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No.

Supreme Court of Ceylon
No. 347 of 1947 (Final).

District Court, Matara.

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|--|
| No. 16621 |
| UNIVERSITY OF LONDON |
| W.C.1. |
| 17 JUL 1953 |
| INSTITUTE OF ADVANCED LEGAL STUDIES |

IN THE PRIVY COUNCIL
ON AN APPEAL FROM THE SUPREME
COURT OF CEYLON

JAYASINGHE ARACHCHIGE UDENIS DE SILVA of

Walliwala in Weligama.....*Defendant-Respondent*

VERSUS

KUDA MADANAGE SIYANERIS of Unawatuna in

Galle.....*Plaintiff-Appellant*

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OF PROCEEDINGS

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UNIVERSITY OF LONDON
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17 JUL 1953

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No.....

Supreme Court of Ceylon
No. 347 of 1947 (Final).

District Court, Matara.
No. 16621.

IN THE PRIVY COUNCIL
ON AN APPEAL FROM THE SUPREME
COURT OF CEYLON

JAYASINGHE ARACHCHIGE UDENIS DE SILVA of
Walliwala in Weligama.....*Respondent*
Defendant-Appellant

VERSUS

KUDA MADANAGE SIYANERIS of Unawatuna in
Galle.....*Appellant*
Plaintiff-Respondent.

RECORD OF PROCEEDINGS

PART I.

PART I.

No. 1

Journal Entries

No. 1
Journal
Entries
23-10-44
to
8-10-48

IN THE DISTRICT COURT OF MATARA.

K. M. SIYANERIS *Plaintiff**vs.*J. A. UDENIS DE SILVA *Defendant.*

No. 16621.

Amount : Rs. 20,000.

10 Nature : Land.

Procedure : Regular.

Journal.

The 23rd day of October, 1944.

Mr. C. V. Samarasinghe, proctor for plaintiff files appointment and
plaint together with abstract of title and summons.

Plaint accepted and summons ordered for 28-11-44.

Sgd. K. D. DE SILVA,
District Judge.

Summons issued with precept returnable 27th day of November,
20 1944, to Deputy Fiscal, Matara.

28-11-44. Summons on the defendant served.

Defendant absent.

Ex parte trial for 31-1-45.

Intld. T. R.,
A. D. J.

28-11-44. Later defendant present, and moves that his presence be noted.
This is at 11-05 a.m.

Intld. T. R.,
A. D. J.

30 28-11-44. Mr. E. P. Wijetunga, proctor for defendant, files proxy and
affidavit from the defendant and for the reasons stated therein
moves that the case may be taken from the *ex parte* roll and
the defendant may be given a date to file his answer,

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23-10-44
to
8-10-48
—continued.

Mr. C. V. Samarasinghe, proctor for plaintiff, received notice.
Of consent case taken off the trial roll and defendant to file
answer on 19-12.

Intld. T. R.,
A. D. J.

19-12-44. Answer of defendant not filed.
File on 16-1-45. Final.

Intld. K. D. DE S.,
D. J.

12-1-45. Defendant's answer filed.
16-1-45. Answer filed.
Replication on 30-1-45.

10

Intld. P. SRI. S. R.,
A. D. J.

30-1-45. Replication filed.
Consideration on 6-2-45.

Intld. P. SRI. S. R.,
A. D. J.

6-2-45. Case called.
Trial on 2-5-45 (specially fixed).

20

Intld. P. SRI. S. R.,
A. D. J.

23-4-45. Mr. E. P. Wijetunga, proctor for defendant, states that Mr. N. Nadarajah, K.C., who is appearing for his client finds it inconvenient to appear in the above case on 2-5-45 and moves that the Court be pleased to refix the case for trial for a date in July.

Mr. C. V. Samarasinghe, proctor for plaintiff, objects as his client has retained Counsel.

Call on bench before A. D. J. on 24-4-45.

Mr. Wijetunga instructed by Mr. E. P. Wijetunga applies that the trial be postponed and the trial date fixed for any date in July as Mr. Nadarajah who has been retained is unable to be present on 2-5-45.

Mr. C. V. Samarasinghe objects as his Counsel, Mr. Gratiaen, has kept 2-5-45 free.

I refuse the application for the postponement of the trial date already fixed.

Trial date will stand.

Trial 2-5-45.

Intld. N. K.

25-4-45. Mr. E. P. Wijetunga, proctor for defendant files list of witnesses and documents and takes out 19 subpoenas in hand—Kachcheri Receipt No. 885 for Rs. 109.50 filed.

26-4-45. Mr. C. V. Samarasinghe, proctor for plaintiff, files list of witnesses and documents and takes out in hand 6 subpoenas and issues to Deputy Fiscal, Matara, 1 subpoena.

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23-10-44
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8-10-48
—continued.

One issued to Deputy Fiscal, Matara, and six subpoenas handed.

2-5-45. Mr. C. V. Samarasinghe for plaintiff.

Mr. E. P. Wijetunga for defendant.

Trial—*vide* proceedings.

Intld. N. K.

10 1-6-45. Mr. A. H. Felsingher, Licensed Surveyor, Matara ; Mr. A. H. M. Hussen, Chairman, Urban Council, Weligama ; Mr. E. H. de Silva of U. C. Weligama ; and A. G. Henry de Silva, Village Headman of Weligama, tender summons and move for batta Rs. 7.50, Rs. 10, Rs. 5 and Rs. 2.50, respectively, deposited in case.

Issue requisition.

Intld. P. S. SRI. R.,
A. D. J.

5-6-45. W. A. B. Abeyratna of Naimana tenders summons and claims batta Rs. 3 deposited in Court.

Issue requisition for Rs. 3.

20

Intld. N. K.,
D. J.

29-6-45. Mr. C. V. Samarasinghe, proctor for plaintiff, files petition from the plaintiff in the above case supported by an affidavit and for reasons stated therein moves for a notice on respondent therein named to appear before this Court and show cause if any why an injunction should not be issued on him restraining him from felling trees on the land in question and otherwise damaging the land, plantations and buildings thereon.

Notices are herewith tendered to be issued.

30

Notice for 10-7-45.

Intld. K. D. DE S.,
D. J.

10-7-45. Notice on defendant-respondent served.

Mr. Wijetunga moves for a date to file objections. Objections 17-7.

Intld. N. K.

13-7-45. Mr. E. P. Wijetunga, proctor for defendant, takes out 19 subpoenas in hand on list already filed.

Kachcheri Receipt No. 599 for Rs. 28 filed.

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Entries
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to
8-10-48
—continued.

17-7-45. Objections.
Inquiry 1-8-45.

Intld. N. K.

19-7-45. Mr. E. P. Wijetunga, proctor for defendant, files Kachcheri Receipt No. 669 for Rs. 10 being batta to Mr. C. V. Samarasinghe, Proctor, S. C. Matara.

24-7-45. In the above case as the Counsel for the plaintiff is unable to attend Court on personal grounds on the second date of trial, viz.: 1st August, Mr. C. V. Samarasinghe, proctor for plaintiff, moves that either the case be refixed for trial on two other consecutive dates or 10 that the second day of trial be postponed for another date that is convenient to Court.

He further moves that the case be now called on the bench to enable him to support this application.

Mr. E. P. Wijetunga, proctor for defendant objects.

Call on bench on 30-7-45.

Plaintiff to notice defendant's proctor for that date.

Intld. N. K.

24-7-45. Mr. C. V. Samarasinghe, proctor for plaintiff, files additional list of witnesses and takes out 6 subpoenas in hand. Kachcheri 20 Receipt No. 971 for Rs. 23.50 filed being batta to witnesses.

30-7-45. Case called.

Proctors of both parties present.

Trial 31-7.

Intld. N. K.

31-7-45. Mr. Samarasinghe for plaintiff.
Mr. E. P. Wijetunga for defendant.
Trial held—*vide* proceedings.

Sgd. N. KRISHNADASAN,

A. D. J. 30

20-8-45. Mr. E. P. Wijetunga, proctor for defendant, takes out 4 summons to witnesses in hand on list already filed.

22-8-45. Mr. A. H. F. Felsing, Licensed Surveyor, tenders summons and claims batta Rs. 7.50 deposited in Court.

Issue requisition for Rs. 7.50.

Intld. K. D. DE S.,

D. J.

29-8-45. Mr. C. V. Samarasinghe for plaintiff.
Mr. E. P. Wijetunga for defendant.
Further hearing—*vide* proceedings.

Intld. N. K.

40

4-9-45. Mr. V. J. Manuel, Electrical Superintendent, U. C. Moratuwa, tenders two summons and claims batta Rs. 30 deposited in Court for his attendance on 31-7-45 and 29-8-45.

Issue requisition for Rs. 30.

Intld. N. K.
A. D. J.

No. 1
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to
8-10-48
—continued.

4-9-45. Mr. P. A. Naraine, Electrical Engineer, Messrs. Walker & Greig, tenders two summons for his attendance on 2-5-45 and 31-7-45 and claims batta Rs. 60 deposited in Court.

10 Issue requisition for Rs. 60.

Intld. N. K.,
A. D. J.

4-9-45. Mr. E. H. de Silva tenders two summons and claims batta Rs. 10 deposited in Court for his attendance on 31-7-45 and 29-8-45.

Issue requisition for Rs. 10.

Intld. N. K.,
A. D. J.

4-9-45. Mr. E. P. Wijetunga, proctor for defendant, takes out 2 subpoenas in hand on list already filed.

20 20-9-45. Mr. E. P. Wijetunga, proctor for defendant, takes out 1 subpoena on list already filed. K. R. No. 788 for Rs. 15 filed.

18-9-45. Mr. C. V. Samarasinghe for plaintiff.

Mr. E. P. Wijetunga for defendant.

Further trial.

10-10-45. Mr. V. J. Manuel, Electrical Superintendent, U. C. Moratuwa, tenders summons and claims batta Rs. 15 deposited in Court.

Issue requisition.

Intld. C. J. C. J.,
A. D. J.

30 17-10-45. *Vide* Mr. N. Krishnadasan's memo No. 240 of 8-10-45. Case called to fix date of trial. Mr. Krishnadasan states that he will take up this case for hearing on 30th November, 1945, 1st and 3rd December, 1945.

Parties take notice.

Intld. C. J. C. J.

No. 1
Journal
Entries
23-10-44
to
8-10-48
—continued.

24-10-45. Mr. A. Withanachchi, the Divisional Revenue Officer, Weligama Korale tenders letter and claims batta Rs. 20 deposited in Court.
Issue requisition.

Intld. C. J. C. J.,
A. D. J.

25-10-45. Mr. W. A. B. Abeyratna tenders summons and claims batta Rs. 3 deposited in Court.
Issue requisition.

Intld. C. J. C. J.,
A. D. J. 10

4-11-45. *Vide* letter dated 23-10-45 filed of record to gazette Mr. Krishnadasan as A. D. J. Matara for 30th November, 1945, and 1st and 3rd December, 1945. The Legal Secretary—*vide* his letter J 29/36 of 29-10-45 wants to forward the papers through Mr. Krishnadasan to enable him to state whether it was absolutely necessary to hear the above case and to suggest arrangements for his work at Anuradhapura.

Papers forwarded to Mr. Krishnadasan.

14-11-45. The Village Headman of Weligama *vide* motion—states that he has lost his summons and moves that a requisition for the amount deposited be issued for his attendance on 31-7-45. He attended Court to give evidence on behalf of defendant.

Issue requisition for Rs. 2.50.

Intld. C. J. C. J.,
A. D. J.

21-11-45. The Governor has appointed Mr. N. Krishnadasan to be Additional District Judge, Matara, from the 30th November to the 3rd December, 1945, to hear the above case (*vide* Legal Secretary's letter No. J 29/36 of 19-11-45).

29-11-45. Mr. C. V. Samarasinghe, proctor for plaintiff, files list of witnesses and documents and takes out 1 subpoena in hand. 30

30-11-45. Mr. C. V. Samarasinghe for plaintiff.

Mr. E. P. Wijetunga for defendant.

Further trial 3-12-45.

3-12-45. Trial heard (*vide* proceedings).

3-12-45. Mr. E. P. Wijetunga, proctor for defendant, tenders documents marked D1 to D55.

16-2-46. Mr. N. Krishnadasan, District Judge, Anuradhapura, by his letter dated 13-2-46 states that he should be gazetted as early as possible to deliver judgment in the above case.

(1) Call case on 19-2-46. 40

(2) Gazette him for 12-3-46 to deliver judgment.

Intld. C. J. C. J.,
A. D. J.

19-2-46. Case called.
Judgment for 12-3.

Intld. C. J. C. J.,

12-3-46. Judgment delivered.
Draft decree for 14-3.

Intld. C. J. C. J.,
A. D. J.

10 12-3-46. Mr. E. P. Wijetunga for defendant-appellant files petition of appeal together with notices of security, notices of appeal, stamps for Supreme Court judgment, Certificate in appeal, application for type-written copies with K. R. for Rs. 54 and moves that the same be accepted and notice of security be issued for 27-3-46 on which date he moves to give costs of security.

1. Accept petition of appeal.
2. Issue security notices for 27-3-46.
3. Forward record to Supreme Court in due course.

Intld. C. J. C. J.,
A. D. J.

20 14-3-46. Mr. C. V. Samarasinghe, proctor for plaintiff, tenders decree. Fee Rs. 5.

Intld. C. J. C. J.,
A. D. J.

20-3-46. Mr. C. V. Samarasinghe, proctor for plaintiff, files affidavit from plaintiff together with petition and application for writ and a certified copy of decree and for reasons stated therein moves that execution of the decree as prayed for in the petition be ordered.

He also tenders notice on defendant and moves that the same be issued for a short date.

Support before the A. D. J.

80 Intld. K. D. de S.,
D. J.

21-3-46. Notice defendant for 25-3-46.

Intld. C. J. C. J.,
A. D. J.

25-3-46. Notice on the defendant served.
Objections 8-4 finally.

Intld. C. J. C. J.

27-3-46. Security notices on Mr. C. V. Samarasinghe, proctor, served.
Accept cash security of Rs. 200 respondent's Advocate Mr. Aziz
40 consenting.

- Issue deposit order. Perfect Bond.
- Issue notices of appeal returnable 7-5.
- List of documents for same date.

Intld. C. J. C. J.,

No. 1
Journal
Entries
23-10-44
to
8-10-48
—continued.

- 8-4-46. Objections (finally) filed.
Enquiry 14-5.
Intld. C. J. C. J.,
A. D. J.
- 9-4-46. Mr. C. V. Samarasinghe, proctor for plaintiff-petitioner, files list of witnesses and takes out 6 subpoenas in hand. K. R. for Rs. 25 filed.
- 3-5-46. Mr. E. P. Wijetunga, proctor for defendant, files list of witnesses and takes out 2 subpoenas in hand.
- 7-5-46. Appeal notices on Mr. C. V. Samarasinghe, proctor, served. 10
Forward appeal.
Intld. C. J. C. J.,
- 14-5-46. Mr. C. V. Samarasinghe for plaintiff.
Mr. E. P. Wijetunga for defendant.
Inquiry into objections *re* enquiry into execution of decree.
(*Vide* proceedings).
Order 21-5-46.
- 24-5-46. S. D. Ranasinghe, Fiscal Officer, Matara, tenders summons and claims batta Rs. 5 deposited in Court.
Issue requisition. 20
Intld. C. J. C. J.,
A. D. J.
- 24-5-46. Police Constable Mohotti of Kamburupitiya Police tenders summons and claims batta Rs. 5 deposited in Court.
Issue requisition.
Intld. C. J. C. J.,
A. D. J.
- 24-5-46. A. G. Henry de Silva, Village Headman of Mahaweediya, tenders summons and claims batta Rs. 5 deposited in Court.
Issue requisition. 30
Intld. C. J. C. J.,
A. D. J.
- 27-5-46. On the application of Mr. C. V. Samarasinghe for plaintiff, D. N. 83468/27-5-46 for Rs. 20,000 being security for delivery of possession of the land and premises as per order of Court, issued. K. R. 1298/27-5-46.
- 27-5-46. *Vide* order of Court dated 21-5-46. Mr. C. V. Samarasinghe, proctor for plaintiff, tenders K. R. No. 1298 for Rs. 20,000 being security ordered and moves that writ of possession tendered herewith be issued.
1. Perfect Bond. 40
2. Issue Writ of Possession.
Intld. C. J. C. J.,
A. D. J.

30-5-46. Writ of possession issued at the instance of Mr. C. V. Samarasinghe returned to Court by Deputy Fiscal, Matara. Possession was delivered to G. Sadiris de Silva on behalf of the plaintiff on 28-5-46.

Noted.

Intld. C. J. C. J.,
A. D. J.

No. 1
Journal
Entries
23-10-44
to
8-10-48
—continued.

No. 2

Plaint of the Plaintiff

No. 2
Plaint of the
Plaintiff
23-10-44

IN THE DISTRICT COURT OF MATARA

10 KUDA MADANAGE SIYANERIS of Unawatuna, in Galle.....*Plaintiff.*

No. 16621

vs.

JAYASINGHE ARACHCHIGE UDENIS DE SILVA of Walliwela, Village Headman of Walliwela in Weligama.....*Defendant*

This 23rd day of October, 1944.

The plaintiff of the plaintiff abovenamed appearing by Cecil Victor Samarasinghe his proctor states as follows :—

1. The defendant resides and the land which forms the subject-matter of this action is situated at Weligama within the jurisdiction of this Court.

20 2. Under and by virtue of Deed No. 12408 dated 3rd October, 1883, attested by Don Cornelis Wickremasinghe of Matara, Notary Public, G. Don Hendrick Perera was the owner of all those contiguous allotments of land forming the property called and known as Palugahawatta fully described in the schedule hereto.

3. The said Don Hendrick Perera by Deed No. 3884 dated 16th September, 1894, attested by L. C. M. S. Chitranayaka of Matara, Notary Public, gifted the said allotments of land to David Samaraweera.

4. The said David Samaraweera caused the said allotments of land to be surveyed and consolidated as one land called and known as Palugahawatta as per Survey Plan dated 8th October, 1919, made by J. D. de Niese, Licensed Surveyor.

30 5. By Deed No. 260 dated 10th October, 1919, attested by I. R. Abeydeera of Matara, Notary Public, the said David Samaraweera sold and transferred the said Palugahawatta to J. B. Appuhamy.

No. 2
Plaint of the
Plaintiff
23-10-44
—continued.

6. The said J. B. Appuhamy by Deed No. 239 dated 28th June, 1944, attested by H. P. Perera of Colombo, Notary Public, sold and transferred the said land to the plaintiff abovenamed.

7. The plaintiff and his predecessors in title have been in the undisturbed and uninterrupted possession of the said land for a period of over ten years by a title adverse to and independent of all others and have thereby acquired a title by prescription to the same.

8. The defendant who has no title whatsoever to the said land is in the wrongful and unlawful possession of the same from 16th September, 1944, to the plaintiff's loss and damage in a sum of Rs. 60 per mensem. 10

9. The said land is reasonably worth Rs. 20,000.

Wherefore the plaintiff prays :

- (a) That the plaintiff be declared entitled to the said land called and known as Palugahawatta fully described in the schedule hereto.
- (b) That the defendant be ejected from the said land and the plaintiff be placed in possession thereof.
- (c) That the defendant be ordered and decreed to pay to the plaintiff damages at the rate of Rs. 60 per mensem from 16th September, 1944, till plaintiff is placed in possession of the said land.
- (d) For costs of this action ; and 20
- (e) For such further and other relief as to this Court shall seem meet.

Sgd. C. V. SAMARASINGHE,
Proctor for Plaintiff.

The Schedule referred to :—

• All that the soil and trees of four contiguous allotments of land (1) Lot A of Malwattegewatta, (2) portion of Maligatenna, (3) Palugahawatta and a portion of Mannehegewatta all adjoining each other and forming one property and known as Palugahawatta situated at Weligama in the Weligam Korale of Matara District, Southern Province, and bounded on the North by Maligatenna and Malwattegederawatta, on the East by 30 Ihalawadugewatta, Kalahegewatta and Palugahaliyadda, South by high road and a portion of Mannehegewatta and on the West by Sandogemmalaiwatta and Wellekappittagederawatta containing in extent four acres and three roods together with all the buildings standing thereon.

Sgd. C. V. SAMARASINGHE,
Proctor for Plaintiff.

Answer of the Defendant

IN THE DISTRICT COURT OF MATARA

KUDA MADANAGE SIYANERIS of Unawatuna in Galle.....*Plaintiff.*

No. 16621

*vs.*JAYASINGHE ARACHCHIGE UDENIS DE SILVA of Walli-
wela, Village Headman of Walliwela in Weligama.....*Defendant.*

On this 12th day of January, 1945.

Answer of the defendant abovenamed appearing by Edmund Perera
10 Wijetunga his proctor states as follows :—

(1) The defendant admits the averments contained in paragraphs 1,
2, 3 and 4 of the plaint.

(2) Answering paragraph 5 of the plaint the defendant states :

(a) that J. B. Appuhamy therein referred to was adopted and brought
up from his infancy by one A. K. J. Punchihamy who was the
mother-in-law of the defendant ;

(b) that in or about the year 1919 the said J. B. Appuhamy was
anxious to contract an advantageous marriage ;

20 (c) that in the year 1919 the said J. B. Appuhamy did not
have any immovable property and was therefore considered to be
lacking in a very important qualification necessary to contract an
advantageous marriage ;

(d) that in the year 1919 the said J. B. Appuhamy was not possessed
of sufficient means to acquire any immovable property ;

30 (e) that in or about the month of October, 1919, the defendant who
had previous to the said time married the daughter of the said
A. K. J. Punchihamy had arranged to purchase from David
Samaraweera referred to in the plaint the land in dispute in this
case. At or about the said time the said J. B. Appuhamy re-
quested the defendant to consent to the Deed of Transfer for the
said land to be made out in favour of the said J. B. Appuhamy so
that he may at least have the appearance of having immovable
property and thereby appear to have the qualification referred to
in paragraph (2) (c) hereof ; the said J. B. Appuhamy definitely
agreed to hold the title for the benefit of the defendant ;

(f) the defendant acceded to the aforesaid request and accordingly
the land in dispute was purchased by the defendant and the Deed
of Transfer, viz., Deed No. 260 referred to in paragraph 5 of the

No. 3
 Answer
 of the
 Defendant
 12-1-45
 —continued.

plaint was made out and executed in favour of the said J. B. Appuhamy merely for the purpose of enabling him to appear to have the qualification referred to in paragraph (2) (c) hereof ;

- (g) that the defendant paid a sum of Rs. 5,500 as the consideration for the said Deed No. 260 and that out of the said sum of Rs. 5,500 a sum of Rs. 4,630 was paid to the said David Samaraweera the vendor of the said land on the said Deed No. 260 and the balance sum of Rs. 870 was given to the said J. B. Appuhamy to whom the said David Samaraweera owed a sum of Rs. 870.
- (h) that at all times material to this action it was understood between 10 the said J. B. Appuhamy and the defendant that the said J. B. Appuhamy was at no time to have any beneficial interests in the said land and that all the beneficial interests therein should be vested in and enjoyed by the defendant ;
- (i) that by reason of the averments contained in paragraph (2) (a) to (h) hereof the said Deed No. 260 did not convey any beneficial interests in the land in dispute to the said J. B. Appuhamy and that the said J. B. Appuhamy has at no time enjoyed any beneficial interest therein ;
- (j) that the rights if any of the said J. B. Appuhamy to the said land 20 were those of a mere trustee holding the same for the exclusive benefit of the defendant.

(3) Answering paragraph 6 of the plaint the defendant states that the purchase of the land in question by the plaintiff from the said J. B. Appuhamy on Deed No. 239 dated 28th June, 1944, was a speculative transaction which was entered into by the plaintiff with full knowledge of the fact that the said J. B. Appuhamy was at no time entitled to any beneficial interest in the said land and that the said Deed No. 239 conveyed no interest in the said land to the plaintiff.

(4) The defendant denies the averments contained in the paragraphs 30 7 and 8 of the plaint.

(5) By way of further answer the defendant states :

- (a) that the defendant has from the 10th day of October, 1919, to the date hereof been in the undisturbed and uninterrupted possession of the land in dispute by a title adverse to and independent of the plaintiff, the said J. B. Appuhamy and of all others and has thereby acquired a title to the same by prescription ;
- (b) that after he entered into possession of the land in dispute in October, 1919, the defendant has improved the said land by erecting buildings thereon and planting fruit trees and coconuts 40 and otherwise improving the said land at a cost of Rs. 35,000 ;
- (c) that in any event the defendant is entitled to recover from plaintiff the sum of Rs. 35,000 as compensation for improvements effected to the said land by the defendant and to a "*jus retentionis*" until

the said compensation is paid. This plea is made in the alternative without prejudice to the defendant's claim to the ownership of the said land and buildings.

No. 3
Answer
of the
Defendant
12-1-45
—continued.

Wherefore the defendant prays :

- (a) That the plaintiff's action be dismissed ;
- (b) that the defendant be declared entitled to the land in question ; or in the alternative without prejudice to the defendant's claim to the ownership of the said land ;
- 10 (c) that in the event of the plaintiff being declared entitled to the said land to order the plaintiff to pay the defendant the sum of Rs. 35,000 as compensation for improvements and declare the defendant entitled to a "*jus retentionis*" until the said compensation is paid ; and
- (d) for costs and such other and further relief in the premises which to the Court may seem meet.

Sgd. EDMUND P. WIJETUNGA,
Proctor for Defendant.

No. 4

Replication of the Plaintiff

No. 4
Replication
of the
Plaintiff
30-1-45

20 IN THE DISTRICT COURT OF MATARA

KUDA MADANAGE SIYANERIS of Unawatuna in Galle.....*Plaintiff.*

vs.

JAYASINGHE ARACHCHIGE UDENIS DE SILVA of Walliwela, Village Headman of Walliwela in Weligama..... *Defendant.*

This 30th day of January, 1945.

The Replication of the plaintiff abovenamed appearing by Cecil Victor Samarasinghe his proctor states as follows :—

1. The plaintiff joins issue with the defendant upon the denials in the answer of the averments contained in the plaint.
- 30 2. Replying to paragraph 2 of the answer the plaintiff denies that the land which is the subject-matter of this action was acquired by J. B. Appuhamy in the circumstances set out in the said paragraph and specially denies that the rights of the said J. B. Appuhamy to the said land were those of a mere trustee.
3. The plaintiff denies the averments contained in paragraph 3 of the answer.

No. 4
Replication
of the
Plaintiff
30-1-45
—continued.

4. Further replying to the said paragraph 3 of the answer the plaintiff states that even if the said J. B. Appuhamy was holding the said land as a trustee the plaintiff is not bound by any trust as he is a *bona fide* purchaser for value without notice.

5. Replying to paragraph 5 of the answer the plaintiff denies the averments contained therein and specially denies that the defendant has affected improvements to the said land of the value of Rs. 35,000 or any sum whatsoever.

6. Further replying to the said paragraph 5 the plaintiff states that even if the defendant effected improvements he is not a *bona fide* possessor and is therefore not entitled to compensation for such improvements or to a "*jus retentionis*".

Wherefore the plaintiff prays :—

That the defendant's claim in reconvention be dismissed ; and

That judgment be entered in favour of the plaintiff as prayed in the plaint.

Sgd. C. V. SAMARASINGHE,
Proctor for Plaintiff.

No. 5

No. 5
Statement of
Objections
of the
Defendant
8-4-46

Statement of Objections of the Defendant

20

KUDA MADANAGE SIYANERIS of Unawatuna in Galle.....*Plaintiff-Petitioner.*

No. 16621 *vs.*

JAYASINGHE ARACHCHIGE UDENIS DE SILVA of Walliwela in Weligama *Defendant-Respondent.*

This 8th day of April, 1946.

The statement of objections of the defendant-respondent appearing by Edmund Perera Wijetunga his proctor states as follows :—

1. The respondent admits the averments in paragraphs 1, 2, 3 and 4 of the petitioner's affidavit and expressly denies the averments contained in paragraphs 5, 6, 7, 8 and 12 of the said affidavit.

2. The respondent states that the averments in paragraphs 5, 6, 7 and 8 are deliberately false. The respondent has had no converse with the petitioner at any time after the date of the decree.

3. The respondent states that there is no reason why the *status quo* should be disturbed pending the hearing of the appeal. The house in question is one that has on the accepted evidence been occupied by the defendant-respondent and his family for the last eight years.

4. The present application of the petitioner has been made purely with a view to harass the respondent.

No. 5
Statement of
Objections
of the
Defendant
8-4-46
—continued.

Wherefore the respondent prays :

- (a) that the application of the petitioner be dismissed ;
- (b) for costs and such other and further relief as to the Court may seem meet.

Sgd. EDMUND P. WIJETUNGA,
Proctor for Defendant.

No. 6

No. 6
Statement of
Objections
of the
Defendant
18-7-45

10

Statement of Objections of the Defendant

KUDA MADANAGE SIYANERIS of Unawatuna in Galle.....*Petitioner.*

No. 16621 *vs.*

JAYASINGHE ARACHCHIGE UDENIS DE SILVA of Walli-wela.....*Respondent.*

On this 13th day of July, 1945.

The statement of objections of the respondent abovenamed appearing by Edmund Perera Wijetunga his proctor states as follows :—

- 1. The respondent admits the averments contained in paragraph 1 of the petition.
- 20 2. The respondent denies the averments contained in paragraphs 2, 3, 4, 5, 6 of the petition.
- 3. The respondent states that the petitioner is not entitled to have the respondent restrained by injunction as prayed for in the petition.

Wherefore the respondent prays :

- (1) That the petitioner's application be dismissed ;
- (2) For costs ; and
- (3) For such other and further relief as to this Court shall seem meet.

Sgd. EDMUND P. WIJETUNGA,
Proctor for Defendant.

Issues Framed

2-5-45 Plaintiff present.
Defendant present.

MR. GRATIAEN with MR. D. W. FERNANDO instructed by MR. SAMARASINGHE for plaintiff.

MR. N. NADARAJAH, K.C., with MR. JAYAMANNA instructed by MR. WIJETUNGA for defendant.

Mr. Gratiaen suggests :

(1) Was Deed No. 260 dated 10-10-19 executed in favour of Appuhamy in the circumstances alleged in paras 2A and 2H in the answer.

(2) If so—

(a) did the beneficial interest in the land not pass to Appuhamy ;

(b) were the rights of Appuhamy to the land those of a mere trustee holding the same for the exclusive benefit of the defendant.

(3) If issues 2A and or 2B are answered in favour of the defendant, did the plaintiff purchase the land from Appuhamy with full knowledge of the fact that Appuhamy was at no time entitled to the beneficial interest in this land.

(4) Was plaintiff a *bona fide* purchaser for value without notice of the trust alleged in the answer.

(5) Is the defendant entitled in law to a declaration of title to the land in dispute.

(6) Prescriptive rights of the defendant.

(7) If issues 1—6 are answered in favour of the plaintiff, is plaintiff entitled—

(a) to a declaration of title to the land ;

(b) to damages, and if so in what sum.

Mr. Nadarajah suggests :

(8) Did David Samaraweera by Deed 260 of 10-10-19 sell and transfer to Appuhamy the land set out in the schedule.

(9) Did Appuhamy sell and transfer to plaintiff for valuable consideration the said land.

(10) Have the plaintiff and his predecessors in title been in undisturbed and uninterrupted possession as set out in para. 7 of the plaint.

(11) Is the defendant in wrongful and unlawful possession of the said land since 16 September, 1944.

(12) If issue 11 is answered in the affirmative to what damages is the plaintiff entitled to.

(13) Was the consideration for Deed No. 260 of 10-10-19 paid to the vendor by the defendant.

(14) Was the said Deed drawn up and executed in favour of Appuhamy for the reasons and under the circumstances set out in paragraph 2A to 2H of the answer.

No. 7
Issues
Framed
2-5-45
—continued.

(15) If issues 13 and 14 are answered in the affirmative was the said Appuhamy—

- (a) entitled to any beneficial interest in the land ;
- (b) holding the legal title in trust for the defendant.

10 (16) Has the defendant effected improvements on the said land.

(17) If so is the defendant entitled to—

- (a) compensation for the said improvements ;
- (b) for *jus retentionis* of the land in question till compensation is paid.

(18) What is the value of the said improvements.

Mr. Gratiaen in lieu of issue (5) suggests issue :

(5A) Were the circumstances under which the Deed No. 260 on 10-10-19 was executed such as to establish a valid trust in favour of the defendant.

20 Mr. Gratiaen raises a further issue.

(19) Even if issue 16 is answered in the affirmative is the defendant a *bona fide* possessor.

(20) If not is the defendant entitled to compensation and or *jus retentionis*.

Sgd. N. KRISHNADASAN,

Mr. Nadarajah objects to issues 1, 2, 5 and 7 (a) and (b) framed by Mr. Gratiaen.

He submits that issues 13, 14 and 15 be allowed to stand in the place of issues 1 and 2 and that issues 8, 9, 10, 11 and 12 be accepted instead of issues 7 (a) and (b).

Mr. Gratiaen objects to issues 8, 9 and 10 and contends that issues 7 and 1 be accepted.

At this stage Mr. Nadarajah applies for a date as he is held up in a partly heard case before Supreme Court. Call 3-5-45 for order re issues.

Sgd. N. KRISHNADASAN,

2-5-45.

Issue 13 is not covered by issue (1). Issue (14) is the same as issue (1). There is no difference between issue (2) and issue (15) and for convenience, I accept issues 13, 14 and 15 instead of issues 1 and 2.

No. 7
Issues
Framed
2-5-45
—continued.

Mr. Gratiaen in place of 5 suggested another issue 5A and I accept that in place of issue 5.

The execution of the transfer by David Samaraweera in favour of Appuhamy is admitted by the defendant, and I disallow issue No. (8). Issue No. (9) is covered by issue No. (4) and I disallow issue No. (9).

Mr. Gratiaen stated that as defendant is claiming title from David Samaraweera his own predecessor in title he is not relying on prescriptive possession. I disallow issue (10). The trial will proceed on issues 3, 4, 5A, 6, 7 (a) and (b), 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20.

Sgd. N. KRISHNADASAN, 10
2-5-45.

3-5-45.

Mr. C. V. Samarasinghe, proctor for plaintiff, present.

Advocate I. M. R. Wijetunga instructed by E. P. Wijetunga for defendant, present.

I inform parties that I have accepted issues 3, 4, 5A, 6, 7 (a) and (b), 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 and that I had disallowed the others.

Sgd. N. KRISHNADASAN,

Trial on 31-7-45 and 1-8-45.

No. 8

20

No. 8
Defendant's
Evidence
J. A. Udenis
de Silva
Examination

Defendant's Evidence

31st July, 1945.

Plaintiff present.

Defendant present.

MR. E. F. N. GRATIAEN instructed by MR. C. V. SAMARASINGHE for the plaintiff.

MR. ADV. WIKREMANAYAKE with MR. ADV. JAYEMANNA instructed by MR. E. P. WIJETUNGA for the defendant.

MR. WIKREMANAYAKA calls :

J. A. UDENIS DE SILVA affirmed, retired teacher, Weligama. I am the defendant in this case. I am in possession of the property in dispute. The property belonged to David Samaraweera and he sold on Deed 260 dated 10-10-19, P1. The consideration on that purchase was paid by me. It was my money. The deed of purchase is in the name of J. B. Appuhamy. He was adopted by my mother-in-law. I paid the purchase money but the deed was in his name, because he had to show a property qualification for him to get married.

Delivery of possession was given to me and I have been in possession since that time. That was in 1919. I produce D1 the extract from the assessment register for 1920 to 1943. That shows my name as the owner. Taxes were paid by me.

A building was put up on the land after the purchase. For the purpose of putting up that building I had to apply for a permit to build. I produce D2, the application made in 1923 by me to the Chairman, along with the sketch D2A. That was an application to build made in 1923. I also made an application for erecting a shed on the premises, which I produce along with the sketch D3 and D3A.

No. 8
Defendant's
Evidence
J. A. Udenis
de Silva
Examination
—continued.

I produce D4 and D4A, the application made to the Chairman in 1925 for permission to erect a copra shed.

I produce D5 and D5A, the application made to the Chairman of the Sanitary Board for the erecting of a dry-earth latrine.

I produce D6 and D6A, the application made in 1935 for permission to construct another building. All these applications have been made by me.

I produce D7 and D7A, the application for the alteration of a building in 1937. I produce D8, a letter received by me from the Chairman of the Urban Council with reference to my application for the alteration of a building. I produce D9, a letter received by me from the Chairman calling for me to obtain a licence for a copra shed. I produce D10, a licence given to me for running a copra shed in 1940. I produce D11, a licence for keeping a copra shed in 1941. This building was fitted with electric lights and for the purpose of installing the lights I had to enter into an agreement.

I produce D12, a certified copy of an application made by me to the Chairman of the Urban Council for the supplying of electric lights in 1937. I produce D13, bill received by me for electricity consumed for 1938.

With regard to the question of the alteration of the building there was a diversion from the plan. I had to leave a space between the road and the building according to the original plan. I left a space as shown in the plan.

I produce D14, a letter from the Chairman threatening me with prosecution.

I produce D15, another letter from the Chairman regarding the same building.

I produce D16, a letter received by me from the Chairman with reference to an application for construction a wall round the house. The matter of the diversion was inquired into by the Council. I produce D17, a letter calling upon me to appear in the office on the 16th March with regard to the diversion.

This building was occupied by me. After that it was rented out to several people. One Abeyratna occupied the house from 1920 to 1924. He paid the rent to me. The money was utilised by me.

The next tenant was W. J. Coomarasinghe. He was there from 1924 to 1929.

No. 8
Defendant's
Evidence
J. A. Udenis
de Silva
Examination
—continued.

The next tenant was Mrs. Wickremaratna. She paid the rent to me. She was in the house till 1935. After that alterations were made to the building. Mr. Narayana and Mr. Manuel were in the house after that. Mr. Manuel was the Electrical Superintendent. Mr. Narayana was the Electrical Engineer.

He was the tenant of the premises. They paid the rent to me. I produce D18, a letter from Mr. Narayana dated 2-7-37. I supplied Mr. Narayana with milk.

The installation of the electricity was done by Mr. A. A. Senaratna of Galle. 10

I produce D19, a letter received by me from the Chairman of the U. C. dated 18-8-38 calling upon me to obtain a licence for a copra shed. I produce D20, the reply sent by the Chairman to a letter sent by me calling for a reduction in the assessment rates.

I produce D21, a letter from the Chairman after the inquiry stating that the rates were reduced. I was in possession up to 1943. Even after that I am in possession. I am now living on the land. In 1943 I heard that Appuhamy got married. Prior to his marriage he did not assert title to the property. He never tried to take possession of the property. After he married he sent me a letter through a proctor in Colombo. I produce that letter D22. When I received this letter I showed it to my lawyers and sent a reply. I sent a caveat to the Registrar on 21-3-44. 20

I produce D23, the reply sent by me. I produce D24, a certified copy of the extract from the Registrar of Lands with regard to the dealings with this property in 1919 showing the registry of the Caveat on 24-3-44.

Thereafter I was informed by the Registrar of Lands of the registration of a Transfer Deed No. 239 of 28-6-44 which had been sent to the Registrar showing a transfer by Appuhamy to the plaintiff.

I produce the notice to the Caveator D25.

I saw my lawyers in connection with that and sent letter D26 to the plaintiff on 22-7-44 informing him that the land belonged to me. I received a letter from the plaintiff's proctor dated 31-8-44, D27, calling upon me to give vacant possession of the property in question. I replied by D28 referring him to D26. 30

I produce D29, a certified copy of Deed 239 in favour of the plaintiff.

I point out to the attestation which says that the consideration was retained by Messrs. Julius & Creasy till possession was delivered. I have been in undisturbed and uninterrupted possession of this land from 1919 up to the present time. I have possessed this property as my own property. Plaintiff's predecessors had no possession of this land whatsoever. I have spent Rs. 15,000 for putting up the building and improving the land. I have spent Rs. 3,000 for putting up a wall and fences. All these amounts were spent by me out of my pocket. Appuhamy was a cook in the Training College. 40

Cross-examined : I married in 1904. Appuhamy was treated as a brother of my wife. I and my wife were on very good terms with Appuhamy till recently. My son stayed with him in the Training College. He stayed there for a short time. He was there for one year. My son was educated at the Royal Preparatory School. At the start he was with Appuhamy. My son did not stay with Appuhamy because a petition was sent to say that he was staying there free of cost. I had no other relations in Colombo, for my son to stay with. There was no one to look after my son. It was after I sent the boy there to Appuhamy's that I knew
 10 that it was not a proper place for my son. I kept the boy in several boarding houses. Our relations with Appuhamy were very cordial. When he came to the village he stayed with me. I did not charge him any board. He did not charge anything from my son. Till 1943 he was not married. I do not know whether he bought an iron safe. I have an iron safe for which I paid. It was Appuhamy who bought the safe. I provided the money. I have no writing from Appuhamy to show that I paid for the iron safe.

No. 8
 Defendant's
 Evidence
 J. A. Udenis
 de Silva
 Cross-exami-
 nation

Appuhamy has sent me many letters. I do not know whether this safe was bought from Mr. Evans. He brought it and asked me to buy it.
 20 He bought it with his money and I paid him for it. I cannot remember whether I wrote to him or told him personally about the safe. He bought a buggy cart. He brought the cart and kept it in my house. It is now all rotten.

Court adjourns for lunch.
 Trial resumed.

At this stage I tell parties that I will not be able to answer issues 3 and 7 unless I also answer issues 1 and 2. Parties are agreeable that the issues 1 and 2 are included. I accept issues 1 and 2 as well.

Sgd. N. KRISHNADASAN,
 A. D. J.

80

J. A. UDENIS DE SILVA recalled, affirmed.
 Cross-examined—(continued).

When Appuhamy brought the buggy cart he brought the bull and left it in the garden where I was then residing. That was about 15 years ago. Now we are living in the house in question. I first came to that house in 1938. I did not come there before that. After I went to this house in 1938 Appuhamy came to the house. Before that he did not leave some of his belongings in my house. He did not bring furniture to my house. That cart was bought by him for our use. I did not know
 40 whether it was a present. Whenever he came from Colombo Appuhamy brought sweets and other things. He did not bring any iron beds to my house. He did not bring a toilet table to my house. I do not know whether he left a toilet table in my house. I have some two or three wardrobes of my own.

No. 8
 Defendant's
 Evidence.
 J. A. Udenis
 de Silva
 Cross-exami-
 nation
 —continued.

Appuhamy had no relations as far as I know. I do not know whether he claimed any relationship to my relations. He did not tell me of any of his relations. I do not know whether he has any relations. He has attended my daughter's wedding but he did not act as an uncle. My daughter has other uncles. Appuhamy did not take part in any ceremony. He was there as a relation. He did not take part in the Poruwa ceremony of my first daughter's wedding.

Appuhamy had been in the Training College for a number of years. He started at Rs. 15 per month in 1909. I did not send any money to him. I do not know whether he was the tuckshop-keeper. I knew that he was cook in the Training College. I do not know whether he had any other means of income. I have no receipts to show that I paid boarding for my son. I did not preserve those receipts. Some of the boarding masters of my son were Abeysinghe Gomez and B. M. Rodrigo. These are the people to whom I made the payments. I cannot say whether my son stayed in the house of the schoolmaster Jayatileke.

I do not know whether my son's boarding fees there were paid by Appuhamy. In 1919 Appuhamy drew Rs. 30. I cannot say whether he saved any money. As far as I know there were no investments he had made. My impression is that he had no money to invest. He had no property. I do not know whether he had any property in Lunawa. I do not know whether he lent money to people of my district. It is my money that was given to proctor Samaraweera, when the mortgage bond was written in favour of Appuhamy. Mr. Samaraweera was a friend of mine and as I could not recover interest from him he wrote the property in the name of Appuhamy.

My mother-in-law had set apart that money to be given to Appuhamy. That money was Rs. 750. That money was given to me about one week prior to the date of the mortgage. The money was given to me and I was asked to write the bond in the name of Appuhamy. 30

My mother-in-law was alive in 1918. She died in 1924. She expressed her desire to make a gift to Appuhamy. Appuhamy was in Colombo. My mother-in-law was in Weligama. That is why she could not give the money to him. The money could have been sent by a money order. As it was agreed to lend the money my mother-in-law gave me this money to be lent to Samaraweera. I agreed to lend the money to Mr. Samaraweera. At the start I wanted to lend my money to Mr. Samaraweera. Then my mother-in-law said this and I lent Appuhamy's money to Mr. Samaraweera. I gave over the money to Mr. Samaraweera as Appuhamy's money. I said earlier that I did not want to give my money to Mr. Samaraweera as I would find it difficult to recover the interest. Mr. Samaraweera paid the interest. That has come to Appuhamy. Mr. Samaraweera gave the interest and the principal and the money was handed to me and I gave the money to Appuhamy.

That money belongs to Appuhamy. Rs. 870 was deducted to be paid to Appuhamy and the balance was given to Mr. Samaraweera. That

Rs. 870 was paid by me to Appuhamy about two days later. The mortgage in favour of Appuhamy was in respect of some other land. The sale of the property was on 10-10-19. I paid that Rs. 870 to Appuhamy on the 12th. I paid this money in Colombo. There was no one present when I paid the money.

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Defendant's
Evidence
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de Silva
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nation
—continued.

(Mr. Gratiaen produces P1 the original of Deed 260.)

The notary for this deed is Mr. Abeydeera. I did not see him come to Court today. His name is on the list of witnesses. I do not know whether the notary knew that the land was being transferred in the name of Appuhamy instead of my name. Mr. Samaraweera gave the instructions to the notary. I told Mr. Samaraweera to have the deed executed in favour of Appuhamy. I did not want to pretend to the notary that Appuhamy was really the purchaser. I gave the original transfer deed to Appuhamy about two years later. He wanted it to be produced in connection with the property qualification for his marriage; that marriage which was to have come off in 1921 did not come off. The marriage proposal was from Gampaha. I do not know who the parties were. This deed was taken to be shown to the bride's party. I knew that Appuhamy had no property when this marriage was proposed. I do not know whether he wanted to make a false representation to the lady's people that he was possessed of property. This deed was not to show that he was possessed of property. I gave this land to him to get him a marriage qualification. Appuhamy wanted to show that he was possessed of property and asked me to write the land in his name and I did so. I first discussed this question of qualification by property at the earlier part of 1919. There was no one else present. When the members of a family have a personal discussion the outsiders do not listen.

My mother-in-law was present when I had this conversation with Appuhamy. At that time my mother-in-law said that some land must be given to Appuhamy in his name. I agreed to this proposal. This proposal would have served the purpose of both of us.

