* pleaded that the appellant was precluded from enforcing his rights under the contract set out in the plaint, as he had failed to register his business name as prescribed by the Business Names Registration

Ordinance, No. 6 of 1918. Section 9 of that Ordinance provides as follows :—

“ Where any firm or person by this Ordinance required to furnish a statement of particulars or of any change in particulars shall have made default in doing so, then the rights of that defaulter under or arising out of any contract made or entered into by or on behalf of such defaulter in relation to the business, in respect of the carrying on of which particulars were required to be furnished, shall not be enforceable at any time while he is in default, by action or other legal proceedings, either in the business name or otherwise.”

After protracted procedure in Action No. 4122, the District Judge on the 17th January 1927 made a decree under which the appellant was ordered to furnish to the Registrar within fourteen days from the date thereof the necessary particulars for the registration of his business name, and the respondent was ordered to pay to the appellant, on the latter's compliance with the said order as to registration, the sum of Rs. 54577.46 with interest as prayed for in the plaint, and the respondent was awarded Rs. 5000 with interest thereon in satisfaction of his claim in reconvention, and the respondent was ordered to pay the larger part of the costs of the action. On the 19th January 1927 the respondent filed an appeal against that decree to the Supreme Court, in which he *inter alia* still maintained his defence founded on the appellant's non-registration of his business name. While this appeal was pending the appellant complied with the requirements of the Business Names Registration Ordinance.

Being faced with the possibility that, if the respondent's appeal succeeded, any further proceedings might be barred by limitation, the appellant made an application to the Supreme Court on the 10th March 1927 to advance the hearing of the appeal, which was successfully opposed by the respondent.

In this situation, the appellant instituted the present suit—Action No. 4687—on the 2nd June 1927 in the District Court of Ratnapura. The amount claimed in the plaint was the same as in Action No. 4122, with the addition of further interest. The respondent filed his written answer on the 5th July 1927, in which he pleaded *inter alia* as matter of law “ that the action No. 4122 of this Court and the decree entered of record therein are a bar to this action.” It is unnecessary to detail the manoeuvres of the parties in the procedure which ensued ; it is sufficient to state that the appellant unsuccessfully sought to have the trial of the second action adjourned until after the decision of the respondent's appeal in the first action. Issues of law were adjusted in the second action as follows :—(1) Is this action barred by the action No. 4122 of this Court and the final decree entered of record therein ? and (2) Is there a decree that can operate as a bar to the action in Decree of Court No. 4122 ? On the 31st August 1927 the District Judge upheld the respondent's plea and dismissed the action (No. 4687). The present appellant appealed from that decree to the Supreme Court on the 8th September 1927.

On the 21st October 1927 the Supreme Court pronounced judgment in the respondent's appeal in Action No. 4122, allowing the appeal and dismissing the action on the sole ground of the present appellant's failure to comply with the requirements of the Registration of Business Names Ordinance.

On the 13th March 1928, the Supreme Court delivered judgment on the present appellant's appeal in the second action (No. 4687), dismissing the appeal with costs. This appeal is from that decree, and the only question for their Lordships' decision is whether on 2nd June 1927 the appellant was barred from instituting the present suit because he then held the decree of the District Judge in his favour in Action No. 4122, though the respondent's appeal therefrom was then pending. The parties in the two suits are the same and the subject matter may be taken to be the same.

The District Judge concluded in the respondent's favour on the ground that the decree in Action No. 4122, though subject to appeal, was final and enforceable. In the Supreme Court Schneider S.P.J., with whom Lyall-Grant J. agreed, appears to have proceeded on two alternative views, viz., that the present appellant's cause of action had been merged in and superseded by the decree, or otherwise that in both actions the appellant was seeking to recover the same debt, and that, as he could not get decree for the same debt twice over, he was not entitled to maintain the second action at all. The learned judge found it unnecessary to decide a question raised under section 207 of the Civil Procedure Code of Ceylon, to which their Lordships will now refer.

