1936 *Present :* **Akbar and Koch JJ.**

RANASINGHE *v.* RANASINGHE.

1—D. C. (Inty.) Kalutara, 2,622.

Administration—Application for letters—Choice of majority of persons interested—Discretion of Court.

In an application for letters of administration to the estate of a deceased person the Court should grant the order in favour of that person amongst those of the same degree of kindred for whom the majority of the parties interested have expressed preference.

APPEAL from an order of the District Judge of Kalutara.

H. V. Perera, for the respondent, appellant.

Molligoda, for the petitioner, respondent.

Cur. adv. vult.

July 8, 1936. AKBAR J.—

The question in this appeal is as regards the right for the issue of letters of administration to the intestate estate of a woman named Serah Ranasinghe, who died leaving a considerable estate on October 2, 1934. She died childless and unmarried. The only heirs were the respondent and the appellant to this appeal and three others, brothers and sisters. The respondent to this appeal, Simon Ranasinghe, was the eldest brother

in the family and he applied for letters of administration himself. This was opposed by the appellant, another brother of the deceased, on the ground that Simon Ranasinghe was not a fit and proper person to be entrusted with the letters of administration. An inquiry was held in this matter and the only persons who gave evidence were James, the appellant, and his sister Catherine. Both objected to the granting of letters of administration to the eldest brother Simon, and the Court also recorded the further fact that the other two heirs, a brother and sister of the deceased, also objected to letters being granted to Simon. The appellant gave evidence, trying to prove the bad character of the respondent Simon. He stated that Simon Ranasinghe had removed barbed wire from the fences, cut down and sold some trees and damaged the rubber plantations. James also stated that Simon had assaulted his sister Catherine and that there was a case pending in the Police Court and that he also used to ill-treat the deceased, too. He further stated that there was a writ against Simon in a certain case the number of which he gave. So far as I can see from the cross-examination of this witness, nothing was alleged to counteract the evidence that James had given in his examination-in-chief regarding the character of Simon. The point that was emphasized in cross-examination was the fact that James was living in Rambukkana and not within the judicial district within which the property of the deceased was situated, a fact which Simon had alleged in his own affidavit. James, on the other hand, gave definite evidence that he stayed away from the judicial district for only one or two months in the year in a house which he had in Rambukkana. No question was put with regard to the points affecting Simon's character which I have already mentioned. Catherine definitely stated that she had been assaulted by Simon when the deceased died, and she was assaulted to such extent that she had to be in hospital for 15 days, and that she had charged him and his son in the Police Court. No question has been put to disprove what the woman stated on this point nor has Simon given evidence. It is however, not necessary for me to decide this question of fact, because it seems that this appeal can be decided on a question of law.

The learned District Judge states five reasons for granting letters of administration to Simon in preference to James, and one of the reasons is, in my opinion, based on a wrong conception of the law. He states as reason No. 2 that Simon is the eldest brother of the deceased and as such has a superior claim to administer the estate. If this was a correct statement of the law, it would go a long way to justify the learned Judge's order ; but it is not so. What section 520 of the Civil Procedure Code contemplates is that the administrator must be a fit and proper person in the opinion of the Court to be entrusted with the administration of an estate. Williams in his (*Treatise on Executors* (*vol. I., 12th ed.*), *p. 289*) states as follows :—

> "It is the duty of the Court to place the administration in the hands of that person who is likely best to convert it to the advantage of those who have claims either in paying the creditors, or in making distribution ; the primary object being the interest of the estate".

Williams in his *Treatise* furth states :—

> "Where there is no material objection on one hand, or reasons for preference on the other, the Court in its discretion, puts the administration into the hands of that persons amongst those of the same degree of kinders, to whom the majority of the parties interested are desirous of entrusting the estate",

and he gives references to certain English cases. It seems to be a principle well recognized in the English Courts and there is no reason why we should not adopt this rule in this case. If we apply this rule, the majority of the interests, namely, four-fifths is in favour of the appellant in this case, and the respondent stands by himself alone, opposed to the others.

Mr. Molligoda who argued the case for the respondent stated that the appellant was a creditor himself. It is true that Williams says on the authority of the case of *Cordeux v. Trasler*[1] that the fact of one of several next of kin being also a creditor is rather adverse to than in favour of his being preferred in a contest for administration. But Williams also says at page 219 that "that principle would apply (where none of these considerations applies)" referring to the principle which I have already stated.

Although the respondent-appellant has disclosed the fact that a sum of Rs. 850 is due to him from the estate when giving evidence he was prepared to waive it. He has repeated that offer in his petition of appeal, and Mr. H. V. Perera, on behalf of his client, has stated that he is willing to waive that sum. So that, this objection disappears.

The further objection taken by Mr. Molligoda was the fact that Catherine Ranasinghe, one of the heirs to this estate, has claimed a certain interest which seems to be in conflict with the interest of the estate. But the point in favour of the claim of James the appellant, is that he himself disclosed in the schedule filed by him that this interest belonged to the estate. Even if Catherine, having an interest adverse to the estate was an undesirable person to have a voice in the appointment of James, and if her name were excluded in counting the interests that are on the side of James and those that are on the side of Simon, it still leaves three-fifths of the estate as opposed to one-fifth in favour of James. The principle of law which the learned Judge has stated as his second reason for his order and which seems to have led him to come to the conclusion that he did come to, is in my opinion wrong.

The learned Judge further states that the allegations made against the respondent have not been proved. I fail to see in what other way they can be proved except by positive evidence and which evidence has not been traversed by evidence to the contrary.

Another reason given by the learned Judge is that the respondent lives in the village. The appellant's evidence shows that he is also a resident in the district in which the properties are situated for 10 or 11 months in the year.

It seems to me therefore that the order of the learned Judge is wrong and sho . The . is allowed with costs in this Court

and the Court below, subject to the condition that the claim of James to the sum of Rs. 850 which has been mentioned in the inventory is deleted and it is understood that he will not prove that claim against the estate.

KOCH J.—I agree.

Appeal allowed.