After he gets married if he will write back the property to me I will attain my object and he also will attain his object.

To some people this proposal will be dishonest. To some people it will not be dishonest. Appuhamy considered this proposal honest.

As he had no relations of his own, he considered getting married even with this pretence as honest.

I wished that he could get married and be a man. I wished to see him successful as a married man.

I wished his married life to be successful. I did not look into how he achieved his success. It was he who wanted to get married and I helped him. I wanted to help him in that transaction and my mother-in-law also asked me to help him and to give him some property. The real owner was myself though the deed was written in Appuhamy's name. What I wanted to show was that he was possessed of property. I did

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—continued.

not help him to commit a fraud. As my mother-in-law asked me to have the deed executed in his name I did so. I never helped anyone to commit a fraud. I did not help Appuhamy to commit a fraud.

P1 was in my possession for two years after the execution. Even today I consider myself the owner of the lands shown in P1. It was I who got the deed drawn and paid the money so I had the deed with me.

I have always felt that I was the real owner of the property. I gave P1 to Appuhamy to show to someone that he was possessed of property. I gave him all the title deeds in connection with the land. He did not tell me when he would return P1 and the other deeds. 10

I did not ask him when he would return them. He did not tell me that the deeds were wanted for a short time. It was on the understanding that he would retransfer the lands to me after the marriage that the deeds were executed. He married in 1943. I did not know that Appuhamy got married. I first heard that he got married towards the end of 1943. I cannot remember the date.

I received a letter from a proctor in Colombo. It was after I received the letter that I knew that Appuhamy got married. I do not know the date I received the letter. It was only after that that I knew of his marriage. As soon as I received that letter I met my proctor and told 20 him what had happened and showed him the letter. I told my proctor to take the necessary action. I saw my proctor a few days after receipt of D22. At the time I received D22 I was not well. I took 2 or 3 weeks to see the proctor. I know that my proctor registered the Caveat. That was after I saw him, and gave him instructions. I think it was after my illness. If the Caveat was registered on the 21st March I must have given the instructions before that. My proctor was Mr. Daluwatta. I was having Diabetes. I have had it for 15 years.

I was in hospital for two months in 1942. I was in bed in 1944 for some days. I used to take treatment from the doctor. I was not confined 30 to bed for more than a week in 1944. My proctor took two months' time to reply to the letter because he was ill at that time. The Caveat is enforceable for six months. I cannot remember whether I gave my proctor all the instructions before the Caveat was registered. I cannot say whether I gave instructions after the Caveat was registered.

When I gave the instructions to the proctor to register the Caveat I told him that the deed was written in the name of Appuhamy to enable him to get married. I cannot say what instructions I gave Mr. Daluwatte before the Caveat was registered.

I did not tell him the reason why the deed was executed in favour of 40 Appuhamy. I showed him D22 and said "the land is mine" and told him to write a reply.

I did not tell the proctor that there were circumstances in which P1 came to be executed in the name of Appuhamy although the land belonged to me.

Mr. Daluwatte knew nothing about the circumstances under which this deed was written. I may have told him that the deed was written in the name of Appuhamy. I did not discuss very much with Mr. Daluwatte about this letter. I only asked him to write a reply. I told Mr. Daluwatte that the deed was in the name of Appuhamy. I may have said other things but I cannot remember.

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nation
—continued.

I had the money which I paid to Mr. Samaraweera for the purchase of this property, in my house. I bought this land for Rs. 5,500, I had over 20 thousand rupees in cash in my house. I hadn't that amount in the house on that day. At that time I had money sufficient for my work. I may have had about Rs. 15,000 with me at home. I had the money in the iron safe. At that time I did not have money in the bank. That safe was my safe. I used to keep the money in the safe which Appuhamy brought to the house. I also kept the money in the other safe and in my wardrobe. I had over two thousand in the wardrobe.

I handed Rs. 4,630 to Mr. Samaraweera. Rs. 870 was kept back to be given to Appuhamy. I am quite sure that the money was given to Mr. Samaraweera. I did not give it to anyone else. Mr. Samaraweera signed the deeds then and there. I think this property had already been mortgaged to someone else. Mr. Samaraweera may have settled that out of his money. I did not arrange for Mr. Samaraweera to settle that previous mortgage for this land. I think it was mortgaged to Mr. James Seneratna.

I did not speak to Mr. Seneratna.

He did not give me any document.

(Shown P2 a Mortgage Bond No. 525 dated 23-7-1914.)

I cannot say whether I have anything to do with P2, I cannot remember whether I got P2 discharged by Mr. Seneratna.

At this stage there is no time.

30 Trial postponed for 29th August, 1945.

Sgd. N. KRISHNADASAN,
31-7-45. A. D. J.

29-8-45.

Plaintiff present.

Defendant present.

MR. GRATIAEN with MR. D. W. FERNANDO instructed by MR. SAMARASINGHE for plaintiff.

MR. E. G. WICKREMANAYAKE instructed by MR. E. P. WIJETUNGE for defendant.

40 J. A. UDENIS DE SILVA recalled. I was in the habit of keeping large sums of money in my house. I had a bank account in 1922. My account was in the Colombo Bank and the bank was closed after some time. The money in the bank was my own private money.

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 Evidence
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 —continued.

The Colombo Bank crashed in 1922 shortly after I opened the account. I lost about Rs. 980 by the bank crash. After that I had no faith in banks and kept my moneys at home. I did not keep Rs. 15,000 or 20,000 every day in my house.

I keep money at home for my trade. I kept with me 10 or 15 thousand rupees.

I used to bring goods from Colombo and sell them. From 1904 I was trading and was in prosperous circumstances. It was not difficult for me to raise money to buy properties. To my knowledge Appuhamy had no interest in any land. I was in the habit of lending money on 10 mortgages and on promissory notes from 1904 till 1930. I used to give out sums of Rs. 1,000, 2,000, 3,000, etc.

In 1930 I fell ill and stopped lending money, I did not stop lending because I was short of money.

I gave out these monies from the money I kept in my safe at home. Sometimes 7 to 8 thousand rupees would have been lent out by me. I lent at 10, 15, 18 or 20 per cent. interest.

The monies I spent on improving the land was from the money I had in hand.

I spent about Rs. 15,000 in improving the land. I did not spend 20 Rs. 35,000 in improving the land. The present day value of the improvements effected by me is Rs. 35,000. I did not spend Rs. 35,000 in improving the land. I cannot give the details of how I spent the Rs. 15,000.

I did not keep accounts as to how I spent the Rs. 15,000. In 1920 or 1921 I effected the first improvement.

I built some inside walls that had come down. I did not build any new walls. I removed a mud and wattle wall that was in existence. I repaired the roof.

I spent Rs. 750 in removing the walls and repairing the roof.

It was after effecting these repairs I rented out this building. 30

Abeyeratna was my first tenant. In 1935 or 1936 I pulled down the whole house allowing only some walls to a height of 2½ feet. The whole house was pulled down. When I opened the roof to repair almost all the walls came down. I am calling some masons as my witnesses. These masons did my work.

I paid Levendius my mason Rs. 1,950. The sum of money I gave the mason I had with me at that time.

I put up new walls, new roof and new floor. The roof on which I previously spent Rs. 750 I had it replaced.

I cut down the hill and levelled it in 1920 or 1921. 40

In rebuilding the house in 1935, 1936 I paid the carpenter Rs. 2,100. It was on a writing I entrusted the work to him.

The writing is now not with me. I remembered the amount I paid the carpenter. I paid for materials more than Rs. 5,000. I cannot give

details as to how I spent the Rs. 5,000. I spent more than Rs. 1,500 in buying hinges, nails, glasses, etc. I bought these articles in Matara, Galle, Weligama and Colombo.

Appuhamy did not buy any of these articles. I did not ask Appuhamy to help me to buy these articles. I never wrote to Appuhamy to get any articles for this house. I had sufficient money at this time.

I did not owe any money to anyone at this time.

The land Deniyawatta belongs to me. I had transferred it to my wife when I was ill on doctor's advice. My wife has not retransferred this property to me. Whether my wife possess it or I possess it is all the same.

By D27 dated 31st August, 1944, plaintiff called upon me to give vacant possession of the property. By D28 dated 9th September, 1944, my proctor on my behalf claimed the property as mine. About 15 months ago, I felt that I should transfer Deniyawatta to my wife as I was ill. I cannot say whether the transfer deed was executed on 11th September, 1944.

Mr. Daluwatte executed the deed.

After the receipt of D27 I knew action will be filed against me.

I told the Court that I had a deed regarding Deniyawatta in my possession.

This is a deed of Deniyawatta that is in my favour.

I brought this deed to show Court that I had money to purchase properties.

I did not tell Court that I never had debts. I had debts and I settled them.

I used to buy goods on credit. I borrowed from Gunaratna Rs. 4,000 in 1924 or 1925. With this money I prospected for plumbago. I borrowed this Rs. 4,000 four or five years after I purchased Deniyawatta.

I bought Deniyawatta for Rs. 6,000 on 1922. In 1926 I mortgaged Deniyawatta to Gunaratna for Rs. 4,000 at the time I borrowed this Rs. 4,000.

I was also lending money to others on interest. I thought it profitable to borrow on interest and lend on interest.

My partner in the plumbago trade gave me a pro-note. One B. A. Hendrick Appuhamy was my partner in the plumbago business.

I stopped lending money in 1930. I recovered a portion of the money I lent in 1930. Still there are monies unrecovered by me. I may have few notes in my house. I have promissory notes in my house.

I do not know whether I have with me now few notes I obtained before 1930. I do not have any mortgage bonds given to me before 1930. I have with me now promissory notes given to me for loans given by me after 1930. I did not settle Gunaratna as the partner in plumbago business had not paid up his share.

Sgd. N. K.

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 Evidence
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 Cross-exami-
 nation
 —continued.

Trial resumed after lunch.

J. A. UDENIS DE SILVA recalled, affirmed. I recovered the amount due from my partner in 1938.

Even after 1930 I gave out large sums on loan. Even after 1930 I had more than 7 to 8 thousand rupees outstanding as monies due to me.

After 1930 I lent only occasionally. Ten or 15 people might have been my debtors at any one time after 1930.

I never had any books in which I noted my money-lending transactions.

If I wanted to pay Gunaratna I had money with me to pay it up. 10

In 1930 I ceased my trade in sundry articles and started copra business. This business too required large amounts in my hand. I required about Rs. 15,000 for my business after 1930.

I had enough money in my hand for my business.

There was no need for me to borrow. I am sure that I did not borrow any money for any business I carried on.

I carried on my copra business till 6 months after the war. There was no profit or loss in the copra business.

I did not find my copra business get anything for the capital that was tied up in the business. 20

I had an income of Rs. 100 from my properties.

I had the Rs. 15,000 which I spent in improving the house in my house. The Rs. 15,000 was not out of any profit I got from my copra business.

I had small profit from my copra business.

This Rs. 15,000 was the money I had. I had 20, 25, 15 thousand rupees in my hand.

I inherited some 4 or 5 thousand rupees from my parents.

I did not get any income as cattle pound keeper.

I was in charge of cattle pound. The Assistant Government Agent 30 asked me to look after this work. The Assistant Government Agent did not pay me anything for it. The watcher was paid 25 cents whenever a head cattle was sold.

I cannot remember when I repaid Gunaratna. It may be I paid him back in 1934.

I repaid Gunaratna before I spent the money on the house. I got money from my partner and from money obtained by sale of plumbago I paid Gunaratna. I can't remember whether I mortgaged Deniyawatta again. I think I did not mortgage Deniyawatta again.

Dalsie Wijeratna is my daughter. I mortgaged Deniyawatta to her. 40

I did not get money from her after mortgaging this land to her. I mortgaged this land to her by way of trust.

The bond was written as if I had to repay Rs. 2,300 with interest at 9 per cent. It may be that this mortgage bond was executed in the same month I redeemed this property from Gunaratna. I wrote that mortgage bond so that my daughter may be benefited if anything happened to me.

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nation.
—continued.

This too I did because of my ill-health. That was in case I died.

If I died she would have got the amount. I purported to borrow and my other children would have got the balance.

This daughter had two children. I wanted my grandchildren to be benefited.

10 I was not a notary's clerk. There is no need to write a Last Will.

If one dies the property will go to the children.

The arrangement with my daughter was that she should discharge the mortgaged bond within one year if I did not die.

I felt on several occasions that I will be dying shortly. In 1934 I felt that I may die. In 1934 I did not make any provision for my wife. As I wanted to make provision for the two children of my daughter I did not make any provision for my wife. When I expected to die before the action and transferred Deniyawatta to my wife, I asked her to look after my grandchildren.

20 In 1934 I had plenty of money. I could have given my daughter cash. I wanted to give my daughter Rs. 2,300 and I wrote a mortgage bond in her favour.

An year later my daughter discharged the bond. The discharge has not yet been registered.

I cannot say whether the discharged mortgage bond is with me. In 1934 Appuhamy was perfectly friendly with me. Till 1940 he was perfectly friendly.

I thought I may die in 1934.

30 I did not ask Appuhamy to transfer the property in my name in 1934 as he was in Colombo and as I thought he will transfer the property in the name of my children. As the property was mine Appuhamy did not tell me at any time that he will not transfer the property to me. I did not in 1934 ask Appuhamy to transfer the land.

I did not at any time ask Appuhamy to transfer the lands but he volunteered to transfer the land in favour of all my children at any time I wanted. I can't say when he volunteered to transfer like this.

He told me on several occasions that he will transfer. I was satisfied that he will transfer.

40 I am quite sure that Appuhamy had no other property in his name other than this land in question.

I did not buy any other land in favour of Appuhamy in trust. I did not buy any land jointly with Appuhamy.

A field was bought formally in my name and in the name of Appuhamy.

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 Defendant's
 Evidence
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 nation
 —continued.

Appuhamy paid only Rs. 250 for his share.

The purchase price of the field was Rs. 625. Rs. 500 was the price of the field, Rs. 125 was the broker's charges. Rs. 625 was put down as the value of the field. I paid Rs. 250, not the Rs. 125 the broker's fee. Appuhamy said that he could only pay Rs. 250. This field was purchased after the purchase of the property in question. The field was not bought in trust.

This field was subsequently partitioned.

The deed of the field was with me. He did not ask the deed from me. Shown document. 10

The signature on the document shown to me looks like mine. I cannot deny that it is not mine.

At this stage Mr. Gratiaen requests that the case be postponed for another date.

Trial for 19-9.

Defendants and witnesses warned.

Sgd. N. KRISHNADASAN,

19th September, 1945.

Plaintiff present.

Defendant present. 20

Appearance as before.

J. A. UDENIS DE SILVA recalled, affirmed.

I executed a mortgage of certain properties in favour of my daughter. I told Court on the last day that it was executed in trust because I anticipated death and I wanted to make provision for my daughter and her children.

That story is not false. Now the names of the children of my daughter are Kumara and Kema. In 1934 I had no such grandchildren.

I cannot remember in what year Kumara was born. He was not living then. He is about 8 or 9 years old. Kema is about 3 years younger than Kumara. 30

I anticipated the property devolving on two children of my daughter. Now my daughter has three children. I wanted the property to devolve on the first two children.

I was not a proctor's clerk before this. I was not a notary's clerk. I was a village headman for 30 years.

I was never a clerk. (Shown P3), this is my marriage certificate. In the column for "occupation" the word "clerk" is written. I was not a clerk at that time. I filled up that column to show that I could write.

This does not mean that I am a clerk under a proctor or notary. 40 That was to show that I was able to write. At the time of my marriage I was a landed proprietor. That was in 1904.

(Shown P4, Deed No. 7906 dated 11-9-44.)

This is a deed of gift which I executed in respect of my property in favour of my wife shortly after I received the letter from the plaintiff's proctor. I wrote this also because I thought I was going to die.

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Defendant's
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nation
—continued.

I have properties in my own name today. One of them is Halkumbura.

No, not Halkumbura, it is Pattikolaliyadde.

I bought that land about 25 or 30 years ago. I bought that for Rs. 350 along with some other lands.

I have other property Diwelwatta, Hakuraduwagewatta, Dangaha-
10 watta, Kahatagahawatta Gong Pokuna, Atamabagahadeniya and others. These are lands I have inherited. I have deeds for some of these lands.

I have a deed for Pattikolaliyadde which I purchased for Rs. 350 with some other lands.

Last year one of my proctors was Mr. A. P. Daluwatta. I dealt with these lands and he acted as my proctor.

After this action was filed I sold some property to Mr. Daluwatta for Rs. 4,000. Rs. 1,500 was paid before the notary by cheque.

I have previously received Rs. 500 in cash. Subsequently I received the balance Rs. 2,000 in cash from Mr. Daluwatta.

20 (Mr. Gratiaen produces Deed No. 3088 dated 1-5-45, P5.)

I was badly in need of money so I sold the lands. My daughter got married on the 7th June, 1945. I gave her Rs. 10,000 in cash as dowry. This year and last year I did not have large sums of money in the house. I had money but I was forced to spend on the children and so I sold the land. My eldest daughter married in 1922. Then I gave her dowry. I did not have to raise money by borrowing.

In the same year I was arranging my daughter's dowry. I gave the title deeds to Appuhamy for the purpose of his proposed marriage. I do not know whether there was a marriage for him. There was a proposal
30 for him in 1921.

There was no marriage that year. To help him in his marriage I gave him the deeds. He asked for the deeds to show to the other side that he was having property. Between 1919 and 1921 he did not ask for the deeds.

He asked for the deeds orally. I never wrote to Appuhamy.

He came to my house and then he told me to give him the deeds. From 1919 till his marriage I never wrote to Appuhamy about the circumstances under which P1 was written. I cannot remember. He did not write to me about these circumstances. I did not write to Appuhamy
40 and he did not write to me. I did not tell anyone about the secret circumstances under which this Deed P1 was written. Except for my mother-in-law, no one else knew about it. She did not ask me to keep it a secret. I never told anyone about it.

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 Defendant's
 Evidence
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 —continued.

Previous to 1919 I had never purchased property for anything over Rs. 5,000. Land is not available every day for people to purchase. Five days prior to the execution of P1 I lent Rs. 1,500 for a land on a conditional transfer. That was a conditional transfer for two years.

The money was repaid and the property was released.

I had a share of the land Habaraduawatta and I transferred it. I purchased that in 1920 for Rs. 50.

That is a share of the land adjoining my residing land.

Previous to that I purchased a share for Rs. 25.

There are certain properties which shares I purchased for Rs. 50 and 10 Rs. 25. On the last date of trial I brought two deeds to Court. That was not to show Court that I had properties. The suggestion was made that I had no money in 1919 and 1921. I wanted to prove that I had money during that time. I brought the deeds to show the date I bought the lands. I wanted to show the year when I bought these properties. I bought those in 1924. That is what I think. I brought these deeds to show that I had money in 1924. That was to prove that I was not in need of money in 1924.

(Shown P6 a Mortgage Bond No. 4429 dated 1-6-26.)

This is mortgaged for Rs. 4,000. This is the same property in favour 20 of Gunaratna. I cannot show any deed to show that before 1919 I had purchased properties for more than Rs. 1,000. I did not come ready to produce deeds. Even if I brought deeds this gentleman (Mr. Gratiaen) says that I am not entitled to them. I did not buy any property before 1919 for more than Rs. 1,000 on a deed. I may have deeds to show that I bought property for more than Rs. 500 on one deed. I bought several lands for Rs. 500 before 1919. Those are partition lands.

I bought shares of several lands and fields for about Rs. 600 I cannot remember the names of the lands. The only paddy land that I bought was the field which I and Appuhamy had purchased jointly. That paddy 30 property was purchased before 1924.

I bought several lands on one deed before 1919 for Rs. 500. One of them is Urakumbura. That is in Weligama. I cannot remember when I bought. That was before 1919 but I cannot remember the date. It was before 1919 but I cannot remember when I bought it.

I know the field which I bought together with Appuhamy and which was partitioned. There was an order for the land to be put up for sale under the decree of Court.

With regard to the interest of Appuhamy I do not know who looked after his interest.

I was the plaintiff in that case. I attended to my work.

I did not attend to Appuhamy's work.

It was a friendly action. There was no contest.

I think a proctor appeared for Appuhamy. I do not know the appraised value of the property.

(Shown P7 Conditions of Sale with respect of this property.)

According to P7 this land was valued at Rs. 855. I was present at the sale. Appuhamy was not present. The only bidders were not myself and S. B. Don Dias. There were others present at the sale. My highest bid was Rs. 190. Dias bid Rs. 200 and the property was knocked down to him. Subsequently I became entitled to the property. Several years later I bought the property for Rs. 200 or Rs. 250. I cannot remember.

10 Don Dias purchased the property for Rs. 200. I cannot remember whether I paid the Rs. 150 as part of the purchase money for Dias.

Dias is a man of this village.

I know Samuel de Silva from Akuressa. He is a relation of my wife.

Don Dias sold this land to Samuel and I got the property from Samuel.

Appuhamy may be knowing that Dias bought the property valued at Rs. 855 for Rs. 200.

(Mr. Gratiaen marks P8, the Journal Entry dated 14-3-24, showing that the defendant in this case, on behalf of the purchaser, tendered
20 Rs. 150 being the balance purchase price.)

I sold this field for Rs. 1,440. I had to spend a lot of money on the improvements to the field.

(Shown P9, Deed No. 2206 dated 27-3-20.) Appuhamy and I purchased this field together for Rs. 625.

My family and Appuhamy were on the best of terms till 1942 or 1943.

In spite of the possession of this Deed P1 Appuhamy remained a bachelor from 1919 till recently. The deed was given for him to get married.

Appuhamy used to visit me about once a year or so. I visited him
30 sometimes. Whenever he came he stayed with me in my house. When I lived on this property he stayed only twice with us. I went to this land in 1938. He came once a year. Some years he did not come. He has stayed with us in the house when he came to Weligama. It was understood by us that whatever Appuhamy had will come to my family when he died.

My family was under the impression that he would transfer whatever property he had and that he would not wait to write a Last Will.

Appuhamy's marriage did not come as a surprise to us.

He had no other relations to my knowledge.

40 I did not expect him to get married. I thought that if he was to get married he would consult us. That was about 25 or 30 years ago. Recently we did not think that he would marry. I did not think that he would be a confirmed bachelor. He is over 60 years of age. Since his

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marriage my family has not met him or spoken to him or to his wife. I did not see them and they did not see us. All cordial relations have ceased to exist.

He married in 1943. I saw him in the rail car the other day. I did not speak to him.

When I repaired the house Appuhamy may have come there once or twice.

I did not tell Appuhamy the details of the expenses. I did not ask him to spend. Even after making the improvements I did not ask him to transfer the property to me. In 1941 I asked him to retransfer the property to me. He agreed. He did not write to me. I asked him this in my house. No one was present except my family members.

My wife was there. My two children were there. They are both daughters.

They are Regina Silva and Lillian de Silva.

I am not calling them.

My family knew that P1 was executed in trust. My wife knew it from 1919.

J. A. Udenis
de Silva
Re-exami-
nation

Re-examined. Mr. E. G. Wickremanayake.

I was asked in cross-examination whether it was my expectation that Appuhamy would transfer his properties to me and to my children. I answered it by saying that I expected him to transfer the property. I was then referring to this land. I expected him to transfer this land because he himself had said that he would transfer the property to me before he died. There was no other property I expected to get from Appuhamy.

I did not expect to benefit by the estate of Appuhamy. I bought the field on P9 in equal shares in 1920.

I was not able to cultivate the field at that time. It used to get under water. I brought a partition action and the field was sold. That was about 3 years after we purchased it.

It was sold in 1924. It was then purchased by Don Dias for Rs. 200. Dias sold the property to Samuel de Silva and he sold it to me again about 3 or 4 years after that.

I then bought it for Rs. 250 or Rs. 300. I did not buy it from Dias. Having purchased it I spent about Rs. 450 in building ridges and improving the fields.

Even after that I was only able to get one crop for a year. That also was a failure as the field was still subject to floods.

I sold this land in 1937 or 1938. I ceased doing business several years ago.

I stopped my sundry boutique business in 1930. I was dealing in copra till 1942.

I told Court that there was a wedding in June, 1945. I had to give a dowry of Rs. 10,000 in cash. My daughter married Proctor Rajapakse. He is from Chilaw. When I was doing business I had large sums of money in my safe. From 1942 except for the land I had no other income. Apart from the dowry I had to incur expenditure for the wedding. I gave my daughter jewellery. So I sold the land to Mr. Daluwatta. This litigation is costing me my money.

No. 8
Defendant's
Evidence
J. A. Udenis
de Silva
Re-exami-
nation
—continued.

I was asked whether I had evidence to show that I was possessed of money in 1919. I told the Court that I had brought two deeds with me on the last occasion. I produce D30, a certified copy of Deed No. 3267 of 16-5-24 showing the purchase of a property by me for Rs. 6,500. The other one is a conditional transfer which I produce D31 Deed No. 1938 dated 6th October, 1919. I had advanced a sum of Rs. 1,500 on this deed.

Apart from lending money I had to sue people for money. There are decrees in this Court in my favour. There are about 200 cases in which I appeared from 1910 to 1942. From 1919 there may be decrees in my favour. I recovered money on these decrees. I improved the land as I said in my answer, at a cost of Rs. 35,000. That is what I have said in my answer. I have not got accounts to show how I spent that. According to the accounts I have, I spent Rs. 15,000. That Rs. 15,000 is today worth Rs. 35,000. I got a valuation of this land from Surveyor Mr. A. H. Felsing.

With reference to the mortgage bond by Proctor Samaraweera, Proctor Samaraweera did work for me as a proctor: he intimated to me that he wanted money. I did not feel inclined to lend him money as it was not possible for me to charge him interest. The money was given in the name of Appuhamy. That money was my money. My mother-in-law asked me to give the money. She promised to give me the money. It was written in Appuhamy's name at the request of my mother-in-law. I got the money from my mother-in-law.

Sgd. N. KRISHNADASAN,
19-9-45. A. D. J.

R. A. NARAYANA affirmed, 37 years, Electrical Engineer, Walker & Greig, Colombo.

R. A. Nara-
yana
Examination

I am employed by Walker & Greig & Co., I am an A.M.I.E. In 1937 I was a tenant in this house under the defendant. I paid the rent to him. I did not have any dealings with Appuhamy. He never came to the house. While I was there alterations were done by the defendant to the house.

I was of some assistance to the defendant's son. I was getting my milk from the defendant.

(Shown D18). This is signed by me.

I was in this house for 5 months in 1937 from May to September. I was putting up the electrical scheme in Weligama.

No. 8
Defendant's
Evidence
R. A. Nara-
yana
Cross-exami-
nation

Cross-examined by Mr. E. F. N. Gratiaen.

I had no occasion to investigate the ownership of this land. The defendant offered the premises on rent to me. Nobody objected and I had no trouble. I have no idea under what circumstances I came to be the tenant.

Sgd. N. KRISHNADASAN,
19-9-45. A. D. J.

M. M. Hus-
sian
Examination

M. M. HUSSIAN affirmed. Chairman of the Urban Council, Weligama. I am the Chairman of the Urban Council of Weligama. The records of the Urban Council are in my custody. I issued a certified copy 10 of the Assessment Register, D1.

I have also issued certified copies of D2 and D2A, D4 and D4A, D5 and D5A, D6 and D6A, D7 and D7A. I have had no inquiries with regard to this building during my time.

M. M. Hus-
sian Cross-
examination

Cross-examined by Mr. Adv. E. F. N. Gratiaen.

I have no personal knowledge of anything with regard to the dealings with the documents I have produced. I was appointed recently. I did not have any official duties at the time these documents were written.

Re-examined nil.

Sgd. N. KRISHNADASAN, 20
19-9-45. A. D. J.

E. H. de
Silva
Examination

E. H. DE SILVA affirmed. Secretary of the Urban Council of Weligama. I have been Secretary of the Urban Council since 1934. The Council came into existence since 1933.

I know the premises in disputes in this case. The land is called Palugahawatta.

(Shown D8). This is filed up by the Urban Council and signed by me, countersigned by the Chairman.

(Shown D9). This is a letter issued by the Council and signed by the Chairman. 30

(Shown D10). This is a receipt for license fees issued by the Chairman of the Urban Council.

(Shown D12). This is a similar receipt.

(Shown D13). This is signed by me.

(Shown D14). This is a letter signed by the Chairman calling upon the defendant to show cause why he should not be prosecuted for not building the house according to the plan. That building was put up by the defendant on this land. He had deviated from the approved plan. I cannot remember whether he showed cause.

(Shown D15). This is a letter from the Chairman sent by me calling 40 upon the defendant to execute an agreement that he would demolish a building. I do not know whether he executed the notarial agreement.

(Shown D16). This is a letter sent by me calling upon the defendant to submit a skeleton sketch for the building to be constructed.

(Shown D17). This is a letter sent by me calling upon the defendant to appear at an inquiry regarding the building.

(Shown D19). This is a letter signed by me from the Chairman calling upon the defendant to obtain a licence for his copra shed.

(Shown D20). This is a letter sent by the Urban Council signed by the Chairman calling upon the defendant to be present at an inquiry into the objection to the assessment.

10 (Shown D21). This is a letter signed by the Chairman and countersigned by me in which we inform the defendant of the date of the inquiry.

There have been many matters in which I have had to deal with this land. I dealt with this defendant in these matters.

I never had to deal with Appuhamy. Appuhamy did not have any dealings with the Urban Council with regard to this land.

Apart from my knowledge as a Secretary I know that the defendant had rented out the building to Mr. Narayana, and also to the Electrical Superintendent Mr. Manuel. That was in 1937. I cannot definitely say the date. I saw Mr. Manuel on the last date of trial present in Court.

20 Cross-examined by Mr. E. F. N. Gratiaen.

I was at the Training College as a student in the English School.

There was an English School and a Vernacular School. The Vernacular School people were mostly boarders.

I remember Appuhamy, the Tuck Shop-keeper.

I was there in 1914 or 1915.

Appuhamy was doing a roaring trade. He used to fleece us all. He had something to do with the catering for the Vernacular School residents of whom there were a large number. It is quite evident that he was making very much more than his salary.

30 The Urban Council was originally the Urban District Council. It was converted into the Urban Council later. The Urban District Council was governed by the District Councils' Ordinance, Chapter 195. I was the Secretary from 1934.

Since recently the relevant Ordinance is the Urban Councils' Ordinance.

The Councils used to levy rates and taxes on properties. For that purpose people have to be registered as owners. As far as the Council was concerned they did not worry about investigating the title or ownership. The "owner" is dealt with in the Ordinance in Section 2 as including a person who is in a position of Agent. I dealt with the defendant
40 as though he was an owner within the meaning of the Ordinance.

I had no knowledge of any facts relating to the circumstances of the title. Neither official nor personal.

No. 8
Defendant's
Evidence
E. H. de
Silva
Examination
—continued.

E. H. de
Silva
Cross-examination

No. 8
Defendant's
Evidence
E. H. de
Silva
Cross-exami-
nation
—continued.

(Shown D15). The defendant was called upon to draw up a notarial agreement in connection with the deviation of the approval plan.

I cannot say whether the defendant complied with the request on D15.

We expected the owner to sign the agreement. I cannot say what happened in case the agent signed it. The usual form would be for the owner to state his title.

Mr. Manuel was living in this house. I cannot say what were the terms of the tenancy. Mr. Narayana and Mr. Manuel were there together. After Mr. Narayana left Mr. Manuel remained there.

E. H. de
Silva
Re-exami-
nation

Re-examined by Mr. E. G. Wickremanayake. 10

I have not executed a notarial agreement. I do not know anything beyond what the notary does. All these things are left to the Councils' lawyers.

I was a student in the Training College. I was about 15 years of age or so. We had dealings with the Tuck shop-keeper. My statement with regard to Appuhamy's running the Tuck shop is what I know as a student. I used to have my lunch there. Appuhamy was more or less a personal servant of Mr. Evans. I do not know who paid him.

Sgd. N. KRISHNADASAN,
19-9-45. A. D. J: 20

Ago Singho
Examination

W. W. A. P. AGO SINGHO affirmed, 62 years, retired Village Headman of Kapparatota.

I know proctor Samaraweera. I know the land in dispute. Mr. Samaraweera spoke to me. After he spoke to me I spoke to the defendant and asked him to purchase this land. The defendant agreed to purchase the land. The price was discussed between the defendant and myself.

After the conversation with the defendant I went and spoke to Mr. Samaraweera and the Deed was executed. I do not know whether Appuhamy had anything to do with the transaction.

After the Deed was executed possession was given to the defendant. 30
He has been in possession of the land from that date.

I was present at the time of the execution. Appuhamy was not there on that day. The consideration was paid by this defendant.

Ago Singho
Cross-exami-
nation

Cross-examined by Mr. E. F. N. Gratiaen.

I retired about 5 months ago. The witnesses were A. Ranaweera and I think the other was proctor Samaraweera's clerk. He is now dead. I know Alwis Ranaweera. I have not seen a copy of this Deed. Within the last three years I have not been present at the execution of deeds.

I only know of this Deed.

Till I gave evidence today no one asked me who was present at the 40
time of the execution of the Deed.

I know Appuhamy. He was a member of the defendant's family. I do not know of any personal arrangement between the members of the defendant's family.

I do not know whose money was paid when the Deed was written. I knew that the land was purchased in the name of Appuhamy. The defendant told me about it. If the defendant told the Court that he never told anyone that the name of Appuhamy was given as the purchaser I do not know about it. I knew that it was written in the name of Appuhamy. I do not know why it was written in his name. I did not know whose money it was. There was no need for me to ask. I did not ask the defendant why the Deed was written in Appuhamy's name.

It is not usual for a man to buy a property in the name of someone else. I was not told of any necessity for writing the Deed in Appuhamy's name. I was not told anything on the date on which P1 was executed, from which I could find out that this transaction was an usual or normal transaction. There was no need for me to find out in whose name the Deed was written.

I told proctor Samaraweera that the defendant was going to purchase the land. The defendant did not come with me to Mr. Samaraweera's office. On the next day I went with the defendant to Mr. Samaraweera's place. I told Mr. Samaraweera that the defendant was going to buy the land. I told him the price for the land. At that time I did not know that Samaraweera had already mortgaged the property with Appuhamy.

I did not tell Mr. Samaraweera how the purchase money was to be paid. The price agreed upon was Rs. 5,500. I do not know how it was to be paid. A date was fixed for the payment of the money and for the execution of the Deed. The date was one week after the arrangement of the transaction. Between the date of the first conversation and the date of the execution of the Deed three days after the first conversation I went to see Mr. Samaraweera with the defendant. We went to fix a price and date for the execution of the Deed. Mr. Samaraweera told me the amount of the price. I told the defendant the price. I went with the defendant to find out whether the Deed was ready. I negotiated the sale between the two parties.

On the first visit to Mr. Samaraweera's I did not mention Appuhamy's name as the purchaser. I told Mr. Samaraweera to get the Deed ready but I did not tell him that Appuhamy was to be the purchaser.

On the second day I went with the defendant and I did not tell Mr. Samaraweera that Appuhamy was to be the purchaser. At the time the Deed was written I was not present. I do not know how much money was paid. I was not present when Mr. Samaraweera signed P1. There was no necessity for me to stay there. I only went to introduce the defendant to Mr. Samaraweera. I was not present at the execution of the Deed. I was not present when the notary or Mr. Samaraweera or the witnesses signed. After I left the office before P1 was signed I do not know what happened to the transaction.

No. 8
Defendant's
Evidence
Ago Singho
Cross-exami-
nation
—continued.

There was a talk that Alwis Ranaweera and the clerk were going to be the witnesses. I do not know whether they signed.

Mr. Samaraweera was well known to the defendant. He asked me to find out a buyer for the property. I came to Matara. I was told by Mr. Samaraweera that the Deed would be executed on that day. So I came to the office. In my presence the defendant did not tell Mr. Samaraweera that Appuhamy was the purchaser.

Ago Singho
Re-exami-
nation

Re-examined by Mr. E. G. Wickremanāyake.

Samaraweera told me to find out a purchaser for the land. I spoke to the defendant and asked him whether he would buy it. I had to ask 10 a person who had money. The defendant had money so I went to him. I have known the defendant for about 40 years. I know what business he was doing in the town. He was dealing in plumbago and copra. I know Appuhamy. I do not know what he was doing. He comes very seldom to Weligama. I live in Kaparatota in Weligama.

Sgd. N. KRISHNADASAN,
19-9-45. A. D. J.

Court adjourns for lunch.

Trial resumed after lunch.

Mr. Wickremanayake calls :

20

A. P. Dalu-
watta
Examination

A. P. DALUWATTA affirmed, Proctor and Notary, Matara.

I have been a proctor of the Supreme Court for 21 years.

I have known this defendant for about 25 years. His financial position is sound. He was the Village Headman of Weligama for a long time.

I was the Vice-Chairman of the Urban Council in 1938 to 1941. During that period there was some matter with regard to a deviation with regard to a building. I was acting for the Chairman and I inquired into it. I summoned only the defendant. He had submitted a plan and put up a building.

The defendant possessed that land subsequently. Prior to that the 30 house was leased. One of the Engineers of the Urban Council was the tenant. An aunt of mine was also a tenant of this house. She is Mrs. Kodippilly. The defendant rented out the house to her.

Throughout my period in the Urban Council as Vice-Chairman I never came into contact with Appuhamy.

Cross-examined by Mr. E. F. N. Gratiaen.

While I was in office in the Urban Council I was not concerned with the ownership of the property in that division. I am aware that a person who is not the true owner of property can be regarded as owner of the property. We never question them about the title. I had no knowledge personally with regard to the question of the title of this property. I assumed the defendant to be the owner. I considered him to be the owner. I do not really know whether the defendant is the owner or the agent for the owner. That question never arose. I attested a mortgage bond by the defendant when he mortgaged the premises to Mrs. Wijeratne his daughter. I cannot remember that. I cannot remember whether the defendant mortgaged any land in favour of any one. I have no knowledge of the circumstance in which he mortgaged this property. I was not a proctor in 1919.

No. 8
Defendant's
Evidence
A. P. Dalu-
watta
Cross-exami-
nation

I know nothing about the transaction between the defendant and proctor Samaraweera.

(Shown D22). This is a letter addressed by Appuhamy's proctor to the defendant. The defendant saw me with this letter and asked me to act for him. The defendant did not tell me the circumstances under which P1 was executed. He did not tell me of any circumstances under which this Deed came to be written in favour of Appuhamy.

At that time my personal knowledge of this affair was nil. I was on visiting terms with the defendant. I saw him on the 16th March when he came with D22.

Within five days the defendant arranged for a caveat to be registered on behalf of the defendant. I saw him between the 16th and 21st March. It was before the 21st that defendant told me something about Appuhamy. The defendant brought me a letter and said that Mr. Wijeratne his son-in-law would be sending me a draft of the reply to be sent to Colombo. He said that he would discuss the matter later. He said "I have made a mistake" and said that he would discuss the matter with me later. The "mistake" was in getting the Deed written in favour of Appuhamy. He was in a hurry and was not well. That is why he said that he would discuss the matter with me later.

He came with D21 to my house and told me that the draft to be sent by Mr. Wijeratne would come and that he was in a hurry and would discuss with me later.

My reply to the letter D22 is D23.

Mr. Wijeratne lives in Colombo. He said he consulted some lawyers. I used the same language used in the draft in writing D23. Mr. Wijeratne's instructions came by letter. During the interval I saw the defendant from time to time. As a proctor I realised that delays would have to be explained.

Shortly after, I prepared P4 the Deed of Gift by the defendant in favour of his wife.

No. 8
Defendant's
Evidence
A. P. Dalu-
watta
Cross-exami-
nation
—continued.

(Shown P5). This is a transfer by the defendant in my favour. I was not told that P5 was produced this morning. I paid Rs. 1,500 by cheque on the 30th April. I have a bank account.

I issued no other cheque in connection with this Deed. Apart from what was gifted to his wife and transferred to me I am not aware whether the defendant owns other property.

A. P. Dalu-
watta
Re-exami-
nation

Re-examined by Mr. E. G. Wickremanāyake.

As Vice-Chairman of the Urban Council I was concerned with the possession. The defendant was in possession of this property to my knowledge. He was in possession for about 7 or 8 years. I know the defendant in 1919. His position in society was sound. He was the police officer and was doing business in rice and sundries. He was also dealing in copra. He appeared to be flourishing. The defendant saw me and said that he had made a mistake in transferring his land in another man's name. I waited for instructions from the defendant's son-in-law Mr. Wijeratne. His son-in-law has a brother who is a lawyer.

Proctor Kumarasinghe on behalf of Appuhamy stated that the property was for sale.

Caveat was registered. That is in force for 6 months. I conveyed that information to the defendant. I purchased certain properties from the defendant in June, 1945. I had no intention of buying these properties. The defendant asked me to give him a loan. Two months before June I lent Rs. 500 to the defendant. Again I lent a further sum of Rs. 1,500. He said that he would require further loans and he wanted to transfer a land to me till the loans were repaid. I have not yet seen any of these lands. He wanted money in connection with this case and his daughter's wedding I proposed retransferring these lands back to the defendant when he repays the loans.

Sgd. N. KRISHNADASAN,
19-9-45. A. D. J. 30

G. M. Perera
Examination

G. M. PERERA affirmed, 47 years, planter of Moodugamuwa.

I was a relation of Mr. Samaraweera. He is my mother's brother. He lived on this land in dispute for some time on two occasions. Once he stayed for 7 years and once for 1 year.

My grandmother lived on this land. Mr. Samaraweera sold this property and then the defendant came into possession. I was a member of the Weligama Urban Council. My dealings as a member of the Urban Council were with this defendant. The property belonged to this defendant as far as we were concerned.

The impression I got at that time was that the land belonged to the defendant. I cannot definitely say from what I formed this impression. I was against the sale. I had no share in this land but I was against the sale of the family property.

I do not know Appuhamy. From the time of the sale up to date the defendant has been in possession of this property.

Cross-examined by Mr. E. F. N. Gratiaen.

In 1919 I was on the estate. I was not in the town. I do not know that this land had been mortgaged to Appuhamy. I did not know that Mr. Samaraweera had mortgaged some properties to Appuhamy. I know nothing about the details of the sale personally. The members of our family were disturbed when the property was sold. I personally knew nothing about the details of the sale of the property. I have not seen the Deed.

No. 8
Defendant's
Evidence
G. M. Perera
Cross-exami-
nation

I had no idea to whom this land was sold on P1. I only know that
10 the defendant came into possession after that. I went with the Chairman
or Vice-Chairman to an inquiry in connection with this land. That was
with regard to some infringement.

I was concerned with the infringement of the by-law rather than
with the ownership of the property. The Council is not concerned with
the ownership.

I became a member of the Council in 1936. I was a member till 1942.

I do not know anything about the possession after the inquiry. There
was an inquiry into a deviation from a plan by the defendant. That was
between 1936 and 1942. Personally I do not know who possessed this
20 property between 1919 and 1936.

I am not sure who was living in the house at the time of the inquiry
in 1936 to 1942. I think the defendant was living there. I cannot speak
to the financial position of the defendant in 1919.

Re-examined by Mr. Wickremanayake.

I have known the defendant for 25 years. He was general merchant
and landed proprietor.

G. M. Perera
Re-exami-
nation

He was very well to do. The defendant acted for an owner to my
knowledge.

Sgd: N. KRISHNADASAN,
19-9-45. A. D. J.

30

MRS. MABEL WICKREMARATNA affirmed, 47 years, wife of
M. J. Jinasena, Polatumodera.

Mabel
Wickrema-
ratna
Examination

I was residing in this house on this land in dispute from 1929 to 1931.

I was there as a tenant. I left in 1931 to get married. Thereafter
my parents lived in the house for 2 or 3 years. I was tenant of J. U. de
Silva. He is this defendant. I paid the rent to him. Repairs were done
by him to this house. A person called Appuhamy did not come to the
house while I was there. I have never known Appuhamy.

No. 8
Defendant's
Evidence
Mabel
Wickrema-
ratna Cross-
examination

Cross-examined by Mr. E. F. N. Gratiaen.

My dealings with the defendant were as landlord and tenant. I did not know whether J. U. de Silva was the owner of the house or not. I do not know whether he bought this land.

Re-examined by Mr. E. G. Wickremanayake nil.

Sgd. N. KRISHNADASAN,
19-9-45. A. D. J.

Alfred
Samara-
weera
Examination

ALFRED SAMARAWEERA affirmed, 65 years, Conductor of Pategama.

I am a relation of David Samaraweera. I was adopted by his father. I did work for Samaraweera. I was conductor on his estates. This land was in my charge. I remember the date of the sale by David Samaraweera. I was not present at the execution. After the Deed was executed I delivered possession to J. U. de Silva, the Village Headman.

Question : Why did you hand over possession to Udenis de Silva ?

Answer : I handed over possession to him because I was asked to do so. Mr. Samaraweera told me that he sold the land to J. U. de Silva.

(Mr. Gratiaen objects to this statement made by Mr. Samaraweera as this will form part of the evidence.) 20

Mr. Wickremanayake argues that this was a statement made by Mr. Samaraweera against his interest and that it is admissible under section 32.

Mr. Gratiaen submits that as Samaraweera had at the time he made this statement to the witness, sold his property by a deed to Appuhamy and that this statement cannot be against his interest as he had no interest at that time.

ORDER

Samaraweera had already sold this property to Appuhamy on a deed before he made this statement with regard to the sale of the property to this witness. I do not think that this statement that he sold to Udenis de Silva, the defendant, can be taken as a statement made against his interest.

I uphold the objection of Mr. Gratiaen. The evidence of this witness as to what Samaraweera said about the sale of this land will not be admissible.

Sgd. N. KRISHNADASAN,
19-9-45. A. D. J.

There was some barbed wire inside the property and I removed it. This was Samaraweera's property. No one possessed this land after I handed over possession. I delivered possession to the defendant and I went away. I have been to the land after that. The defendant is possessing the land. No one else possess the land.

Cross-examined by Mr. E. F. N. Gratiaen.

I live in Pathagama. H. E. W. Perera is supporting me. I am a poor adopted member of the family maintained by Mr. Samaraweera's nephew.

No. 8
Defendant's
Evidence
Alfred
Samaraweera
Cross-examination

I cannot say exactly who lived in the house in 1919. I was not present when P1 was signed. I was on Lindwood estate as a conductor. That is 3 miles from Weligama. Mr. Samaraweera did not live in town. He was residing in Matara. Mr. Samaraweera's mother was alive. She was living in this land and a few days prior to the sale she went to a place called Sea View at Kapparatota. Before this land was sold she was living in this house. I was living with her. She adopted me. I was on the estate and used to come to this house. I went to the estate in 1911. Two or three times a week I had been used to going to the house. In 1919 I was in Lindwood estate and in this house. Mrs. Samaraweera had a life-interest in this land by P1. She died two years later. She retained her life-interest after David Samaraweera sold this land.