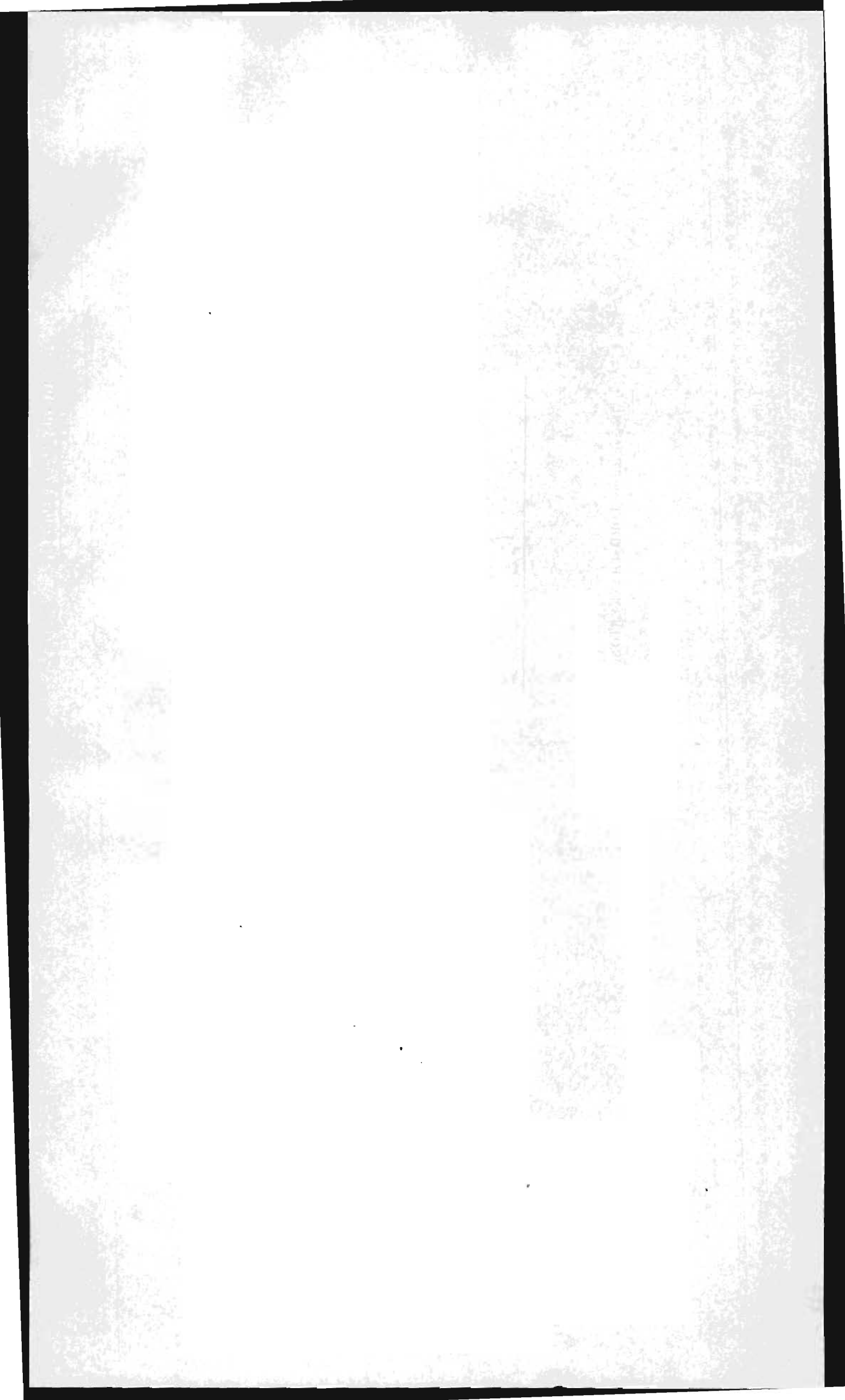
Section 207 of the Civil Procedure Code 1889 provides as follows :—

“ All decrees passed by the Court shall, subject to appeal, when an appeal is allowed, be final between the parties ; and no plaintiff shall be non-suited.”

The appellant maintained that, under this provision, no decree, from which an appeal lies and has in fact been taken, is final between the parties so as to form *res adjudicata*, while the respondent contended that such a decree was final between the parties and formed *res adjudicata* until it was set aside on appeal. In their Lordships' opinion the former view is the correct one, and where an appeal lies the finality of the decree on such appeal being taken, is qualified by the appeal and the decree is not final in the sense that it will form *res adjudicata* as between the same parties. The opinion of the learned judges of the Supreme Court clearly inclined to the same view, and their Lordships have a difficulty in appreciating why the learned judges found it unnecessary to decide this point, for this view still leaves it open to the Court to see that the appellant does not get decree twice over for the same sum, and it is inconsistent with the other ground expressed by them for their decision that the appellant's cause of action had been merged into the decree in Action No. 4122, since, according to this view, that decree was not final. Their Lordships

regret that the second action was not adjourned pending the decision of the appeal in the first action, as that would have simplified procedure and saved expense.

Accordingly, their Lordships are of opinion that the appeal should be allowed and that the decree of the District Judge, dated the 31st August 1927, and the decree of the Supreme Court on that judgment dated the 13th March 1928, should be recalled, the appellant to have the costs of this appeal, except the costs of his petition for the admission of additional documents in relation to which the respondent should have his costs, and as to which there should be a set-off, that the appellant should have his costs in relation to the issues of law on which the decree of the 31st August 1927 was pronounced, and of the appeal from that decree to the Supreme Court, and that the action should be remitted to the District Court of Ratnapura to proceed as accords. Their Lordships will humbly advise His Majesty accordingly.



In the Privy Council.

S. P. A. ANNAMALAY CHETTIY

vs.

B. A. THORNHILL.

DELIVERED BY LORD THANKERTON.

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