I was also in charge of this land. Mrs. Samaraweera was very old so I was looking after the land.

David Samaraweera had got deeds from his mother leaving her the life-interest. Mrs. Samaraweera did not have a life-interest after P1 was executed. In 1919 or so I was not residing in this house. I do not know whether Samaraweera paid taxes even in 1920 for this land. I am now a conductor for Mr. H. G. M. Perera. I am paid Rs. 45 a month.

Re-examined by Mr. E. G. Wickremanayake.

I was a conductor in Lindwood estate belonging to David Samaraweera. This estate is 3 miles from this house. Mrs. Samaraweera lived in this house on this land. She lived in this house before the sale. I stayed in Uwawatta for about 3 months. She lived in this house for about 3 or 4 months prior to the sale. After that she was in the house Sea View at Kapparatota.

Alfred
Samaraweera
Re-examination

Up to 1919 S. E. Perera, Registrar, and his family were living in this house with Mrs. Samaraweera.

To Court: I gave possession about 5 days after the sale. The sale was in 1919. I do not know the month or day.

Sgd. N. KRISHNADASAN

19-9-45. A. D. J.

W. A. P. ABEYRATNA, affirmed, 45 years, Clerk, Naimana.

I know the house on this land in dispute. I was an occupant of this house for 3½ years from the end of 1921 till the end of 1924. I took this house from the defendant. I paid the rental to him. Repairs were done by him before I came into occupation.

W. A. P.
Abeyratna
Examination

I do not know a man called Appuhamy.

No man called Appuhamy came to this house.

No. 8
Defendant's
Evidence
Abeyratna
Cross-exami-
nation

Cross-examined by Mr. E. F. N. Gratiaen.

I cannot remember the month I went into occupation. It was not the beginning of 1921. I was appointed there after June. Before that I was at St. Thomas' School, Matara.

The head teacher of St. Thomas' asked me to take up duties in Weligama. That was to be done within one month. Before I was going into occupation some repairs had to be done. I was shown some repairs that had been done. The defendant offered to take me round the premises I did not examine the title or ownership. I asked the defendant for the house. He said "You can have the house". He took me there for the owner. My friend took me there and he said that the house belonged to the defendant. I knew that the house belonged to Ralahamy. In my evidence I used the words "Aithicaraya venuwen" (අයිතිකාරයා වෙනුවෙන්.)

Question : Does that word mean "on behalf of the owner ?

Answer : I think it means on behalf of the owner.

I have been giving evidence all this time in Sinhalese. Every question put in English I understood very well.

(The witness now voluntarily gives evidence in English and says :--

I paid the rent as paying it to the owner. If I were to say that I paid the rent as owner I should have said "Aithicaraya vasayen" (අයිතිකාරයා වශයෙන්). The words Aithicaraya venuwen (වෙනුවෙන්) is a mistake.

I teach up to the 4th standard.

This is the first time I am giving evidence and in a place like this I made a mistake.

If I was in school I would not have made such a mistake.

Re-examined by Mr. E. G. Wickremanayake.

There is only one meaning to the word venuwen (වෙනුවෙන්) it means on behalf of. The word "Nisar" (නිසා) means "because". I really meant "Aithicaraya hatiyata" (හැටියට). That is the correct word I should have used.

Question : You told the Court just now in English that you said "as the owner", didn't you ?

Answer : I thought the defendant was the owner because I paid rent to him at Rs. 5 per month.

There was no mention of anyone else as owner. There was no suggestion that he was collecting rent for anyone else.

Question : Throughout the whole period did anyone collect rent from you ?

Answer : No one else claimed rent from me.

Abeyratna
Re-exami-
nation

I did not become aware of anyone else claiming the rent. The rent throughout the period which I paid was Rs. 5 per month.

Sgd. N. KRISHNADASAN,
A. D. J.

No. 8
Defendant's
Evidence
Abeyratna
Re-exami-
nation
—continued.

It is now 4 p.m. No time. Further hearing on 26th September at 9-30 a.m.

Sgd. N. KRISHNADASAN,
19-9-45. A. D. J.

26th September, 1945.

10 Plaintiff and defendant present.

MR. ADVOCATE FERNANDO instructed by MR. C. V. SAMARASINGHE, for the plaintiff.

MR. ADVOCATE E. G. WICKREMANAYAKE instructed by MR. E. P. WIJETUNGE, for the defendant.

Mr. Wickremanayake calls.

V. G. MANUEL, sworn, Electrical Engineer, Moratuwa.

V.G. Manuel
Examination

I am the Electrical Engineer of the Urban Council. I was in Weligama in 1935 and 1936. I was supervising the construction of electric lights. I know the building in dispute. When I was in Weligama I was 20 living in the premises of J. U. de Silva as his tenant. I paid rent to him. I did not have any claim to the house by a person called Appuhamy. While I was in the house improvements were made to the land and house. The defendant was doing some constructional work. He consulted me once about fixing a chimney. I was there for about 3 or 4 years.

Cross-examined by Mr. Advocate Fernando.

V.G. Manuel
Cross-exami-
nation

I was in Weligama from 1935 to 1936 I resided in this house for three years and later went to another house. I shifted to the other house close by. From 1936 I was Superintendent of the Urban Council, Weligama. I occupied this house from 1936, the time I was supervising electrical 30 work. Till 1938 I was in the premises in dispute. During that time I saw the defendant doing work with regard to the construction of the building in dispute. This was in the house I was occupying. He also made a kitchen storeroom, etc. He added a verandah and latrine to this house. He wanted a new design for the frontage.

I paid the rent to the defendant. I took the defendant to be the owner of the house. I had no occasion to investigate the title of the defendant.

Re-examined : Mr. Narayan was there in this house for about 3 years. I took the defendant to be the owner. No one else put forward a claim 40 to ownership.

V.G. Manuel
Re-exami-
nation

26-9-45.

Sgd. N. KRISHNADASAN,
A. D. J.

No. 8
Defendant's
Evidence
A. G. Henry
Silva
Examination

Mr. Wickremanayake calls.

A. G. HENRY SILVA affirmed, Village Headman, Main Street, Weligama. I have been headman for the last 20 years. I know the property in dispute. I had occasion to go to that property on official duties. J. U. de Silva was in possession of the property for 20 to 25 years, to my knowledge. To my knowledge Appuhamy has not exercised any right to this property. I have known the defendant for about 35 years. He had many jobs, trading in plumbago, copra, rice and sundries, etc. His financial circumstances were sound. In 1919 he was well-to-do.

I have seen Appuhamy.

10

A. G. Henry
Silva
Cross-exami-
nation

Cross-examined by Mr. Advocate Fernando.

I did not know the defendant in 1904. I first came to know him in 1912 or 1915. To my personal knowledge this land belonged to this defendant. He was living and possessed this land. From that I knew that he was the owner. I drew the inference that he was the owner. There was the incident of the cutting down of a jak tree on this land. This defendant asked for permission to cut down a fallen jak tree. I made a report on it that it may be cut down. I reported that the tree was dead. I remember the investigation on a petition sent by the plaintiff's agent. The police held an inquiry and it was proved that the tree was dead.

I do not know of any injunction against this defendant. The Divisional Revenue Officer may have come to the land.

A. G. Henry
Silva
Re-exami-
nation

Re-examined: After investigation it was found that the jak tree was dead. There was no prosecution against the defendant for the cutting down of the jak tree.

Sgd. N. KRISHNADASAN,
26-9-45. A. D. J.

Coomara-
singhe
Examination

Mr. Wickremanayake calls.

W. J. COOMARASINGHE affirmed, 66 years, Native Doctor of 30 Walliwala.

I know the land in dispute. I know the building on this land. There was a period during which the Buddhist priests occupied this house. That was in 1925. It was used as an "Arvarsaya" for 4 years. I obtained permission from the defendant to use it.

I was a dayakayar of the temple. I got permission from the defendant to use this house as an arvarsaya. I brought six priests for the Wus period. I went to the defendant for permission because the house belonged to him. I have known this house for a long time before. I know that the house originally belonged to David Samaraweera. He was the original owner. After that he left the land and the defendant started living on this land. He is there still. I know Appuhamy. He did not possess this land. Throughout the whole period of occupation by the priests, Appuhamy did not put forward a claim to the land. He never claimed this land.

Cross-examined by Mr. Advocate Fernando.

I know the house belonged to the defendant because he bought the property and possessed the land. I do not know in whose name the title deed was. After this case I know that the land belonged to Appuhamy. I did not draw an inference that the defendant was the owner. The defendant repaired the house and possessed the land. I know that the defendant possessed the land. I do not know the circumstances under which this land was sold. I have no personal knowledge as to the title of the property. Up to the filing of this action I knew that the defendant
10 was possessing this land and so I took him to be the owner. A man may possess a land and not be the owner. I was not aware of anyone else being the owner.

No. 8
Defendant's
Evidence
Coomara-
singhe
Cross-exami-
nation

I do not know whether the deed was in the name of the defendant or not. Because the defendant was possessing the land I thought he was the owner.

Re-examined nil.

Sgd. N. KRISHNADASAN,
A. D. J.

Mr. Advocate Wickremanayake calls.

20 DON ALWIS RANAWEERA affirmed, 65 years, cultivator of Walliwela. (Shown P1). I have signed as a witness to this deed. This is a transfer by David Samaraweera. I saw money being paid at the transfer by the defendant. I know Appuhamy, he was not present there at the time the deed was executed.

D. A. Rana-
weera
Examination

I know the land in question. The defendant possessed that land from after the deed was executed.

The defendant is still in possession. Appuhamy did not possess the land.

Cross-examined by Mr. Advocate Fernando.

30 I have known the defendant for about 35 or 40 years. I went to see proctor Samaraweera. The proctor had some money of mine. I took the money to the office. He did not owe me money on a mortgage. That was money recovered in a case. I went with Mr. Samaraweera to the place where the deed was to be executed. That was the office of Mr. Abeydeera. When I went there the deed had been partly read out. When Mr. Samaraweera signed the deed I was at a distance. I knew in whose name it was written. It was written in the name of Appuhamy. I do not know the reason why it was written in favour of Appuhamy. When I went to the office there were other people who had come for cases and
40 to get deeds written. I knew what the land was at the time the deed was written.

D. A. Rana-
weera
Cross-exami-
nation

Defendant paid the money. I knew the deed was in the name of Appuhamy. The deed was read out. I did not ask the defendant why the deed was written in the name of Appuhamy on the day it was executed.

No. 8
Defendant's
Evidence
D. A. Rana-
weera
Cross-exami-
nation
—continued.

I did not ask the defendant whether he got a re-transfer from Appuhamy. I know that the defendant paid over the sum of money at the execution of the deed. The money was in the defendant's hands. I do not know whose money the defendant paid when the execution of the deed took place.

Re-examined : I have known the defendant well for 40 years.

Sgd. N. KRISHNADASAN,
A. D. J.

Mr. Advocate Wickremanayake calls.

Levendiris
Examination

H. H. LEVENDIRIS affirmed, 45 years, mason, Kadumulla. 10

I know the building in dispute. I did work in connection with that building. I did masonry work for the building on instructions from Ralahamy (the defendant) Ralahamy paid me for the work. I was paid a total of Rs. 1,950. Part of the work was done on contract. The work took me more than one year.

I do not know Appuhamy. During the whole period of one year I was working a person called Appuamy did not come to the land.

The defendant's son and the defendant gave me instructions. No man call Appuhamy gave me instructions. No man called Appuhamy paid me any money. The money was paid from time to time. 20

Levendiris
Cross-exami-
nation

Cross-examined by Mr. Advocate Fernando.

I used to take the money once in three or four days. Labourers were paid according to their abilities. When I worked on daily rates I was paid Rs. 2.50 to Rs. 3 per day.

That was in 1936. I worked till 1937. I was paid about Rs. 2.50. I can swear to it.

The work I took on contract was the demolishing of the whole house and rebuilding and plastering it. The walls were not completely pulled down. Over the foundation there was about 3 feet of wall. When I was carrying out the repairs the Electrical Superintendent was there. He 30 was there at the time I finished the house. When the house was being pulled down no one could live there. When part of the work was done that portion was occupied by the Superintendent. The house was in a condition when nobody could live in it, in 1936. Mr. Manuel and Mr. Narayan were in the house at that time. When I went there there was nobody in the house. The house was in such a condition for about 5 or 6 months I think. It was not tenanted then. I am quite sure of that. There was no written agreement for me to do the work. The defendant was the headman and whenever I wanted money he paid me. Sometimes when he had no money he said "come tomorrow". 40

Apart from delay of a day or two there was no delay in the payments. I do not know whether the defendant had large sums of money in the house. May be he did not have change with him.

Re-examined nil.

Sgd. N. KRISHNADASAN,
A. D. J.

Mr. Advocate Wickremanayake calls.

F. D. CHARLES SILVA affirmed, 58 years, carpenter of Weligama. I know the building in dispute. I did work in connection with it. I did the carpentry work for the roof and the doors in the house at the instance of the defendant. I was paid by the defendant. The work took me about 7 or 6 months. The work was supervised by the defendant. The materials were supplied by the defendant. I was paid Rs. 2,100. I do not know a man called Appuhamy. No man by that name made any payment to me. No man called Appuhamy supervised the work.

No. 8
Defendant's
Evidence
Charles Silva
Examination

10 Cross-examined by Mr. Advocate Fernando.

I took this work on contract. I got two writings. Both the defendant and I signed both writings. I have not got my copy. After the work was over the two papers were destroyed.

Charles Silva
Cross-exami-
nation

The figure Rs. 2,100 was put on the contract. I was paid as the work was proceeding. I was paid by instalments. Whenever I wanted money the defendant paid me. If he had no money he paid me on the following day. I gave him timely notice that I wanted money on such and such a day.

Re-examined nil.

20

Sgd. N. KRISHNADASAN,
A. D. J.

Mr. Wickremanayake calls.

A. H. FELSINGER sworn, licensed surveyor of Matara. I am a Commissioner of this Court. I am also valuer of this Court. I value buildings in partition cases. I have had much experience. I was asked by the defendant to value the building on the land in question. I inspected the land and valued the buildings according to my report which I produce D32.

A. H. Fel-
singer
Examination

I have described the material and submitted a report on the valuation of the building. All the buildings of this land are worth Rs. 39,783. This land is about 5 acres in extent. I have valued the soil. I have attached D32A, the plan of the houses. I also produce D32 B the value of the quantities. The total of my abstract is Rs. 37,000 for the building on this land excluding the outhouses.

Cross-examined by Mr. Advocate Fernando.

In my report I have the first item for clearing and levelling the site. I was told that the whole thing except a small portion was the foundation and that the walls, etc. were done by the defendant. I was asked by the defendant to value the place. I knew it was in connection with this case. I knew that the defendant was making a claim for compensation for improvements. He told me what the improvements were. He said that the whole building was put up by him except a portion of the foundation and a portion of the walls. He said that he had done all the rest. He pointed out the small portion of the foundation. He told me he had to

A. H. Fel-
singer
Cross-exami-
nation

No. 8
Defendant's
Evidence
A. H. Fel-
singer
Cross-exami-
nation
—continued.

get the place levelled for a site. My estimate of Rs. 835 is for clearing the site. This portion is the rear portion. I do not know whether the building on this land was there before he started this present building.

(Shown plan attached to P1.)

This plan is on a scale of 2 chains to an inch. The main building in this plan is 50 feet by 40 feet. The building now standing on this land is 76 feet by 54 feet. I have measured the building.

I prepared a valuation in 1945 April. I worked on the then level lands.

These rates are very much higher than the rates in 1936. I have based my valuation on the present rates. I have valued the doors and frames at Rs. 5,000. These are the doors of 10 × 10 square feet.

To Court : I can approximately say the rates that were prevailing in 1936. The present rates are about three times as much as the rates prevailing in 1936.

Jakwood has gone up about four times. I have made the valuation of the jakwood at the present rates. Labour has gone up in price about four times as much as the rates prevailing in 1936.

In 1936 a labourer was paid about 40 or 50 cents a day. An ordinary cooly was paid about 40 cents. A carpenter was then paid about Rs. 1.50. Today he is paid about Rs. 3.50. A skilled labourer is paid over Rs. 2 today. Material has gone up in price even ten times as much as the rates in 1936. The total value according to the rates in 1936 would not have been more than Rs. 12,000 or Rs. 15,000. The price of things then would have been about $\frac{1}{3}$ the present prices. The front wall is in a line with the parapet wall. I do not know the rules about buildings coming within street lines. My duty is to value the buildings wherever it is. I make valuations of lands and houses wherever they are. It matters not to me whether they are within the street lines or not. I have valued the parapet walls of this building. I did not take into consideration whether the building had been pulled down without paying compensation. Similarly with the front wall I never took into consideration the possibility of their having been pulled down without the payment of compensation.

My valuation would have been the same if the building was 50 yards inside the land.

A. H. Fel-
singer
Re-exami-
nation

Re-examined by Mr. Advocate Wickremanayake.

I was shown the buildings and I was pointed out certain portions as having been constructed by the defendant. Some materials have gone up in price by about 3 or 4 hundred per cent. Some others less and others more. The cost of construction of this building in 1936 would have been about Rs. 12,000 to Rs. 15,000.

Sgd. N. KRISHNADASAN,
A. D. J.

Mr. Advocate Wickremanayake produces 16 certified copies of decrees in favour of the defendant from 1918 onwards. He marks them D33—D48. He also produces D49 a final decree and plan in January, 1918, D50 another certified copy of decree and plan in 1918, D51 another list in 1920.

No. 8
Defendant's
Evidence
A. H. Fel-
singer
Re-exami-
nation
—continued.

Mr. Advocate Fernando does not object to the production of D33 to D51 without the defendant being called.

Mr. Advocate Wickremanayake reads in evidence D1 to D51 and closes his case for the defence.

10

Sgd. N. KRISHNADASAN,
A. D. J.

No. 9

Plaintiff's Evidence

No. 9
Plaintiff's
Evidence
James
Bleakley
Examination

Plaintiff's case :

Mr. Advocate Fernando calls.

JAMES BLEAKLEY sworn, Lecturer, Training College, Colombo. I was in the Training College from November, 1912, till 2 years ago. I was lecturer in Science and later Vice-Principal. I know J. B. Appuhamy. I have known him throughout my connections with the Training College. He was more or less a personal servant to Mr. Evans, the Principal. He did the buying of provisions for the food for the students. Mr. Evans did the catering and Appuhamy bought the provisions for Mr. Evans. Appuhamy also ran the Tuck shop in the Training College. The Training College had the Boys' English School attached to it which school was later transferred to the Royal College. This boys' school had children of some of the wealthiest families in Ceylon.

To my personal knowledge I do not know whether Appuhamy was possessed of means. I can only go by what people attributed to him.

Q. Had he opportunities of making money ?

A. I considered Appuhamy as a man having much opportunity for making money.

(Mr. Wickremanayake objects to this question and answer on the ground that this is opinion.)

Appuhamy was very seriously ill and he got alarmed. He was afraid that his relations would raid his place and so, in the presence of two others, he got me to take charge of his goods and give him an inventory. I did so and was amazed at the amount of stuff he had. The stuff was mainly jewellery and gold coins. I took charge of them. I cannot give a possible value of those things as I was not interested in the value of the goods. I was only interested in taking charge of them and seeing that they were

No. 9
Plaintiff's
Evidence
James
Bleakley
Examination
—continued:

safe. The only thing that struck me was that it was a dangerous thing to keep such a big amount in such insecure quarters. I could not say whether Appuhamy was afraid of theft.

Q. Do you know whether Appuhamy had a revolver ?

A. I do not know whether Appuhamy had a revolver. He was in the Training College even after I retired. He retired after I did.

James
Bleakley
Cross-exami-
nation

Cross-examined by Mr. Advocate Wickremanayake.

I went to the Training College as a Science Lecturer. Appuhamy was there from 1901. He was under Mr. Evans as appu and butler. Mr. Evans was doing the catering and it was Appuhamy's business to do the buying of provisions. Mr. Evans was there for a few years before I arrived in Ceylon. Mr. Evans was there for two years after I left on furlough. His successor Mr. Smith followed the same procedure. Mr. Smith was there till about 1920. After that Mr. Harrison came as Principal.

He found the procedure unsatisfactory. He introduced the system of contract. Appuhamy was accused of making a lot of money.

(Mr. Advocate Wickremanayake wishes me to note that the latter portion of the witnesses' answer that Appuhamy was making a lot of money was not the answer to the question. For how long was this procedure in force ?)

The students were very dissatisfied with the catering.

I left Ceylon in 1920 on leave. When I came back I cannot say whether the system was renewed. There was a storekeeper introduced into the College.

I cannot say when the system of contract was introduced. The most I can say is that it was started by Mr. Harrison. The inventory I made was handed back to Appuhamy by me. That was 10 or 12 years ago or somewhere round about that time. I took the jewellery and coins into my own possession. They were made into parcels and I took them to my bungalow.

To my knowledge Mr. Evans had nothing to do with the Tuck shop. Part of Appuhamy's duties was the supervising of the classes arranging them, etc.

I do not know whether Appuhamy was paid by Government. I think he was paid at the start by Mr. Evans but I cannot be sure. Appuhamy was not allowed to take part in other employment without permission.

If he obtained permission it would be in the personal file of Appuhamy. A government servant is not allowed to purchase property without the permission of Government. If he got permission it would be in

the personal file. Appuhamy was ill about 10 years ago to the best of my knowledge. I cannot be exact.

I think he was ill about 1938. He got ill after I came back from England. I went to England in 1920. Prior to 1920 the number of students was about 80. It increased later.

No. 9
Plaintiff's
Evidence
James
Bleakley
Cross-exami-
nation
—continued.

Re-examined by Mr. Advocate Fernando.

There was a Tuck shop from 1912 to 1920 run by Appuhamy. There were about 80 resident students. Apart from them there were very few non-resident students. Practically all the students were residents.

James
Bleakley
Re-exami-
nation

10 In 1912 till 1920 there was a Bilingual school attached to the Training College. The Boys' English school was the bigger portion of Royal College. The English school had boys from the wealthiest families of Ceylon. Mr. Evans did the catering for the resident students from 1912. The Government allowed a certain amount and the money was paid to Mr. Evans, and from that money he did the catering. When Mr. Harrison came he found that the allowance was far too small to adequately carry out the catering. He had the amount of the scholarship raised and the students were charged certain amounts out of the scholarship. Students were paid Rs. 30 and out of that Rs. 20 was paid for the catering. The
20 money was not paid to Mr. Harrison. The money was retained by Government to pay the contractor. At the time Mr. Evans was there the money was paid to him and he paid all the expenses. The body of the students complained to me about the condition of the food.

Sgd. N. KRISHNADASAN,
A. D. J.

I am on transfer from the 1st October, 1945, to Anuradhapura and I am on leave from tomorrow. Both parties and counsel state that this case will take three more days and as the defendants' case has been closed they wish that this case is heard by me and finished. Let this case be
30 fixed for further hearing before me. The Legal Secretary to be written to, to gazette me to hear this case. After going to Anuradhapura I will inform Court of the dates on which I could come from Anuradhapura to hear this case.

Call case on 17th October, 1945.

Sgd. N. KRISHNADASAN,
A. D. J.

30-11-45.

Plaintiff present.

Defendant present.

40 Appearances as before. Mr. Gratiaen calls.

K. M. Siya-
neris
Examination

K. M. SIYANERIS affirmed, 59 years, trader, forwarding agents estates. I do business in Opanayake and Balangoda. I live in Unawatuna. I stay more in Opanayake and Balangoda. I go to Galle two or three times a month. I have been successful in business and I am a wealthy man.

No. 9
Plaintiff's
Evidence
K. M. Siya-
neris
Examination
—continued.

In Ceylon Bank account in No. 1 Account I have Rs. 35,000. In No. 2 Account I have 12 to 15 thousand rupees. In Hong Kong Bank I have Rs. 25,000. I own a fair amount of properties. I paid income tax for 1943—1944 Rs. 8,000. Last year I had good deal of share money. Shown P10 Deed No. 239 dated 28-6-44. P10 is the original of the Deed on which I purchased this property. About one month prior to the execution of the deed I negotiated the purchase of this property. G. L. de Silva my brother-in-law told me about this property. He lives at Weligama. I told Silva that I had money to invest. I did not inspect or see the property. I met Appuhamy on the day the title deeds were brought. I produce title deed P1.

Discharged mortgage bond P2 and P11 a bundle of title deeds. Appuhamy wanted Rs. 20,000 for the property. I took the deeds to Julius & Creasy. Julius & Creasy wrote to Samarasinghe to search the encumbrances. I was informed that a caveat had been registered. I did not know Appuhamy the defendant before my purchase of this property. I did not know anything about their relationship. In the chain of title defendant's name does not appear. I asked Appuhamy about the caveat. Appuhamy said that defendant was his brother-in-law and that he entered the caveat because he wanted to sell the property. He said that defendant had no interest in the property. He said that defendant lived on the property. He said that the land was purchased for him and his family to live and that his brother-in-law lived in the house. He said that he spent the money and that defendant built it for him. I thought that Appuhamy was the owner. And I was prepared to buy. Julius & Creasy said that the title was good and I purchased the property. P10 was executed. I paid by cheque for Rs. 20,000 drawn on the Bank of Ceylon. Shown the attestation clause. Because of the caveat the money was deposited with Julius & Creasy. The money was deposited with Julius & Creasy till I had possession. At the beginning I did not think that I will have to file an action against defendant to get possession of this land.

Shown D26. On 26th July I received D26 from defendant's proctor. I replied by D27 of 31st August, 1944. In D27 I had stated that defendant was staying in the land with the leave and licence of Appuhamy. I received letter D28 dated 9th September. I did not know that defendant had paid for the property and that the deed was executed in the name of Appuhamy to help him to get married.

K. M. Siya-
neris
Cross-exami-
nation

Cross-examined : Before the deeds were executed I did not know that defendant was in possession of the land. Appuhamy told me after the deed was executed that defendant was staying in the land. I did not say earlier that. Appuhamy told me before the execution of the deed that defendant was staying in the land. I stated that I did not know that accused was staying in the land before the deed was executed. Before the purchase I know there was a caveat entered. I had a talk with Appuhamy about it. Even during that conversation Appuhamy did not tell me that defendant was staying in the land. I came to know that defendant was living in the land when I questioned Appuhamy on the

receipt of letter marked D26 of 22-7-44. I purchased on 28-6-44. Before I received D26 I did not go to see the land. I did not go to inspect the land before the purchase. When I came to Matara I pass this house. I came to Matara once in four or five months.

I went and saw Mr. Samarasinghe before the deed was executed and after he was asked to search for encumbrances. To go to Samarasinghe's house one has to pass this house.

I did not get down or stop to see the property. I did not think it necessary. I did not know that defendant was living in this property at the time I went to see Samarasinghe. At that time I knew that Appuhamy was working in Colombo. I knew that Appuhamy was living in Colombo. My brother-in-law told that the house belonged to Appuhamy. As my brother-in-law said that Appuhamy was the owner of the land.

Mr. Gratiaen at this stage wishes that I should record the question and answer.

Mr. Wickremanayake states that he is only clearing up what witness had said earlier.

I see no harm in the application to record a question put.

20 Q. It is because your brother-in-law told you that Appuhamy was the owner of the land that you did not bother to inquire who was residing in the land although you knew that Appuhamy was living in Colombo?

A. Yes.

Q. It is correct. Is it not? that your brother-in-law told you that Appuhamy was the owner of the land?

A. It is.

Q. It is correct is it not; that thereafter you did not care to ascertain who was living on the land?

A. I did not try to find out who was living in the land before the 30 deed was executed.

Q. It is also correct that at that time you were aware that Appuhamy was living in retirement?

A. I knew that he had retired and that he was living in Colombo.

Q. It is because of what Appuhamy told you that you did not care to find out?

A. That is so. I have been buying lands before. I have bought properties for less than Rs. 20,000 before this. In the middle of 1942 I had purchased land. I paid for a rubber land 14 or 15,000 thousand rupees.

40 I inspected this land before I purchased it. I knew who was living in that land before I purchased it. It was only after finding out who was living in the land that I purchased it. I purchased other lands. I purchased these other lands after I saw the lands. In all these instances I paid the money and took delivery. Payments at the execution of the

No. 9
Plaintiff's
Evidence
K. M. Siya-
neris
Cross-exami-
nation
—continued.

deed and I got possession immediately when the deed was signed I asked Appuhamy to place me in possession. He told me that he will give over possession. I told him to go with my brother-in-law and give possession of the land. I can't remember whether a particular date was fixed to give over the possession. I did not fix a date to take over possession as my brother-in-law had to take leave and come up. I told him to give over possession on a date when my brother-in-law could take leave. My brother-in-law works in the Insurance Co. My brother-in-law, I think, is a clerk at the Insurance Co. My brother-in-law said that he could come in two or three days. I did not meet my brother-in-law after that for 10 some time. I did not write either to Appuhamy or my brother-in-law. I had no occasion to question the person who entered the caveat. I did not meet him. There is no harm if a caveat is entered. I did not want to ask the person who entered the caveat. My lawyers said that the caveat did not matter. I had to ask Appuhamy about the caveat because he is my vendor. I asked Appuhamy why a caveat was entered. I wanted to find out why the caveat was entered. I have not bought any lands for which a caveat was entered. I never entered caveat. I do not know the effect of a caveat. I did not in spite of the fact a caveat was entered try to find out who was living in the land. 20

Rs. 20,000 was left with Julius & Creasy till possession was taken. I did not anticipate any trouble in getting possession. I did not deposit the money with Julius & Creasy in anticipation of any trouble. In other sales money was paid in the presence of the notary when the land is executed. I have bought about 10 or 15 lands. I did not indulge in speculative litigation. I never had litigation in connection with lands. I can't remember I have no recollection of any land action I had. I know Mendis Silva. He was the defendant and I was the plaintiff in a partition case. The partition action was dismissed. I purchased $\frac{1}{3}$ share of the land for 15 years. I was a defendant in that partition case. I am sure 30 I was the defendant and not the plaintiff. I paid costs in that partition case. I lost the $\frac{1}{3}$ share I purchased. I appealed in that case. Appeal was dismissed. I can't remember any other litigation. I do not finance other people to litigate. I have not bought lands over which some case was pending. I did not meet Appuhamy before I received D26. I met him when the deeds were signed. I did not meet him earlier. From that date till I talked to him about letter D26, I did not meet him. I gave the cheque to the notary on the day bond was executed. I talked to him about the land. I told him that I was willing to buy the land. He said he was willing. I told him that he could have the money after 40 possession was given. On the day the bond was executed I asked him about the caveat, and told him to take the money after giving possession to my brother-in-law. I questioned Appuhamy on the day bond was executed why a caveat was entered. I questioned him before the bond was signed. The deed was signed after the conversation. We were in the notary's office for $2\frac{1}{2}$ hours. The deed was prepared by the notary after my talk with Appuhamy on this day.

Prior to this date I had given deeds to Julius & Creasy. I went to Julius & Creasy's to meet Appuhamy by appointment.

I can't recollect of having said on the day the deed was executed that I was willing to buy and that he was willing to sell. I can't remember whether Appuhamy came there or the deeds were sent. It was after my conversation with Appuhamy on this day at Julius & Creasy that Julius & Creasy were given instructions to prepare the deed. I was in the office of Julius & Creasy when the deeds were prepared. I was there for 2½ hours. It was during that time the deeds were prepared. Appuhamy was also there during that time. After the deeds were signed we both went away. I was interested in the income that can be derived from this land before I purchased it. I own other lands. I know that houses within the Municipality are assessed. I do not know that a register is kept. I know that rates have a relation to rent. I did not try to find what rates were paid. I did not know that I could find the rates paid from the Urban Council. I am doing business for 35 or 40 years. I have obtained from Sanitary Board assessment paid on buildings. I know a register is kept by the Sanitary Board. I know there will be no difference between the system followed in Sanitary Boards and Urban Councils. I have a boutique within the Balangoda Urban Council. I know that the Urban Council keeps a register of taxes paid. I know that Rent Restriction Ordinance applies to Weligama. I know that the books of the Urban Council of Weligama will show the rent but I was not concerned about it. I did not decide to live in this house. I might have come to live in this house when I purchased. I had no intention of living in this land. I know that the land will give income. I keep books of account. On lands I will expect a return of 2 or 2½ per cent. Sometimes 2 or 2½ per cent. is not recovered by income. I know how much income can be obtained from this land. Appuhamy did not tell me for how long defendant lived in this land. I did not make any independent inquiries.

Re-examined: I am 59 years. I have no children. My heirs are my sister's children who are related to my brother-in-law Silva. He lives in Weligama. My brother-in-law told me that the land was 5 acres and that it was worth Rs. 20,000. I accepted his valuation as correct. The title deeds were taken to Julius & Creasy about two weeks before the deeds were executed. The deeds were sent to Julius & Creasy through proctor Ratnayake. I instructed Julius & Creasy to investigate the title about a month before the execution.

Q. On whose advice did you deposit the money with Julius & Creasy?

A. It was on the advice of proctor Perera of Julius & Creasy. I left the money with Julius & Creasy. I paid Julius & Creasy their fees. I paid for the stamps. I am certain that I was the defendant in the partition case. This case was about 10 or 15 years ago. The property was at Unawatuna. Some ¼ mile from my residing land. The land that was partitioned was a high land. I paid some 500 or 600 rupees for ½ share.

Sgd. N. KRISHNADASAN,

No. 9
Plaintiff's
Evidence
K. M. Siya-
neris
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—continued.

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neris
Re-exami-
nation

No. 9
Plaintiff's
Evidence
Appuhamy
Examination

APPUHAMY affirmed, 62 years, cultivator, Halbedda, Gampaha District. I am a Government pensioner. I retired in 1943. I draw a pension of Rs. 41 and odd cents. Since retirement I am living in Halbedda.

I cultivate and spend my time. I married about the time I retired. This is my first marriage. My wife gets a pension. She gets a pension of Rs. 9. It was her first marriage when she married she was 52 years. I was not adopted by the defendant's mother-in-law. I stayed with her. I was brought up by them. I was treated as a brother by defendant's wife. I regarded defendant as my brother-in-law. Defendant has four children. I am fond of them. First I was employed as a caterer. I was¹⁰ employed before that in the hospital at Madukelle. I was the head kangany. I was paid by the Government. I worked for four years in the hospital. I was paid Rs. 22'50. I used to save money. I had saved money when I was in the hospital. In 1909 I joined the Training College. I saw to the catering. I supervised the servants. I arranged the place for examinations. Mr. Evans was the first Principal under whom I worked I ran a tuck shop. I kept a man and ran it. I took the profit. I ran the Training College tuck shop for 6 years from 1912. After 1918 the tuck shop was closed. I did not open it again.

I ran the tuck shop at Royal College after this. I paid the rent of²⁰ the premises to Government. I took the profit. I ran the Royal College tuck shop for 3 years from 1921. As caterer I made money. I made profit out of the tuck shop at Training College. I had saved about Rs. 15,000 or Rs. 18,000 by 1918. I had accounts in saving banks. I kept monies in the school in my almirah. I had the monies in coins and notes. I had jewellery and gold coins. I was afraid to keep the money with me.

I informed the Principal and purchased a revolver. Shown P12. This is a dispatch note for a revolver. I bought a small property of $\frac{1}{4}$ acre extent in Lunawa. I purchased it I think in 1916. I got an income³⁰ from this property. I got Rs. 10 a month from this property as rent. Training College carpenter stayed in this property. I was the owner of this property for 6 years.

Q. What was your next investment ?

A. I purchased a field.

At this stage Mr. Wickremanayake submits that he objects to evidence being given that witness purchased the property without the deed being produced.

Mr. Gratiaen withdraws the earlier question.

I have lent money on mortgages. Defendant was responsible in⁴⁰ arranging these mortgages.

Q. Where was the mortgage.

A. The mortgage was on behalf of Samaraweera. I do not know who the mortgagor was. I produce P13 certified copy of mortgage Bond No. 230 dated 22-11-1918 for Rs. 750 in my favour.

Samaraweera is the mortgagor in this bond. I gave the money to the defendant at Training College. Defendant came to Colombo once a month or twice and meets me. I was friendly with defendant. There were three holidays in an year. I spent the holidays in the house of defendant. I compensated the defendant for my stay in his house. I used to give them money and articles. Because I considered the house of defendant also my house. I gave these articles. The house of defendant was 500 feet from the land in question. I was residing in that house before I put up the house which is in dispute. On 14th October, 1919, Samaraweera executed the transfer of the property in my name. In 1919 I wanted to buy a land. I had expressed this wish to defendant. Defendant told me that he will inquire and find out a suitable property to purchase. About 6 months later defendant told me about the property. I told defendant that I wanted to purchase a property about 4 or 5 months before I gave the Rs. 750 on mortgage. Defendant came to Training College and told me that I could buy this property. Mr. Samaraweera did not pay any interest on the mortgage bond. I purchased the property for Rs. 5,500. I paid Rs. 4,650 in cash to the defendant. The balance was set off against the mortgage amount. I was not present at the execution of the transfer. I left the transaction in the hands of the defendant. I had implicit confidence in him. He did not pay the consideration out of his own money. I did not ask him to get the transfer in my name to help me to get married. In 1919 I was about 36 years old. I was not contemplating marriage at that time.

Before I married now I did not contemplate to marry earlier. I contemplated marrying 2 years before I married. I got the title deeds from the defendant. I thought that as I remained unmarried my properties will go to my relations. I had no other relations other than defendant and his people. Dionosius Silva is the son of defendant. He studies at Training College. He stayed with me. I defrayed his expenses. There was objection for his staying with me in the College. I put him in a boarding and I paid the expenses. I continued to spend the school holidays in the house of defendant. I wanted to improve the building in this land. I told the defendant about it. I provided the money. Whenever he wanted money for the work I gave him the money. I gave him the money and got the work done. The house was rented out. He said that he used to get about Rs. 10 a month, I did not get the rent from the defendant. I had sufficient money and I did not get this rent from him. In 1938 defendant and his family went into residence. Before that substantial repairs had not been effected. Minor repairs were effected before defendant went into occupation. I spent a sum of Rs. 5,000 in repairs. I can't say when I spent this money. I spent this Rs. 5,000 in small amounts. From time to time monies were demanded and I gave the money. When I spent this Rs. 5,000 the house was almost rebuilt. I have been to this house after it was rebuilt and stayed there. I had taken Gunaratna to this house after it was rebuilt.

No. 9
Plaintiff's
Evidence
Appuhamy
Examination
—continued.

I had a separate room. When it rained I slept in a special room. All this time my relation with defendant was cordial. I thought of spending my retirement in this house with defendant. I did not contemplate writing a Will. I married in 1943. Defendant or his family did not come for my wedding. I did not invite them. I had told them earlier that I was intending to marry. When I gave this information they were not pleased. I was engaged for 2 years before I married. During this time of engagement my relationship with defendant was not cordial. I spent my holidays with defendant 6 months before I married. I found that defendant was displeased after marriage. I gave up the idea of living in this house after retirement. On 16-3-44 I instructed my proctor to write D22 to defendant offering to sell the land to him. I wanted to sell the property. I thought I should offer it to defendant. Proctor Kumarakulasinghe was my proctor. He sent D22. My proctor said that no reply was sent. I asked him from time to time whether no reply was sent. I then took the deed from Kumarakulasinghe. I decided to sell the land to some others. Ultimately I sold it to plaintiff. I never told the plaintiff that the land belonged to defendant. Plaintiff's brother-in-law Silva negotiated with me regarding the purchase of this property.

Appuhamy
Cross-examination

Cross-examined: I get Rs. 41.37 as pension. I started work as boarding manager. My first appointment was not as appu. I was never an appu. It was the students' money that was used for catering. Principal, Mr. Evans, provided the catering out of the students' monies. I was sent out to buy the articles. I was not entitled to any balance left out of the monies given by the students. I did not give false accounts. I did not make out any money by catering. My salary was Rs. 30. I do not know whether I sent memorials to Government from time to time. I sent memorials to have my post pensionable. I sent petitions to have my designation changed from head peon to butler. In those petitions I stated that I received Rs. 16 as salary. I sent a petition in 1920 to the Director of Education that I be paid a salary of Rs. 360 with board and quarters. When I came to the Training College I came with money. I had five cows in the Training College. I am maintaining this for the first time. I got the produce of the Training College gardens. I had an income of about Rs. 250 a month. I did not mention the cows to the lawyers as it was a small matter. The income from the cows and vegetables in the gardens was not small.

The reason I gave for not telling my proctors about the cows is not correct. My proctors did not ask me what other sources of income I had at Madulkelle. I had a savings bank account as head kangany. I was paid Rs. 22.50. I did a little cultivation. I put my savings in the Savings Bank. I did not try to take a certified copy of the Savings Bank account I had. For 6 or 8 years after I came to Training College, I had the savings bank account. I had Rs. 700 in the Post Office Saving Bank and Rs. 1,000 in the Ceylon Savings Bank. In 1920 I withdrew the Rs. 700 from the Post Office Bank. I drew the Rs. 1,000 from Ceylon Savings Bank last year. I have my Savings Bank book in Court. Rs. 1,000 was the largest

amount I had in the Ceylon Savings Bank. In 1918 I had Rs. 1,000 in the Savings Bank and the balance I had in an almirah in notes and coins. I used to get down books for sale in the school. There were 200 boarders and 800 day students. For a day the sale in the tuck shop in December was about Rs. 700. I ran the tuck shop with the permission of the Principal. Amongst the furniture I took to the house of the defendant, after he came to live in this rebuilt house, was an ironsafe. I took only one ironsafe. Defendant went to live in this rebuilt house in 1938. Mr. Evans left the Island in 1920. I told my proctor that as soon as I purchased the safe I took it to the house of defendant. I bought the safe in 1918. I took the safe in 1918 to the old house of defendant. When all articles were removed from the old house I took the safe. All the articles I brought to the new house were articles I brought from the old house. These articles were taken by me to the old house during the first 4 or 5 years of my employment in Training College.

No. 9
Plaintiff's
Evidence
Appuhamy
Cross-exami-
nation
—continued.

Tuck shop was from 1912—1918. I ran the tuck shop at Royal College when I was at Training College. In my petition I have stated the nature of work I did.

At this stage the stenographer comes and takes the proceedings.

20

Sgd. N. KRISHNADASAN,

30-11-45.

From 5-30 a.m. till 10 p.m. I had work and during that time I found time to run a tuck shop in a different place. No. Another man was running the tuck shop and not I. The man who ran the tuck shop kept accounts. That man is Dionis. I do not know where he is. I did not make any attempt to trace Dionis. I think he came from Talangama. He was employed at Royal College. Dionis never gave me accounts of the tuck shop. I have made three investments. One was on a property at Lunawa. That was a property purchased by me at a Fiscal's sale. No. I sold that land. I did not make an attempt to obtain a certified copy of the deed relating to the property at Lunawa. Before I purchased that land at Lunawa I gave a loan to the vendor of that deed in a sum of Rs. 250.

No. I did not give him a loan.

I have brought three actions for the recovery of monies due to me. One was for Rs. 600 the other for Rs. 400 and the other for Rs. 250.

In the action for the recovery of Rs. 250 the Lunawa property was sold and I purchased it. In that property there was a building constructed of mud walls and cadjan roof. I sold that property one year after I bought it. I sold it for Rs. 350.

I bought the Lunawa property for Rs. 350 and I sold the same for Rs. 350 within one year.

With that money I made a small investment along with the defendant.

No. 9
Plaintiff's
Evidence
Appuhamy
Cross-exami-
nation
—continued.

The investment was on a paddy field and I paid Rs. 625. Apart from this purchase I have given a loan to Samaraweera and also made another small investment with my money. A paddy field was bought by myself and the defendant in the name of the defendant which was later mortgaged and the sum involved in the mortgage, viz. Rs. 250 was taken by the defendant.

Further hearing tomorrow.

N. KRISHNADASAN,
A. D. J.
30-11-45. 10

1-12-45.

Appearance as before, except Mr. Advocate Fernando for the plaintiff J. B. Appuhamy recalled, affirmed.

Cross-examinations (continued).

Yesterday I admitted certain statements that I made in petitions and memorials which I sent. The statements I made in these petitions were true and some were false. There were mistakes in the statements. These were not false statements. What I knew as facts I did not misstate. I do not know English and I may have made some typing mistakes in the petitions and memorials. There was no false statement made deliberately. 20

In the petition sent to the Director of Education in 1920 I said : " as head peon and butler my duties involved me in long hours of work and kept me fully occupied even on Sundays ". I said " during the vacations, though the work was not heavy there was plenty to do ".

I described the work during the holidays. I said that they kept me busy all the vacation. I said " the holidays were a very difficult matter ". I said that the strain was more and more difficult to bear. These statements are true.

In another petition I said that I was residing in the premises throughout the year and could not get out at any time. That statement is correct. 30

In the petition I sent to the Hon'ble the Colonial Secretary in 1926 I stated " Even during the vacation I remained in the College and did the work of a steward ". That statement is correct. I applied to be made a steward. I mentioned the work I did as being the work of a steward.

I said that I had to make room for emergencies when I had to go away.

In the petition of 4th June, 1937, to the Director of Education I said this : " My hours of duty are from 6 a.m. to 10 p.m. including Government holidays and Sundays ". I said that even during the College vacation I had to be on duty. These statements are correct. I stated that if I obtained a few days' leave I had to place a substitute. That too is correct. 40 I used to be given a food allowance during the vacation. At one time that was stopped. I sent a petition asking for restoration of the food allowance. At a certain stage I was refused that allowance by the Department. I said " if you cannot give me my food allowance let me take the vacation ".

Staying in Colombo in the vacation meant that I had to pay for my own food. That is why I asked for the allowance. I wanted that my allowance be granted or permission allowed to me to go home for the vacation.

No. 9
Plaintiff's
Evidence
Appuhamy
Cross-exami-
nation
—continued.

I received a letter from the Principal, Mr. H. S. Perera, on the 8th September, 1941.

(Shown letter D52). This is the letter I received. I was informed that no food allowance would be paid during the vacation.

It was to that letter that I sent a letter asking for permission to take the College vacation. I cannot remember it was for that I received a reply from the Director of Education, Mr. Patrick, on the 7th November, 1941.

(Mr. Advocate Wickremanayake produces this letter marked D53.) I was told that only teachers could be allowed the vacation.

In 1925 I was given free meals during the term time. During the holidays I was paid Rs. 15 per month as food expenses because I had to stay in the College.

I remember on one occasion when the food allowance was stopped I submitted a bill for diet during the vacation month for Rs. 20.25 for the diet for staying in College during the vacation. After a lot of trouble that was paid to me.

My vacations were spent in the Training College as a rule. When I needed to go out I took permission and placed a substitute. That substitute had to be paid, but not by me. I appointed a substitute out of one of the men working there. When I wanted to go I had to get permission and state the reason. I had to make an application for leave. I had to state the reason and I had to name a substitute. The leave granted to me was very limited. It was only by an application of that kind that I could take leave. If the matter was urgent I had to show a telegram.

In the result it was only very occasionally that I was able to go to Weligama. I had holidays once in 3 months. Though I spent my holidays in the College I took leave and came to Weligama when necessary. I stayed with the defendant when I came to Weligama. I was accommodated in my own house. That house is my house and I lived there.

The improvements to the building I spoke about before the defendant went into residence were small repairs.

Only the repairs to the roof were done before the defendant took up residence. The reconstruction was done after the defendant went into residence. After he went into residence he did not effect any repairs. I effected the repairs when the defendant was living in his own house. I did not say that the house was rebuilt when the defendant was living in it. I did the repairs. I was present when the work was going on. I cannot say who did the work. I was there only on one or two days when the work was being done.

No. 9
Plaintiff's
Evidence
Appuhamy
Cross-exami-
nation
—continued.

I was not in Court when the carpenter and mason gave evidence. I did not see them. If I see them I could recognise them. I did not come to the Courts before this. On any of the earlier days of trial I was not in Court premises. I was on the road near the resthouse. I had come then in connection with this case. I did not see the carpenter and mason.

I have heard of a man called Lavandris. I do not know a mason called Lavandris. There is a man called Charles Silva in the village.

If they said that they did not see me when they work, it is false. I did not tell the lawyers for the plaintiff that that statement was false. I told them that they supervised the building of the house. 10

I did not make any direct payment to my employees.

I have seen the tenants. I have come into contact with them. When I go for work on the land I spoke to them. The tenants were a lady and gentleman and some others. I do not know any of their names. Mrs. Wickremaratna made a false statement if she said that she did not have any dealings with me and never met me. I have met her and spoken to her. I did not tell the plaintiff's lawyers that I had met some of the tenants. They did not ask me whether I had dealings with the tenants. They did not ask me questions about the tenancy. The defendant never paid me any of the rent he collected. 20

I have had no dealings with the Urban Council authorities with regard to the building. I kept a copy of my personal file. My personal file is with the counsel for the defendant at the moment. I admit that he is having my personal file.

(Shown the personal file). (Witness is asked whether there are copies of letters sent by him to the department.).

The author of these letters is my nephew, Mr. Wijeratna. I cannot say whether the letters in the personal file are copies of letters sent by me to the department. These letters were written by my nephew, Mr. Wijeratna, with whom I stayed. 30

I told the Court that I was not present on the day the deed of transfer was written. The deed of transfer in my favour was executed on 10th October, 1919. That was during the term.

Delivery of possession was handed over by the vendor to the defendant I did not come to take possession. Possession was not given to me. Samaraweera gave possession of the land to the defendant.

(Shown P1.) This is the deed in my favour. I cannot recognise the signature of David Samaraweera. The title deeds were handed over after the execution of the transfer in my favour to the defendant. The defendant gave me the deeds. Mr. Samaraweera gave the title deeds to 40 the defendant. The defendant gave me the title deeds about 2 months after the transfer. He gave them to me in the Training College. I cannot exactly remember the date when they were sent. It might be in 1921. At that time there was no proposal of marriage for me from Gampaha.

I got married in 1943. At the time I joined the Training College under Mr. Evans my wife was not his ayah. She was working in the women's department under Mr. Evans. She did sewing, etc. During the term of my employment in the Training College in the men's department she was working in the women's department. She is now retired and gets a pension.

No. 9
Plaintiff's
Evidence
Appuhamy
Cross-exami-
nation
—continued.

About 2 or 3 years prior to the marriage the romance started. I go and supervise the work done in the women's department and my wife used to work there. I was not paying Court to her before 3 years prior to the marriage. I did not give her presents. There was no opportunity for that.

Prior to 1918 I saved money amounting to Rs. 10,000 to Rs. 15,000. After 1918 I did not continue to save at that rate. It was less. Even then I was able to save about Rs. 2,000 or Rs. 3,000.

I spent Rs. 5,500 on the purchase of this property. I spent another Rs. 4,000 on improvements. I have altogether in my life saved about Rs. 30,000. I have spent most of that. I had a total saving of Rs. 13,000 to Rs. 14,000.

I gave the balance savings to my relations. I have given money to the defendant and his children. I have given them presents.

I did not own a paddy field in Gampaha.

There is a field in Weligama which I took on a mortgage. Now I do not own a single paddy field. I cultivate my wife's fields now.

I spoke about a revolver. While I was working in the Training College there was an attempted burglary. I tackled the burglar. I received certain injuries. My services were recognised by the Government and I was given a reward of Rs. 20. Thereafter I made an application that I should be given a revolver. That was to look after my personal property.

In the petition I sent I stated that I had tackled a thief and was injured in the attempt. I pointed out that Government rewarded me for looking after Government property. I said that I was protecting Government property. That was immediately after the burglary that I made the application for a revolver. Mr. Lee Smith, the Principal, recommended the application. I was allowed a licence.

I told the Court that I wanted the properties belonging to me to go to my relations after my death. That was my desire and not a promise. If there was nobody else it was to go to them. I did not contemplate that it would go to someone else. I have no blood relations. The defendant and his people are considered my relations because I was brought up in that house. There is no blood relationship between us.

I did not make a Will. I did not consider making a Will. In 1937 I was seriously ill in the General Hospital. I was not married then. If I happened to have died it would not have been in accordance with my wishes that the defendant and his people would get my property.

No. 9
Plaintiff's
Evidence
Appuhamy
Cross-exami-
nation
—continued.

I never thought of selling my property. I did not take it for granted that my property will go to my relations. I never thought that I would die at that time. There was nobody else at that time for me to leave my property to.

I did not know what I was suffering from. After I got better I knew that I was having dysentery. I had fever. I cannot say for how long. I do not know whether my room in the Training College was disinfected.

I cannot say whether I sent the key of the almirah by the defendant to Mr. Bleakley. I cannot remember to whom I gave the key. Mr. Bleakley said that there were two people when he opened the almirah. They were two masters. Mr. Bleakley knows the masters. Either Mr. or Mrs. Wijeratna was present. The defendant was not present.

Mr. Bleakley said that certain articles were found at that time. Among these was a Mudaliyar's sword. I do not know whether that sword belonged to Mr. Wijeratna. I do not have a sword. It was Mr. Wijeratna's sword. I do not know whether his father was the Divisional Traffic Superintendent in the Railway. I do not know whether he became a Mudaliyar. I have seen a photograph of him in his Mudaliyar's uniform.

Mr. Wijeratna's sword was in my almirah because Mrs. Wijeratna had entrusted it to me for safekeeping when she was intending to go out of Colombo. Along with the sword she kept a bundle. I do not know what was in that bundle. It may have contained jewellery and gold sovereigns. I had my sovereigns in the almirah.

At that time I was on most cordial terms with the defendant and his family.

My job originally was not pensionable. Mr. Wijeratna who is the clerk in the State Council, through Mr. Jayasuriya whom he induced to move a motion to make the post pensionable got this post made pensionable for me. That was in 1938. I cannot say whether it was immediately after my illness.

30

In the case for the defendant, Alfred Samaraweera stated that he gave possession to the defendant two or three days after the deed was executed. It was put to him that it could not have been so because Mrs. Samaraweera had a life interest. I did not give those instructions.

(Mr. Wickremanayake produces D54 a certified copy of deed by Mrs. Samaraweera transferring her life interest to David Samaraweera.)

I told Court yesterday that I ran the tuck shop with the permission of Principal of the Training College. I knew that without the permission of Government a permanent Government servant could not do private business and get profits privately. The Principal ordered me to open the tuck shop. He put up the tuck shop. The Principal was Mr. Evans.

There was a time when I was doing the catering and sending out to market. I did not provide the food for the tuck shop. The permission for me to run the tuck shop was not given in writing. The department had given permission to Mr. Evans to get a tuck shop run by the general supervisor who was myself.

I say that permission of Government is necessary only for those in pensionable posts.

(Mr. Wickremanayake refers me to the Ceylon Government Manual of Procedure of 1940, section 165.)

The Director of Education had given Mr. Evans permission to start a tuck shop. Mr. Evans put up the building from his private funds. He asked me to run the tuck shop. After Mr. Evans left it was run till 1918. After he left the building was there. I ran the tuck shop till 1920. I did not take the building on rent. Mr. Evans' successor ordered me to
 10 carry on. Mr. Evans was succeeded by Mr. Lee Smith. I did not pay Mr. Evans rent for the building. He let me take the profits of the tuck shop. He did not spend more than Rs. 200 on the building.

Mr. Bleakley said that any permission given to me to run the tuck shop would be in my personal file. There is no such writing. I do not agree that it should be in my personal file. There is no such thing in the personal file because no such writing was given to me. There is no other authority for the running of the tuck shop as far as I know.

There is nothing in the personal file about the tuck shop. Someone had sent a petition about the tuck shop. I did not try to get a certified
 20 copy of that petition for my personal file. I did not tell my proctor anything about it. There was an inquiry held regarding the petition.

I told Court that I was engaged for about 2 years. During that time my relations with the defendant were cordial. There was a slight difference in the feelings. When I spoke of the marriage with the defendant, their feelings were a little strained.

I cannot believe that I said yesterday that during the engagement my relations with the defendant were not cordial. If I said so it is true that the relations were a bit strained after the proposal of marriage.

When I am questioned in a rough tone I got mixed up and must say
 30 something. I said the first statement yesterday in examination-in-chief.

When I said that the relations with the defendant were strained that is true. That was when I had this marriage proposal. I do not know whether it was recorded through a mistake on the part of Court or on my part.

At the time of the engagement there was slight displeasure on the part of the defendant. I noticed it when I went to see him. That was in 1943. After that I did not go to see defendant.

After that I did not demand rent from the defendant. My first intimation to the defendant that I was claiming title was through the
 40 letter sent through Mr. Kumarakulasinghe. I wrote that letter asking the defendant to buy the land from me. That was after my marriage. I received no reply from the defendant. My proctor did not tell me that there was a reply. After that I made efforts to sell the land. Plaintiff's offer through his broker was not the first offer. One G. Silva made an offer. G. Silva is the brother-in-law of the plaintiff. That was the only

No. 9
Plaintiff's
Evidence
Appuhamy
Cross-exami-
nation
—continued.

offer. G. Silva spoke to me on behalf of the plaintiff. There was another offer from a man of Weligama. That was after the offer of Silva. Before the offer there was no offer. I had no offer before Mr. Kumarakulasinghe sent the letter. I did not show the deed to anyone and I did not tell anyone about it.

In the letter sent by Mr. Kumarakulasinghe there is mention of offers by two people. That was on my instructions. I told the proctor that only one person offered to buy the property.

I just said that before the letter there were no offers. Either I made a mistake or Mr. Kumarakulasinghe made a mistake in writing the letter 10 D22.

I just said that in my instructions to Mr. Kumarakulasinghe there was one offer. I told Mr. Kumarakulasinghe that there was one offer. I said that several people had asked for the land, and not two persons. That statement I made to Kumarakulasinghe is not false.

The Arunadisi Stores people had asked me for the land. Only one person had asked me for the land. Others had talked to me about the land. I may have made a mistake in my confusion.

I had no offer before Mr. Kumarakulasinghe's letter. I told the proctor that I had one offer. That offer did not take effect. I sent a 20 letter through Kumarakulasinghe in March. I never met these people after that.

I first met them in Maradana casually. He is the Arunadisi Stores people. They are from Weligama. I know the man who made the offer. I do not know his name. That man had a child in the Training College. At the time I was not in the Training College. The Arunadisi Stores is opposite to the Lipton's Stores.

When I did not get a reply from the defendant I did not go and ask the Arunadisi Stores people to buy the land.

I met G. Silva in Colombo. He asked me where I was going. I had 30 gone to the Pavilion Hotel and I met him there. I told him that I intended to sell my land Palugahawatta and asked him to find bidders for the land.

He asked me where I was going and I said that I was going to sell the land. I had come to Colombo to purchase some articles. I gave him details of the property because I know him well. I told him where I was going and then told him about the property, because he was a friend of mine. He is a friend of mine for a long time. We were neighbours in Weligama. He is a clerk in an Insurance Co. I was drinking tea in the hotel when I met him. He told me that he had come there to have a cup of tea.

40

With regard to the mortgage by Samaraweera in my favour I do not know what that land is. I know nothing about the land. The defendant told us that his mother-in-law wanted to give some money to me and at her request the defendant lent that money in my name to Samaraweera. That is not true. I gave the money to the defendant to lend to Samara-

weera. I did not discharge the mortgage bond. The defendant did everything. Rs. 750 was lent to Samaraweera. That money was deducted from the amount of the consideration of this deed of transfer. That bond was discharged. I did not sign the discharge. I discharged that mortgaged bond. The money on that bond was not paid to me by the defendant in Colombo. I did not discharge that mortgaged bond. I deny that I discharged it. I did not sign it in Colombo or anywhere else.

No. 9
Plaintiff's
Evidence
Appuhamy
Cross-exami-
nation
—continued.

I was doing the tuck shop business. I had books of account of the money going in and coming out. I did not have accounts for my personal accounts. Only tuck shop accounts were in the books. I did not have books or the tuck shop now. I paid the money for the repairs to the building. I did not keep accounts of the money I gave the defendant. Whenever he asked me for money I gave him the money he required.

12-15 p.m.

Court adjourns till 1-30 p.m.

Sgd. N. KRISHNADASAN,

A. D. J.

1-12-45.

Trial resumed.

J. B. APPUHAMY recalled, affirmed.

(Mr. Wickremanayake produces as D55 the mortgage bond No. 230 of 22-11-1918 referred to in P1.)

Appuhamy
Re-exami-
nation

Re-examined by Mr. Advocate Fernando.

After I left Madulkelle hospital I took up duties in the Training College. My first job was as caterer. I got a salary of Rs. 30 per month. I was paid by Mr. Evans. I was caterer till I left. I drew a salary from the Government as peon Rs. 16 per month. I was paid by the office on a pay abstract.

As caterer I supplied the food for the Students and supervised the servants and the food. I had to cater for 150 students of both sections at the start.

The kitchen coolies did the purchasing of goods necessary for the catering. I purchased them. I did the supervising of the kitchen coolies. As caterer I get certain profits. I got a profit as a result of the boutique people giving me a rupee or two saying it was for rickshaw fare. I did not spend that for the rickshaw. I usually walked or cycled.

From 1912 to 1918 I had the tuck shop. I catered for the training students and for the pupils. There were about 150 students and about 800 to 900 pupils. The tuck shop catered for them all. There were chocolates, books, stationery, soap, powder, etc., I had soap and powder for the use of the masters and students. I had books for the pupils and also text books and exercise books for the students.

No. 9
Plaintiff's
Evidence
Appuhamy
Re-exami-
nation
—continued.

On the average I made about Rs. 200 to Rs. 175 by the sale of the books, etc. In the month of January I used to make a profit of about Rs. 1,200 in 10 days. During that time there are books for sale as it is the beginning of the term.

I was asked whether I purchased a property at a Fiscal's sale. I deny having purchased on a Fiscal's transfer. I produce P14 a certified copy of Deed 5576 dated 17th June, 1921, by which I sold the property. I point to the first recital on that deed. This shows that I did not purchase on the Fiscal's sale.

In my evidence I stated that I visited the defendant often. I did not visit him frequently because I could not do so. I went often when there was illness in the family, otherwise I did not go.

I was questioned with regard to certain documents alleged to be in the personal file. That personal file was in Mr. Wijeratna's house. He is the defendant's son-in-law. I used to get him to write all my letters.

Sgd. N. KRISHNADASAN,
A. D. J.
1-12-45.

Mr. Advocate Fernando offers to call as witness G. Silva, two of whose statements were spoken to by the plaintiff. 20

Mr. Advocate Wickremanayake states that he does not require that this witness should be called merely to prove that hearsay evidence and consents to that evidence being taken as evidence in this case.

Mr. Advocate Fernando does not call G. Silva.

Mr. Advocate Fernando closes his case reading in evidence P1 to P14.

Mr. Advocate Wickremanayake reads further in evidence documents up to D55.

Addresses on 3rd December, 1945.

Sgd. N. KRISHNADASAN,
A. D. J. 30
1-12-45.

3-12-45.

No. 10
Addresses of
Counsel

Plaintiff present.

Defendant present.

Appearance as before.

Mr. Gratiaen addresses me and cites :

28 N. L. R. 148.

Sec. 32, Registration Ordinance, Chap. 101.

Sec. 66 and sec. 98, Trust Ordinance, Chap. 72.

Keele on Trust, page 348.

40

Mr. Wickremañayake addresses me and cites :

7 N. L. R. 173.

Walter Perera, page 385.

1 S. C. R. 282.

Ramachandara 1860, page 145.

Mr. Gratiaen cites :

3 Civil Law Reports 65.

7 N. L. R. 91.

3 N. L. R. 213.

10 10 N. L. R. 183.

3 A. C. R. 84.

5 Thambiah 20.

Sgd. N. KRISHNADASAN,
3-12-45.

No. 10
Addresses of
Counsel
—continued.

No. 11

Judgment of the District Court

No. 11
Judgment of
the District
Court
12-3-46

JUDGMENT

Plaintiff having purchased the land described in the plaint from one T. B. Appuhamy has filed this action against the defendant for declaration of title and ejectment. The case for the defence is that the land in question was bought by defendant with his money in the name of Appuhamy and that Appuhamy was only a trustee and that he had no beneficial interest in the land to transfer to plaintiff. Defendant also relied on adverse possession by him from 10th October, 1919, the date when deed 260 (P1) was executed in favour of Appuhamy by Samaraweera, the previous owner. I have first to find whether this land was purchased from Samaraweera with defendant's money and whether Deed P1 was executed in trust. The only evidence adduced by the defendant to prove that he gave the Rs. 5,500 to Samaraweera for the land was his statement in the box that the money was his and that the deed was written in favour of Appuhamy to show that he had property qualification to enable him to get married. He said he did not give instructions to the notary and that he asked Samaraweera to instruct the notary to write the land in the name of Appuhamy. He also said that he did not know whether the notary knew that the land was being transferred in the name of Appuhamy instead of his.

Ago Singho the only other witness who was called to speak about this purchase said that he did not know with whose money the land was bought and why it was written in the name of Appuhamy. Defendant said that he discussed this transfer with Appuhamy in the earlier part of 1919 and gave him Deed P1 in 1921 to be shown to the parents of some

No. 11
Judgment of
the District
Court
12-3-46
—continued.

prospective bride. At the time of execution of P1 there was Mortgage Bond No. 230 of 22-11-18 (P13) executed by Samaraweera in favour of Appuhamy. Defendant in his attempt to show that the money on the Bond was not lent out by Appuhamy made conflicting statements. First he stated that the Rs. 750 lent on the mortgage bond was his and that bond was written in Appuhamy's name as Samaraweera was a friend of his and he feared that he may not be able to recover interest from him. Later he said that a week before the execution of P13 his mother-in-law gave him the money and asked him to have the bond written in favour of Appuhamy. At the time of execution of P1 the land in question was 10 under mortgage to Mr. Senaratna by bond No. 525 of 20-7-14 (P2). P2 was discharged on 11-10-19 the day after the execution of P1. I find it difficult to accept the evidence of defendant that out of the Rs. 5,500 to be paid to Samaraweera he retained Rs. 870 to be paid to Appuhamy in settlement of Mortgage Bond P13 and paid the balance Rs. 4,630 to Samaraweera. Defendant had once mortgaged one of his lands to his daughter. He stated that he did not borrow any money from his daughter on that mortgage and that because he feared death at that time, he mortgaged the land to his daughter, so that his grandchildren who were not born at that time may be benefited to the extent of the mortgaged 20 amount from his estate. In 1919 when P1 was executed Appuhamy was 36 years of age and he did not marry till 1943. For all these reasons I find it difficult to accept the evidence led for the defence that defendant paid Samaraweera for the land and that he got it written in the name of Appuhamy. Mr. Bleakley is a disinterested witness, he said that Appuhamy ran the tuck shop at the Royal College. He also said that Mr. Evans did the catering for the resident students and that Appuhamy bought the premises. Appuhamy had opportunities of making money and he must have made much more than his salary. I prefer to accept his evidence that he paid for the land in question and that defendant 30 acted as his agent in having the deed executed and in getting possession from Samaraweera. The next point I have to decide is the question of adverse possession by the defendant. The extracts from the assessment book kept by the Urban Council, Weligama produced as D1 show that for many years defendant's name appears in the assessment book as the proprietor. The building applications produced as D2 to D7 show that defendant from time to time had applied to the Urban Council to extend or improve the building in question. The correspondence between defendant and Chairman Urban Council produced as D8 to D17 indicate that the Urban Council had looked upon the defendant as the owner of 40 these premises. I accept the evidence of Narayan and Mabel Wickremaratna that they rented out the house from defendant and looked upon him as the landlord. Appuhamy admitted that defendant collected rent and that he never got the rent from him. All these show that defendant was in the possession of this property from the time of its purchase from Samaraweera and that he was looked upon as the owner by many people. Appuhamy was brought up by the defendant's mother-in-law as a member of the family. Appuhamy had no other relatives except defendant and

his family and the relationship between Appuhamy and defendant's family was very cordial till Appuhamy's marriage. Appuhamy always stayed in Colombo and defendant looked after Appuhamy's interest in Appuhamy's dealings with others. Defendant took possession of the premises from Samaraweera rented it out to various people and later occupied it himself. The question is did he during this long period acknowledge ownership of these premises in anyone else. Defendant feared on many occasions that he will die. He mortgaged and transferred many of his properties at different times. At no time did he deal with this property as his own.

10 He said in evidence "In 1941 I asked him to retransfer this property to me." "He agreed" "he did not write to me", "I expected him to retransfer this land because he himself had said that he would transfer the property to me before he died". The evidence of defendant shows that he right-through acknowledged Appuhamy to have transferable interest in this land. This attitude is inconsistent in one who possess the land as his own and acknowledges no other owner. The right on which defendant possessed this land did not change during his long period of possession. He had taken possession from Samaraweera as the agent of Appuhamy and had remained in it with Appuhamy's leave and licence. The evidence

20 of defendant "It was understood by us that whatever Appuhamy had will come to my family when he died" shows the whole relationship between Appuhamy and defendant up to 1943. I hold that defendant by his long possession did not prescribe to this land. The possession of defendant was that of a relative who was occupying without paying rent and who expected this land to devolve on him or on his children on the death of the owner. His possession was not that of a "*bona fide*" possessor. The land and building had been improved. Defendant and his witnesses said that defendant spent on the improvements, whilst Appuhamy stated that defendant obtained from him from time to time monies that were

30 expended on the improvements. Even if defendant spent his money on these improvements he has no right of *jus retentionis*. He has no claim for compensation against plaintiff who has purchased this land from Appuhamy. I do not think plaintiff is an innocent purchaser who did not know that his claim to the land will be resisted by defendants; but whatever knowledge he had will not make him liable to pay compensation for defendant, even if he had effected the improvements. Plaintiff has claimed damages for wrongful occupation from 16th September, 1944. No evidence was led before me to show the amount of damage sustained. The rateable annual value placed upon the land by the Urban Council is Rs. 363. I

40 assess the damages at Rs. 40 a month. Possession of defendant was the possession of Appuhamy and I hold that plaintiff and his predecessors in title have been in prescriptive possession of the land in question.

I answer issues :

1. No.
4. No.
- 5A. No.
6. Defendant did not prescribe to this land.

No. 11
Judgment of
the District
Court
12-3-46
—continued.

- 7A. Plaintiff is entitled to a declaration of title to the land.
7B. I award him damages at the rate of Rs. 40 a month from 16th
September, 1944.
11. Yes.
13. No.
14. No.
19. No.
20. No.

I enter judgment declaring plaintiff to be entitled to the land in question. I award him damages at the rate of the Rs. 40 a month from 16th September, 1944, till defendant is ejected from the premises.

Plaintiff will be entitled to the costs of this action.

Sgd. N. KRISHNADASAN,

Pronounced in open Court.

12-3-46.

Sgd. C. J. C. JANSZ,
A. D. J.

Mr. E. P. Wijetunge for defendant files petition of appeal. Decree
14/3.

Sgd. C. J. C. JANSZ,
12-3-46. 20

No. 12
Decree of
the District
Court
12-3-46

No. 12

Decree of the District Court

DECREE

No. 16621.

IN THE DISTRICT COURT OF MATARA

KUDA MADANAGE SIYANERIS of Unawatuna in Galle*Plaintiff*.

vs.

JAYASINGHE ARACHCHIGE UDENIS DE SILVA of Walli-
wela, Village Headman of Walliwela in Weligama.....*Defendant*.

This action coming on for final disposal before N. Krishnadasan, Esquire, Additional District Judge of Matara, on the 31st day of July, 1945, and 12th day of March, 1946, in the presence of Mr. Adv. E. F. N. Gratiaen instructed by Mr. C. V. Samarasinghe, Proctor, on the part of the plaintiff and of Mr. Adv. Wickremanayake with Mr. Adv. Jayamanne instructed by Mr. E. P. Wijetunge, Proctor, on the part of the defendant.

It is ordered and decreed that the plaintiff abovenamed be and he is hereby declared entitled to all that the soil and trees of four contiguous allotments of land (1) Lot A of Malwattegewatta, (2) portion of Maligatenna, (3) Palugahawatta and a portion of Mannehegewatta all adjoining each other and forming one property and known as Palugahawatta situated at Weligama in the Weligam Korale of Matara District, Southern Province and bounded on the North by Maligatenna and Malawattegederawatta, on the East by Ihalawadugewatta Kalahegewatta and Palugahaliyadda, South by high road and a portion of Mannehegewatta, and on the West
 10 by Sandogemmalaiwatta and Wellekappittagederawatta containing in extent four acres and three roods together with all the buildings standing thereon.

No. 12
 Decree of
 the District
 Court
 12-3-46
 —continued.

It is further ordered and decreed that the defendant do pay to the plaintiff damages at Rs. 40 a month from 16th September, 1944, till defendant is ejected from the aforesaid premises and the plaintiff is restored to possession thereof.

It is further ordered and decreed that the defendant be ejected from the aforesaid premises and the plaintiff be put placed and quieted in possession thereof.

20 It is further ordered and decreed that the defendant do pay to the plaintiff the costs of this action as taxed by the officer of the Court.

The 12th day of March, 1946.

(Sgd.) C. J. C. JANSZ,
Addl. District Judge.

No. 13

Proceedings *re* Application for Execution of the D. C. Decree.

14-5-46.

MR. ADV. AZIZ instructed for plaintiff-petitioner.

MR. ADV. WICKREMANAYAKE with MR. ADV. SILVA instructed for the defendant-respondent.

30 Mr. Adv. Aziz :

Application is for the execution of the decree for possession and ejection costs have not been taxed as yet.

Section 761, etc., C. P. C. (Agreed that the petition of appeal was filed before the application for writ).

Defendant parted with all his properties. *Vide* P4 (after institution of action P5 after action.)

Petitioner is prepared to pay Rs. 15,000 in cash as security if so ordered, 41 N. L. R. 89.

No. 13
 Proceedings
re Appli-
 cation for
 Execution of
 the D. C.
 Decree
 14-5-46

No. 18
Proceedings
re Appli-
cation for
Execution of
the D. C.
Decree
G. H. Jamis
Silva
Examination

Mr. Adv. Aziz calls :

G. H. JAMIS SILVA affirmed, 56 years, trader of Weligama.

Plaintiff is a trader at Opanayake. I look after his interests in Weligama. The defendant resides in the subject-matter of this action.

After the institution of this action the defendant cut down a jak tree that was slanting owing to the water-course. I saw the cutting in April, 1945. One Abraham Silva removed the tree that was cut down. He bought the tree. About June, 1945, the defendant cut down five coconut trees. Those were trees that had been struck by lightning. The trunks were sold to a lime-kiln-owner. 10

In March this year the defendant cut down five arecanut trees. They were good healthy trees. Last March the defendant was seated in a boutique at the junction. As I passed the boutique he told all the people who were there for me to hear it that although the plaintiff had won his case he would only get a heap of earth to possess.

G. H. Jamis
Silva
Cross-exami-
nation

Cross-examined.

I have never been on talking terms with the defendant. The defendant has very often done things to rouse my temper.

I am not angry with him.

In 1929 the defendant prevented me from building a house on Gama-20 gewatta which was the subject matter of a partition suit instituted by the defendant. The partition suit was concluded in 1942. After the jak trees and coconut trees were cut down in 1945 there was an application made to this Court for an injunction to restrain the defendant from causing damage.

I know that jak trees cannot be cut down under the Defence Regulations. A police officer inquired into the cutting of the jak trees. No action was filed by the police against the defendant for cutting down the tree. I do not know what happened, but the injunction matter was not inquired into. 30

An arecanut tree is worth more than Rs. 5.

Re-examination nil.

Sgd. C. J. C. JANSZ,
A. D. J.
14-5-46.

D. D. W.
Mohotti
Examination

D. D. W. MOHOTTI affirmed, T 909, Kamburupitiya Police.

I inquired into the cutting of a jak tree on the premises in question. I was then attached to the Weligama Police. I inquired into the felling of the jak tree in April, 1945, on a complaint made by the petitioner.

The tree that had been cut was not a withered tree. It was a live 40 tree. I judged this from the stump and the branches. The trunk had been removed. There was an exudation from the trunk which had dried up. The leaves were green ones which had wilted. I inquired from the defendant, and he showed me a permit to cut down a tree,

Cross-examination.

The complaint was made on the 18th April and I went there on the 19th April.

According to the complaint the tree had been cut on the 18th April, 1945. I cannot say whether the tree was slanting over the water-course.

Re-examination nil.

Sgd. C. J. C. JANSZ,
A. D. J.
14-5-46.

No. 18
Proceedings
re Appli-
cation for
Execution of
the D. C.
Decree
D. D. W.
Mohotti
Cross-exami-
nation

10 C. M. GRERO affirmed, Inspector of Police, Weligama.

C. M. Grero
Examination

On a complaint made by petitioner I went to this land. The complaint was made on 25th March, 1946. I saw 5 stumps of 5 arecanut trees. Three trees appeared to have been recently cut and two some time earlier.

Defendant objected to the plaintiff entering into the premises. I went round the premises with the defendant.

Cross-examination.

The complaint was that he had information that the defendant had cut down jak trees, coconut trees, breadfruit trees and other valuable trees. 20 No valuable trees had been cut. A wood apple tree and a coconut tree had fallen down probably owing to the blowing. Defendant told me that he had used the arecanut trees for the fence.

C. M. Grero
Cross-exami-
nation

Re-examination.

Defendant did not show me the arecanut stumps used for the fence.

C. M. Grero
Re-exami-
nation

Sgd. C. J. C. JANSZ,
A. D. J.
14-5-46.

Mr. Adv. Aziz closes his case reading in evidence P4 to P5.

Sgd. C. J. C. JANSZ,
A. D. J.

30

Mr. Adv. Wikremanayake is not calling any evidence. His argument. Case was fought out on the question of prescription in addition to trust.

Defendant comes under section 763 C. P. C.

Admittedly the defendant has lived in the premises for the last 10 years.

At the most the Court may make an order calling upon the defendant to deposit Rs. 40 per month as a rental to the credit of the case.

No. 13
Proceedings
re Appli-
cation for
Execution of
the D. C.
Decree
C. M. Greo
Re-exami-
nation
—continued.

A lump sum even by way of rental may be ordered as security.

Affidavit states that doors, hinges, electric installations are being damaged.

35 N. L. R. 390.

Order on 21st May, 1946.

Sgd. C. J. C. JANSZ,
A. D. J.

14-5-46.

No. 14
Order of the
District
Court
on Appli-
cation for
Execution of
the D. C.
Decree
21-5-46

No. 14

**Order of the District Court on Application for Execution of
D. C. Decree**

10

ORDER

This is an application for execution of the decree for possession and ejection entered in favour of the plaintiff-petitioner after petition of appeal was filed by the unsuccessful defendant-respondent.

One of the points raised at the inquiry was whether the provisions of section 761 or 763 C. P. C. is applicable to this case. In my opinion the provisions of section 763 are applicable.

In the affidavit filed by the petitioner allegations that damage had been caused to doors, hinges and electric installations have been alleged, but these allegations have not been borne out by the evidence led at the inquiry.

Whatever may be the allegations made in the affidavit the evidence shows that at any rate three arecanut trees were cut down after judgment was pronounced in this case and that the defendant had parted with some of his properties on P4 and P5 during the pendency of this case.

Under these circumstances I think plaintiff is entitled to the execution of the decree for possession and ejection in his favour on sufficient security being granted by him for the restitution of the property which may be taken in execution and for the due performance of the decree or order of the Supreme Court.

30

I think this security should be substantial and I fix it at Rs. 20,000 in land or cash.

Plaintiff is entitled to the costs of this inquiry and this should be paid to him by the defendant.

Sgd. C. J. C. JANSZ,
A. D. J.

21-5-46.

No. 15

No. 15
 Petition of
 Appeal to
 the Supreme
 Court
 12-3-46

Petition of Appeal to the Supreme Court

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

JAYASINGHE ARACHCHIGE UDENIS DE SILVA of Walli-
 wela in Weligama *Defendant-Appellant.*

D. C. Matara Case No. 16621 *vs.*

KUDA MADANAGE SIYANERIS of Unawatuna in Galle.....*Plaintiff-
 Respondent.*

To

10 THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUSTICES
 OF THE SUPREME COURT OF THE ISLAND OF CEYLON, COLOMBO.

On this 12th day of March, 1946.

The petition of appeal of the defendant-appellant abovenamed appearing by Edmund Perera Wijetunga his Proctor states as follows :—

1. The plaintiff-respondent instituted this action against the defendant-appellant for a declaration of title to the land called Palugahawatta and the buildings thereon. The plaintiff-respondent claims title to the said premises by right of purchase on Deed No. 239 of 28th June, 1944, from one J. B. Appuhamy who it was alleged became entitled to
 20 the said premises on Deed No. 260 of 10th October, 1919.

2. The defendant-appellant pleaded title by prescription. The defendant-appellant further pleaded that the consideration for the said Deed No. 260 of 10th October, 1919, had been provided by the defendant-appellant and that the said J. B. Appuhamy had obtained only the legal title while the beneficial interest was to the defendant-appellant.

3. The parties went to trial on several issues of chiefly prescription and trust. After trial the learned District Judge by a judgment delivered on 12th March, 1946, held that the plaintiff-respondent was entitled to the said premises and that the defendant-appellant was not entitled to
 30 recover compensation for improvements effected.

4. Being aggrieved at the said judgment the defendant-appellant begs leave to appeal to Your Lordships' Honourable Court on the following among other grounds that may be urged by Counsel at the hearing of this appeal :—

(a) The said judgment is contrary to law and to the weight of the evidence led in the case.

(b) The evidence accepted by the learned District Judge shows conclusively that after the execution of the Deed No. 260 of 10th October,

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Petition of
Appeal to
the Supreme
Court
12-3-46
—continued.

1919, the defendant-appellant had his name registered as owner in the Assessment Register of the Urban Council of Weligama and that he thereafter openly possessed the said premises, renting out the building and appropriating the rents and putting up new buildings. The said possession of the defendant-appellant continued undisturbed and uninterrupted for a period of 25 years. It is submitted that a stronger case of prescriptive possession would be difficult to find.

(c) To meet this it was suggested for the plaintiff-respondent and the suggestion has been accepted by the learned District Judge that by reason of the fact that the defendant-appellant and the said J. B. Appuhamy had 10 been brought up in the same household there should be an inference that the possession of the defendant-appellant was with the permission of the said J. B. Appuhamy. It is submitted with respect, that therein the learned District Judge has clearly misdirected himself in the burden of proof. It is submitted that possession more particularly such possession as has been proved in this case, gives rise to the presumption that it is proprietary. If the plaintiff-respondent sought to set up a case of possession with leave and licence he should have alleged and proved it. No such allegation has been made in the pleadings although the plaintiff-respondent had an opportunity of doing so in the replication he filed. 20 Instead he has merely denied the possession of the defendant-appellant.

Not one word of evidence has been led even in evidence-in-chief of permissive user. The case for the plaintiff-respondent, on the contrary was that Appuhamy possessed in that he spent three vacations a year in that house. That story of Appuhamy is clearly false.

(d) The evidence accepted by the learned District Judge shows that Appuhamy was not present at the execution of the Deed No. 260 of 10th October, 1919, that the consideration was handed over by the defendant-appellant, that the title deeds were handed over to the defendant-appellant that two or three days later possession was delivered to the defendant-30 appellant by Alfred Samaraweera a relative of the vendor on instructions from the vendor, that the defendant-appellant appropriated all the rents throughout until he went into occupation of the premises, that all improvements were effected by the defendant-appellant and that he expended considerable sums of his own money as the said improvements. In the light of these facts it is submitted that there can be no inference of permissive user.

(e) The whole case for the plaintiff-respondent was based is on the presumption of leave and licence as will be seen from the authorities cited by Counsel for the plaintiff-respondent, viz.: 7 New Law Reports 91 and 40 10 New Law Reports 183. Those cases it is submitted go on the basis that permission at the outset of possession was either admitted or proved.

(f) Even on the question of trust the possession proved in this case and the facts set out in paragraph (D) hereof strongly corroborate the story of the defendant-appellant and are utterly inconsistent with beneficial ownership in the said J. B. Appuhamy. There is the further fact that while it is incredible on the evidence that J. B. Appuhamy could

have found the money for the consideration in the said deed all the evidence show that the defendant-appellant was a well-to-do trader who had purchased other properties and had regularly invested monies on loans.

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Petition of
Appeal to
the Supreme
Court
12-3-46
—continued.

(g) On the question of compensation it is submitted that in any event even on the footing that the defendant-appellant was a *mala-fide* possessor he is entitled to compensation for the improvements that have been held to have been effected by him.

(h) It is submitted that the plaintiff-respondent is a speculative purchaser who did know and could have known the real facts had he cared to make the proper inquiries after he became aware of the registration of the caveat.

Wherefore the defendant-appellant prays :—

- (i.) That the said judgment and decree of the learned District Judge be set aside ;
- (ii.) That the action of the plaintiff-respondent be dismissed ;
- (iii.) That in any event, even if the said action be not dismissed, the defendant-appellant be awarded compensation for the improvements in the sum prayed for in the answer and decreed entitled to a “*jus retentionis*” till payment of the said compensation ;
- (iv.) For the costs of this appeal and in the trial in the Court below ; and
- (v.) For such other and further relief as to Your Lordships’ Honourable Court shall seem meet.

Sgd. EDMUND P. WIJETUNGA,
Proctor for Defendant-Appellant.

No. 16

Judgment of the Supreme Court

S. C. No. 347—L.

D. C. Matara No. 16621.

No. 16
Judgment
of the
Supreme
Court
1-10-48

Present : CANEKERATNE & NAGALINGAM, JJ.

Counsel : N. E. WEERASOORIYA, K.C., with E. G. WIKREME-NAYAKE & W. D. GUNARATNE, for Defendant-Appellant.

H. V. PERERA, K.C., with S. W. JAYASURIYA, for Plaintiff-Respondent.

Argued on : 16th September, 1948.

Delivered on : 1st October, 1948.

NAGALINGAM, J.

This is an appeal by the defendant from a judgment pronounced by the District Judge of Matara declaring the plaintiff entitled to certain land and premises the subject of the suit. It is common ground between

No. 16
Judgment of
the Supreme
Court
1-10-48
—continued.

the parties that the land at one time belonged to one David Samaraweera. By Deed P10 of 1919, David Samaraweera conveyed the land and premises to one Appuhamy who in turn conveyed it to the plaintiff. It is not disputed by the defendant that the documentary title is in the plaintiff. The case for the defendant is that he himself purchased the property from David Samaraweera providing the consideration himself but that he had the deed executed in favour of Appuhamy, actuated by certain considerations, and that Appuhamy was merely a trustee of the property for him and that he has all along had had the beneficial interest in it. Appuhamy, it is common ground again, was brought up from his infancy by the defendant's mother-in-law. Appuhamy has no blood relations and he has been treated right through as though he were a member of the family of the defendant's mother-in-law.

That it was the defendant who negotiated the purchase of the property and that it was he who actually handed the consideration to the vendor at the time of the execution of the deed of transfer, that it was to him that the vendor delivered possession of the premises after the sale, are all matters which are not in dispute between the parties. Further, that it was the defendant's name that was entered in the Urban District Council's and later in the Urban Council's books as the owner of the property for purposes of rating is also conceded by Appuhamy. That the defendant has since the execution of the Deed P1 been renting out the premises from time to time to various tenants and that it was he who collected the rents and that it was he who appropriated the rents are also matters which are accepted by Appuhamy himself as being true. It is also not disputed by Appuhamy that it was the defendant who effected repairs from time to time, the repairs being of a very extensive nature; the purchase price of the property was Rs. 5,500, but according to the defendant the repairs cost another Rs. 5,000. The defendant has been able to prove, however, that apart from the extensive repairs he completely renovated the building practically rebuilding it at a cost of about Rs. 15,000 the land and premises as they now stand have been valued by a competent valuator at about Rs. 37,000.

The reason for the deed being taken in favour of Appuhamy to get married advantageously, for if it were shown that he is a man possessed of immovable property the chances of finding a suitable bride would have been greater than if he had none. The defendant says that that was the only reason and no other. Appuhamy, on the contrary, denies that there was any such reason underlying the purchase, but asserts that he provided the money, that he handed the money to the defendant to make the purchase and that he looked upon the defendant as a brother-in-law and as he was employed in Colombo and could not attend to the details of the purchase in person, he requested the defendant to attend to all these matters, which the defendant did on his behalf; further, that as he was unmarried and had a sufficient income in Colombo to maintain himself, he did not, in view of the state of relationship between himself and the defendant, insist upon the latter handing over the rents when the property

was rented out or object to the defendant going into occupation himself, nor even thereafter think of demanding any rent in respect of such occupation. Appuhamy also alleges that it was he who provided the money for the various repairs although he does not go to the extent of saying that in regard to the rebuilding of the property he provided any.

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—continued.

The question that has to be decided is whether the purchase was made by the defendant as stated by him or whether it was a purchase by Appuhamy. That the defendant was pecuniarily well off so as to be able to afford the purchase is not denied by Appuhamy; but the defendant has 10 challenged the financial ability of Appuhamy to have made a purchase of the nature and extent not only in 1919, the date of the purchase, but even at any subsequent date. Appuhamy started life as a personal servant of Mr. Evans, Principal of the Training College, on a salary of Rs. 15 a month in 1909 which was later increased from time to time till it reached a sum of Rs. 30 a month in 1919. His salary alone, therefore, would not have permitted him to make the purchase. He has, however, attempted to account for the requisite funds by referring to his having made money in other avocations. At one time he says that between 1912 and 1918, a 20 period of six years, he ran the tuck shop at the Training College and that during this period he made a profit of between Rs. 15,000 and Rs. 18,000, a most incredible story to my mind. But he himself when pressed with regard to his tuck shop activities admitted that a man was employed by him to run the tuck shop and that he did not make any money by catering. He then suggested that he had cows at the Training College and by the supply of milk and by taking the produce from the Training College premises he used to make about Rs. 250 a month. This, again, is a story hard to believe, when one considers that it was before 1919 that he made this large turnover. But, it is significant, not a single question was put to the defendant with regard to Appuhamy's activities either in running 30 a dairy or in appropriating to himself the produce from the Training College premises, nor were such questions addressed to Mr. Bleakley who was summoned as a witness for the plaintiff, for he could and would have been in a position to give the Court some indication as to whether the story was even a probable one. Appuhamy admittedly had two Savings Bank accounts at that time, one in the Post Office Savings Bank and the other in the Ceylon Savings Bank, and the maximum sum he had at any one time was a sum of Rs. 1,000 in one of the accounts. He, however, tenders the only possible explanation as to where the rest of the money was, and that is, he had the money with him in currency notes in his own 40 almirah. He seems to have made in all two or three small investments of about Rs. 250 each and nothing more, though he says he had these large sums of Rs. 15,000 to Rs. 18,000. These circumstances coupled with the fact that Appuhamy, according to him had permitted the defendant to receive the rents without raising a question at any time, especially when the rent was in the neighbourhood of Rs. 30 or Rs. 40 a month, throw very great doubts on his version that it was he who provided the consideration.

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Judgment of
the Supreme
Court
1-10-48
—continued.

Appuhamy further states that he continued to advance moneys for repairs. Even then he made no attempt to have the rents which the defendant had recovered from the tenants applied in meeting at least part of the cost of the improvements. It must be borne in mind that the defendant was not a poor relation of Appuhamy in needy circumstances. He was a very well-to-do man and no explanation has been given and none attempted as to why Appuhamy should have permitted the income from all his hard earned savings to be appropriated and utilised by the defendant, especially when Appuhamy himself was creating a fund of his own out of his savings. Appuhamy further says he kept no accounts and he asked for no accounts from the defendant in regard to the amounts spent on repairs. His knowledge of the building programme to which the premises were subjected to is very meagre and scanty, and although he claimed to have met and talked to one or more of the tenants who had been in occupation of the premises none of them supported him.

The learned Judge has approached the determination of the question as to who provided the money for the purchase of the land by throwing the burden of proof on the defendant. Had the fact that the deed was in favour of Appuhamy stood alone, it would have been correct to presume that it was Appuhamy who provided the consideration. But on the admission of Appuhamy that he himself did not pay the money to the vendor but that it was the defendant, the burden at that stage clearly shifted to Appuhamy to establish that he had paid or handed the money to the defendant. Apart from his *ipse dixit* there is no other proof and had the learned Judge approached the question in this way he would have reached a conclusion opposite to that which he arrived at, as the reasoning underlying his decision would be equally applicable.

There is another circumstance adverted to by the learned Judge for the view he took, and that is that there was an anterior mortgage bond in favour of Appuhamy for a sum of Rs. 750 on the very property transferred and that the defendant gave two different versions in regard to this mortgage. The defendant stated at one time that he had lent his own money to David Samaraweera but that as David Samaraweera was well known to him and he would not have been in a position to recover any interest from him he took the mortgage in favour of Appuhamy. At another time he stated that his mother-in-law had provided the sum of Rs. 750 as a gift to Appuhamy and wanted him to invest it on behalf of Appuhamy. The defendant ultimately reconciled both these statements and stated that it was his intention to lend this money by taking the mortgage bond in favour of Appuhamy for the reason he had given but that before the bond was executed his mother-in-law gave him the money and that the money that was lent, therefore, at the date it was lent was money that had belonged to Appuhamy himself. This statement of the defendant that it was his mother-in-law who provided the money for the mortgage bond receives strong corroboration from Appuhamy himself,

although the latter tried later to whittle away the effect of his testimony. Says Appuhamy that the defendant told him that defendant's mother-in-law wanted to give some money to him and at her request the defendant lent that money to Samaraweera. Why should the defendant have mentioned this at all to Appuhamy, if that were not the fact? It seems to me that the very circumstance that these facts were brought to the notice of Appuhamy strongly corroborate and bear testimony to the truth of the defendant's version of the transaction.

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Judgment of
the Supreme
Court
1-10-48
—continued.

An argument was sought to be built based on the fact that there was
10 already a mortgage in favour of Appuhamy at the time of the execution
of the deed of transfer, namely, that the probabilities would have been
that the transfer too was intended to be a beneficial one in favour of
Appuhamy. As against this consideration all the other circumstances
strongly point to the contrary being more near the truth.

In regard to the question of prescription that was raised in the case,
the learned Judge finds that though possession was with the defendant,
it was one with the leave and licence of Appuhamy. Appuhamy, however,
does not give any express testimony on the point, but rather leaves it to
be inferred from the circumstance of relationship. No explanation has
20 been given as to why in the assessment book of the local authority the
name of Appuhamy himself was not inserted but that of the defendant.
The learned Judge has not disbelieved the defendant or his witnesses in
reaching the conclusion he arrived at, but it was as a result of throwing
the burden of proof wrongly on the defendant in regard to establishing
that it was he who provided the purchase money for the transfer that he
arrived at a decision unfavourable to the defendant.

On a consideration of all the evidence in the case, I am satisfied that
the case presented by the defendant is substantially true and that he has
acquired prescriptive title to the land and premises.

30 The learned Judge finds that the plaintiff is not an innocent purchaser ;
with this finding I see no reason to disagree, but in view of the conclusions
I have reached on the other issues, this finding has no bearing on the case.

For the reasons given I would allow the appeal, set aside the judgment
of the learned District Judge and dismiss plaintiff's action with costs both
in this and the Court below.

Sgd. C. NAGALINGAM,
Puisne Justice.

CANEKERATNE, J.

I agree.

Sgd. A. R. H. CANEKERATNE,
Puisne Justice.

No. 17
Decree of
the Supreme
Court
1-10-48

Decree of the Supreme Court

**GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN,
IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS, KING,
DEFENDER OF THE FAITH.**

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

K. M. SIYANERIS of Unawatuna in Galle.....*Plaintiff-Respondent.*

against

J. A. UDENIS DE SILVA of Walliwala in Weligama.....*Defendant-Appellant.* 10

Action No. 16621.

District Court of Matara.

This cause coming on for hearing and determination on the 16th September and 1st October, 1948, and on this day, upon an appeal preferred by the defendant before the Hon. Mr. A. R. H. Canekeratne, K.C., Puisne Justice, and the Hon. Mr. C. Nagalingam, K.C., Puisne Justice of this Court, in the presence of Counsel for the appellant and respondent.

It is considered and adjudged that this appeal be and the same is hereby allowed. The judgment of the District Judge is set aside and the plaintiff's action is dismissed with costs both in this and the Court below.

Witness the Hon. Mr. Edwin Arthur Lewis Wijeyewardene, K.C.,²⁰ Acting Chief Justice, at Colombo, the 1st day of October, in the year of our Lord One thousand Nine hundred and Forty-eight, and of Our Reign the Twelfth.

**CLARENCE DE SILVA,
*Registrar, S. C.***

No. 18
Application
for Conditional
Leave to Appeal to
the Privy
Council
18-10-48

Application for Conditional Leave to Appeal to the Privy Council.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

In the matter of an application for Conditional Leave to Appeal under the provisions of the Appeals (Privy Council) Ordinance (Chapter 85).

KUDA MADANAGE SIYANERIS of Unawatuna in Galle.....*Petitioner (Plaintiff-Respondent).*

No. 347/L of 1947 (Final)

D. C. Matara No. 16621. vs.

JAYASINGHE ARACHCHIGE UDENIS DE SILVA of Walliwala in Weligama..... *Respondent (Defendant-Appellant).*

To

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUDGES OF
THE HONOURABLE THE SUPREME COURT OF THE ISLAND OF CEYLON.

No. 18
Application
for Condi-
tional Leave
to Appeal to
the Privy
Council
13-10-48
—continued.

On this 13th day of October, 1948.

The petition of the petitioner abovenamed appearing by Geoffrey Thomas Hale, Frederick Claude Rowan, Joseph Francis Martyn and Henric Theodore Perera carrying on business in partnership in Colombo under the name, style and firm of Julius & Creasy and their Assistants Alexander Nereus Wiratunge, John Peter Edmund Gregory, James Arelu-
10 par Naidoo, Alexander Richard Neville de Fonseka, Behram Kaikhushroo Billimoria, Lena Charlotte Fernando and Mohamed Shereeff Mohamed Shabdeen, Proctors, states as follows :—

1. That feeling aggrieved by the judgment and decree of this Court pronounced on 1st October, 1948, the said petitioner abovenamed is desirous of appealing therefrom to His Majesty the King in Council.

2. The said judgment is a final judgment and the matter in dispute on the appeal is well over the value of Rupees Five thousand (Rs. 5,000).

3. That notice of the intended application for leave to appeal was served on the respondent in terms of Rule (2) of the Rules in the Schedule
20 to the Appeals (Privy Council) Ordinance on 11th October, 1948, by sending notices to the respondent abovenamed by :

- (a) Registered post ;
- (b) Ordinary post ;
- (c) Personal service.

Wherefore the petitioner prays that Your Lordships' Court be pleased to grant Conditional Leave to Appeal against the said judgment and decree of this Court dated 1st October, 1948, to His Majesty the King in Council and for such other and further relief as to Your Lordships shall seem meet.

Sgd. JULIUS & CREASY,
Proctor for Petitioner.

No. 19
Decree of the
Supreme
Court grant-
ing Condi-
tional Leave
18-10-48

No. 19

Decree of the Supreme Court granting Conditional Leave.

**GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN,
IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS, KING,
DEFENDER OF THE FAITH.**

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

**KUDA MADANAGE SIYANERIS of Unawatuna in Galle.....*Plaintiff*
*Respondent (Petitioner).***

against

**JAYASINGHE ARACHCHIGE UDENIS DE SILVA of Walliwala 10
in Weligama*Defendant-Appellant (Respondent).***

Action No. 16621 (S. C. No. 347 (F) of 1947).

District Court of Matara.

In the matter of an application by the petitioner abovenamed for Conditional Leave to appeal to His Majesty the King in Council against the decree of this Court dated 1st October, 1948.

This matter coming on for hearing and determination on the 18th day of October, 1948, before the Hon. Mr. E. A. L. Wijeyewardene, K.C., Acting Chief Justice, and the Hon. Mr. C. Nagalingam, K.C., Puisne Justice of this Court, in the presence of Counsel for the applicant. 20

It is considered and adjudged that this application be and the same is hereby allowed upon the condition that the applicant do with one month from this date :

(1) Deposit with the Registrar of the Supreme Court a sum of Rs. 3,000 and hypothecate the same by bond or such other security as the Court in terms of section 7 (1) of the Appellate Procedure (Privy Council) Order shall on application made after due notice to the other side approve ;

(2) Deposit in terms of the provisions of section 8 (a) of the Appellate Procedure (Privy Council) Order with the Registrar a sum of Rs. 300 in respect of fees mentioned in section 4 (b) and (c) of Ordinance No. 31 of 30 1909 (Chapter 85).

Provided that the applicant may apply in writing to the said Registrar stating whether he intends to print the record or any part thereof in Ceylon for an estimate of such amounts and fees and thereafter deposit the estimated sum with the said Registrar.

Witness the Hon. Mr. Edwin Arthur Lewis Wijeyewardene, K.C., Acting Chief Justice, at Colombo, the 18th day of October, in the year of our Lord One thousand Nine hundred and Forty-eight, and of Our Reign the Twelfth.

Sgd. N. NAVARATNAM, 40
Deputy Registrar, S. C.

Application for Final Leave to Appeal to the Privy Council.**IN THE SUPREME COURT OF THE ISLAND OF CEYLON**

KUDA MADANAGE SIYANERIS of Unawatuna in Galle.....*Petitioner.*
(*Plaintiff-Respondent.*)

No. 347/L of 1947 (Final)

D. C. Matara No. 16621.

vs.

JAYASINGHE ARACHCHIGE UDENIS DE SILVA of Walliwala
in Weligama *Respondent (Defendant-Appellant).*

10 To

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUDGES OF
THE HONOURABLE THE SUPREME COURT OF THE ISLAND OF CEYLON.

On this 26th day of October, 1948.

The humble petition of the plaintiff in District Court Matara No. 16621 plaintiff-respondent in Supreme Court No. 347/L of 1947 (Final) and petitioner abovenamed appearing by Geoffrey Thomas Hale, Frederick Claude Rowan, Joseph Francis Martyn and Henric Theodore Perera carrying on business in partnership in Colombo under the name, style and firm of Julius & Creasy and their Assistants Alexander Nereus Wiratunga,
20 John Peter Edmund Gregory, James Arelupar Naidoo, Alexander Richard Neville de Fonseka, Behram Kaikhushroo Billimoria, Lena Charlotte Fernando and Mohamed Shereef Mohamed Shabdeen, Proctors, states as follows :—

1. That the plaintiff in District Court Matara No. 16621, plaintiff-respondent in Supreme Court No. 347/L of 1947 (Final) and petitioner abovenamed on the 18th day of October, 1948, obtained from this Honourable Court Conditional Leave to appeal to His Majesty the King in Council against the judgment of this Court in the above-styled action pronounced on the 1st day of October, 1948.

30 2. That the plaintiff in District Court Matara No. 16621, plaintiff-respondent in Supreme Court No. 347/L of 1947 (Final) and petitioner abovenamed has in compliance with the conditions upon which such leave was granted deposited with the Registrar of this Court and duly hypothecated by bond on the 26th day of October, 1948, a sum of Rs. 3,000 as security for the due prosecution of the appeal and the payment of all such costs as may become payable to the defendant in District Court Matara No. 16621, defendant-appellant in Supreme Court No. 347/L of 1947 (Final) and respondent in the event of the plaintiff in District Court Matara No. 16621, plaintiff-respondent in Supreme Court No. 347/L of
40 1947 (Final) and petitioner abovenamed not obtaining an order granting him Final Leave to Appeal or of the appeal being dismissed for non-prosecution, or of His Majesty the King in Council ordering the said petitioner to pay the abovenamed respondent's costs as the case may be,

No. 20
Application
for Final
Leave to
Appeal to
the Privy
Council
26-10-48
—continued.

3. That the plaintiff in District Court Matara No. 16621, plaintiff-respondent in Supreme Court No. 347/L of 1947 (Final) and petitioner abovenamed has further deposited with the said Registrar a sum of Rs. 300 in respect of fees.

4. That the plaintiff in District Court Matara No. 16621, plaintiff-respondent in Supreme Court No. 347/L of 1947 (Final) and petitioner abovenamed has given due notice to the defendant in District Court Matara No. 16621, defendant-appellant in Supreme Court No. 347/L of 1947 (Final) and respondent abovenamed of his application.

Wherefore the plaintiff in District Court Matara No. 16621, plaintiff-respondent in Supreme Court No. 347/L of 1947 (Final) and petitioner abovenamed prays that he be granted Final Leave to Appeal against the said judgment of this Court dated the 1st day of October, 1948, to His Majesty the King in Council, and for such other and further relief in the premises as to Your Lordships' Court shall seem meet.

Sgd. JULIUS & CREASY,
*Proctors for Plaintiff in District Court Matara
No. 16621, Plaintiff-Respondent in Supreme
Court No. 347/L of 1947 (Final) and Petitioner
to this Application.* 20

No. 21

No. 21
Decree of
the Supreme
Court grant-
ing Final
Leave to
Appeal
2-11-48

Decree of the Supreme Court granting Final Leave to Appeal.

GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN,
IRELAND, AND THE BRITISH DOMINIONS BEYOND THE SEAS, KING
DEFENDER OF THE FAITH.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

KUDA MADANAGE SIYANERIS of Unawatuna in Galle.....*Petitioner.*
(Plaintiff-Respondent).

against

JAYASINGHE ARACHCHIGE UDENIS DE SILVA of Walliwala 30
in Weligama *Respondent (Defendant-Appellant).*

Action No. 16621 (S. C. No. 347 Final). District Court of Matara.

In the matter of an application by the plaintiff abovenamed dated 26th October, 1948, for Final Leave to Appeal to His Majesty the King in Council from the judgment and decree of this Court dated 1st October, 1948,

This matter coming on for hearing and determination on the 2nd day of November, 1948, before the Hon. Mr. A. R. H. Canekeratne, K.C., Puisne Justice, and the Hon. Mr. C. Nagalingam, K.C., Puisne Justice of this Court, in the presence of Counsel for the applicant and respondent.

No. 21
Decree of
the Supreme
Court grant-
ing Final
Leave to
Appeal
2-11-48
—continued.

The applicant having complied with the conditions imposed on him by the Order of this Court dated the 18th October, 1948, granting Conditional Leave to Appeal.

It is ordered that the applicant's application for Final Leave to Appeal to His Majesty the King in Council be and the same is hereby allowed.

Witness the Hon. Sir John Curtois Howard, Kt., K.C., Chief Justice, at Colombo, the Second day of November, in the year of our Lord One thousand Nine hundred and Forty-eight, and of Our Reign the Twelfth.

Sgd. N. NAVARATNAM,
Deputy Registrar, S. C.

Exhibits

P 11
Deed
No. 12408
3-10-1883

PART II.

EXHIBITS

P 11. Deed No. 12408

TRANSLATION

Rs. 1,500.

Transfer No. 12408.

I, Samaraweera Patabendige Don Bastian de Silva Notary of Weligama in Weligam Totamune, do hereby sell and transfer (1) all that the soil and fruit trees and the thirteen cubits tiled house standing thereon purchased by me upon Deed No. 9100 delivered over herewith of the land Palugahawatta situate at Walliwala in the said Totamune bounded on the east by Kalehegewatta, west by Etambagahawatta and Maligatenna, south by Palugahaliadda, north by Kaluahe Vidanaegewatta and Malwattewatta for Rupees six hundred ; (2) all that the one-third portion allotted to me in Matara D. C. Partition Case No. 32821 and purchased upon Deeds 9324 and 9273 of the land Malwattewatta situated at Weligama aforesaid bounded on the east by Agrabodhi Vihare west by Kudalamulla, south by Palugahawatta, north by Vila for Rupees three hundred ; (3) the land Alawattehena paid for upon Matara Kachcheri. Receipts No. 69 and 206 and obtained from Government and possessed by me situate at Borale in Weligam Korale bounded on the east by Paragahawatta, west by Wewa and the minor road to Kodagoda, south by Wankadawewa and road, north by Polgahawila and Managewatta in extent 26A. 3R. 32P. for Rupees six hundred in all for a sum of Rupees one thousand five hundred (Rs. 1,500) unto Galapattige, Don Hendrick Perera of Weligama.

Therefore having duly counted and received the said sum in full I do hereof renounce all the rights titles and interests which I and my heirs, etc. have had in and to the premises hereof sold and conveyed so that the vendee and his heirs, etc. might have and hold the same unto and to their use absolutely for ever with full right to deal therewith just as they may like.

30

Thus this deed of transfer was duly executed and granted this 3rd day of October, 1883, at Weligama.

Sgd. S. P. D. B. DE SILVA,

Witnesses :

1. Sgd. WATTUHAMY.
2. Sgd. D. JOHANIS DE SILVA.

Sgd. D. C. WICKREMASINGHE,
N. P.

Attested on 3rd October, 1883.

P 11. Deed No. 9100

Exhibits

TRANSLATION

P 11
Deed
No. 9100
6-10-1879**Transfer No. 9100.**

I, Don Heradus de Silva Abeygunawardena Overseer of Weligama in Weligam Totamune do hereby sell and transfer the soil and fruit trees and the thirteen cubits tiled house standing thereon, I am entitled upon Deed No. 6129 attested by Sehu Selema Lebbe Marikadan Seidu Mustapha Lebbe, Notary Public of the land Palugahawatta situated at Walliwala in the said Totamune bounded on the east by Kalehegewatta, west by Etambagahawatta and Maligatenna, south by Palugahaliadda, north by Kalehe Vidanegewatta and Malwattengewatta for a sum of Rupees one thousand five hundred (Rs. 1,500) unto Samaraweera Patabendige Don Bastian de Silva Notaris Mahatmaya of Weligama.

Therefore having duly counted and received the said sum in full I do hereof renounce all the rights titles and interests which I and my heirs, etc. have had in and to the premises hereby sold and conveyed so that the vendor and his heirs, etc. might have and hold the same unto and to their use absolutely for ever with full right to deal therewith just as they may like.

20 Thus this Deed of Transfer was duly executed and granted this 6th day of October, 1879, at Weligama.

Sgd. D. H. D. SILVA.

Witnesses :

1. Sgd. D. H. PERERA.
2. Sgd. D. H. D. A. GOONEWARDENA.

Sgd. D. C. WICKREMASINGHE,

Attested on 6th October, 1879.

N. P.

P 11. Proceedings D. C. Matara 32821.P 11
Proceedings
D. C. Matara
32821
9-10-1882

IN THE DISTRICT COURT OF MATARA.

30 SAMARAWEERA PATABENDIGE DON BASTIAN DE SILVA
of Galle..... *Plaintiff.*

No. 32821

vs.

1. MALWATTAGE DON BASTIAN,
2. MALWATTAGE DONA CECILIANA,
3. ABEYSURIYA POLWATTE PATABENDIGE THEPANIS APPU,
4. DANTANARAYANA LEWISHAMY RALE,
5. LOKUBADU JAYASURIYA PATABENDIGE ANGOAPPU,
6. Do. BABASINGO all of Weligama..... *Defendants.*

Exhibits
 P 11
 Proceedings
 D. C. Matara
 32821
 9-10-1882
 —continued.

9th October, 1882.

3rd Defendant affirmed :

I know Malwattagewatta and the boundaries. Plaintiff is entitled to 1/3rd of paraveni 1st and 2nd defendants are entitled 28th/80 of the paraveni, I (3rd defendant is entitled to 1/40, 4th defendant to 1/6th 5th and 6th defendants 10/80ths plaintiff is entitled to planters (half the trees) share of 3rd plantation of the enclosures Wewa-addarakoratuwa Wattuwawatta koratuwa and Maligatennekoratuwa planters share of the 3rd plantation on Lewis Appu Padinchikoratuwa belongs to me.

Planter's share of 3rd plantation on Dinesappupadinchikoratuwa belongs to 5th defendant. Planters' share of the other four koratuwas of 3rd plantation belong to 1st and 2nd defendants. The two houses of 9 cubits belong to 1st defendant. The two houses of 5 cubits belong to 2nd defendant. This land is possessed in common, the 1st, 2nd, 4th, 5th and 6th defendants all present and admit the correctness of the above evidence and ask for a partition of the land.

A partition of the shares as given above is decreed costs to be borne *pro rata*.

Plaintiff nominates Mr. W. S. Armstrong to carry out the partition. Defendants agree to same surveyor commission to issue accordingly. 20
 9th October, 1882.

Sgd. EVAN MARBARY BYRDE,
 D. J.

Reference

The portion marked Lr. A on plan was allotted to plaintiff.
 Do. B on plan was allotted to 1st and 2nd defendants.
 Do. C on plan was allotted to 4th defendant.
 Do. D on plan was allotted to 6th defendant.
 Do. E on plan was allotted to 5th defendant.
 Do. F on plan was allotted to 3rd defendant. 30

Containing in extent :

| | | Acres | Roods | Perches |
|-------|-------|-------|-------|---------|
| Lr. A | 1/3 | ... | 3 | 3 0 |
| B | 28/80 | ... | 3 | 3 30 |
| C | 1/6 | ... | 1 | 3 20 |
| D | 5/80 | ... | 0 | 3 — |
| E | 5/80 | ... | 0 | 3 — |
| F | 1/40 | ... | 0 | 1 10 |
| Total | ... | ... | 11 | 1 20 |

Surveyed and partitioned on the 11th and 12th December, 1882. 40

Sgd. W. S. ARMSTRONG,
 Licensed Surveyor.

Sworn before me on this 9th day of June, 1883 :
 Sgd. EVAN MARBARY BYRDE,
 District Judge.

15th June, 1883.

Plaintiff absent, defendants except the 2nd and 6th present, 2nd reported not known. The appraisement of 4th defendant's share has been reduced and now he is willing that the partition be confirmed. As all parties have not agreed the partition is confirmed.

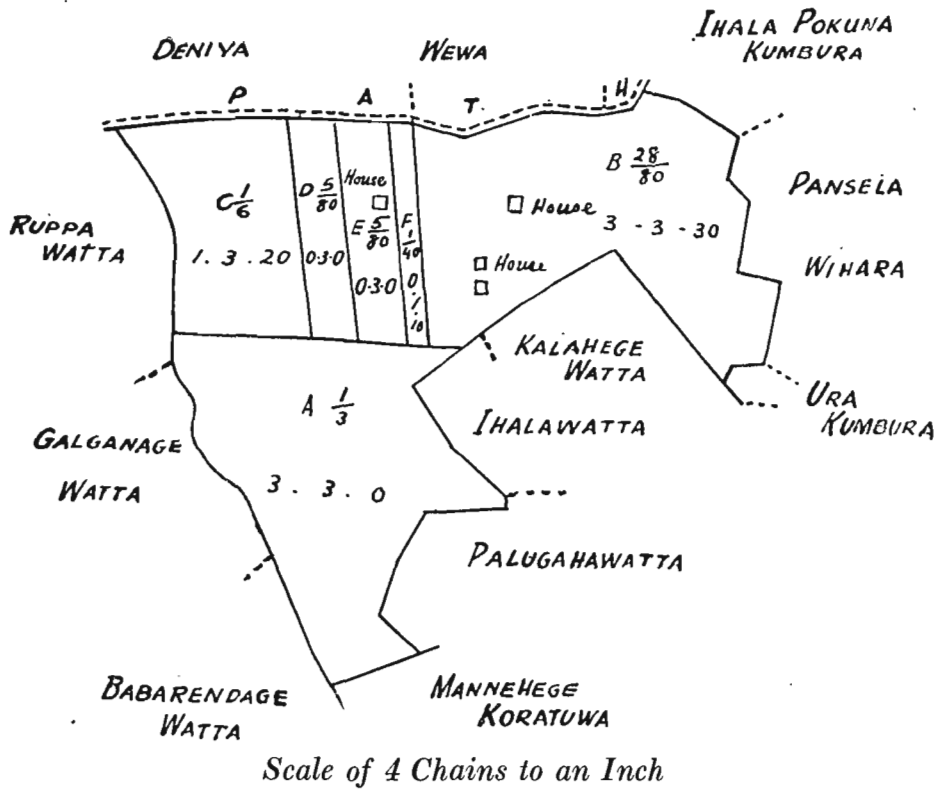
Exhibits

P 11
Proceedings
D. C. Matara
32821
9-10-1882
—continued.

Sgd. EVAN MARBARY BYRDE,
D. J.

P 11. Plan

P 11
Plan
12-12-1882



10 Plan of Partition of the Land called Malwattagewatta situated at Weligama in the District Court of Matara.

D. C. Case No. 32821.

Containing in extent 11A. 1R. 20P.

Surveyed 11th and 12th day of December, 1882.

Sgd. W. S. ARMSTRONG,
Licensed Surveyor.

Exhibits
 P 11
 Deed
 No. 3884
 16-9-1894

P 11. Deed No. 3884

TRANSLATION

Rs. 2,000.
 Lands 2.

Deed of Gift No. 3884

The purport of this Deed of gift written and granted this 16th day of September, 1894, at Walliwala is as follows :—

I, Galappathigei Don Hendrick Perera Acting Vidane of Weligama Totamunc having realised it my duty to give something by way of gift unto Proctor Mr. David Samaraweera of the Fort of Matara who has been of 10 great assistance to me, I do hereby gift unto him the lands described below subject to the conditions set out herein (1) all that the soil and fruit trees and the thirteen cubits tiled house thereon which I am entitled upon Deed No. 12408 dated 3rd October, 1883, attested by Don Carolis Wickremasinha Notary Public of the land Palugahawatta situated at Watterwala in Weligam Totamunc bounded on the east by Kalehegewatta, west by Etambagahawatta and Maligatenna, south by Palugahaliadda, north by Kalahe Vidanegewatta and Malwattagewatta worth Rupees one thousand five hundred (Rs. 1,500); (2) the one-third portion allotted to me upon D. C. Matara partition Case No. 32821 and the fruit trees standing 20 thereon of the land Malwattagewatta situate at Weligama bounded on the east by Agrabodhi Vihare, west by Kudalumulla, south by Palugahawatta, north by Wela, worth Rupees five hundred (Rs. 500) all of the value of Rupees two thousand and agree as follows :—

That during the lifetime of Susana Perera Samaraweera Notaris Hamine of Weligama, she shall have the right to possess the produce of the two said lands, the fruit trees and the house standing thereon by leasing same or in any manner she desires. That except possessing in that manner she shall not have the right to do anything else. Having thus possessed at the death of the said Notaris Hamine the same shall 30 devolve on the said Proctor Mr. David Samaraweera and the generation of his children and grandchildren descendant from him for possession and to deal therewith just as they may like.

Thus this Deed of Gift was duly executed and granted on these aforesaid date and place.

Sgd. G. D. H. PERERA.

And I the said David Samaraweera Proctor do hereof thankfully accept the foregoing gift hereof made.

Sgd. DAVID SAMARAWEERA,

Witness :
 D. H. SAMARAWEERA.

L. C. S. CHITTINAIKE, 40
 N. P.

Exhibits
 P 2.
 Deed
 No. 525
 23-7-1914
 —continued.

ratne, Esquire, his certain attorney heirs executors administrators and assigns for which payment well and truly to be made I do bind myself my heirs executors and administrators firmly by these presents and as security for the due repayment thereof I the said David Samaraweera do hereby mortgage and hypothecate as a primary mortgage to and with the said obligee and his aforewritten the premises described in the schedule hereunder written, and all my right title interest claim and demand whatsoever in and to the same.

The Schedule above referred to

1. An allotment of land called "Kaluhelagoda" in extent about 10 twelve acres one rood and thirty perches (12A. 1R. 30P.) situate at Midigama in the Weligam Korale of Matara District, Southern Province, and bounded on the north by Crown land, east by Crown land and a water course and lot 683 in P. Plan 1657 and T. P. 200144, west by T. P.s 200144 and 200147 and Crown land and on the south also by Crown land which I am entitled to by right of purchase on Crown grant dated 31st December, 1902.

2. An allotment of land called Kaluhelagoda in extent nine acres two roods (9A. 2R.) situated at Midigama aforesaid and bounded on the north by T. P. 200148 and lot 683 in P. Plan 1657, east by lot 683 in 20 P. Plan 1657 and a water course, south by a water course and lot 683 in P. P. 1657, west by land claimed by natives lot 15695 in P. P. 6096 and a road which I am entitled to on deed No. 2500 dated 12th June, 1910, and on certain other deeds herewith granted.

3. All the soil and trees and the tiled house of thirteen cubits standing on Palugahawatta in extent about three acres situated at Walliwala in Weligama Weligam Korale, Southern Province and bounded on the east by Kalehegewatta, on the west by Elambagahawatta and Maligatenna south by Palugahaliyadda and on the north by Kalehevidanagewatta and Malwattegewatta. 30

4. The divided one-third portion of Malwattegewatta situated at Weligama aforesaid which lot is in extent about four acres and bounded on the east by Agra Bodhi Vihare, west by Kudalumulla, north by a portion of the same land and on the south by Palugahawatta which I am entitled to by right of gift Deed No. 3884 dated 16th September, 1894.

In witness whereof I do set my hand to three of the same tenor and date as these presents at Matara on this twenty-third day of July, One thousand Nine hundred and Fourteen.

DAVID SAMARAWEERA

Witnesses :

1. Sgd. J. E. PERERA
2. Sgd. CHAS. A. WEERASINGHA

40

Sgd. J. S. WIRASINHA,
Ntary Public.

Attested on 23-7-1914.

D 49. Decree D. C. Matara 7387

Exhibits

D 49. Partition.

D 49.
Decree D. C.
Matara
7387
8-6-17

IN THE DISTRICT COURT OF MATARA

J. U. DE SILVA, Police Officer of Walliwala.....*Plaintiff*

No. 7387. vs.

1. EMALIYA ABEYSURIYA FONSEKA and husband
2. E. H. DE FONSEKA of Panadura
3. NICOLINE ABEYSURIYA of Weligama
4. LEVENDIRIS ILLAMPERUMA of Hettiweediya
- 10 5. PERIS ABEYSURIYA of Kadeweediya, Weligama
6. CICILIANA ABEYSURIYA of Karaweediya
7. CHARLES ABEYSURIYA of Diyatalawa
8. KANDEGE SINGHOAPPU of Walliwala*Defendants.*

DECREE

This action coming on for disposal before J. C. W. Rock, Esquire, District Judge of Matara on the 1st May and 8th June, 1917, in the presence of Mr. Advocate Jayawickrema with Mr. Solomons for the plaintiff and of Mr. Samaraweera for the 1st and 2nd defendants it is ordered and decreed that the parties to this action be and they are hereby
 20 declared entitled as absolute owners to the land called Urakumbura situated at Weligama and bounded on the north by Pinkoratuwa, east by Halgahakumbura Padeniya and Paluwatta, south by the high road and west by Palugahaliyadda Pinkella Talttigewatta Pokunakoratuwa and Malwattegewatta and more fully described as lots A, B and C in the Plan

Exhibits of Survey No. 993 made by Mr. H. V. Ernst, Licensed Surveyor of Matara,
 D 49. under the commission issued to him in the above case and filed of record
 Decree D. C. in the following shares to wit :—
 Matara
 7387
 8-6-17
 —continued.

The plaintiff to $1/6 + 1/12 = 18/72$
 The 1st defendant to $1/12 + 1/72 = 7/72$
 The 3rd defendant $1/12 = 6/72$
 The 4th defendant $1/6 + 1/6 + 2/72 = 26/72$
 The 5th defendant $1/6 + 1/72 = 13/72$
 The 6th defendant $1/72$
 The 7th defendant to $1/72$

10

And it is further ordered that the said common property be sold if a partition is not practicable the parties paying costs *pro rata*.

The 8th day of June, 1917.

Sgd. J. C. W. ROCK,
District Judge.

FINAL DECREE

This action coming on for final disposal before J. C. W. Rock, Esquire, District Judge Matara, on the 9th January, 1918, it is ordered and decreed that the Plan of Partition No. 717 and the schedule of appraisement of the field called Irakumbura situated at Weligama within the jurisdiction of this Court made by Mr. H. V. Ernst, Licensed Surveyor of Matara, 20 under the commission issued to him in the above case and filed of record be and the same are hereby confirmed and the plaintiff is hereby declared entitled to the portion marked

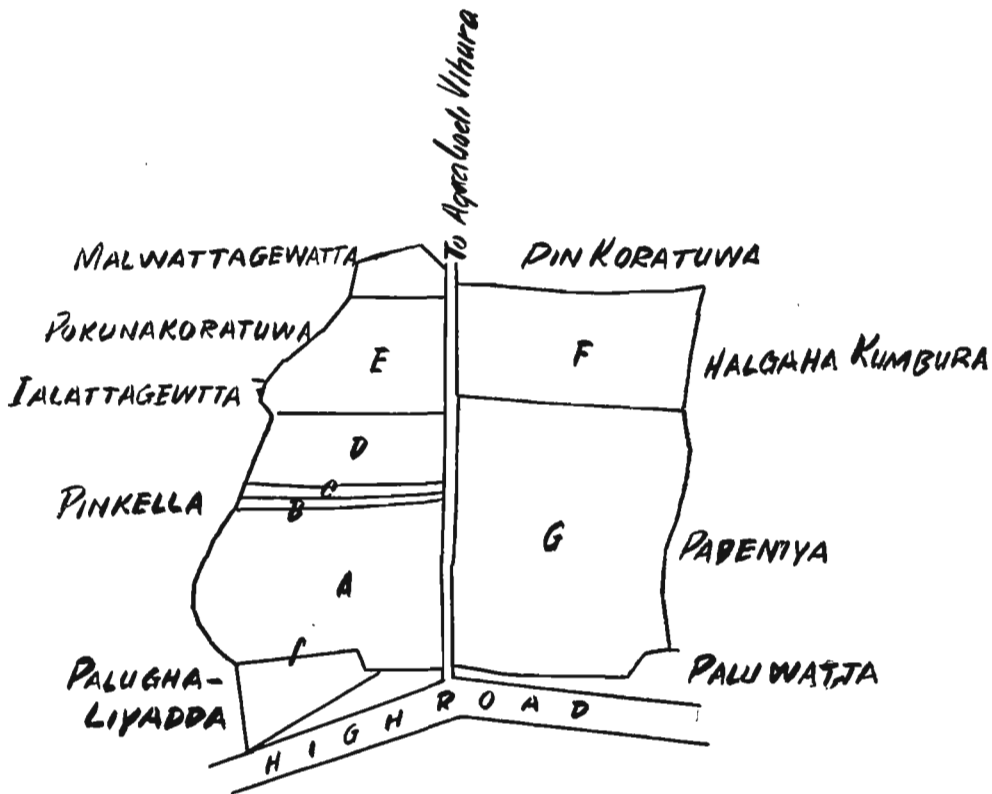
| | |
|---|---|
| the 6th defendant to portion marked | A |
| the 7th defendant to do. | B |
| the 3rd defendant to do. | C |
| the 1st defendant to do. | D |
| the 5th defendant to do. | E |
| the 4th defendant to do. | F |
| in the said Plan of Partition as absolute owners. | G |

30

The 9th day of January, 1918.

Sgd. J. C. W. ROCK,
District Judge.

Exhibits
 D 49.
 Decree D. C.
 Matara
 7387
 8-6-17
 —continued.



Scale of 2 Chains to an Inch

Plan of Survey of an allotment of land called URAKUMBURA situated at Weligama in the Weligam Korale of the Matara District, Southern Province.

- | | | |
|--|--|-----------------------------|
| <p>10</p> <p>A. Plaintiff. B. 6th Defendant C. 7th Defendant D. 3rd Defendant E. 1st Defendant F. 5th Defendant G. 4th Defendant</p> | <p>Bounded on the North by East by South by West by</p> | <p>} as described above</p> |
|--|--|-----------------------------|

Purchased under Writ No. 7387 D. C. Matara in extent 1A. 3R. 12P.

Surveyed on 13th day of January, 1917.

Sgd. H. V. ERNST,
 Licensed Surveyor.

Exhibits
 D 50,
 Decree C. R.
 Matara
 9126
 23-1-18

D 50. Decree C. R. Matara 9126

D 50.

IN THE COURT OF REQUESTS, MATARA

J. U. DE SILVA, Police Officer of Walliwala.....*Plaintiff*

No. 9126. (Partition)

1. EMALIYA ABEYSURIYA FONSEKA of Panadura and husband
2. E. H. DE FONSEKA of Panadura
3. NICOLINE ABEYSURIYA of Weligama
4. LEVENDIRIS ILLAMPERUMA of Hettiweediya
5. PERIS ABEYSURIYA of Karaweediya, Weligama -10
6. CICILIANA ABEYSURIYA of Karaweediya, Weligama
7. CHARLES ABEYSURIYA of Diyatalawa*Defendants.*

DECREE

This action coming on for disposal before J. C. W. Rock, Esquire, Addl. Commissioner of Requests, Matara, on the 23rd August and 21st September, 1917, in the presence of Mr. Advocate Jayawickrema with Mr. Solomons for the plaintiff and of Mr. Samaraweera for the 1st and 2nd defendants it is ordered and decreed that the parties to this action be and they are hereby declared entitled as absolute owners to the field called Aramanawela situated at Weligama and bounded on the north by Illan 20 Kon Walawwewatta *alias* Galwediyawatta, east by Wadugekumbura, south by Appugewatta and Gamagewatta and on the west by the rail road and more fully described in the Plan of Survey No. 994 made by Mr. H. V. Ernst, Licensed Surveyor of Matara, under the commission issued to him, in the above case and filed of record in the following shares to wit :—

- The plaintiff to $1/6 + 1/12 + 1/6$
- The 1st defendant to $1/12 + 1/144$
- The 3rd defendant to $1/12 + 1/144$
- The 4th defendant to $1/6 + 2/72$
- The 5th defendant to $1/6 + 1/72$
- The 6th defendant to $1/72$
- The 7th defendant to $1/72$

30

And it is further ordered that the said common property be sold if a partition is not practicable, the parties paying costs *pro rata*.

Sgd. J. C. W. ROCK,
District Judge.

FINAL DECREE

This action coming on for final disposal before J. C. W. Rock, Esquire, Addl. Commissioner of Requests of Matara, on the 23rd January, 1918, in the presence of Mr. Solomons for the plaintiff, it is ordered and decreed 40 that the plan of partition and the schedule of appraisement of the field called Aramanawala situated at Weligama within the jurisdiction of this Court made by Mr. H. V. Ernst, Licensed Surveyor of Matara, under the commission issued to him in the above case and filed record be and same are

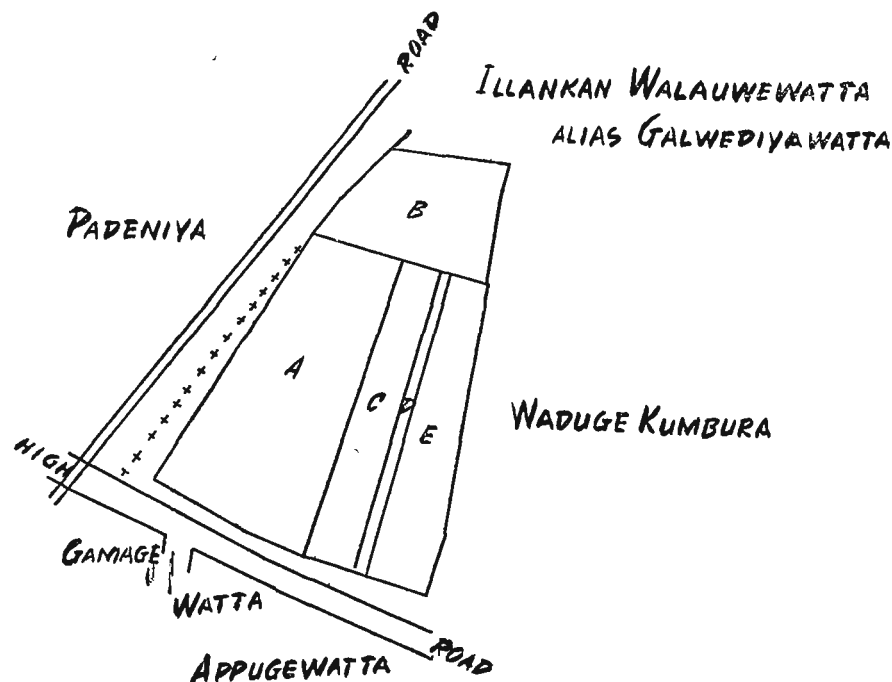
hereby confirmed and the plaintiff is hereby declared entitled to the portion marked
 the 5th defendant to
 the 1st and 3rd defendant to
 the 6th and 7th defendant to
 the 4th defendant to
 in the said plan of partition as absolute owners.

A
 B
 C
 D
 E

Exhibits
 D 50.
 Decree C. R.
 Matara
 9126
 23-1-18
 —continued.

Sgd. J. C. W. ROCK,
 A. C. R.

The 23rd day of January, 1918.



10

Scale of 2 Chains to an Inch

Plan of Survey of an allotment of Land called Aramanawela situated at Weligama in the Weligam Korale in Matara District, Southern Province

| | | |
|-------------------------|----------------------|---------------------------------------|
| Bounded on the North by | } as described above | A. Plff. 5/12 0-2-18 3/4 |
| East by | | B. 5th deft. 13/72 0-1-02 19/24 |
| South by | | C. 1st & 3rd deft. 13/72 0-1-02 19/24 |
| West by | | D. 6th & 7th deft. 2/72 0-0-06 7/12 |
| | | E. 4th deft. 7/36 0-1-06 1/12 |

20 Purchased under Writ No. 9125 C. R. Matara. Containing in extent 1A. 1R. 35P.

Surveyed on the 13th day of January, 1917.

Sgd. H. V. ERNST,
 Licensed Surveyor.

Exhibits

P 13.
Deed
No. 230
22-11-1918

P 13. Deed No. 230

P 13.

Mortgage Amount Rs. 750
No. 230. Lands 1.

Know all men by these presents that I David Samaraweera of Matara hereinafter sometimes calling myself and referred to as the obligor am held and firmly bound unto Jayasinhage Babunappuhamy of Cinnamon Gardens, Colombo, hereinafter called and referred to as the obligee in the sum of (Rs. 750) Rupees seven hundred and fifty of lawful money of 10 Ceylon for money borrowed and received by me from the said obligee at the execution of these presents (the receipt whereof I do hereby admit and acknowledge). I therefore hereby renouncing the *beneficium non numerate pecuniæ* do engage and bind myself my heirs executors and administrators do pay on demand unto the said obligee or to his certain heirs attorneys executors administrators or assigns the said sum of (Rs. 750) Rupees seven hundred and fifty with interest thereon at and after the rate of 18 per centum per annum to be computed from this date.

And for securing the payment of the said amount with the interest accruing thereon I the said obligor do hereby especially mortgage and 20 hypothecate to and with the said obligee his heirs executors administrators and assigns as a first or primary mortgage free from any encumbrances whatsoever and subject to the conditions hereinafter mentioned the following property with all the estate right title interest claim and demand whatsoever therein and thereto of me the said obligor to wit :—

All that soil and trees of the lot marked letter A of the land called Ganahalawatta situated at Hettiweediya in Weligama in the Weligam Korale of Matara District, Southern Province, and bounded on the north by Wijewatta, on the east by high road, on the south by Pankolaliadda and on the west by lot marked letter B of the same land containing in extent 30 three roods and ten perches (0A. 3R. 10P.) as depicted in Plan of Survey dated 13th September, 1889, made by Mr. J. A. Buyzer, Licensed Surveyor of Matara which said premises have been held and possessed by me the said obligor under and by virtue of transfer deed No. 2989 of 26th June, 1893, and attested by L. S. Chittranayake Notary Public and Transfer Deed No. 3344 of 21st December, 1893, and attested by the said notary and I the said obligor for myself my heirs executors and administrators do hereby covenant with the said obligee his heirs executors administrators and assigns that I have good and just right to make the foregoing mortgage of the above described premises in manner aforesaid 40 and that the same are not nor is any part thereof subject to any other mortgage or to any prohibition seizure lease lien or other charge or encumbrance whatsoever, and further that I the said obligor and my aforewritten shall and will at all times hereafter so long as any money shall be owing under or in respect of these presents do and execute or cause to be done and executed all such further and other acts deeds matters and things for better and more perfectly assuring the said premises hereby

expressed to be mortgaged or any part thereof in manner intended by these presents as by the said obligee or his aforewritten shall or may be reasonably required. Exhibits P 18 Deed No. 230 22-11-1918

In witnesses whereof I the said obligor do set my hand to three of the same tenor and date as these presents at Matara this twenty-second day of November, One thousand Nine hundred and Eighteen. *continued.*

Witnesses :

Sgd. DAVID SAMARAWEERA.

1. Sgd. G. D. JOHN DE SILVA
- 10 2. Sgd. ALWIS RATNAWEERA

Sgd. ISAAC ABEDEERA,
N. P.

Attested on 22nd November, 1918.

D 54. Deed No. 244

D 54.

D 54.
Deed
No. 244
6-8-1919

Amount Rs. 100.
Lands 4

Transfer No. 244

Know all men by these Presents that I Susan Perera Abeywardana Samaraweera of Weligama hereinafter sometimes called and referred to as the vendor for and in consideration of the sum of (Rs. 100) Rupees One hundred lawful money of Ceylon well and truly paid to me by David Samaraweera, Esquire, Proctor of Matara, hereinafter sometimes called and referred to as the vendee (the receipt whereof I do hereby admit and acknowledge) have granted bargained sold assigned transferred and set over and do by these presents grant bargain sell assign transfer and set over unto the said vendee his heirs executors administrators and assigns : (1) all the rents and profits of the contiguous fields called Witanagemuttetuwa Gamagemuttethuwa Bambarayamuttettuwa Egodaliyadda and Mahantemuttettuwa adjoining each other and forming one property situated at Malimboda in the Weligam Korale of Matara District, Southern Province and bounded on the north by lands belonging to P. Babahamy and others and lands belonging to Andris and others and Tondalagodella, on the north-east by Tondalagodella and Nalawepitiawagura, on the south-east by Korawalawella and land belonging to K. Dowan and others, on the south by land belonging to K. Dowan and others and Kendalakumbura, on the west by Weniakule Ela and land belonging to P. Babahamy and others and on the north-west by land belonging to Andiris and others containing in extent about thirteen bags of paddy sowing which said premises have been held and possessed by me the said vendor under and by virtue of Last Will of S. P. Don Bastian de Silva late of Weligama dated 16th September, 1894, filed in Testamentary Case No, 1068 of the District Court of Matara.

Exhibits
 D 54.
 Deed
 No. 244
 6-3-1919
 —continued.

2. All the rents and profits of the field called Malapalawa situated at Malimboda aforesaid and bounded on the north by Kankanigemeddegoda, on the east by Radawagodella, on the south by Dandumurekumbura and on the west by river containing in extent about two bags of paddy sowing which said premises have been held and possessed by me the said vendor under and by virtue of said Last Will filed in case No. 1068 aforesaid. (3) All the rents and profits of the land called Palugahawatta situated at Welliwala in Weligam Korale aforesaid and bounded on the north by Kalahewidanagewatta and Malwattigewatta, on the east by Kalahewegewatta, on the south by Palugahaliyadda, and on the west by 10 Etambagahawatta and Maligatenna containing in extent about three acres (3A. 0R. 0P.) which said premises have been held and possessed by me the said vendor under and by virtue of Gift Deed No. 3884 of 16th September, 1894, and attested by C. S. Chitranayake, Notary Public, which is not produced herewith.

4. All the rents and profits of the divided one-third portion of the land called Malwattigewatta situated at Weligama in the Weligam Korale aforesaid and bounded on the north by a portion of the same land, on the east by Aggrabodhi Vihare, on the south by Palugahawatta and on the west by Kudalumulla containing in extent about four acres (4A. 0R. 0P.) 20 which said premises have been held and possessed by me the said vendor under and by virtue of Gift Deed No. 3884 aforesaid together with all and singular the rights ways easements advantages servitudes and appurtenances whatsoever thereto belonging or in anywise appertaining or usually held, occupied used or enjoyed therewith or reputed or known as part or parcel thereof and together with all the estate title interest and claim and demand whatsoever of me the said vendor of in to upon or out of the said premises and every part thereof and together with all the title deeds vouchers and other writings therewith held or relating thereto which said premises have been held and possessed by me the said vendor as aforesaid. 30 To have and to hold the said premises hereby sold and conveyed with the rights and appurtenances thereto belonging unto him the said vendee his heirs executors administrators and assigns absolutely and for ever.

And I the said vendor for myself my heirs executors and administrator do hereby covenant promise and declare to and with the said vendee his heirs executors and administrators and assigns that the said premises hereby sold and conveyed are free from any encumbrance whatsoever and that I have not at any time heretofore made done or committed or been party or privy to any act deed, matter or thing whatsoever whereby or by means whereof the said premises or any part thereof are or shall 40 or may be impeached or encumbered in title charge estate or otherwise however and that I and my aforewritten shall and will at all times hereafter warrant and defend the title to the same and every part thereof unto him or his aforewritten against any person or persons whomsoever ; and further also shall and will at all times hereafter at the request and cost of the said vendee or his aforewritten do and execute or cause to be done and executed all such further and other acts deeds assurances matters

and things whatsoever for further and more perfectly assuring the said premises hereby sold and conveyed and every part thereof unto the said vendee and his aforewritten shall or may be reasonably required.

Exhibits
D 54.
Deed
No. 244
6-3-1919
—continued.

In witness whereof I the said vendor do set my hand to three of the same tenor and date as these presents at Weligama on this sixth day of March, One thousand Nine hundred and Nineteen.

Sgd. S. P. A. SAMARAWEERA,
Sgd. ISAAC R. ABEYDEERA,
N. P.

10 Witnessed and attested on 6th March, 1919.

P 12. Advice of Despatch

P 12.

Advice of Despatch

P 12.
Advice of
Despatch
14-6-19

From COLOMBO STORES, LTD.,
(late Retail Department, Walker, Sons & Co., Ltd.)
Colombo, 14-6-1919.

MR. J. B. APPU HAMI,
Training College, Colombo.

Dear Sir,

20 We have much pleasure in forwarding goods, as detailed below in accordance with your esteemed favour of date..... and trust they will reach you in due course and merit your approval.

Yours faithfully,
for COLOMBO STORES, LTD.
Sgd. (Illegibly).

Per bearer. One revolver Holster.
C/Sale.

Transport at Buyer's Risk.

Goods returned will not be credited unless received in good order
30 within 10 days from date of issue.

D 31. Deed No. 1938

D 31.

No. 1938

D 31.
Deed
No. 1938
5-10-19

This Indenture made and entered into at Weligama on this fifth day of October, One thousand Nine hundred and Nineteen, by and between Victor David Mamuhewa of Weligama hereinafter called the vendor of

Exhibits
 D 31.
 Deed
 No. 1938
 5-10-19
 —continued.

the first or one part and Jayasinghe Aratchchige Udenis de Silva of Walliwala hereinafter called and referred to as the vendee of the second or other part.

Whereas the said vendor is under and by virtue of Deeds Nos. 1472 of 12th December, 1916, attested by A. S. K. Panditatilaka, Notary, and 1937 of 5th October, 1919, attested by the Notary attesting these presents and by right of inheritance from his father Joseph Jandris Mamuhewa, seized and possessed of or otherwise well and sufficiently entitled to the premises in the schedule hereto fully described.

And whereas the said vendor has agreed to and with the said vendee to sell unto him the said vendee the said premises for the consideration hereinafter mentioned subject to the condition that if within three years from the date hereof the said vendor pay back the consideration herein mentioned and interest as hereinafter mentioned and demand a retransfer of the said premises the vendee shall be bound to retransfer the same by a valid conveyance such conveyance to be prepared at the expense of the said vendor provided that in the meantime interest at the rate of twenty rupees per mensem shall be regularly paid on or before the fifteenth of every month.

In the event of the vendor failing to pay said interest on the said date and the same remain unpaid for one month from the due date then the time limit of three years shall be deemed null and void and this indenture shall be deemed an unconditional conveyance.

Now this Indenture witnesseth that the said vendor in pursuance of the said agreement and in consideration of the sum of Rupees one thousand five hundred (Rs. 1,500) lawful money of Ceylon well and truly paid to him the said vendor by the said vendee (the receipt whereof is hereby acknowledged) doth hereby subject to the said condition and also the conditions hereinafter mentioned give grant bargain sell assign transfer and set over unto the said vendee his heirs executors administrators and assigns the said premises together with all and singular the rights ways easements advantages servitudes and appurtenances thereto belonging or in anywise appertaining or reputed to appertain or usually held occupied used or enjoyed therewith or known as part and parcel thereof and together with all the estate title interest claim and demand whatsoever of him the said vendor of into upon or out the said premises and every part thereof and together with all the title deeds vouchers and other writings therewith held or relating thereto.

To have and to hold the said premises hereby sold and conveyed unto him the said vendee his heirs executors administrators and assigns absolutely and for ever subject as aforesaid.

And he the said vendor for himself his heirs executors and administrators doth hereby covenant promise and declare to and with the said vendee his heirs executors administrators and assigns that the said premises hereby sold and conveyed are free from any encumbrance whatsoever.

ever and that he has not at any time heretofore made done or committed or been party or privy to any act deed matter or thing whatsoever whereby or by means whereof the said premises or any part thereof are is can shall or may be impeached or encumbered in title charge estate or otherwise howsoever : and that he and his aforewritten shall and will at all times hereafter warrant and defend the same and every part thereof unto him or his aforewritten against any person or persons whomsoever ; and further also shall and will at the request and cost of the said vendee or his aforewritten do and execute or cause to be done and executed all such further
 10 and other acts deeds assurances matters and things whatsoever for further and more fully assuring the said premises hereby sold and conveyed and every part thereof unto him and his aforewritten as by him or them shall or may be reasonably required.

Exhibits
 D 31.
 Deed
 No. 1938
 5-10-19
 —continued.

And this Indenture further witnesseth that the said vendor shall before the expiration of the three years hereinbefore mentioned obtain a conveyance for the undivided one-thirty-sixth share of the said house and buildings from William Mamuhewa the owner thereof who is now serving a term of imprisonment, and retransfer the same to the vendee subject to the condition in this deed contained. And in the event of the vendor
 20 failing to make the aforesaid conveyance he shall be liable to pay to the vendee a sum of Rupees two hundred and fifty as liquidated damages and the vendor hereby further promises that he shall not at any time hereafter sell the premises in the schedule herein mentioned together with the share of the house belonging to William Mamuhewa which he undertakes to obtain a conveyance to any person whomsoever out of the family except to the vendee herein named.

In witness whereof the said vendor and the said vendee do set their respective hands to three of the same tenor and date as these presents at the place on the day, month and year in the beginning hereof written.

30

The Schedule above referred to

All that undivided twenty-nine forty-fourth (29/44) part of the soil and fruit trees and an undivided thirty-five-thirty-sixth (35/36) part of the masonry tiled house of thirteen cubits and of all the other buildings standing on the land called Disawagewatta, situate at Weligama in the Weligam Korale of Matara District, Southern Province, and bounded on the north by Pananbalanagegederawatta, east by Ranasinaratchchigederawatta and Maginisammalaiwatta, south by high road and west by Kalubalagewatta and containing in extent about one acre.

40

Sgd. V. D. MAMUHEWA
 „ J. U. DE SILVA,

Sgd. A. GUNARATNE,
Notary Public.

Attested on 6th October, 1919.

Exhibits

P 1.
Deed
No. 260
10-10-1919

P 1. Deed No. 260

Amount Rs. 5,500.

TRANSFER

No. 260. Lands 1.

Know all men by these presents that I David Samaraweera, Proctor of Matara, hereinafter sometimes called and referred to as the vendor for and in consideration of the sum of (Rs. 5,500) Rupees Five thousand five hundred lawful money of Ceylon well and truly paid to me by Jayasinhage Babun Appuhamy of Cinnamon Garden, Colombo, hereinafter sometimes called and referred to as the vendee (the receipt whereof. I do hereby 10 admit and acknowledge) have granted, bargained sold assigned transferred and set over and do by these presents grant bargain sell assign transfer and set over unto the said vendee his heirs executors administrators and assigns all that soil and trees of four contiguous allotments of lands (1) Lot A of Malwattegewatta ; (2) portion of Maligatenna ; (3) Palugahawatta and a portion of Mannehegewatta all adjoining each other and forming one property and now known as Palugahawatta situated at Weligama in Weligam Korale of Matara District, Southern Province, and bounded on the north by Maligatenna and Malwattegederawatta, on the east by Ihala-wadugewatta, Kalahegewatta and Palugahaliadda, on the south by high 20 road and a portion of Mannegewatta and on the west by Sandogeammalai-watta and Wellekapiththagederawatta containing in extent four acres and three roods (4A. 3R. 0P.) together with all the buildings standing thereon and more fully described in the Plan of Survey dated 8th October, 1919, made by Mr. J. De Neise, Licensed Surveyor of Matara, together with all and singular the rights ways easements advantages servitudes and appurtenances whatsoever thereto belonging or in anywise appertaining or usually held occupied used or enjoyed therewith or reputed or known as part or parcel thereof and together with all the estate title interest claim and demand whatsoever of me the said vendor of in to upon or out of the 30 said premises and every part thereof and together with all the title deeds vouchers and other writings therewith held or relating thereto which said premises have been held and possessed by me the said vendor under and by virtue of Gift Deed No. 3884 of 16th September, 1894, and attested by L. C. S. De Silva Chitranayake, Notary Public, and also by right of prescription.

To have and to hold the said premises hereby sold and conveyed with the rights and appurtenances thereto belonging unto him the said vendee his heirs executors administrators and assigns absolutely and for ever. And I the said vendor for myself my heirs executors and administrators 40 do hereby covenant promise and declare to and with the said vendee his heirs executors administrators and assigns that the said premises hereby sold and conveyed are free from any encumbrance whatsoever and that I have not at any time heretofore made done or committed or been party or privy to any act deed matter or thing whatsoever whereby or by means whereof the said premises or any part thereof are is can shall or may be

impeached or encumbered in title charge estate or otherwise howsoever and that I and my aforewritten shall and will at all times hereafter warrant and defend the title to the same and every part thereof unto him or his aforewritten against any person or persons whomsoever and further also shall and will at all times hereafter at the request and cost of the said vendee or his aforewritten do and execute or cause to be done and executed all such further and other acts deeds assurances matters and things whatsoever for further and more perfectly assuring the said premises hereby sold and conveyed and every part thereof, unto the said vendee and his
 10 aforewritten as by the said vendee or his aforewritten shall or may be reasonably required.

Exhibits
 p 1.
 Deed
 No. 260
 10-10-1919
 —continued.

In witness whereof I the said vendor do set my hand to three of the same tenor and date as these presents at Matara on this tenth day of October, One thousand Nine hundred and Nineteen.

Witnesses :

1. Sgd. D. T. WEERASINGHE
2. Sgd. D. A. RANAWEERA

Sgd. DAVID SAMARAWEERA.
 Sgd. ISAAC R. ABEYDEERA.
 N. P.

20

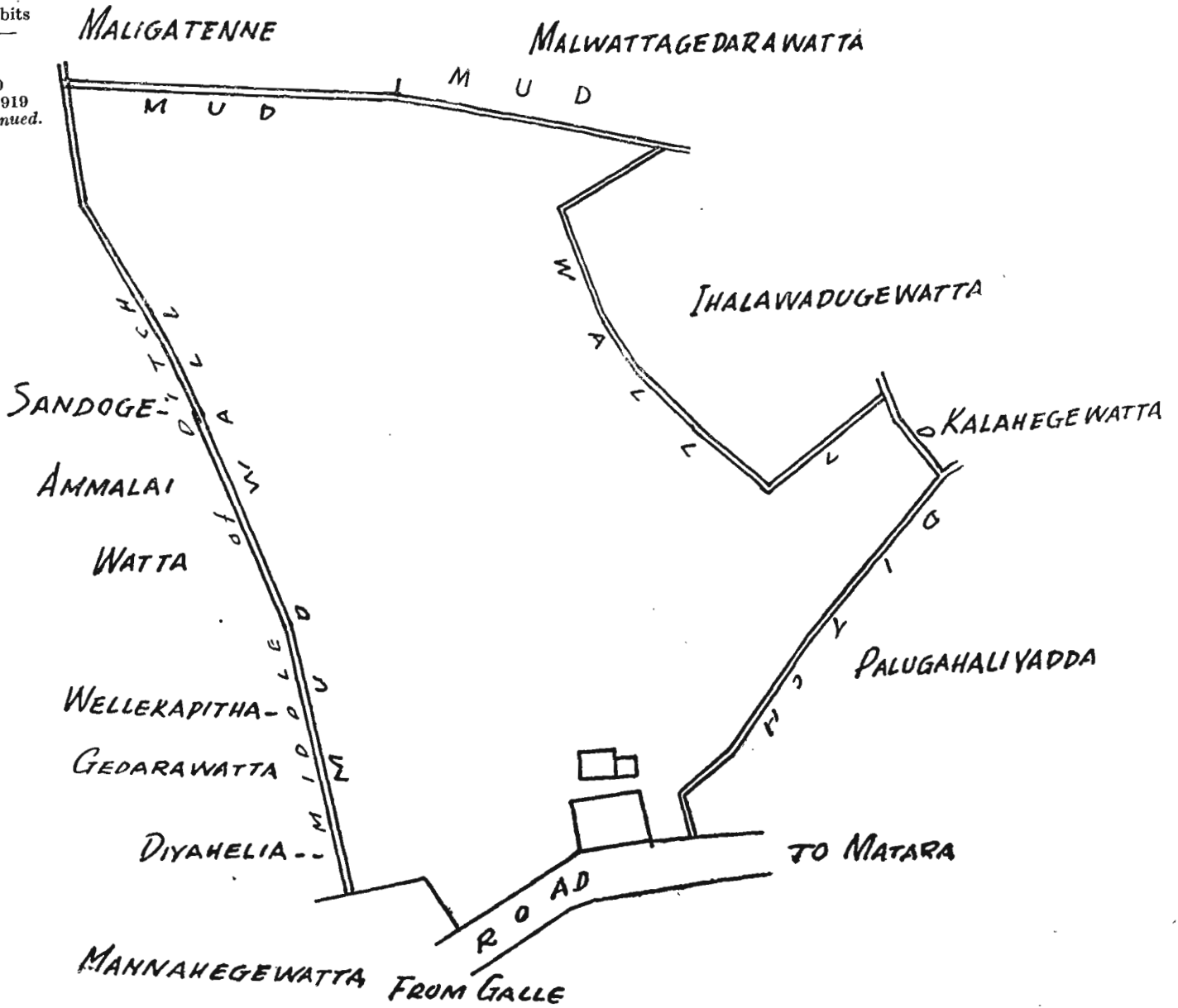
Which I attest :

Sgd. ISAAC R. ABEYDEERA,
Notary Public.

Date of Attestation :

10th October, 1919.

Exhibits
P 1.
Deed
No. 260
10-10-1919
—continued.



Scale of 2 Chains to an Inch.

Plan of Palugahawatta situated at Weligama, Matara District.
Extent: 4A. 3R. 0P.

Surveyed on 8th October, 1919.
Matara, 8th October, 1919.

Sgd. J. D. DE NIESE,
Licensed Surveyor.

D 1. Extract from Assessment Book

Exhibits

D 1. Extract from the Assessment Book of Sanitary Board, Weligama,
 for the Year 1919.

D 1.
 Extract from
 Assessment
 Book
 1919

Assessment No. 589.

Name of proprietor : D. Samaraweera, Proctor.

Name of property : Palugahawatta and houses.

Annual rent : Rs. 150.

Per cent. per quarter : Rs. 1.50.

Paid for :

| | | |
|----|---------------------------------|---------------|
| 10 | 1st quarter ; date of payment : | 25-9-19. |
| | 2nd quarter | do. 9-1-20. |
| | 3rd quarter | do. 7-2-20. |
| | 4th quarter | do. 29-11-20. |

D 1. An Extract from the Assessment Book of Weligama Urban
 Council for the Year 1921.

20 No. 601.

Name of proprietor : J. U. de Silva, P. O.

Name of property : Palugahawatta and houses.

Annual rent : Rs. 160.

Per cent. per quarter : Rs. 1.60.

Paid for :

| | | |
|--|---------------------------------|---------------|
| | 1st quarter ; date of payment : | 8-8-21. |
| | 2nd quarter | do. 17-10-21. |
| | 3rd quarter | do. 20-1-22. |
| | 4th quarter | do. 5-4-22. |

Copies Sgd.,

Exhibits
 D 1. Extract from the Assessment Book of the Weligama Sanitary
 Board for the Year 1922.
 D 1.
 Extract from
 Assessment
 Book
 1919
 —continued.

Assessment No. 610.

Name of proprietor : J. U. de Silva, P. O.

Name of property : Palugahawatta and houses.

Annual rent : Rs. 220.

Per cent. per quarter : Rs. 2·20.

Paid for :

1st quarter ; date of payment : 10-7-22.

2nd quarter do. 10-11-22.

3rd quarter do. 12-4-23.

4th quarter do. 9-6-23.

10

D 1. Extract from the Assessment Book of the Sanitary Board,
 Weligama, for the Year 1925.

Assessment No. 648.

Name of proprietor : J. U. de Silva.

Name of property : Palugahawatta and house.

Annual rent : Rs. 300.

Per cent. per quarter : Rs. 3·75.

Paid for :

1st quarter ; date of payment : 16-4-25.

2nd quarter do. 3-10-25.

3rd quarter do. 19-1-26.

4th quarter do. 3-8-26.

20

D 1. Extract from the Assessment Book of the Sanitary Board,
Weligama, for the Year 1928.

Exhibits
D 1.
Extract from
Assessment
Book
1919
—continued.

Assessment No. 664.

Name of proprietor : J. U. de Silva.

Name of property : Palugahawatta and buildings.

Annual rent : Rs. 375.

Conservancy rate per quarter : Rs. 1·87½.

Assessment rate per quarter : Rs. 5·62½.

Total amount : Rs. 7·50.

10 Paid for :

1st quarter ; date of payment : 17-9-28.

2nd quarter do. 3-12-28.

3rd quarter do. 2-4-29.

4th quarter do. 15-7-29.

D 1. Extract from the Assessment Book of the Sanitary Board,
Weligama, for the Year 1931.

Assessment No. 664.

Name of proprietor : J. U. de Silva.

Name of property : House garden, Palugahawatta.

20 Annual rent : Rs. 400.

Conservancy rate per quarter : Rs. 2.

Assessment rate per quarter : Rs. 6.

Total amount : Rs. 8.

Paid for :

1st quarter ; date of payment : 4-4-32.

2nd quarter do. 15-4-32.

3rd quarter do. 18-1-33.

4th quarter do. 18-1-33.

Exhibits
 D 1.
 Extract from
 Assessment
 Book
 1919
 —continued.

D 1. Extract from the Assessment Book of the Urban District
 Council, Weligama, for the Year 1934.

Assessment No. 664.

Name of proprietor : J. U. de Silva.

Name of property : House garden, Palugahawatta.

Annual rent : Rs. 264.

Assessment tax per quarter : Rs. 3·96.

Conservancy rate per quarter : Rs. 1·32.

Total amount : Rs. 5·28.

Paid for :

10

1st quarter ; date of payment : 19-6-34.

2nd quarter do. 22-8-34.

3rd quarter do. 6-11-34.

4th quarter do. 28-1-35.

D 1. Extract from the Assessment Book of the Urban Council,
 Weligama for the Year 1937

Assessment No. 1969.

Name of proprietor : J. U. de Silva.

Name of property : House and garden, Palugahawatta.

Annual value : Rs. 240.

20

Rate per quarter : Rs. 6.

Paid for :

1st quarter ; date of payment : 15-9-37.

2nd quarter do. 27-11-37.

3rd quarter do. 2-3-38.

4th quarter do. 22-6-38.

D 1. Extract from the Assessment Book of the Urban Council, Weligama, for the Year 1940.

Exhibits

D 1.
Extract from
Assessment
Book
1919
—continued.

Assessment No. 1969.

Name of owner : J. U. de Silva.

Name of property : Palugahawatta.

Description : Tiled house and compound.

Ratable annual value : Rs. 353.

Rates per quarter : Rs. 8·82½

Date of payment :

- 10 1st quarter : 7-11-40.
2nd quarter : 26-2-41.
3rd quarter : 29-4-41.
4th quarter : 9-7-41.

D 1. Extract from the Assessment Book of the Urban Council, Weligama, for the Year 1943.

Assessment No. 1969.

Name of owner : J. U. de Silva.

Name of property : Palugahawatta.

Description : Tiled house and compound.

20 Ratable annual value : Rs. 363.

Rate per quarter : Rs. 9·07½.

Date of payment :

- 1st quarter : 27-3-44.
2nd quarter : 27-3-44.
3rd quarter : 27-3-44.
4th quarter : 27-3-44.

Exhibits
 D 1. An Extract from the Assessment Book of Weligama Urban
 Council for the Year 1943.
 D 1.
 Extract from
 Assessment
 Book
 1919
 —continued. Assessment No. 1969.

Name of owner : J. U. de Silva.
 Name of property : Palugahawatta.
 Description : Tiled house and compound.
 Ratable annual value : Rs. 363.
 Rates per quarter : Rs. 9·07½.
 Date of payment :

1st quarter : 27-3-44.
 2nd quarter : 27-3-44.
 3rd quarter : 27-3-44.
 4th quarter:: 27-3-44.

P 9.
 Deed
 No. 2206
 27-3-20

P 9.

P 9. Deed No. 2206

Transfer No. 2206

Know all men by these presents that we Ahamed Lebbe Marikkar Neinambo Natchiya and husband Segu Mohideen Hajjar Alia Marikkar Hadjar both of Kohunugamuwa hereinafter sometimes called and referred to as the vendors for and in consideration of the sum of (Rs. 625) Rupees 20 six hundred and twenty-five lawful money of Ceylon well and truly paid to us by Jayasinghe Udenis de Silva and Jayasinghe Babun Appuhamy both of Walliwala hereinafter sometimes called and referred to as the vendees (the receipt whereof we do hereby admit and acknowledge) have granted bargained sold assigned transferred and set over and do by these presents grant bargain sell assign transfer and set over unto the said vendees their heirs executors administrators and assigns :

All that the field called Thombuwila situate at Jamburegoda in the Weligam Korale of Matara District, Southern Province, and bounded on the north by Andiyegewila, east by Nettayawila, south by Thombuwile-30

pahahairawalla and west by Ingirisigewila and containing in extent one ammunam of paddy sowing, together with all and singular the rights ways easements advantages servitudes and appurtenances, whatsoever thereto belonging or in anywise appurtenant or usually held occupied used or enjoyed therewith or reputed or known as part or parcel thereof and together with all the estate title interest claim and demand whatsoever of us the said vendors of in to upon or out of the said premises and every part thereof and together with all the title deeds vouchers and other writings therewith held or relating thereto which said premises have been held and possessed 10 by me the said named vendor under Deed No. 17986 of 25th December, 1899, attested by I. L. M. U. L. Marikar Notary.

Exhibits
P 9.
Deed
No. 2206
27-3-20
—continued.

To have and to hold the said premises hereby sold and conveyed with the rights and appurtenances thereto belonging unto them the said vendees their heirs executors administrators and assigns absolutely and for ever.

And we the said vendors for ourselves and our heirs executors and administrators do hereby covenant promise and declare to and with the said vendees their heirs executors administrators and assigns that the said premises hereby sold and conveyed are free from any encumbrance whatsoever and that we have not any time heretofore made done or committed 20 or been party or privy to any act deed matter or thing whatsoever whereby or by means whereof the said premises or any part thereof are is can shall or may impeached or encumbered in title charge estate or otherwise howsoever: and that we and our aforewritten shall and will at all times hereafter warrant and defend the same every part thereof unto them or their aforewritten against any person or persons whomsoever: and further also shall and will at all times hereafter at the request and cost of the said vendees or their aforewritten do and execute or cause to be done and executed all such further and other acts deeds assurances matters and things whatsoever for further and more perfectly assuring the said 30 premises hereby sold and conveyed and every part thereof unto them and their aforewritten as by them or their aforewritten shall or may be reasonably required.

In witnesses whereof we the said vendors do set our hands to three of the same tenor and date as these presents at Weligama on this Twenty-sixth day of March, One thousand Nine hundred and Twenty.

Witnesses :

Sgd. S. M. YUSOOF

Sgd. A. LEBBE MARIKKAR

- 40
1. (Mark of A. L. M. Z. NATCHIYA)
 2. Sgd. M. H. A. MARIKKAR HADJIAR

Sgd. A. GUNARATNA,

Attested on 27th March, 1920.

N. P.

Exhibits

D 51.
Deed
No. 1200
13-6-20

D 51. Deed No. 1200**D 51.****TRANSLATION**

Rs. 1,000. Lands 1.

Deed of Lease No. 1200.

This Indenture of Lease made and entered into by and between Seidu Muhammadu Ibbun Seidu Ahamadu Barulba Elavi Mawlana of Kohunugamuwa in Weligama of Weligam Korale Matara (lessor) of the one part and Mr. Jayasinghe Aratchige Udenis de Silva Police Officer of Walliwala in Weligam Korale aforesaid (lessee) of the other part on this 13th day of 10 June, 1920, witnesseth :

That the lessor for and in the consideration of the sum of Rupees one thousand (Rs. 1,000) lawful money of Ceylon at the rate of Rupees two hundred and fifty per annum and subject to the conditions set out below doth hereby lease unto the lessee the premises belonging to the lessor described in the schedule below for a period of four years commencing from the 1st day of January, 1921, and the lessee consenting doth hereby take over same by way of lease.

The conditions referred to :—That out of the said lease value the sum of Rupees one thousand the lease value of the first two years the sum of 20 Rupees five hundred shall be paid in advance and out of the remaining lease value a sum of Rupees two hundred and fifty shall be paid on or before the 1st day of January, 1923, and the balance sum of Rupees two hundred and fifty on or before the 1st day of January, 1924, and receipts shall be obtained for same. That during the said period of lease the assessment taxes payable in respect of the premises hereof leased shall be paid by the lessee.

That during the said period of lease should any disputes arise regarding the lease the lessor shall be responsible for all loss and damage thereby caused. That during the said period of lease the lessee shall well protect 30 and keep the said premises clear and at the expiration of the lease without causing any damage deliver over the said premises unto the lessor and peacefully vacate same.

And he the lessor and lessee for ourselves our heirs executors administrators and assigns do hereby further engage and bind ourselves for the due fulfilment of the foregoing conditions.

In witness whereof we the lessor and lessee do set our hands to three of the same tenor and date as these presents on the 13th day of June, 1920, at Weligama.

The Schedule

40

All that the soil and fruit trees of the land called Kurunduwatta *alias* Kurun Etamlehena, bearing assessment No. 298 situate at Walliwala in Weligam Korale Matara bounded on the north by Puwakwatta, east by

Welikanattewatta, south by Thalghaliadda Talkotakumbura and Denuwala Matiwelakumbura, west by high road Julkanattewatta Ihalahawatta and Kanattawatta in extent thirteen acres three roods ten decimal four (13A. 3R. 10.44P.).

Exhibits
D 51.
Deed
No. 1200
13-6-20
—continued.

Sgd. S. M. I. S. A. B. E. MAWLANA,
Sgd. J. U. DE SILVA

Sgd. U. D. SAMARAWICKREMA,
N. P.

Witnessed and attested on 13th June, 1920.

10
P 14.

P 14. Deed No. 5576

P 14.
Deed
No. 5576
17-6-21

No. 5576

To all to whom these presents shall come Jayasinghege Babun Appuhamy of Kollupitiya in Colombo (hereinafter sometimes referred to as the vendor) sends Greetings :

Whereas the said vendor is under and by virtue of Deed No. 14612 dated 1st July, 1912, and attested by D. F. W. Karunaratna of Moratuwa, Notary Public, seized and possessed of or otherwise well and entitled to all that portion of land and premises described in the schedule to these
20 presents.

And whereas the said vendor has agreed for the absolute sale to Nimithigalage Maria Perera of Uyana in Moratuwa (hereinafter sometimes referred to as the vendee) of the said premises intended to be hereby granted and conveyed free from incumbrance at the price of Rupees three hundred and fifty (Rs. 350).

Now know ye and these presents witness that the said vendor in pursuance of the said agreement and in consideration of the sum of Rupees three hundred and fifty (Rs. 350) paid by the said vendee at or before the execution of these presents (the receipt whereof the said vendor doth
30 and from the same hereby release the said vendee doth hereby acknowledge hereby grant convey assign transfer set over and assure unto the said vendee her heirs executors administrators and assigns all that property and premises described in the said schedule to these presents together with all and singular the buildings privileges easements and appurtenances whatsoever to the said premises belonging or in anywise appurtenant or usually held or enjoyed therewith or reputed to belong or be appurtenant thereto and all the estate right title interest claim and demand whatsoever of the said vendor to and upon the said premises and every part thereof.

Exhibits
 P 14.
 Deed
 No. 5576
 17-6-21
 —continued.

To have and to hold the said premises hereby granted and conveyed or expressed so to be unto the said vendee his heirs executors administrators and assigns for ever. And the said vendor doth hereby for himself his heirs executors and administrators covenant with the said vendee her heirs executors administrators and assigns that the said premises are free from all incumbrances whatsoever made or suffered by the said vendor or any person or persons lawfully claiming from under or in trust for him and that he now has good right to grant and convey the said premises in manner aforesaid and that the said vendor and his heirs executors and administrators shall and will always warrant and defend the said premises 10 and every part thereof unto the said vendee her heirs executors administrators and assigns against any person whomsoever. And that the said vendor or his heirs executors and administrators and every person having or claiming thereof from under or in trust for the said vendor shall and will from time to time and at all times hereafter at the request and cost of the said vendee her heirs executors administrators or assigns do and execute or cause to be done and executed all such acts deeds and things whatsoever for further and more perfectly assuring the said premises and every part thereof unto the said vendee her heirs executors administrators and assigns in manner aforesaid as shall or may be reasonably required. 20

In witness whereof the said vendor doth hereby set his hand to three of the same tenor as these presents at Colombo on the Seventeenth day of June, One thousand Nine hundred and Twenty-one.

The Schedule above referred to

All that portion of land called Moderapola Dombagahawatta together with the buildings trees and plantations thereon situated at Uyana in Moratuwa under the Palle Pattu of Salpiti Korale in the District of Colombo. Western Province, and bounded on the north by the portion of this same land presently belonging to Sampathawaduge Belenis Silva and others formerly of Guruge Hendrick Fernando, on the east by the lands presently 30 belonging to Mr. Peter Mendis and Mr. Arthur Soysa formerly of Weerahennedige Andris Fernando, on the south by the land presently belonging to Guruge Hendrick Fernando formerly of Weerahennedi Weerabala Jayasuriya Patabendige Joronis Fernando and on the west by the land presently belonging to the estate of the late Mr. Manuel Soysa formerly of the heirs of the late Weerahennedi Weerabala Jayasuriya Patabendige Harmanis Fernando containing in extent 11 6/100 square perches.

Witnesses :

1. A. T. WIJESSEKERA
2. M. T. S. COORAY

Sgd. J. B. APPUHAMY. 40

Sgd. G. M. SILVA,
 N. P.

Attested on 17th June, 1921.

D 3. Application to Construct Building

Exhibits

D 3.

Application No. 57254/B, year 1923, Small Town of Weligama.

D 3.
Application
to Construct
Building
1923

A plan and specification approved by the Chairman herewith forwarded to J. U. de Silva of Walliwala East to erect a shed in the land called Palugahawatta situated at Walliwala East.

You should carefully note :

1. That the building is to be constructed of posts and the roof is to be covered with cadjan.
- 10 2. The wall must be so constructed that they can be plastered and whitewashed.
3. The floor is to be raised feet about the ground.
4. No portion of the eaves walls floor or verandah posts are to come within twenty-five feet of the centre of any public road or path.
5. This permit lapses after one year from its date of issue.
6. Before operations are started the applicant must give the Chairman 7 days' notice to commence work on the form C1 below.
7. If at any time work is suspended over 3 months he must give similar notice to the Chairman on form C 2 below.
- 20 8. The applicant's attention is invited to the provisions of the Ordinance contained overleaf.
9. No building erected shall on completion be occupied otherwise than as given overleaf until a certificate of conformity has been obtained from the Chairman, Sanitary Board, Matara. On completion of the building the form C 3 should be detached filled up and sent to the Chairman.
10. All references to this application should bear number year and name of the Small Town given at the head of this page.

Sgd. W. S. WODEMAN,
Chairman, S. B.

30

Kachcheri,
Matara, 28th October, 1923.

C 1. In respect of the Application No. 57254/B, year 1923 of the Small Town of Weligama.

I, of on terms of section 10 of Ordinance No. 19 of 1915 do hereby given notice to the Chairman of the Sanitary Board of the Matara District, that I intend to commence operations under the above approved application on the

40 Date :

.....
Signature of Applicant.

Exhibits
D 3.
Application
to Construct
Building
1923
—continued.

C 2. In respect of the Application No. 57254/B, year 1923 of the Small Town of Weligama.

I, of having suspended operations under the above application for over 3 months do hereby under the provisions of section 10 of Ordinance No. 19 of 1915 given notice to the Chairman of the Sanitary Board of the Matara District that I intend to resume operations under the above approved application on the

Date :
.....
Signature of Applicant.

C 3. To the Chairman, Sanitary Board, Matara. 10

I, of having carried out the building operations referred to in the approved application No. 57254/B, year 1923 of the Small Town of Weligama in terms of such approved application do hereby in terms of section 15 of Ordinance No. 15 of 1915 apply for a certificate of conformity in respect of the said premises.

Date :
.....
Signature of Applicant.

Address :

C.

The recipient of this permit is recommended to note the following 20 sections of Ordinance No. 19 of 1915 :—

Section 5 : No person shall erect or re-erect any building within the limits administered by local authority except in accordance with plans drawings and specifications approved in writing by the Chairman.

6. (1) : No person shall make any alteration in any building within the limits administered by a local authority without the written consent of the Chairman.

10 : No person shall commence any building operations involving the erection, re-erection or alteration of a building or in case of any operations the progress whereof shall have been suspended for a period exceeding 30 three months resume any such building operations unless—

(a) He shall have given to the Chairman seven days' notice of his intention to commence or resume such operations with particulars of the intended work ; and

(b) The approval or consent of the Chairman required by this chapter shall have been given within one year before the date of the notice.

13. (1) : Any person who shall—

(a) Commence continue or resume building operations in contravention of any provision of this chapter ;

(b) Deviate from any plan or specification approved by the Chairman 40 without his written permission ;

(c) Execute any building operations in contravention of any of the provisions of this Ordinance or of any local by-law ;

(d) Fail to comply with any lawful order or written direction of the Chairman ; or

(e) Cause any other person to do any of the acts above enumerated, or if such person cannot be found the owner of the building in question shall be liable on summary conviction to a fine not exceeding three hundred rupees and to a daily fine of twenty-five rupees for every day on which the offence is continued after conviction.

10 15. (1) : No building constructed after the commencement of this Ordinance shall be occupied except by a caretaker until the Chairman has given a certificate that such building as regards construction drainage and in all other respects is in accordance with law.

(2) Any person who occupies or allows to be occupied any building in contravention of this section shall be guilty of an offence and shall be liable to a penalty not exceeding twenty rupees for each during the contravention continues.

D 2. Application to Construct Building

D 2.

20 Application No. 23A, year 1923, Small Town of Weligama.

A plan and specification approved by the Chairman herewith forwarded to J. U. de Silva of Weligama to alter a building in the land called Palugahawatta situated at Hettiwadya. You should carefully note :

No portion of the eaves, walls floor or verandah posts are to come within twenty-five feet of the centre of any public road or path.

The permit lapses after one year from its date of issue.

Before operations are started the applicant must give the Chairman seven days' notice to commence work on the form C 1 below.

If at any time work is suspended over 3 months he must give similar 39 notice to the Chairman on form C 2 below.

The applicant's attention is invited to the provisions of the Ordinance contained overleaf.

No building erected shall on completion be occupied otherwise than as given overleaf, until a certificate of conformity has been obtained from the Chairman, Sanitary Board Matara. On completion of the build-the form C 3 should be detached filled up and sent to the Chairman.

All references to this application should bear the number, year and name of the Small Town given at the head of this page.

40 Kachcheri,
Matara, 16-4-1923.

Sgd. W. S. WODEMAN,
Chairman, S. B.

Exhibits
D 3.
Application
to Construct
Building
1923
—continued.

D 2.
Application
to Construct
Building
16-4-23

Exhibits
 D 2.
 Application
 to Construct
 Building
 16-4-23
 —continued.

The recipient of this permit is recommended to note the following section of Ordinance No. 19 of 1915 :—

Section 5 : No person shall erect or re-erect any building within the limits administered by local authority except in accordance with plans drawings and specifications approved in writing by the Chairman.

6. (1) : No person shall make any alteration in any building within the limits administered by a local authority without the written consent of the Chairman.

10 : No person shall commence any building operations involving the erection, re-erection alteration of a building or in case of any operations the progress whereof shall have been suspended for a period exceeding three months, resume any such building operations unless—

(a) He shall have given to the Chairman seven days' notice of his intention to commence or resume such operations, with particulars of the intended work; and

(b) The approval or consent of the Chairman required by this chapter shall have been given within one year before the date of the notice.

13. (1) : Any person who shall—

(a) Commence continue or resume building operations in contravention of any of the provision of this chapter. 20

(b) Deviate from any plan or specification approved by the Chairman without his written permission.

(c) Execute any building operation in contravention of any of the provisions of this Ordinance or of any local by-law.

(d) Fail to comply with any lawful order or written direction of the Chairman ; or

(e) Cause any other person to do any of the acts above enumerated or if such person cannot be found, the owner of the building in question shall be liable on summary conviction to a fine not exceeding three hundred rupees and to a daily fine of twenty-five rupees for every day on which the offence is continued after conviction. 30

15. (1) : No building constructed after the commencement of this Ordinance shall be occupied except by a caretaker until the Chairman has given a certificate that such building as regards construction drainage and in all other respects is in accordance with law.

(2) Any person who occupies or allows to be occupied any building in contravention of this section shall be guilty of an offence, and shall be liable to a penalty not exceeding twenty rupees for each day during which the contravention continues.

P 7. Conditions of Sale

Exhibits

IN THE DISTRICT COURT OF MATARA

P 7.
Conditions
of Sale
14-3-24

JAYASINGHE ARACHCHIGE UDENIS DE SILVA, Police
Officer of Weligama..... Plaintiff

No. 288.

vs.

JAYASINGHE BABUN APPUHAMY of Colombo..... Defendant.

Approved :

Sgd. E. RODRIGO,

District Judge.

10

Conditions of Sale

Matara Case No. 388 D. C.

Conditions of sale upon which the land called Thombuwela situate at Jamburegoda in the Weligam Korale of the Matara District and bounded on the north by Audiyagewila, east by Potukolagodella and Nettiwwila, south by Tombuwila Pahala Irawalla and west by Muhandirangewila and Ingirisigewila and more fully described in the plan of Survey No. 524 filed in the case will be put up for sale on the 16th day of February, 1924, at 8 a.m. at the spot in accordance with an order issued from the District Court of Matara in Case No. 388 to Mr. S. E. Ferdinand, Commissioner,
20 as follows :—

1. The said land shall be put up for sale among the shareholders at the appraised value of Rs. 855, and if not purchased by them at the said appraised value it will then be put up for sale to the public and sold to the highest bidder.
2. The highest bidder shall be the purchaser and if any dispute shall arise between two or more bidders the property shall be put up again at a bid one but the last.
3. No person shall at any bidding advance less than Rs. 5 and no bidding shall be retracted.
- 30 4. Immediately after the fall of the hammer the purchaser shall pay the Commissioner one-fourth of the purchase amount and sign these conditions for the completion of the purchase as hereinafter stipulated and in failure to do so the property shall be knocked down to the next highest bidder and failing him too it shall be re-sold immediately afterwards at the spot.
5. The remainder of the purchase money shall be tendered in to the District Court of Matara and the purchase completed within one month.

Exhibits
 P 7.
 Conditions
 of Sale
 14-8-24
 —continued.

6. The purchaser shall enter into possession of the property on obtaining a certificate from the Court after paying the full purchase money.

7. If any unintentional error or mistake shall have been made in the description of the property the same shall not vitiate the sale.

8. Should the purchaser neglect or fail with the conditions his deposit money shall be thereupon forfeited and the property shall be re-sold at his risk at such time and place and in such manner as the District Court shall direct and in case of a resale the increase if any in the purchase money shall be credited to the shareholders and the deficiency if any attending the resale shall be made good by the defaulter and be recoverable as liquidated damage.

9. If the property shall be purchased by one or more of the shareholders the share due to him or them shall be deducted from the amount paid to Court.

10. If the highest bid does not exceed the appraised value the Commissioner shall accept such bids subject to the approval of the Court and shall require the highest bidder to deposit one-fourth of the purchase amount.

11. The Court reserves the right to refuse at its discretion to confirm the sale.

20

Conditions of sale explained by :

Sgd. S. E. FERDINAND,
Commissioner.

The above Conditions were read and explained by the Commissioner to part owners who were present.

Witnesses :

1. Sgd. in English, illegibly
2. Sgd. J. B. APPUHAMY

I, Samarasinghe Basnayaka Don Dias Appuhamy of Hettiweediya Weligama do hereby acknowledge to have this 16th day of February, 1924, purchased the land called Thombuwila situate at Jamburegoda for the sum of Rs. 200 subject to the conditions explained.

Sgd. DON DIAS APPUHAMY

Witnesses :

1. Sgd. in English, illegibly
2. Sgd. G. SERASINGHA.

Sale started at 8 a.m. Co-owners present. No bid for appraised amount. Exhibits

- 1st bid for Rs. 150 by S. B. Don Dias.
- 2nd bid for Rs. 160 by plaintiff.
- 3rd bid for Rs. 175 by S. B. Don Dias.
- 4th bid for Rs. 180 by plaintiff.
- 5th bid for Rs. 185 by S. B. Don Dias.
- 6th bid for Rs. 190 by plaintiff.
- 7th bid for Rs. 200 by S. B. Don Dias.

P 7.
Conditions
of Sale
14-8-24
—continued.

10 D. C. No. 388.

I, J. U. de Silva on behalf of the purchaser tender into Court Rs. 150 being balance purchase amount.

Matara, 14th March, 1924.

Deposit :

Intld. (Illegibly).
14-3.

Deposited 14-3-24.

Certificate of Sale

IN THE DISTRICT COURT OF MATARA

20 JAYASINGHE ARACHCHIGE UDENIS DE SILVA..... *Plaintiff*

No. 388.

vs.

JAYASINGHE BABUN APPUHAMY.....*Defendant.*

I, Edmund Rodrigo, District Judge of Matara, certify that the land called Thombuwila situate at Jamburegoda in Weligam Korale of the Matara District, Southern Province, bounded on the north by Audiyage-wila, east by Pothukolagodella and Nettiyege-wila, south by Thombuwila Pahala Irawalla and west by Muhandiramgewila and Ingirisigewila in extent 3 acres 2 roods 14 perches.....as per plan of survey No. 524 of 2nd September, 1923, made by Mr. S. E. Ferdinand, Licensed Surveyor, 30 Matara District, copy hereto annexed was sold under the orders of this Court on the 16th day of February, 1924, and purchased by Samarasinghe Basnayaka Don Dias Appuhamy of Hettiweediya, Weligama, for the sum of Rupees two hundred only and that the purchase amount was duly paid into Court in full as required by the 8th Clause of Ordinance No. 10 of 1863.

Sgd. E. RODRIGO,
District Judge.

The 7th day of April, 1924 :

Examined by :

40 Sgd. E. C. DIAS,
Secretary.

Exhibits

P 8. Motion D. C. Matara 388

P 8.
Motion in **P 8.**
M. C. Matara
388
14-3-24

IN THE DISTRICT COURT OF MATARA

JAYASINGHE ARACHCHIGE UDENIS DE SILVA, Police
Officer of Weligama*Plaintiff*

No. 388. *vs.*

JAYASINGHE BABUN APPUHAMY of Colombo.....*Defendant.*

D. C. No. 388.

I, J. U. de Silva on behalf of the purchaser tender into Court Rs. 150
being balance purchase amount. 10

Matara, 14th March, 1924. Sgd. J. U. DE SILVA.

Deposit :

Intld. E. C. D.

14-3.

Deposited. 14-3-24.

D 30. Deed No. 3267

D 30.
Deed
No. 3267
16-5-24

D 30.

Consideration Rs. 6,500.

Lands 1.

Transfer No. 3267

To all to whom these presents shall come I, Arukatti Patabendige 20
Daniel Abeysuriya of Matara (hereinafter sometimes called and referred
to as the vendor, send Greeting :

Whereas under and by virtue of certificate of sale dated 8th day of July, 1921, issued in Partition Case No. 9296 of the District Court of Matara under the hand of Charles William Bickmore, Esquire, District Judge of Matara, Sella Hewage Wattuhamy of Dondra was seized and possessed of the land called Deniyewatta comprising of two allotments called Deniyewatta and Paluwatta situated at Pitiduwa Pathegama in Weligam Korale Matara District, Southern Province, bounded on the north by Kewelkumbura and Pindeniya, east by Pattinigewatta and Kurunduwatta, south by Rabelgewatta and on the west by Wewahena Etiyamullewatta Nugedeniyedumulla and Pateiabokka containing in extent sixteen acres one rood and thirty-five perches (16A. 1R. 35P.) as per Plan of Survey filed in the above case made by J. D. de Niese, Licensed Surveyor, Matara.

Exhibits
D 30.
Deed
No. 3267
16-5-24
—continued.

And whereas the said Sella Hewage Wattuhamy sold and transferred the said property unto me the said Arukatti Patabendige Daniel Abey-suriya on Deed of Transfer No. 2368 dated 1st day of November, 1921, attested by D. G. Gunawardena of Galle, Notary Public.

And whereas I the said vendor Arukatti Patabendige Daniel Abey-suriya have agreed with Jayasinghe Arachchige Udenis de Silva Police Officer of Weligama (hereinafter sometimes called and referred to as the vendee) for the absolute sale to him of the said property for the consideration hereinafter mentioned.

Now know ye and these presents witness that I the said vendor Arukkatti Patabendige Daniel Abey-suriya in pursuance of the said agreement and in consideration of the sum of Rupees six thousand five hundred (Rs. 6,500) lawful money of Ceylon well and truly paid unto the said vendor by the said vendee Jayasinghe Arachchige Udenis de Silva (the receipt whereof I do hereby admit and acknowledge) do hereby grant, convey, assign, transfer, set over and assure unto the said vendee his heirs executors administrators and assigns all that land called "Deniyewatta comprising of two allotments Deniyawatta and Paluwatta" hereinbefore fully described together with all and singular the rights ways easements advantages servitudes and appurtenances whatsoever thereto belonging or in anywise appertaining or usually held occupied used or enjoyed therewith or reputed or known as part or parcel thereof and together with all the estate right title interest claim and demand whatsoever of me the said vendor of in to upon or out of the said premises and every part thereof and together with all the title deeds vouchers and other writings therewith held or relating thereto.

To have and to hold the said premises hereby sold and conveyed with the rights and appurtenances thereto belonging unto him the said vendee his heirs executors administrators and assigns absolutely and for ever.

And I the said vendor for myself my heirs executors and administrators do hereby covenant promise and declare to and with the said vendee his heirs executors administrators and assigns that the said premises hereby sold and conveyed and free from any encumbrance whatso-

Exhibits
 D 80.
 Deed
 No. 3207
 16-5-24
 —continued.

ever and that I have not at any time heretofore made done or committed or been party or privy to any act deed matter or thing whatsoever whereby or by means whereof the said premises or any part thereof are is can shall or may be impeached or encumbered in title charge estate or otherwise however and that I and my aforewritten shall and will at all times hereafter warrant and defend the title to the same and every part thereof unto him or his aforewritten against any person or persons whomsoever and further also shall and will at all times hereafter at the request and cost of the said vendee or his aforewritten do and execute or cause to be done and executed all such further and other acts deeds assurances matters 10 and things whatsoever for further and more perfectly assuring the said premises hereby sold and conveyed and every part thereof unto the said vendee and his aforewritten as by the said vendee or his aforewritten shall or may be reasonably required.

In witness whereof I the said vendor do set my hand to three of the same tenor and date as these presents at Weligama on this sixteenth day of May, in the year One thousand Nine hundred and Twenty-four.

Witnesses :

1. Sgd. K. D. S. ABEYSUNDERA

2. Sgd. D. A. D. SILVA

Sgd. A. D. D. ABEYSOORIYA. 20

Sgd. B. E. A. JAYAWICKREMA.

N. P.

Attested on 16th May, 1924.

D 4. Application to Construct Building

D 4.
 Application
 to Construct
 Building
 1925

D 4.

Application No. 51/B of the Year 1925 for the Small Town of Weligama.

Plan and specification approved by the Chairman are herewith forwarded to J. U. de Silva of Weligama to erect a copra shed in the land called Palugahawatta situated at Walliwala, Weligama.

You should carefully note :

1. That the building is to be constructed of wattle and daub walls, 30 floor mud and the roof is to be covered with cadjans.
2. The walls must be so constructed that they can be plastered and whitewashed.
3. The floor is to be raised feet above the ground.
4. No portion of the eaves walls floor or verandah posts are to come within twenty-five feet from the centre of any public road or path.
5. This permit lapses after one year from its date of issue.
6. Before operations are started the applicant must give the Chairman seven days' notice to commence work on the form C 1 below.

7. If at any time work is suspended over three months he must give similar notice to the Chairman on form C 2 below. Exhibits

8. The applicant's attention is invited to the provisions of the Ordinance contained overleaf* D 4. Application to Construct Building 1925

9. No building erected shall on completion be occupied otherwise than as given overleaf until a certificate of conformity has been obtained from the Chairman, Sanitary Board, Matara. On completion of the building the form C 3 should be detached filled up and sent to the Chairman. —continued.

10. All references to this application should bear the number, year and name of the Small Town given at the head of this page.

Kachcheri,
Matara, 24th June, 1925.

Sgd. (Illegibly).
Chairman S. B.

P 6. Deed No. 4429

P 6.

P 6.
Deed
No. 4429
1-6-1926

Mortgage No. 4429.

Amount Rs. 4,000. Lands 1.

Know all men by these presents that I, Jayasingha Aratchige Udenis de Silva, Police Officer of Walliwala, hereinafter calling myself and referred to as the obligor am held and firmly bound unto Lorensu Hewage Darilnamine Gunaratna of Weligama hereinafter called and referred to as the obligee in the sum of (Rs. 4,000) Rupees four thousand of lawful money of Ceylon for money borrowed and received by me from the said obligee at the execution of these presents (the receipt whereof I do hereby admit and acknowledge) I therefore hereby renouncing the *beneficium non numerate pecuniæ* do engage and bind myself my heirs executors and administrators to pay on demand unto the said obligee or to her certain heirs attorneys executors administrators or assigns the said sum of (Rs. 4,000) Rupees four thousand with interest thereon at and after the rate of ten per centum per annum to be computed from this date.

30 And for securing the payment of the said amount with the interest accruing thereon I the said obligor do hereby specially mortgage and hypothecate to and with the said obligee his heirs executors administrators and assigns as a first or primary mortgage free from any encumbrance whatsoever and subject to the conditions hereinafter mentioned the following property with all the estate right title interest property claim and demand whatsoever therein and thereto of me the said obligor to wit : All that the land called Deniyewatta comprising of two allotments called

* Refers to Sections 5, 6, 10, 18 and 15 of Ordinance No. 19 of 1915.

As a first cause of action.

2. (1) The defendant by his promissory note dated 8th day of October, 1926, executed at Weligama marked " P 1 " and filed herewith as part and parcel of this plaint promised to pay on demand unto the plaintiff a sum of Rs. 250 with interest thereon at the rate of 18 per cent. per annum from the date thereof.

Exhibits

D 35.
Plaint in
D. C. Matara
3494
10-2-28
—continued.

As second cause of action.

(ii) The defendant by his promissory note dated 14th March, 1926, executed at Weligama aforesaid marked " P 2 " and filed herewith as part and parcel of this plaint promised to pay on demand unto the plaintiff a sum of Rs. 100 with interest thereon at the rate of 18 per cent. per annum from the date thereof.

3. There is justly and truly due and owing from the defendant on first cause of action a sum of Rs. 250 being principal and a sum of Rs. 60 being interest and on second cause of action a sum of Rs. 100 being principal and a sum of Rs. 34.20 being interest aggregating the sum of Rs. 444.20 which sum the defendant has failed and neglected to pay though thereto often demanded.

Wherefore the plaintiff prays :

1. For judgment against the defendant for the recovery of the sum of Rupees four hundred and forty-four and cents twenty (Rs. 444.20) together with further interest on principal amounts from this date till date of decree and thereafter legal interest on the aggregate amount from the date of decree till date of payment in full.
2. For costs, and
3. For such other and further relief as to this Court shall seem meet.

Sgd. BALASURIYA & DALUWATTA,
Proctors for Plaintiff.

DECREE

It is ordered and decreed that the defendant do pay to the plaintiff the sum of Rupees four hundred and forty-four and cents twenty (Rs. 444.20) with further interest on the principal sum of Rs. 350 at 18 per cent. per annum from the 10th day of February, 1928, till this date and thereafter legal interest on the aggregate amount till payment in full and costs of suit.

The 29th day of August, 1929.

Sgd. M. PRASAD,
District Judge.

Exhibits
D 39.
Decree in
D. C. Matara
4122
60-11-28

D 39. Decree D. C. Matara 4122

DECREE

IN THE DISTRICT COURT OF MATARA

JAYASINGHE ARACHCHIGE UDENIS DE SILVA, Police
Officer of Walliwala *Plaintiff*

No. 4122. *against*

CHARLES THOMAS WEERARATNE JAYASURIYA of
Pitiduwa, Pategama *Defendant.*

This action coming on for final disposal before Murari Prasad, Esq., District Judge of Matara on the 30th day of November, 1929, in the presence of Messrs. Balasuriya & Daluwatta Proctors on the part of the plaintiff and the defendant not appearing either in person or by Proctor, it is ordered and decreed that the defendant do pay to the plaintiff the sum of Rupees three hundred and twelve and cents thirty (Rs. 312.30) with further interest thereon at 9 per cent. per annum from the 28th day of September, 1928, till payment in full.

And it is further ordered that the said defendant do pay to the plaintiff his costs of this action as taxed by the officer of the Court.

Sgd. M. PRASAD, 20
District Judge.

The 30th day of November, 1928.

D 36.
Decree in
D. C. Matara
4149
19-11-29

D 36. Decree D. C. Matara 4149

DECREE

IN THE DISTRICT COURT OF MATARA

JAYASINGHE ARACHCHIGE UDENIS DE SILVA, Police
Officer of Weligama..... *Plaintiff*

No. 4149. *against*

1. ILLAMPERUMA ARACHCHIGE BABAHAMY of Kohunugamuwa, 30
2. Do. HENDRICK APPU of Walliwala,
3. LEIRIS APPU *Defendants.*

This action coming on for final disposal before Murari Prasad, Esquire, District Judge of Matara on the 19th day of November, 1929, in the presence of Messrs. Balasuriya & Daluwatta Proctors on the part of the plaintiff and of Mr. A. Gunaratna Proctor on the part of the defendant, it is ordered and decreed of consent that the 1st and 2nd defendants

jointly and severally do pay to the plaintiff the sum of Rupees six hundred and ten (Rs. 610) being the aggregate amount of the principal interest and costs due in respect of mortgage bond No. 1073 dated the 28th day of September, 1927, and attested by A. P. Daluwatte, Notary Public, with further interest on the said sum of Rs. 610 at 15 per cent. per annum from 28th September, 1927, till date hereof and thereafter on the aggregate amount at the rate of 9 per cent. per annum from this date till payment in full, and the costs of this action (Rs. 75) Rupees seventy-five on or before the expiry of the period of two months. And it is further ordered 10 that in default of payment of the said amount, interest and costs within such time the premises mortgaged by the said bond to wit: All that undivided one-fourth share of the soil and fruit trees together with the planter's half share of all the plantation and the thirteen cubits tiled house standing thereon of the land called Polhenegewatta situated at Kohunugamuwa in the Weligam Korale of Matara District, Southern Province, and bounded on the north by Rukattanagahakoratuwa or Patiranagekoratuwa, east by Alawatta, south by Danketiya and west by Kella containing in extent one acre and two roods.

2. All that undivided five-sixteenth share of the soil and fruit trees 20 together with the planter's half share of the 1st, 2nd, 3rd plantations of the land called Nugahawatta situate at Kohunugamuwa aforesaid and bounded on the north by Panambalana Owita, east by Patiriannehege Owita *alias* Katukurunduge Owita, south by Mulana and west by Bogahapittaniya containing in extent two acres.

3. All that undivided one-eighth share of the soil and fruit trees together with the planter's share of the second plantation of the land called Patiranage Owita situate at Kohunugamuwa aforesaid and bounded on the north by Arachchige Owita, east by Katukurundugeowita and Rukattanagahakoratuwa, south by Polhenegewatta and west by Nagaha- 30 pittaniya containing in extent about three acres.

4. All that undivided one-sixth share of the soil and fruit trees of the land called Yaddehigewatta situate at Kohunugamuwa aforesaid and bounded on the north by Liyana Arachchigewatta, east by Godawatta, south by Barawagewatta and west by Patiranagewatta containing in extent about one acre.

And all the right title interest and claim whatsoever of the said defendants in to upon or out of the said several premises mortgaged by the defendants be sold by K. M. Thorolis Silva Commissioner and the proceeds applied in and towards the payment of the said amount interest 40 and costs and if such proceeds shall not be sufficient for the payment in full of such amount that the said defendant do pay to the plaintiff the amount of the deficiency with interest thereon at the aforementioned rate until realisation.

The 19th day of November, 1929.

Sgd. M. PRASAD,
District Judge.

Exhibits
D 36.
Decree in
D. C. Matara
4149
19-11-29
—continued.

Exhibits

D 34. Plaintiff D. C. Matara 6104

D 34.
Plaint in
D. C. Matara
6104
25-8-30

Amount Rs. 1,782.75.

IN THE DISTRICT COURT OF MATARA

JAYASINGHE ARACHCHIGE UDENIS DE SILVA of Walli-
wala..... *Plaintiff*

No. 6104. *vs.*

SEIYADU AHAMADU IBUNU SEIYADU SHEIK HIBSI
MOWLANA of Kohunugamuwa *Defendant.*

This 25th day of August, 1930.

The plaint of the plaintiff abovenamed appearing by Wilmot Bala-¹⁰
suriya and Alexander Peter Daluwatta Proctors of Matara carrying on
business in partnership under the name style and firm of Balasuriya &
Daluwatta his Proctors, state as follows :—

1. The defendant by his promissory note dated 8th August, 1929,
executed at Weligama within the jurisdiction of this Court marked “ P 1 ”
and filed herewith as part and parcel of this plaint, promised to pay on
demand unto the plaintiff a sum of Rupees one thousand five hundred
(Rs. 1,500) with interest thereon at the rate of eighteen per cent. per
annum from the date thereof.

2. There is justly and truly due and owing from the defendant to ²⁰
the plaintiff a sum of Rs. 1,500 for principal and a sum of Rs. 282.75 for
interest aggregating the sum of Rs. 1,782.75.

3. The defendant has hitherto failed and neglected to pay on demand
unto the plaintiff a sum of Rs. 1,782.75, though thereto often demanded.

Wherefore the plaintiff prays :

1. For judgment against the defendant for the said sum of Rs. 1,782.75
together with further interest on the principal sum of Rs. 1,500 at the
rate of 18 per cent. per annum from this date till date of decree, and
thereafter on the aggregate amount legal interest at the rate of nine per
cent. from the date of decree till payment in full under Chapter LIII of ³⁰
the Civil Procedure Code ;

2. For costs ; and

3. For such other and further relief as to this Court shall seem meet.

Sgd. BALASURIYA & DALUWATTA,
Proctors for Plaintiff.

Trial. 11-10-32.

Settled. Plaintiff withdraws.

DECREE

It is ordered and decreed that the action of the plaintiff in this case
be and the same is hereby dismissed.

Sgd. C. J. S. PRITCHETT, ⁴⁰
District Judge.

The 11th day of October, 1932.

D 48. **Plaint A. C. R. Matara 22505**

Exhibits

D 48.

D 48.
Plaint in
A. C. R.
Matara
22505
8-1-41

IN THE ADDITIONAL COURT OF REQUESTS OF MATARA

JAYASINGHE ARACHCHIGE UDENIS DE SILVA, Police
Officer of Walliwala *Plaintiff*

No. 22505.

vs.

1. KADEHETTIGE ANDRIS APPU,
 2. Do. MARTHENIS APPU, and
 3. Do. ELMIS SINGHO all of Pitiduwa
- 10 Pategama,..... *Defendants.*

This 8th day of January, 1941.

The plaintiff of the plaintiff abovenamed appearing by Wilmot Balasuriya and Alexander Peter Daluwatta Proctor of Matara carrying on business in partnership under the name and style and firm of Balasuriya & Daluwatta Proctors, state as follows :—

1. Defendants reside at Pitiduwa, Pategama within the jurisdiction of this Court.

2. By Bond No. 5085 dated the 7th day of February, 1938, and attested by Mr. A. P. Daluwatta, Notary Public, executed at Weligama
20 within the jurisdiction of this Court herewith filed and plead as part and parcel of this plaint the defendants bound themselves heirs executors and administrators to pay on demand unto plaintiff and his heirs executors administrators and assigns a sum of Rupces one hundred and fifty (Rs. 150) with interest thereon at the rate of 18 per cent. per annum from the date thereof.

3. For securing the payment of the principal and interest the defendant mortgaged and hypothecated to and with the said plaintiff the property more fully described in the schedule hereunder written.

4. There is now due and owing from the defendant to the plaintiff
30 sum of Rs. 150 for principal and Rs. 51·82 for interest aggregating the sum of Rs. 201·82.

5. The defendant has hitherto failed and neglected to pay unto the plaintiff the said sum of Rs. 201·82 or any part thereof though thereto often demanded and the plaintiff has further incurred a sum of Rs. 1·25 in issuing a letter of demand.

Wherefore the plaintiff prays that the Court will order the defendant to pay the said sum of Rs. 203·07 with such further interest as may accrue between the filing of the plaint and the date of judgment and thereafter with legal interest on the aggregate amount till payment in

Exhibits
 D 48.
 Plaintiff in
 A. C. R.
 Matara
 22505
 8-1-31
 —continued.

full and also the costs of this action on some day to be named by the Court and in default that the said premises may be sold and the proceeds applied in and towards the payment of the amount of the said principal interest and costs and that if such proceeds shall not be sufficient for the payment in full of such amount the defendant do pay the plaintiff the amount of the deficiency with interest thereon at the rate of nine per cent. per annum until realisation and for the purpose all proper directions may be given and accounts taken by the Court.

Sgd. BALASURIYA & DALUWATTA,
Proctors for Plaintiff. 10

Documents filed with the plaintiff.
 Mortgage Bond No. 5085 dated 7th February, 1938.
 Attested by A. P. DALUWATTA, N. P.

Sgd. BALASURIYA & DALUWATTA,
Proctors for Plaintiff.

The Schedule above referred to

All that undivided three-fifth (3/5th) part of the soil and of fruit trees and of the seven cubit tiled house standing thereon of the defined Lot E of the land called Itiyamullewatta situate at Pitiduwa in Weligam Korale, Matara District, Southern Province, and which said Lot E is bounded on the north by Lot D of the same land, east by Lot F of the same land, south by road, and west by Mahaitiyamulle and containing in extent two roods and thirty-seven and one-third perches (0A. 2R. 37.1/3P.)

Sgd. BALASURIYA & DALUWATTA,
Proctors for Plaintiff.

18-12-42. Messrs. Daluwatta & Jayasuriya for plaintiff move to certify payment of full amount due from defendant.

Plaintiff consents :

1. Payment certified.
2. Enter satisfaction of Decree.

30

Initialled : S. S. J. G.,
 A. C. R.

D 40. Decree D. C. Matara 6105

Exhibits

D 40.

IN THE DISTRICT COURT OF MATARA

D 40.
Decree in
D. C. Matara
6105
22-1-31

JAYASINGHE ARACHCHIGE UDENIS DE SILVA of Walli-
wala *Plaintiff*

No. 6105.

vs.

RAIGAM KORALE ROBERT DE SILVA of Ahangama presently
of Walliwala.....*Defendant.*

DECREE

10 It is ordered and decreed that the defendant do pay to the plaintiff
the sum of Rs. 928.99 together with further interest on the principal sum
of Rs. 600 at 12 per cent. per annum and also for Rs. 200 at the rate of
20 per cent. per annum from 25th day of August, 1930, till this date and
thereafter legal interest on the aggregate amount till payment in full
and costs of suit.

Sgd. M. PRASAD,
District Judge.

The 22nd day of January, 1931.

D 37. Plaint D. C. Matara 6957

D 37.

20 8-3-32. Defendants served with summons,
Payments made. Lay by.

D 37.
Plaint in
D. C. Matara
6957
7-9-31

Initialled : C. J. S. P.,
D. J.

22-2-35. No steps taken since 8-3-32.
Case abated.

Sgd. C. E. DE PINTO,
D. J.

No. 6957. Amount Rs. 334.70.

IN THE DISTRICT COURT OF MATARA

30 JAYASINGHE ARACHCHIGE UDENIS DE SILVA, Police
Officer of Walliwala*Plaintiff*

Against

1. KAHALUWE WELIGAMAGE EDIA;
2. Do. JULINONA and husband,
3. RATNAWEERA PATABENDIGE PUNCHI SINGHO all
of Walliwala *Defendants.*

This 7th day of September, 1931.

The plaint of the abovenamed plaintiff appearing by Balasuriya &
Daluwatta Proctors, sheweth as follows :—

- 40 1. That the defendants reside at Walliwala within the jurisdiction
of this Court.

Exhibits
 D. 37.
 Plaintiff in
 D. C. Matara
 6957
 7-9-31
 —continued.

2. That by a writing obligatory or Bond No. 1219 dated the 17th day of October, 1929, attested by A. D. S. W. Samaranayaka, Notary Public, executed at Weligama within the jurisdiction of this Court duly registered on the 28th day of October, 1929, herewith filed (1r) and pleaded as part and parcel of this plaint the defendants bound themselves to pay on demand unto the plaintiff and his heirs executors administrators and assigns a sum of Rupees two hundred and fifty (Rs. 250) with interest thereon at the rate of 18 per cent. per annum from the date thereof.

3. For securing the payment of the said principal and interest the defendant mortgaged and hypothecated to and with the said plaintiff and his heirs executors administrators the following property, to wit: more fully described in the schedule hereunder written.

The Schedule referred to

All that the undivided five-twenty-fourth (5/24) share of the soil and fruit trees exclusive of the planter's half share of the first and second plantations Kosralagehena situate at Kudalumulla in Weligam Korale, Matara District, Southern Province, and bounded on the north by Ihalgewatta, east by Badalgewatta *alias* Babarendegewatta, south by old road west by Pahalawattagodella in extent about four acres.

4. There is now due and owing from the defendant to the plaintiff a sum of Rs. 250 for principal and Rs. 84.70 for interest aggregating the sum of Rs. 334.70.

5. The defendant has hitherto failed and neglected to pay unto the plaintiff the said sum of Rs. 334.70 or any part thereof though thereto often demanded.

Wherefore the plaintiff prays that the Court will order the defendant to pay the said sum of Rs. 334.70 with such further interest as may accrue between the filing of the plaint up to the date of decree and legal interest on the aggregate amount from the date of decree till payment in full, and also costs of this action, on some day to be named by the Court and in default that the said property may be sold and the proceeds applied in and towards the payment of the amount of the said principal, interest and costs, and that if such proceeds shall not be sufficient for the payment in full of such amount the defendant do pay to the plaintiff the amount of deficiency with interest thereon at the rate of per cent. per annum until realisation, and that for that purpose all proper directions may be given and accounts taken by the Court, and the plaintiff also pray for such further or other relief as to this Court shall seem meet.

Sgd. BALASURIYA & DALUWATTA,
Proctors for Plaintiff. 40

Documents filed with plaint :

Bond No. 1219 dated 17th day of October, 1929, attested by A. D. S. W. Samaranayaka, Notary Public of Weligama marked and referred to in the plaint.

Sgd. BALASURIYA & DALUWATTA,
Proctor for plaintiff.

D 5. Application to Construct Building

Exhibits

D 5.D 5.
Application
to Construct
Building
1933

Application No. 43/B of the year 1933 for the Town of Weligama.

Plan and specification approved by the Chairman are herewith forwarded to J. U. de Silva of Weligama to erect a Dry-Earth Latrine in the land called Palugahawatta situated at Hettiweediya.

You should carefully note :

1. That the building is to be constructed of masonry plastered and limewashed and the roof is to be covered with tiles.
- 10 2. The walls must be so constructed that they can be plastered and whitewashed.
3. The floor is to be raised one foot above the ground and cemented.
4. No portion of the eaves walls floor or verandah posts are to come within twenty-five feet of the centre of any public road or path.
5. This permit lapses after one year from its date of issue.
6. Before operations are started the applicant must give the Chairman seven days' notice to commence work on the form C 1 below.
7. If at any time work is suspended for over three months he must give similar notice to the Chairman on form C 2 below.
- 20 8. The applicant's attention is invited to the provisions of the Ordinance contained overleaf.*
9. No building erected shall on completion be occupied otherwise than as given overleaf until a certificate of conformity has been obtained from the Chairman, Urban District Council, Weligama. On completion of the building the form C 3 should be detached filled up and sent to the Chairman.
10. All references to this application should bear the number, year and name of the Small Town given at the head of this page.

30 U. D. C. Office,
Weligama, 26th June, 1933.

Sgd. S. M. S. DE SILVA,
for Chairman, U. D. C.

* Refers to Sections 5, 6, 10, 13 and 15 of Ordinance No. 19 of 1915.

Exhibits

D 43.
Supreme
Decree
in D. C.
Matara
6918
20-7-38

D 43. Supreme Court Decree D. C. Matara 6918

D 43.

GEORGE THE FIFTH BY THE GRACE OF GOD OF THE UNITED KINGDOM
OF GREAT BRITAIN AND IRELAND AND OF THE BRITISH DOMINIONS
BEYOND THE SEAS, KING, DEFENDER OF THE FAITH.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

J. A. UDENIS DE SILVA.....*Plaintiff-Appellant*

against

1. L. B. NIMALHAMY.
2. G. G. POROLIS SIRIWARDENA,
3. G. G. ARNOLISHAMY.....*Defendants-Respondents.* 10

Action 6918.

DISTRICT COURT OF MATARA

This cause coming on for hearing and determination on the 20th day of July, 1933, and on this day upon an appeal preferred by the plaintiff before the Hon. Mr. Allen Driberg, K.C., and Hon. Mr. W. E. Barber, Puisne Justices of this Court in the presence of counsel for the appellant and respondents.

It is considered and adjudged that the decree made in this action by the Court of Matara and dated the 5th September, 1932, be and the same 20 is hereby set aside.

It is further ordered and decreed that the defendants-respondents do pay to the plaintiff the sum of Rs. 150 together with further interest at the rate of 18 per cent. per annum from the 25th August, 1931, till date hereof and interest on the aggregate sum at the rate of 9 per cent. per annum from 20th July, 1933, till payment in full.

It is further ordered that the defendants-respondents do pay to the plaintiff-appellant his taxed costs of this action in the Court of Requests Class and of this appeal on the same basis.

Witness the Hon. Mr. Llewelyn Chisholm Dalton, Acting Chief Justice 30 at Colombo the 20th day of July, in the year of our Lord One thousand Nine hundred and Thirty-three and of our Reign the Twenty-fourth.

Sgd. E. W. GUNARATNA,
Deputy-Registrar, S. C.

D 38. **Plaint A. C. R. Matara 18837**

Exhibits

D 38.

Amount Rs. 283.

D 38.
Plaint in
A. C. R.
Matara
18837
28-7-33

IN THE ADDITIONAL COURT OF REQUESTS OF MATARA

JAYASINGHE ARACHCHIGE UDENIS DE SILVA of
Walliwala *Plaintiff*

No. 18837

vs.

SEIYADU AHAMADU IBUNU SEIYADU SHEIK HIBSI
MAWLANA of Weligama..... *Defendant.*

This 28th day of July, 1933.

10 The plaintiff of the plaintiff abovenamed appearing by Wilmot Balasuriya and Alexander Peter Daluwatta Proctors of Matara carrying on business in partnership under the name style and firm of Balasuriya & Daluwatta his Proctors, state as follows :—

1. The parties to this action reside and the cause of action hereinafter set forth arose within the jurisdiction of this Court.

2. On Indenture No. 2724 dated 29th day of September, 1932, attested by Mr. A. P. Daluwatta, N. P., the defendant agreed and covenanted with the plaintiff to deliver to him seven thousand and five hundred coconuts on or before the first day of December, 1932.

20 3. The defendant has delivered to the plaintiff only 1,200 nuts leaving a balance of 6,300.

4. A cause of action hath accrued to the plaintiff to sue the defendant for the recovery of the sum of Rs. 283.

5. The defendant has failed and neglected to pay the sum of Rs. 283 though thereto often demanded.

Wherefore the plaintiff prays :

That the defendant be condemned to pay the said sum of Rs. 283 together with the legal interest and costs of suit for such other and further relief as to this Court shall seem meet.

30

Sgd. BALASURIYA & DALUWATTA,
Proctors for Plaintiff.

Exhibits
D 41.
Decree in
D. C. Matara
8247
12-4-34

D 41. Decree D. C. Matara 8247

DECREE

IN THE DISTRICT COURT OF MATARA

JAYASINGHE ARACHCHIGE UDENIS DE SILVA of
Walliwala in Weligama *Plaintiff*

against

SEIYADU AHAMADU IBUNU SEIYADU SHEIK HIBSI
MAWLANA of Weligama..... *Defendant.*

This action coming on for final disposal before M. H. Kantawala, 10 Esquire, District Judge of Matara on the 12th day of April, 1934, in the presence of Mr. Adv. G. M. de Silva with Messrs. Balasuriya & Daluwatta Proctors on the part of the plaintiff and of Mr. A. Gunaratna Proctor on the part of the defendant it is ordered and decreed that the defendant abovenamed do pay to the plaintiff the sum of Rupees three hundred and thirty-seven and cents fifty (Rs. 337.50) together with legal interest from 23rd day of December, 1932, till payment in full.

And it is further ordered that the said defendant do pay to the said plaintiff his costs of this action as taxed by the officer of this Court.

The 12th day of April, 1934. Sgd. M. H. KANTAWALA, 20
District Judge.

D 42.
Plaint in
C. R. Matara
9664
7-5-34

D 42. Plaint C. R. Matara 9664

Value Rs. 491.56.

IN THE COURT OF REQUESTS OF MATARA

JAYASINGHE ARACHCHIGE UDENIS DE SILVA of
Walliwala..... *Plaintiff*

No. 9664 *vs.*

CASSIM LEBBE MARIKAR AHAMADU ISMAIL of Wata-
gederamulla..... *Defendant.*

The 7th day of May, 1934. 30

The plaint of the abovenamed plaintiff appearing by Wilmot Balasuriya and Alexander Peter Daluwatta, Proctors of Matara carrying on business in partnership under the name style and firm of Balasuriya & Daluwatta, Proctors, state as follows :—

1. The parties to this action reside within the jurisdiction of this Court.

2. The defendant abovenamed by his promissory note dated 25th day of December, 1928, executed at Weligama within the jurisdiction of this Court promised to pay to the plaintiff on demand the sum of Rs. 250 with interest thereon at 18 per cent. per annum.

Exhibits
D 42.
Plaint in
C. R. Matara
9664
7-5-34
—continued.

3. There is now justly and truly due from the defendant to the plaintiff a sum of Rs. 250 for principal and Rs. 241·56 for interest aggregating the sum of Rs. 491·56.

4. The defendant has hitherto failed and neglected to pay to the plaintiff the said sum of Rs. 491·56 or any part thereof though thereto often demanded and the plaintiff has further incurred a sum of Rs. 1·25 in issuing a letter of demand.

Wherefore the plaintiff pray for judgment against the defendant for the sum of Rs. 491·56 with further interest on Rs. 250 at 18 per cent. per annum from this till date of decree and thereafter with legal interest till payment in full together with costs of this action and for such further and other relief as to this Court shall seem meet.

Sgd. BALASURIYA & DALUWATTA,
Proctors for Plaintiff.

Documents filed with plaint.
20 Promissory note dated 25th day of December, 1928.

Sgd. BALASURIYA & DALUWATTA,
Proctors for Plaintiff.

DECREE

It is ordered and decreed that the defendant do pay to the plaintiff the sum of Rs. 491·56 with further interest on the principal sum of Rs. 250 at 18 per cent. per annum from 7th day of May, 1934, till this date and thereafter legal interest on the aggregate amount till payment in full and costs of suit.

30 The 31st day of October, 1934. Sgd. C. E. DE PINTO,
District Judge.

D 44. Decree C. R. Matara 19408

D 44.

IN THE COURT OF REQUESTS OF MATARA

D 44.
Decree in
C. R. Matara
19408
13-11-34

JAYASINGHE ARACHCHIGE UDENIS DE SILVA of
Walliwala..... *Plaintiff*

No. 19408

vs.

JOHN WILFRED SAMARAWEERA of Weligama*Defendant.*

DECREE

It is ordered and decreed that the defendant do pay to the plaintiff the sum of Rs. 196·55 with further interest on the principal sum of Rs. 100

Exhibits at 18 per cent. per annum from 16th July, 1934, till date hereof, and thereafter legal interest on the aggregate amount till payment in full and costs of suit.

D 44. Decree in C. R. Matara 19408 18-11-34
—continued. The 13th day of November, 1934.

Sgd. C. E. DE PINTO,
A. C. R.

D 6.
Application
to Construct
Building
1935

D 6. Application to Construct Building

C. Application No. W A 3 year 1935.

A plan and specification approved by the Chairman are herewith forwarded to Mr. J. U. de Silva of Walliwala to alter a dwelling house in the land called Palugahawatta situated at Walliwala.

You should carefully note :

1. That the building is to be constructed of rubble masonry plastered and limewashed and the roof is to be covered with tiles.
2. The walls must be so constructed that they can be plastered and whitewashed.
3. The floor is to be raised half foot above the ground and cemented.
4. No portion of the eaves walls floor or verandah posts are to come within twenty-five feet of the centre of any public road or path.
5. This permit lapses after one year from its date of issue. 20
6. Before operations are started the applicant must give the Chairman seven days' notice to commence work on the form C 1 below.
7. If at any time work is suspended for over 3 month he must give similar notice to the Chairman on form C 2 below.
8. The applicant's attention is invited to the provisions of the Ordinance contained over leaf.*
9. No building erected shall on completion be occupied otherwise than as given overleaf until a certificate of conformity has been obtained from the Chairman, Urban District Council, Weligama, on completion of the building the form C 3 should be detached filed up and sent to the Chairman.
10. All references to this application should bear the number and year given at the head of this page.

Sgd. H. HUSSAIN,
Acting Chairman, U. D. C.

Urban District Council Office,
Weligama, 18th February, 1935.

* Refers to Sections 5, 6, 10, 13 and 15 of Ordinance No. 19 of 1915.

D 46.

DECREE

D 46.
Decree in
A. C. R.
Matara
20007
27-11-35

IN THE ADDITIONAL COURT OF REQUESTS OF MATARA

No. 20007.

JAYASINGHE ARACHCHIGE UDENIS DE SILVA, Police
Officer of Walliwala *Plaintiff*

vs.

PODDANA RADAGE CARO of Madiha.....*Defendant.*

10 This action coming on for final disposal before G. P. Keuneman,
Esquire, Acting Additional Commissioner of Requests of Matara on the
30th day of September, 1935, in the presence of Messrs. Balasuriya &
Daluwatta on the part of the plaintiff.

It is ordered and decreed of consent that the defendant do pay to
the plaintiff the sum of Rupees One hundred and Nine and cents thirty
(Rs. 109.30) being the aggregate amount of the principal interest and costs
due in respect of Mortgage Bond No. 3796 dated the 19th day of February
1935, and attested by A. P. Daluwatta, Notary Public, and bearing Regis-
tered No. A 148/108 with interest thereon at the rate of nine per cent. per
20 annum from this date till payment in full, and the costs of this action as
taxed by the officer of the Court, within three months. And it is further
ordered that in default of payment of the said amount interest and costs
within such time, the premises mortgaged by the said bond, to wit :

All that undivided one-sixteenth (1/16th) part of the soil and paraveni
fruit trees and an undivided one-eighth part of the planter's one-third
share of the first plantation and an undivided planter's one-third share of
the second plantation of the land called Kurunduwatta Addaracoratuwa
lying on the west of Kotawilagahawatta situate at Madiha in the Four
Gravets of Matara in Matara District, Southern Province, and bounded on
30 the north by Goraka tree and Badawetiya, east by Paragahakumbura
Niyara and Kotaniligahawatta planted by Kadawatte Arachchige Wattu-
hamy, south by Maddumegekumbura and west by Kurunduwattewela and
containing in extent about three acres.

And all the right title interest and claim whatsoever of the defendant
in to upon or out of the said several premises mortgaged by the defendant
be sold by the Fiscal and the proceeds applied in and towards the payment
of said amount, interest and costs and if such proceeds shall not be suffi-
cient for the payment in full of such amount that the defendant do pay
to the plaintiff the amount of the deficiency with interest thereon at the
40 aforementioned rate until realization.

The 27th day of November, 1935.

Sgd. C. E. DE PINTO,
Additional Commissioner.

Exhibits

D 8.
Letter
15-11-35**D 8. Letter****D 8.**

No. W. A. 3/1935.

Office of the Urban District Council,
Weligama, 15th November, 1935.

MR. J. U. DE SILVA, Walliwala.

Alterations to a Dwelling House on Palugahawatta

With reference to your letter of the 9th November, 1935, you are informed there is no objection to the door at Q being placed at 11 in the same room D. The deletion of window B cannot be allowed. As it is the big hall is not provided with adequate ventilation.

10

Sgd. E. H. DE SILVA,
*Secretary.*Sgd. S. JAMES DE SILVA,
*Chairman, U. D. C.*D 9.
Licence for
Copra Shed
21-5-36**D 9. Licence for Copra Shed****D 9.**

No. C 46.

Office of the Urban District
Council, Weligama, May 21, 1936.

From the CHAIRMAN, Urban District Council, Weligama.

To MR. J. U. DE SILVA, Walliwala, Weligama.

Licence for a Copra Shed for 1936

20

You are hereby requested to obtain a licence for your copra shed situated in the land called Palugahawatta within 10 days of the receipt of this notice.

2. On your failure to comply with the above, action will be taken against you, in terms of the by-laws made by this Council and published in the Government Gazette No. 8019 of the 24th November, 1933.

Sgd. MONTAGUE JAYAWICKREMA,
Chairman, U. D. C.

D 14. Notice re Alteration to Building

Exhibits

D 14.

No. W. A. 3/1935,
Office of the Urban District Council,
Weligama, 9th June, 1936.

D 14.
Notice re
Alteration
to Building
9-6-36

To MR. J. U. DE SILVA, Walliwala.

Alterations to Building under B. A., W. A.

3/1935

You are hereby directed to show cause within seven days of the receipt of this notice as to why you should not be prosecuted for erecting the above building leaving only a space of 17 feet from the centre of the road instead of keeping 22 feet as shown on approved plan.

2. You should also note that the dry latrine should be improved according to type plan.

Sgd. MONTAGUE JAYAWICKREMA,
Chairman, Urban District Council, Weligama.

D 15. Notice re Deviation from Approved Plan

D 15.
Notice re
Deviation
from
Approved
Plan
19-8-36

D 15.

No. W. A. 3/1935,
Office of the Urban District Council,
Weligama, 19th August, 1936.

To MR. J. U. DE SILVA, Walliwala, Weligama.

Deviations from Approved Plan No. W. A. 3/1935

It is reported that you have deviated from above approved plan.

2. You are requested to draw up a notarial agreement with this Council to the effect that you will demolish without any compensation the deviated portion of your house if and when road widening is necessary.

Sgd. MONTAGUE JAYAWICKREMA,
Chairman, U. D. C., Weligama.

Sgd. EDWIN H. DE SILVA,
Secretary.

Exhibits

D 16.
Letter
29-8-36

D 16. Letter

No. B 29.

Office of the Urban District Council,
Weligama, 29th August, 1936.

To MR. J. U. DE SILVA, Walliwala.

Application to Construct Walls at Palugahawatta and Gamagewatta

With reference to your application dated 29th August, 1936, you are requested to submit sketches on the approved forms available at this office at a cost of 10 cents per form for consideration. 10

Sgd. EDWIN H. DE SILVA,
*for Chairman, Urban District Council,
Weligama.*

D 17.
Notice re
Inquiry
15-8-37

D 17. Notice re Inquiry

No. B 29.

Office of the Urban District Council,
Weligama, 15th March, 1937.

To MR. J. U. DE SILVA, Walliwala.

Erection of a Building on Palugahawatta

You are requested to appear before me at this office on the 16th 20 March, 1937, at 10 a.m. when I will hold an inquiry into the above matter.

Sgd. EDWIN H. DE SILVA,
for Chairman, Urban Council, Weligama.

D 45.
Decree in
D. C. Matara
11485
20-4-37

D 45. Decree D. C. Matara 11485

D 45. No. 22A Form of Decree Absolute in Hypothecary Action in
Default of Appearance of Defendant (see Section 85)
No. 11485.

IN THE DISTRICT COURT OF MATARA

JAYASINGHE ARACHCHIGE UDENIS DE SILVA of
Weligama.....*Plaintiff* 30

vs

1. SARIFA KADIJA BIUTU SEIYADU AHAMADU
B. HASHIM BA ALAWI MOWLANA,
2. SEIADU AHAMADU IBUNU SEIADU SHEIK HIBASI
MOWLANA, both of Kohunugamuwa*Defendants*

This action coming on for disposal before Cyril Ernest de Pinto, Esquire, District Judge of Matara on the 20th day of April, 1937, being the day fixed for the *ex parte* hearing of the action against the 1st defendant

and the plaintiff appearing by Proctors and the 1st defendant not appearing either in person or by Proctor or Counsel, although he was duly served with the summons together with a concise statement of the nature of the claim as provided by section 49 of the Civil Procedure Code, as by the affidavit of A. M. Ismail, Police Officer of Galbokka, Weligama, filed the 12th day of January, 1937, appears, it is ordered and decreed that the 1st defendant do pay to the plaintiff the sum of Rupees two thousand and seventy (Rs. 2,070) being the aggregate amount of the principal and interest due in respect of mortgage bond No. 3471 dated the 22nd day of 10 April, 1934, and attested by A. P. Daluwatta, N. P., with further interest on the principal sum of Rs. 1,500 at the rate of 15 per cent. per annum from the 4th day of November, 1936, till date of decree and thereafter legal interest on the aggregate amount at the rate of nine per cent. per annum from this date till payment in full and the costs of this action as taxed by the officer of the Court.

Exhibits
D 45
Decree in
D. C. Matara
11485
20-4-37
—continued.

And it is further ordered that in default of payment of the said amount interest and costs within such time the premises mortgaged by the said bond to wit : as per schedule annexed. And all the right title interest and claim whatsoever of the 1st and 2nd defendants in to upon or out of the said several premises mortgaged by the 1st and 2nd defendants be sold by Mr. K. M. Thorlis Silva of Matara and the proceeds applied in and towards the payment of the said amount interest and costs, and if such proceeds shall not be sufficient for the payment in full of such amount that the 1st defendant do pay to the plaintiff the amount of the deficiency with interest thereon at the rate of 9 per cent. per annum until realisation.

Sgd. C. E. DE PINTO,
District Judge.

The 20th day of April, 1937.

Schedule referred to

1. All that undivided ten-twenty-first (10/21) part of the soil and 30 fruit trees of the land called Hompalawatta situate at Weligama within the Urban District Council area of Weligama in Weligam Korale, Matara District, Southern Province, and bounded on the north by Ela, east by Odetuduwa, south by the sea shore and on the west by Kappittawatta containing in extent about three acres.

2. All the field called Kongahawila situate at Palalla in Weligam Korale aforesaid, and bounded on the north by Kesbewila, east by river, south by Ilwattewatta and west by Talpitawatta containing in extent ten bags of paddy sowing.

3. All that the soil and fruit trees of the land called Gallellewila 40 situate at Palalla aforesaid and bounded on the north-east by Digama Ratambale and Kesbewepitakanda, south-east by Kesbeweowita and Ilwatta, south-west by Pamanwella and Talgahawatteowita and north-west by Bakinigahaliyadda and Waduwareowita containing in extent seven acres 2 roods and four perches.

Sgd. C. E. DE PINTO,
District Judge.

Exhibits
 D 7.
 Application
 to Construct
 Building
 29-4-37

D 7. Application to Construct Building

D 7.

C. Application No. W. A. 13 year 1937.

A plan and specification approved by the Chairman are herewith forwarded to Mr. J. U. de Silva of Walliwala to alter a dwelling house in the land called Palugahawatta situated at Walliwala.

You should carefully note :

1. That the building is to be constructed of masonry walls, plastered and limewashed and the roof is to be covered with tiles.
2. The walls must be so constructed that they can be plastered and 10 whitewashed.
3. The floor is to be raised one foot above the ground and cemented.
4. No portion of the caves walls floor or verandah posts are to come within twenty-five feet of the centre of any public road or path.
5. This permit lapses after one year from its date of issue.
6. Before operations are started the applicant must give the Chairman seven days' notice to commence work on the form C 1 below.
7. If at any time work is suspended for over 3 months he must give similar notice to the Chairman on form C 2 below.
8. The applicant's attention is invited to the provisions of the 20 Ordinance contained overleaf.*
9. No building erected shall be occupied otherwise than as given overleaf until a certificate of conformity has been obtained from the Chairman, Urban District Council, Weligama. On completion of the building the form C 3 should be detached filled up and sent to the Chairman.
10. All reference to this application should bear the number and year given at the head of this page.

Parapet walls shown on plan W. A. 13/1937 are not allowed.

Sgd. S. RICHARD PEIRIS,
for Acting Chairman, U.D. C. 30

Urban District Council Office,
 Weligama, 29th April, 1937.

D 18. Letter

D 18.
 Letter
 2-7-37

D 18.

Weligama, 2-7-37.

Dear MR. DE SILVA,

Herewith house rent for June and milk bill. Please let me have separate receipts and oblige.

Yours sincerely,
 Sgd. P. A. NARAIN.

* Refers to Sections 5, 6, 10, 13 and 15 of Ordinance No. 19 of 1915.

D 47. Decree A. C. R. Matara 2118

Exhibits

D 47.

DECREE

D 47.
Decree in
A. C. R.
Matara
2118
4-10-37

IN THE ADDITIONAL COURT OF REQUESTS OF MATARA

JAYASINGHE ARACHCHIGE UDENIS DE SILVA of
Walliwala..... *Plaintiff*

No. 2118.

*vs.*WATHIYAGE JAYAN of Walliwala *Defendant.*

This action coming on for final disposal before Charles Edwin Augustus Samarakkody, Esquire, Additional Commissioner of Requests of Matara on the 4th day of October, 1937, in the presence of Messrs. Balasuriya and Daluwatta Proctors on the part of the plaintiff and of Mr. A. S. de S. Amarasuriya Proctor on the part of the defendant.

It is ordered and decreed of consent that the defendant do pay to the plaintiff the sum of Rupees one hundred and one and cents twenty-five (Rs. 101.25) being the aggregate amount of the principal interest and costs due in respect of Mortgage Bond No. 1130 dated the 7th day of August, 1929, and attested by A. D. S. W. Samaranayaka, Notary Public, with interest thereon at the rate of nine per cent. per annum from this date till payment in full and the costs of this action as taxed by the officer of the Court. And it is further ordered that in default of payment of the said amount interest and costs within such time, the premises mortgaged by the said bond to wit :

All these undivided one-twentieth (1/20) part of the soil and of the fruit trees and an undivided one-fourth (1/4th) part of the planter's half share of the second plantation thereon of the land called Kanuketiyawatta situate at Walliwala in Weligam Korale, Matara District, Southern Province, and bounded on the north and east by Kurunduwatta, south by Kanuketiyekumbura and on the west by high road, and containing in extent about four acres and all the right title interest and claim whatsoever of the said defendant in to upon or out of the said several premises mortgaged by the defendant, be sold and the proceeds applied in and towards the payment of the said amount, interest and costs and if such proceeds shall not be sufficient for the payment of the in full of such amount, that the said defendant do pay to the plaintiff the amount of the deficiency with interest thereon at the aforementioned rate until realisation.

2. It is further ordered that the defendant do pay the amount by monthly instalments of Rs. 20 and that the first instalment be paid on 5th November, 1937, It is also ordered that in default of any of the payments as aforesaid writ do issue for the amount then due.

Sgd. C. E. A. SAMARAKKODY,
Additional Commissioner of Requests.

The 4th day of October, 1937.

Exhibits

D 12. Application for Electricity

No. 40/39.

D 12.
Application
for Elec-
tricity
13-12-37

D 12.

Date received : 13-12-37.

Page B issued.

Deposit for Connection Rs. 29.39.

Date of payment : 13-12-37.

Deposit for current : Rs.

Date of payment :

For Office use only.

Application for Supply of Electricity for Lighting and Fans 10

THE CHAIRMAN,

Urban District Council, Weligama.

Date : 13th December, 1937.

Sir,

I, the undersigned being the owner of premises No. 1969 known as situated in Galle Road at Weligama hereby request you to make the necessary arrangements for a supply of electricity for lighting and fans to such premises under and subject to the Rules and Regulations of the Electricity Department of your Council which I hereby declare I have perused. 20

I agree to be responsible for all sums due for the consumption of current service connection charges minimum charges rent of apparatus, etc., as shown by the Rules and Regulations of the Electricity Department of the Council and any Rules and Regulations that may be made hereafter by the Electricity Department of the Council and I also agree to pay until such time as this agreement is duly determined by either party in writing a minimum sum per month at the rates specified in the by-laws regulating the supply of electricity in Weligama whether energy is consumed or not.

I further agree that the properly authorised agents of the Electricity 30 Department of the Council shall at all reasonable hours have free access to the premises for the purpose of examining repairing or removing meter wires or other appliance belonging to the said Council.

I also agree to provide space for and protect the meter, wires and other appliances belonging to the said Council and hereby authorise the Council to remove the meter and all other materials belonging to them and cut off the supply of electric current whenever any bills for said service or supplied are in arrears or upon violation of any of the Rules and Regulations of the Electricity Department of the said Council.

The Council reserves the right to connect other consumers to the 40 service main wherever the supply to the original applicant is not affected thereby. Where it becomes necessary to make a connection to an existing service cable in a private compound the Council undertakes to reinstate the ground in proper and satisfactory manner.

I further understand that while the Council will at all times endeavour to furnish a continuous supply of electricity at the said premises it does not guarantee such a supply and shall not be liable for any damages which I may sustain by reason of the failure of current.

Exhibits
D 12.
Application
for Elec-
tricity
18-12-27
—continued.

Sgd. J. U. DE SILVA,

Applicant's signature on
Fifty-cent stamp.

Witness :

The supply will be required on

10 Please fill in the following in block letters.

Applicant's name : Mr. J. U. de Silva.

Applicant's place of business or private address : Weligama.

Landlord's name : Mr. J. U. de Silva.

Landlord's address : Weligama.

Contractor's name : K. A. Seemaratna.

Contractor's address : Wakwella, Galle.

Is the work to be carried out on the Assisted Wiring Scheme ?

Sgd. J. U. DE SILVA.

D 13. Electricity Bill

20 D 13.

MR. J. U. DE SILVA,
1969, Galle Road, Weligama.

Date : 1-4-1938.
Rental No. 40.

D 13.
Electricity
Bill
1-4-38

Dr. to the Urban District Council, Weligama.

For Electricity Supplied

| | | | | | | |
|----|---|-----|-----|-----|----|----|
| | Index of meter at date of bill | ... | ... | 2 | 9 | 0 |
| | Deduct previous month's index | ... | ... | 2 | 4 | 9 |
| | Consumption for the month in Trade Unit | ... | ... | 0 | 4 | 1 |
| | Amount outstanding on above date from accounts previously rendered | | | | | |
| 30 | Charges for the month of March. | | | Rs. | 2 | 50 |
| | Units 4-1 at 50-cents per unit | | | | | |
| | Rent of meter | ... | ... | .. | 1 | 00 |
| | | | | | | |
| | Total amount due on date of this bill | ... | Rs. | 3 | 50 | |

Sgd. EDWIN H. DE SILVA,
for Chairman, U. D. C.

Exhibits

D 19.
Notice
re Licence for
Copra Shed
18-8-38

D 19. Notice re Licence for Copra Shed

No. C 46.

Office of the Urban District Council, Weligama,
August 18, 1938.

FROM THE CHAIRMAN, Urban District Council, Weligama.
TO MR. J. U. DE SILVA, Walliwala.

Licence for a Copra Shed for 1938

You are hereby requested to obtain a licence for your copra shed situated in the land called Palugahawatta within one week of the receipt of this notice. 10

2. On your failure to comply with the above, action will be taken against you, in terms of the by-laws made by this Council, and published in the Government Gazette No. 8019 of the 24th November, 1933.

Sgd. EDWIN H. DE SILVA,
for Chairman, U. D. C.

D 20.
Notice re
Assessment
Objections
23-8-39

D 20. Notice re Assessment Objections

No. C 37.

Office of the Urban District Council, Weligama,
23-8-1939.

Assessment Objections

20

Sir,

I have the honour to inform you that your objection to the assessment of property bearing assessment No. 1969 for the year 1939 will be investigated at this office on the 8th September, 1939, at 9 a.m.

2. You or your agent should be present at that time with any documents on which you base your request for a reduction of the assessment.

I am, Sir,
Your obedient servant,
Sgd. M. JAYAWICKREMA,
Chairman, U. D. C. 30

MR. J. U. DE SILVA, Walliwala.

D 21. Notice re Assessment Objections

Exhibits

D 21.

C/P 1969.

Office of the Urban District Council, Weligama,
2-10-1939.D 21.
Notice re-
Assessment
Objections
2-10-39**Assessment Objections**

Sir,

With reference to the inquiry into assessment objections held on 8-9-39, I have the honour to inform you that the assessment of your property bearing Assessment No. 1969 has been reduced as follows :—

10

From Rs. 380 to Rs. 353.

I am, Sir,

Your obedient servant,

Sgd. EDWIN H. DE SILVA,

for Chairman, U. D. C.

MR. J. U. DE SILVA, Walliwala.

D 33. Complaint in A. C. R. Matara 22343D 33.
Complaint in
A. C. R.
Matara
22343
27-8-40

D 33.

Amount Rs. 131.50.

IN THE ADDITIONAL COURT OF REQUESTS OF MATARA

JAYASINGHE ARACHCHIGE UDENIS DE SILVA of

20 Weligama..... *Plaintiff*

No. 22343.

vs.

1. GOLUHEWAGE JAMES DE SILVA of Weligama,
2. AWALIKARA GALAPPATTIGE DAVID WIMALASURIYA
of Weligama *Defendants.*

This 27th day of August, 1940.

The plaint of the plaintiff abovenamed appearing by Wilmot Balasuriya and Alexander Peter Daluwatta Proctors of Matara carrying on business in partnership under the name style and firm of Balasuriya & Daluwatta his Proctors, states as follows :—

30 1. The defendant resides at Weligama within the jurisdiction of this Court.

2. That on mortgage bond No. 5096 dated 22nd February, 1938, attested by Mr. A. P. Daluwatta, Notary Public, executed at Weligama within the jurisdiction of this Court, the defendant bound himself his heirs

Exhibits
 D 33.
 Plaint in
 A. C. R.
 Matara
 22343
 27-8-40
 —continued.

executors and administrators to pay on demand unto Awalikara Galapattige David Wimalasuriya of Weligama and his heirs executors administrators and assigns a sum of Rupees one hundred (Rs. 100) with interest thereon at the rate of twelve per cent. per annum from the date thereof.

3. For securing the payment of the said principal and interest the 1st defendant abovenamed mortgaged and hypothecated to and with the said Awalikara Galapattige David Wimalasuriya, the property more fully described in the schedule hereunder written.

4. That on assignment of mortgage No. 5820 dated 12th April, 1940, attested by Mr. A. P. Daluwatta, Notary Public, executed at Weligama marked " P 2 " and filed herewith as part and parcel of this plaint the said Awalikara Galapattige David Wimalasuriya of Weligama assigned the said principal sum of Rs. 100 due upon the said bond and all interest due thereon and interest to become due and the said security and the said bond and the full benefit and advantage thereof and all the right title interest claim and demand whatsoever of the said Awalikara Galapattige David Wimalasuriya, the 2nd defendant abovenamed unto the plaintiff.

5. There is justly and truly due and owing from the said 1st defendant to the plaintiff a sum of Rs. 100 for principal and a sum of 20 Rs. 30·14 for interest aggregating a sum of Rs. 130·14.

6. The 1st defendant has failed and neglected to pay the said sum of Rs. 130·14 or any part thereof though thereto often demanded. And the plaintiff has incurred a sum of Rs. 1·36 in issuing a letter of demand on him.

7. That the said Awalikara Galapattige David Wimalasuriya is made a party to this action to give him notice of this action but no relief is sought against him.

Wherefore the plaintiff prays :

That the Court will order the 1st defendant to pay the said sum of 30 Rs. 131·50 with such further interest as may accrue between the filing of this action and date of payment and thereafter with legal interest on the aggregate amount till payment in full and also the costs of this action on some day to be named by the Court and in default that the said premises may be sold and the proceeds applied in and towards the payment of the amount of the said principal interest and costs and that if such proceeds shall not be sufficient for the payment in full of such amount the defendant do pay to the plaintiff the amount of the deficiency with interest thereon at the rate of nine per cent. per annum until realisation and for that purpose all proper directions may be given and accounts taken by the 40 Court.

Sgd. BALASURIYA & DALUWATTA,
Proctors for Plaintiff.

Schedule above referred to

Exhibits

1. All that defined Lot B of the land called Aramanawala situated at Weligama within the Urban Council area of Weligama in Weligam Korale, Matara District, Southern Province, and which said Lot B is bounded on the north by Illankonwalauwewatta *alias* Galweediyawatta, east by Wadugekumbura, south by Lots E, D, C, and A of the same land and west by reservation along the railway line and containing in extent one rood two and ten upon twenty-four perches.

D 88.
Plaint in
A. C. R.
Matara
22343
27-8-40
—continued.

2. All that the divided Lot D of the land called Aramanawala¹⁰ situated at Weligama aforesaid and which said Lot D is bounded on the north by Lot B of the same land, east by Lot E of the same land south by high road and west by Lot C of the same land and containing in extent six and seven-twelfth perches.

Sgd. BALASURIYA & DALUWATTA,
Proctors for Plaintiff.

A. C. R. 22343.

18-6-41. MR. ADV. SENEVIRATNA instructed by MESSRS. BALASURIYA & DALUWATTA for plaintiff.

MR. C. V. SAMARASINGHE for 1st defendant.

20 Trial.

Defendant present.

Mr. Samarasinghe for defendant consents to judgment and moves to pay by instalments.

I enter judgment for plaintiff as prayed for with costs payable by instalments of Rs. 15 per month commencing 17-7-41. Usual terms.

Sgd. T. P. P. GUNATILLAKE.

In case of default of the said instalments order to sell to issue without notice to the defendant.

Sgd. T. P. P. GUNATILLAKE.

Exhibits

D 10.
Receipt
15-11-40

D 10. Receipt

Original

No. 4. Date : 15-11-1940. No. B 39814.

Urban District Council, Weligama.
Licence to keep a Copra Shed.
Under the provision of Section 175 and 177 of Ordinance 61 of 1939.

Montague Jayawickrema, Chairman, U. D. C., do hereby license Mr. J. U. de Silva of Walliwala. This licence remains in force until 31-12-40.
Licence Fee Rs. 5. 10

| | |
|------------------------------------|--|
| Sgd. <i>Revenue Clerk.</i> | Sgd. <i>Chairman, U. D. C.</i> |
| Received the above fee. | |
| Sgd. <i>Cashier.</i> | |

D 52.
Letter
8-9-41

D 52. Letter

Govt. Training College,
Colombo, 8th September, 1941.

J. B. APPUHAMY (Head Servant):

You are informed that the Treasury has ruled that in future no food allowance will be paid to you during the College vacations. You may however, be given any available food during term time.

Sgd. H. S. PERERA,
Principal.

D 11.
Receipt
21-10-41

D 11. Receipt

D 11.
No. 2.

Original

Date : October 21, 1941.
No. B 39928.

Urban District Council, Weligama.
Licence to keep a Copra Shed. 80
Under the provisions of Sections 175 and 177 of Ordinance 61 of 1939.

Montague Jayawickrema, Chairman, U. D. C., do hereby licence Mr. J. U. de Silva to keep a copra shed in premises No. 1969.

This licence remains in force until 31-12-41.
Licence Fee Rs. 5.

| | |
|--|--|
| Sgd. (Illegibly). <i>Revenue Clerk.</i> | Sgd. M. JAYAWICKREMA, <i>Chairman, U. D. C.</i> |
| Received the above fee. | |
| Sgd. (Illegibly). <i>Cashier.</i> | |

D 53. Letter

Exhibits

D 53.No. S. G./SF/ G.T.C.
Education Office,D 53.
Letter
7-11-41

Colombo, 7th November, 1941.

From the DIRECTOR OF EDUCATION.

To J. B. APPUHAMY.

(Through the Principal, Govt. Training College).

With reference to your letter dated 27th October, 1941, forwarded through the Principal, Government Training College, you are informed that it is regretted that your request cannot be granted.

Only teachers on the Staff of the Govt. Training College are entitled to the College vacations.

Sgd.
for Director of Education.

D 22. LetterD 22.
Letter
16-3-44**D 22.**247, Hultsdorf Street, Colombo,
16th March, 1944.

J. U. DE SILVA, Esq.,

Police Officer, Walliwala, Weligama.

Palugahawatta in Weligama

20

Dear Sir,

I am instructed by my client Mr. J. B. Appuhamy to inform you that he wishes to sell the above land and premises belonging to him. As he has had two offers from people who are interested in the above property, I am asked to find out from you whether you have any intention of purchasing same. If so, kindly let me know what your offer is.

Yours faithfully,

Sgd. C. B. KUMARAKULASINGHE,

Proctor and Notary.

30

Caveat

To the REGISTRAR OF LANDS, Matara.

Take notice that I, Jayasinghe Aratchige Udenis de Silva of Walliwala Weligama required to be served with notice of the presentation for registration of any Instrument affecting the land called Palugahawatta situated at Weligama in Weligam Korale in the District of Matara, Southern Province, bearing Assessment No. 1969 and fully described in the schedule hereto.

Exhibits
D 22.
Letter
16-3-44
—continued.

This Caveat is to remain in force for a period of six months from the date hereof.

And I appoint Walliwala Weligama as the place which notices relating hereto should be sent.

Dated 21st March, 1944.

Sgd. J. U. DE SILVA,
Signature of Caveator.

Signed by the abovenamed Jayasinghe Aratchige Udenis de Silva in the presence of :

Signature of Witnesses :

- 1.
- 2.

10

D 23.
Letter
22-5-44

D 23. Letter

Weligama, 22nd May, 1944.

D 23.

C. BARR-KUMARAKULASINGHE, Esq.,
Proctor, Hultsdorf, Colombo.

Palugahawatta in Weligama

Dear Sir,

Your letter of the 16th March, 1944, addressed to my client Mr. J. U. de Silva, Police Officer, Walliwala in Weligama has been handed to me for reply.

20

My client instructs me that your client's claim to sell the property in question as his own is absurd. This property is the sole property of my client, purchased with my client's money. Your client is fully aware of the circumstances under which the deed came to be written in his favour and my client is prepared to prove those circumstances at proper time and place.

The delay in replying to this letter was due to my client being ill.

Yours faithfully,
Sgd. A. P. DALUWATTA,
Proctor S. C. & Notary Public.

30

P 10.
Deed
No. 239
28-6-44

P 10. Deed No. 239

P 10.

No. 239

To all to whom these presents shall come Jayasinhe Babun Appuhamy of Cinnamon Gardens, Colombo in the Island of Ceylon (hereinafter referred

to as "the vendor" which term shall where the context so requires or admits mean and include the said Jayasinhage Babun Appuhamy his heirs executors and administrators.

P 10.
Deed
No. 239
28-6-44
—continued.

Send Greeting :

Whereas the vendor is seized and possessed of or wherewise well and sufficiently entitled to all that and those the property and premises in the schedule hereto particularly described.

And whereas the vendor has agreed with Kuda Madanage Siyaneris of Unawatuna, Talpe Pattu, Galle in the said Island (hereinafter referred to as the purchaser which term shall where the context so requires or admits mean and include the said Kuda Madanage Siyaneris his heirs executors administrators and assigns) for the sale to the purchaser of the said property and premises at or for the price or sum of Rupees twenty thousand (Rs. 20,000) free of all encumbrances.

Now know ye and these presents witness that in pursuance of the said agreement and in consideration of the said sum of Rupees twenty thousand (Rs. 20,000) well and truly paid by the said purchaser to the vendor on or before the execution of these presents (the receipt whereof the vendor doth hereby expressly admit and acknowledge) the vendor doth hereby grant bargain sell, assign transfer convey assure and set over unto the purchaser.

All that and those the property and premises in the schedule hereto particularly described together with the buildings standing thereon and all rights ways easements servitudes and appurtenances whatsoever thereto belonging or in anywise appertaining or held to belong or be appurtenant thereto or used or enjoyed therewith and all the estate right title interest property claim and demand whatsoever of the vendor of in to upon or out of the said property and premises and every part thereof.

To have and to hold the said property and premises together with all and singular the appurtenances thereto belonging unto the purchaser absolutely for ever.

And the vendor doth hereby covenant with the purchaser that the purchaser shall and may at all times hereafter peaceably and quietly possess and enjoy the said property and premises and receive the rents and profits thereof without any interruption or disturbance from or by the vendor and that free of all encumbrances and the vendor and all persons having or claiming any estate or interest in the said property and premises and every part thereof from under or in trust for the vendor shall and will at all times hereafter warrant and defend the said property and premises and every part thereof and the title thereto against any person or persons whomsoever and shall and will at the request and cost of the purchaser do and execute or cause to be done and executed all such further and other acts deeds assurances matters and things whatsoever as shall or may be reasonably required for further and more perfectly assuring the said property and premises and every part thereof to the purchaser.

Exhibits

The Schedule above referred to

P 10.
Deed
No. 239
28-6-44
continued.

All that soil and trees of four contiguous allotments of lands (1) Lot A of Malwattegewatta, (2) portion of Maligatenna, (3) Palugahawatta and a portion of Mannehegewatta all adjoining each other and forming one property and now known as Palugahawatta situated at Weligama in the Weligam Korale of Matara District, Southern Province, and bounded on the north by Maligatenna and Malwattegederawatta, on the east by Ihalawadugewatta, Kalahegewatta and Palugahaliyadda, on the south by high road and a portion of Mannehegewatta and on the west by Sandogemmaliwatta and Wellekappithalagederawatta containing in extent four 10 acres and three roods (4A. 3R. 0P.) together with all the buildings standing thereon and more fully described in the plan of survey dated 8th October, 1919, made by Mr. J. de Neise, Licensed Surveyor of Matara.

In witness whereof the said Jayasinhage Babun Appuhamy hath hereto and to two others of the same tenor and date as these presents set his hand at Colombo this twenty-eighth day of June, One thousand Nine hundred and Forty-four.

Witnesses :

1. Sgd. G. S. DE SILVA

Sgd. J. B. APPUHAMY.

2. Sgd. A. V. S. DASSANAYAKE

20

Sgd. HENRIE T. PERERA.

Attested on 28th June, 1944.

N. P.

D 29.
Deed
No. 239
28-6-44

D 29. Deed No. 239**D 29.****No. 239**

To all to whom these presents shall come Jayasinghege Babun Appuhamy of Cinnamon Gardens, Colombo in the Island of Ceylon (hereinafter referred to as "the vendor" which term shall where the context so requires or admits mean and include the said Jayasinghe Babun Appuhamy his heirs executors and administrators).

30

Send Greetings :

Whereas the vendor is seized and possessed of or otherwise well and sufficiently entitled to all that and those the property and premises in the schedule hereto particularly described.

Exhibits
 D 29.
 Deed
 No. 239
 28-6-44
 —continued.

And whereas the vendor has agreed with Kuda Madanage Siyaneris of Unawatuna, Talpe Pattu, Galle, in the said Island (hereinafter referred to as the purchaser which term shall where the context so requires or admits mean and include the said Kuda Madanage Siyaneris his heirs executors administrators and assigns) for the sale to the purchaser of the
 10 said property and premises at or for the price or sum of Rupees twenty-thousand (Rs. 20,000) free of all encumbrances.

Now know ye and these presents witness and in pursuance of the said agreement and in consideration of Rupees twenty-thousand (Rs. 20,000) well and truly paid by the purchaser to the vendor on or before the execution of these presents (the receipt whereof the vendor doth hereby expressly admit and acknowledge) the vendor doth hereby grant bargain sell assign transfer convey assure and set over unto the purchaser all that and those
 20 the property and premises in the schedule hereto particularly described together with all the buildings standing thereon and all rights ways easements servitudes and appurtenances whatsoever thereto belonging or in anywise appertaining or held to belong or be appurtenant thereto or used or enjoyed therewith and all the estate right title interest property claim and demand whatsoever of the vendor of in to upon or out of the said property and premises and every part thereof.

To have and to hold the said property and premises together with all and singular the appurtenances thereto belonging unto the purchaser absolutely for ever.

And the vendor doth hereby covenant with the purchaser that the purchaser shall and may at all times hereafter peaceably and quietly
 30 possess and enjoy the said property and premises and receive the rents and profits thereof without any interruption or disturbance from or by the vendor and that free of all encumbrances .

And the vendor and all persons having or claiming any estate or interest in the said property and premises and every part thereof from under or in trust from the vendor shall and will at all times hereafter warrant and defend the said property and premises and every part thereof

Exhibits
 D 29.
 Deed
 No. 239
 28-6-44
 —continued.

and the title thereto against any person or persons whosoever and shall and will at the request and cost of the purchaser do and execute or cause to be done and executed all such further and other acts deeds assurances matters and things whatsoever as shall or may be reasonably required for further and more perfectly assuring the said property and premises and every part thereof to the purchaser.

The Schedule above referred to

All that soil and trees of four contiguous allotments of lands (1) Lot A of Malwattewatta, (2) Portion of Maligatenna, (3) Palugahawatta and a portion of Mannehegewatta all adjoining each other and forming 10 one property and now known as Palugahawatta situated at Weligama in the Weligam Korale of Matara District, Southern Province, and bounded on the north by Maligatenna and Malwattederawatta, on the east by Ihalawadugewatta, Kalahegewatta and Palugahaliyadda, on the south by high road and a portion of Mannehegewatta and on the west by Sandogemmaliwatta and Wellekappithalagederawatta containing in extent four acres and three roods (4A. 3R. 0P.) together with all the buildings standing thereon and more fully described in the Plan of Survey dated 8th October, 1919 made by Mr. J. de Neise, Licensed Surveyor of Matara.

In witness whereof the said Jayasinghege Babun Appuhamy hath 20 hereunto and to two others of the same tenor and date as these presents set his hand at Colombo on this twenty-eighth day of June, One thousand Nine hundred and Forty-four.

Witnesses :

Sgd. JAYASINGHEGE BABUN APPUHAMY,

1. Sgd. G. S. DE SILVA
2. Sgd. J. U. S. DASSANAYAKE

Sgd. HARRY T. PERERA,
 N. P.

Date : 28th June, 1944.

D 25. Notice to Caveator**D 25.**

Notice to Caveator. (Regulation 22).

Exhibits

D 25.
Notice to
Caveator
11-7-44

To Mr. JAYASINGHE ARACHCHIGE UDENIS DE SILVA
of Walliwala, Weligama.

With reference to your Caveat dated 21-3-1944 lodged at this office on the 21st day of March, 1944, under section 32 of the Registration of Documents Ordinance No. 23 of 1927 take notice that Messrs. Julius & Creasy of Colombo have tendered for Registration a deed of transfer
10 No. 239 dated 28-6-44 executed by Jayasinghe Babun Appuhamy of Cinnamon Gardens, Colombo, in favour of Kudamadenage Siyaneris of Unawatuna before Mr. H. T. Perera, Notary Public, affecting the property mentioned in your caveat, viz. :

1. Name of property (1) Malwattegewatta Lot A of (2) Maligatenna portion of (3) Palugahawatta and a portion of Mannehegewatta all forming one property and now known as Palugahawatta.

2. Situation : Weligama.

3. Boundaries :

N. Maligatenna and Malwattegederawatta.

20 E. Ihalawadugewatta, Kalahegewatta and Palugahaliyadda.

S. High road and a portion of Mannhegewatta.

W. Sandogammalaliwatta and Wellekappitigederawatta.

4. Extent : 4A. 3R. 0P.

5. Registration reference D 241/219.

Land Registry, Matara.
11-7-1944.

Sgd. (Illegibly).
Registrar of Lands.

D 26. Letter**D 26.**

No. 247, Hultsdorf,
Colombo, 22nd July, 1944.

30

D 26.
Letter
22-7-44

Mr. KUDAMADANAGE SIYANERIS, Unawatuna, Galle.

Sir,

I am instructed by my client Mr. J. U. de Silva of Walliwala, Weligama, to inform you that he find that by Deed No. 239 dated 28th June, 1944, Jayasinghe Babun Appuhamy has purported to sell to you the property known as Palugahawatta situated at Weligama.

My client instructs me to inform you that the property in question belongs to him and that your vendor had absolutely no title to the property nor a right to transfer the same to you.

40

Yours faithfully,
Sgd. T. M. SENEVIRATNE,
Proctor S. C. & N. P.

Exhibits

D 27.
Letter
31-8-44**D 27. Letter**

Matara, 31st August, 1944.

D 27.

To J. U. DE SILVA, ESQ., Village Headman, Walliwala, Weligama.

Palugahawatta

Dear Sir,

I am instructed by my client Mr. K. M. Siyaneris of Unawatuna, Galle to inform you that by Deed No. 239 dated 28th June, 1944, attested by Mr. H. T. Perera of Colombo, Notary Public, he has purchased from Mr. J. B. Appuhamy of Colombo the above premises situated at Weligama of which you are in occupation. 10

As Mr. J. B. Appuhamy with whose leave and licence you have been in occupation is no longer entitled to the said premises. I am further instructed to request you to quit the same on or before the 15th proximo and deliver possession thereof to my client.

If you fail to quit the said premises on or before the aforesaid date, my client will institute legal proceedings against you for ejection.

Yours faithfully,
Sgd. C. V. SAMARASINGHE,
Proctor S. C.

D 28.
Letter
9-9-44**D 28. Letter**

20

D 28.No. 247, Huldsdorf,
Colombo, 9th September, 1944.C. V. SAMARASINGHE, ESQ., Proctor, S. C. & Notary Public,
Matara.**Palugahawatta**

Dear Sir,

Your letter of the 31st August, 1944, addressed to my client, Mr. J. U. de Silva at the instance of your client Mr. K. M. Siyaneris of Unawatuna has been handed to me for reply.

I am instructed to refer your client to my letter to him sent on the 20th 22nd July, 1944, copy of which is enclosed for your information.

I am further instructed by my client to state that he will not deliver possession of the premises to your client or any other person and that your client is welcome to institute legal proceedings if he is so advised.

Yours faithfully,
Sgd. T. M. SENEVIRATNE,
Proctor.

P 4. Deed 7906

P 4.
Gift Deed.

Rs. 30,000. Lands 5.

No. 7906

Exhibits

P 4.
Deed
No. 7906
11-9-44

Know all men by these presents that I, Jayasinghe Aratchige Udenis de Silva of Walliwala (hereinafter sometimes called the donor) for and in consideration of the love and affection which I have and bear unto my wife Goluhewage Pitchchohamy de Silva of Walliwala (hereinafter sometimes called the donee) and various other considerations hereunto moving
 10 do hereby give grant assign convey set over and assure as a gift absolute and irrevocable unto the said donee her heirs executors administrators and assigns all the rights properties and premises in the schedule hereto more fully described together with all and singular the rights easements, liberties, advantages and privileges whatsoever to the said premises belonging or in anywise appertaining or usually held occupied and enjoyed therewith or reputed to belong or known to be part and parcel thereof and all the estate right title interest claim and demand whatsoever of the said donor in to, out of or upon the said premises.

To have and to hold the said premises hereby conveyed which are of
 20 the value of Rupees thirty thousand unto the said donee her heirs executors administrators and assigns for ever.

And I the said donor do hereby for myself my heirs executors and administrators covenant and declare to and with the said donee and her aforewritten that the said premises hereby conveyed are free from all encumbrances whatsoever made or suffered by the said donor and that I have good right to grant and convey the said premises in manner aforesaid and that I shall and will always warrant and defend the said premises
 30 unto the said donee and her aforewritten against any person or persons whomsoever and also shall and will at all times hereafter at the request and cost of the said donee and her aforewritten do or cause to be done all acts deeds and things for more perfectly assuring the said premises unto the said donee or her aforewritten as by her or them shall or may be reasonably required.

And I the said donee do hereby thankfully accept the foregoing gift hereby made.

The Schedule above referred to

1. All that the soil and fruit trees and all the buildings standing thereon of the land called Deniyewatta comprising of two allotments called Deniyewatta and Polwatta situate at Pitiduwa Pathegama in Weligam
 40 Korale, Matara District, Southern Province and bounded on the north by Kewulkumbura and Pindeniya, east by Paththinigewatta and Kurunduwatta, south by Rabinelgewatta and west by Wewahena Etiyamullewatta Nugedeniya Udumulla and Pathinibokka and containing in extent sixteen acres one rood and thirty-five perches (16A. 1R. 35P.).

Exhibits
 P 4.
 Deed
 No. 7906
 11-9-44
 —continued.

2. All that the soil and fruit trees and all the buildings of the land called Lot A of Gamagewatta *alias* Bogahawatta situate at Walliwala within the Urban Council area of Weligama in Weligam Korale aforesaid which said Lot A is bounded on the north by Aramanawalakumbura, east by Aiappugewatta, south by high road and west by Galagawadeniya and containing in extent five perches.

3. All that the soil and fruit trees and all the buildings standing thereon of the land called Lot C of Gamegewatta *alias* Bogahawatta situate at Walliwala aforesaid and bounded on the north by high road, east by Aiappugewatta and Habaraduwegewatta, south by Lot D 1 and C 1 of 10 the same land and west by Gansabawa road and containing in extent one rood and three decimal five perches (0A. 1R. 3·5P.).

4. All that the soil and fruit trees and all the buildings standing thereon of the field and high land called Lot A of Arananawala situate at Weligama within the Urban Council area of Weligama aforesaid and which said Lot A is bounded on the north by Lot B of the same land, east by Lot C of the same land, south by high road and west by railway line and containing in extent two roods eighteen and three-fourth perches (0A. 2R. 18 3/4P.).

5. All that the soil and fruit trees and all the buildings standing 20 thereon of the defined Lot A of the field called Urakumbura situate at Weligama aforesaid and which said Lot A is bounded on the north by Lot B of the same land, east by road to Agrabode Vihare, south by high road and west by Pinkalla and Palugahaliyadda and containing in extent about one rood and thirty-three perches (0A. 1R. 33P.) which said first premises held and possessed by me the said donor by right of Deed No. 3267 of 16th May, 1924, attested by Mr. B. E. A. Jayawickrema, Notary Public, second and third premises by right of Certificate of Sale No. 366 dated 22nd March, 1943, issued under the partition Case No. 4591 of the District Court of Matara, fourth premises by right of Decree entered in Partition 30 Case No. 9126 of D. C. Matara, and fifth premises by right of Decree entered in Partition Case No. 7387 of D. C. Matara and buildings by right of construction.

In witness whereof we the said donor and donee do set our hands to three of the same tenor and date as these presents at Weligama on this eleventh day of September, One thousand Nine hundred and Forty-four.

Witnesses :

- | | |
|----------------------------|--------------------------------|
| 1. Sgd. H. K. DAVID | Sgd. J. A. UDENIS DE SILVA, |
| 2. Sgd. J. DE S. ABEYDEERA | Sgd. G. PITCHEHOHAMY DE SILVA, |

Attested on 11th September, 1944.

40

Sgd. A. P. DALUWATTA,
Notary Public.

D 24. Extracts of Encumbrances

D 24.

Volume No. D 241/219.

Division : D. Volume : 241.
Folio : 219.

Name of Land : (1) Malwattegewatte Lot A of, (2) Maligatenne portions of, (3) Palugahawatte and a portion of Mannihegwatta all forming one property and now known as Palugahawatta.

Village : Weligama.
District : Matara.Korak : Weligam.
Province : Southern.

Boundaries :—

N.—Maligatenne and Malwattedegarawatta.
E.—Ihalawadugewatta, Kalahegewatta and Palugahaliyadde.
S—High road and a portion of Mannehegewatta.
W.—Sandogemmalaiwatta and Wellekappittagederawatta.

Extent : 4A. 3R. 0P.

| Date of Registry (Day Book No. and Date) | Grantors (Names in full, and Residence) | Grantees (Names in full, and Residence) | Nature and Particulars of Alienations and Incumbrances (To be concisely and clearly stated) | No. and Date of Deed | Name of Notary Judge, &c. | Regn. Stamp Duty | Signature of Registrar | REMARKS |
|--|---|---|---|-------------------------------|-------------------------------|------------------|----------------------------|---|
| 9971 14th Oct., 1919 | David Samarawira of Matara | Jayasinghage Babun of Cinnamon Gardens, Colombo | Transfer of soil and trees of the above consideration Rs. 5,500 | No. 260 10th Oct., 1919 | I. R. Abeydeera, N. P. | | Sgd. J. S. Abey- sekera | This 1st and 3rd lands have been separately registered in D 213/ 300 and 301 |
| 4979 21st March, 1944 | Caveat under Section 32 of the Registration of Documents Ordinance, Chapter 101 by Jayasingha Arachchige Udenis de Silva of Walliwala affecting the above together with all the buildings and fruit trees thereon. The Caveat is in force until 20th September, 1944 (<i>i.e.</i> for a period of six months from date hereof. | | | | | Rs. 12.50 | | |
| 9392 4th July, 1944 | Jayasinghage Babun Appuhamy of Cinna- mon Gardens, Colombo | Kudamadanage Siya- neris of Unawatuna in Galle District | Transfer of the soil and trees with all the buildings thereon of the above considera- tion Rs. 20,000 | 239 28th June, 1944 | H. T. Perera N. P. Colombo | | Sgd. D. J. de Mel | |

Caveat D. B. No. 4979 of 21st March, entered by Jayasinghe Arachchige Udenis de Silva of Walliwala is in force until 20th September, 1944.

Sgd. D. J. DE MEL,

R. L.
11th July, 1944.

Exhibits

P 5. Deed No. 13088

P 5.
Deed
No. 13088
1-5-45

P 5.

Transfer.

Consideration Rs. 4,000. Lands 5.

No. 13088

Know all men by these presents that I, Jayasinghe Arachchige Udenis de Silva, retired Village Headman of Walliwala in Weligama (hereinafter sometimes called and referred to as the vendor) for and in consideration of (Rs. 4,000) Rupees four thousand lawful money of Ceylon well and truly paid to me by Alexander Peter Daluwatta, Esquire, Proctor S. C. of Matara (hereinafter sometimes called and referred to as the vendee)¹⁰ (the receipt whereof I do hereby admit and acknowledge) have granted bargained sold assigned transferred and set over and do by these presents grant bargain sell assign transfer and set over unto the said vendee his heirs executors administrators and assigns the properties mentioned in schedule below together with all and singular the rights ways easements advantages servitudes and appurtenances, whatsoever thereto belonging or in anywise appertaining or usually held occupied used or enjoyed therewith or reputed or known as part or parcel thereof and together with all the estate, interest claim and demand whatsoever of me the said vendor of in to upon or out of the said premises and every part thereof and²⁰ together with all the title deeds, vouchers and other writings therewith held or relating thereto.

To have and to hold the said premises hereby sold and conveyed with the rights and appurtenances thereto belonging unto him the said vendee his heirs executors administrators and assigns absolutely and for ever.

And I the said vendor for myself my heirs executors and administrators do hereby covenant promise and declare to and with the said vendee his heirs executors administrators and assigns that the said premises hereby sold.....by the said vendee or his aforewritten shall or may be reasonably required. 30

The Schedule above referred to

1. All that undivided one-half part of the field called Ihaladeniyakumbura situated at Walana in Weligam Korale of Matara District, Southern Province and bounded on the north by Ihaladeniyewatta, east by Mahagalahena, south by Talgahakumbura and Ihaladeniyewatta and west by Kongahakoratuwa and containing in extent sixteen kurunies of paddy sowing, which I the said vendor am entitled to under Deeds No. 5081 dated 3rd February, 1938, attested by Mr. A. P. Daluwatta, Notary Public, and No. 2629 dated 28th November, 1922, attested by Mr. B. E. A. Jayawickrema, Notary Public. 40

2. All that undivided one-half ($\frac{1}{2}$) part of the soil and of the fruit trees of the land called Lot D of Gorakagahawatta *alias* Pitakoratuwa situated at Pitiduwa, Pathegama in Weligam Korale aforesaid and bounded on the north by Embrellagahawatta, east by Massalapittaniya, south by Vidanelaiwatta and west by Lots B and C of the same land and containing in extent two roods and twelve decimal ninetyfive perches (0A. 2R. 12.95P.) which I the said vendor am entitled to under Deed No. 7785 dated 25th May, 1944, attested by Mr. A. P. Daluwatta, Notary Public. Exhibits
P 5.
Deed
No. 13088
1-5-45
—continued.
3. All that undivided eleven thirty-second ($\frac{11}{32}$) parts of the soil and of the fruit trees and an undivided planter's half share of the plantations of the land called Kustarajagalagawapaulawattekoratuwa situated at Walliwala in Weligam Korale aforesaid and bounded on the north by Padeniya, east by Gamagewatta *alias* Bogahawatta, south by Galagawakumbura and Egodagodawatta and west by Paulawatta and containing in extent about two roods which I the said vendor am entitled to under Deeds No. 493 dated 26th July, 1917, attested by Mr. A. Gunaratna, Notary Public and No. 1303 dated 20th August, 1916, attested by Mr. A. S. K. Panditilleke, Notary Public.
4. All that undivided forty-one nine hundred and sixtieth ($\frac{41}{960}$) parts of the soil and of the fruit trees of the land called Habaraduwegawatta situated at Weligama in Weligam Korale aforesaid and bounded on the north by Iappugewatta, east by Kewaliyanbokke Ela *alias* Welegedera, south by Egodawatta and Wattuaiwatta and west by Gamagewatta and containing in extent about three acres, which I the said vendor am entitled to under Deeds No. 1059 dated 20th May, 1920, attested by Mr. B. E. A. Jayawickreme, Notary Public, and No. 1710 dated 7th June, 1913, attested by Mr. E. F. Costa, Notary Public.
5. All that undivided forty-nine one hundred and twentieth ($\frac{49}{120}$) parts of the soil and of the paraveni fruit trees together with the planter's undivided half share of the fourth and fifth plantations lying towards the east and undivided half part of the planter's undivided half share of the second plantation lying towards the centre and undivided half part of the trees belonging to the third plantation lying towards the south and undivided half part of the trees belonging to fourth plantation lying towards the south of the land called Arumaduravitanagederawatta and undivided half part of the tiled house of nine cubits standing thereon, situated at Kamburugamuwa in Weligam Korale aforesaid; and bounded on the north by Arumaduravitanagegalagawawatta, east by Galagodawatta, south by Maddumalamayawawatibenadawatagahawatta and west by Sidolaiwatta *alias* Annawasiwatta and containing in extent about five acres which I the said vendor am entitled to under Deeds No. 7 dated 3rd January, 1919, attested by Mr. G. A. Kodippily, Notary Public, No. 2540 dated 19th November, 1922, attested by Mr. J. P. Gunawardena, Notary Public, and No. 1182 dated 10th June, 1918, attested by Mr. K. J. P. Gunaratna, N.P. and also by right of parental inheritance.

Exhibits
P 5.
Deed
No. 18088
1-5-45
—continued.

In witness whereof I the said vendor do set my hand to three of the same tenor and date as these presents at Matara on this first day of May, in the year one thousand Nine hundred and Forty-five.

Witnesses :

1. Sgd. D. S. GAJAWEERA
2. Sgd. E. JAYASINGHE

Sgd. J. A. UDENIS DE SILVA,

Sgd. A. M. BUHARI,
Notary Public.

Attested on 1st May, 1945.

D 32.
Valuation
Report
17-4-45

D 32. Valuation Report

D. C. 16621. 10

D 32.

Valuation Report

On instructions from Mr. J. U. de Silva of Walliwala, Weligama, I proceeded to the land called Palugahawatta bearing Assessment No. 1969 situated at Walliwala and inspected same and took measurements for the purpose of estimating the value of the improvements made by him.

I annex Plan No. 1160 shewing ground plan and front view of the building put up by him about 8 years ago, specification of which is as follows :—

- Foundation in rubble and lime mortar.
- Footings in brick and lime mortar. 20
- Walls combined kudagal 4 brick in lime mortar plastered in lime.
- Floors in cement concrete finished in coloured cement in the main building.
- Doors and window in well seasoned jak timber.
- Those of the hall front and verandah are glazed in frosted glass.
- Limework of roof in well seasoned jak of standard sizes, shaped and finished in conventional types.
- Hall ceiling in jak planking finished in diamond pattern and painted white having a centre boss in ornamental carved wood.
- Verandah ceiling in jak planking painted white. 30
- All hinges, hasps, staples, bolts, locks and keys, window bars, screws, etc. in brass.
- Valance and barge boards in jak planking.
- Gutters and down pipe in zinc.
- Entire roof in Ceylon half-round tiles.
- The entire house if fitted with electric lights, those in the main building being ornamental lamps.
- The completed structure presents a well finished appearance.

Sgd. A. H. FELSINGER,

17-4-45. 40

I have to submit Value of further Improvements to the property claimed by Mr. J. U. de Silva as follows :—

| | | | | | | | | Exhibits |
|----|--|--|---|-----|-----------------|--------|----|--|
| | | | | | | Rs. | c. | D 32. Valuation Report 17-4-45 —continued. |
| 1. | Copra shed 45' by 18' partly broken down | cadjan roof half walls 4 pillars—kudagal | ... | ... | | 150 | 00 | |
| 2. | Cattle shed 23' by 12' kudagal | cadjan roof with storeroom 18' by 12' with a W. C. | ... | ... | | 250 | 00 | |
| 3. | Masonry well 8' dia. about 15' deep | upper portion of brick and cemented with cemented pavement 8' by 12' | ... | ... | | 150 | 00 | |
| 10 | 4. | Palugahawatta is in extent nearly 5 acres | surrounded with a barbed-wire fence with 5 strands (requires 6 cwt. of barbed wire and 200 posts with labour) | ... | | 400 | 00 | |
| | 5. | Contains the following cultivations, claims by Mr. J. U. de Silva :— | | | | | | |
| | | 17 | Cocoanut trees 20-25 years old at Rs. 15 per tree | | = Rs. 255 | | | |
| | | 32 | Do. do. at Rs. 12 | | = Rs. 384 | | | |
| | | 82 | Do. do. at Rs. 8 | | = Rs. 656 | | | |
| | | 75 | Do. do. at Rs. 4 | | = Rs. 300 | | | |
| | | 52 | Do. do. at Rs. 2 | | = Rs. 104 | | | |
| 20 | | 23 | Do. do. at Re. 1 | | = Rs. 23 | | | |
| | | 9 | Mango trees at Rs. 4 per tree | | = Rs. 36 | | | |
| | | 1 | Jak tree at Rs. 75 | | = Rs. 75 | | | |
| | | | | | | 1,833 | 00 | |
| | | | | | | <hr/> | | |
| | | | | | Total ... | 2,783 | 00 | |
| | | | Add value of house No. 1969 | | Rs. ... | 37,000 | 00 | |
| | | | | | | <hr/> | | |
| | | | | | Grand Total ... | 39,783 | 00 | |
| | | | | | | <hr/> | | |

Sgd. A. H. FELSINGER,
Surveyor & Leveller, Matara.

17-4-45.

Exhibits

D 55.
Extracts of
Encum-
brances
1-5-45

D 55. Extracts of Encumbrances

D 55.

Application No. L 1155/30-4-45.

Division : D.
Volume : 72
Name of Land : Gamahelawatta. $\frac{1}{2}$
Village or Town and Street : Weligama.
District : Matara.
Province : Southern.

Volume : 235.
Brought forward from D 143 Folio : 220.

Korale : Weligam.
Province : Southern

| Date of Registry (Day Book No. and Date) | Grantors (Names in full, and Residence) | Grantees (Names in full, and Residence) | Nature and Particulars of Alienations and Incumbrances (To be concisely and clearly stated) | No. and Date of Deed | Name of Notary, Judge, &c. | Regn. Stamp Duty | Signature of Registrar | REMARKS |
|--|---|--|---|--------------------------|----------------------------------|------------------|------------------------|---|
| 8091 26th Nov., 1918 | David Samaraweera of Matara | Jayasinhage Babun of Cinnamon Gardens, Colombo | Mortgage of soil and trees of the above for Rs. 750 with interest at 18 % per annum. | 230 22nd Nov. 1918 | I. R. Abeydira, Notary Public | Rs. 4 | Sgd. J. S. Abeysekera | Land : Gamahelawatta Lot A of North—Wijewatta East—High road South—Pankolaliyadda West—Lot marked letter B of the same land. Extent : 0A. 3R. 10P. Situation: Hettiweediya |
| 10170 17th Oct., 1919 | Jayasinhage Babun Appuhamy of Cinnamon Gardens | David Samaraweera of Matara | Discharge of the above Registered Mortgage Bond No. 230 | | Discharged 10th October, 1919 | Rs. 2 | | |

Sgd. J. S. ABEYSEKRA,
1-5-45.

No.....

Supreme Court of Ceylon
No. 347 of 1947 (Final).

District Court, Matara.
No. 16621.

In the Privy Council
on an Appeal from the Supreme Court of Ceylon

JAYASINGHE ARACHCHIGE

UDENIS DE SILVA of Walli-

wala in Weligama.....*Defendant-Appellant* ^{*Respondent*}

VERSUS

KUDA MADANAGE SIYANERIS

of Unawatuna in Galle.....*Plaintiff-Appellant* ^{*Respondent*}

RECORD
OF PROCEEDINGS
