

5, 1968
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No. **23** OF 1967

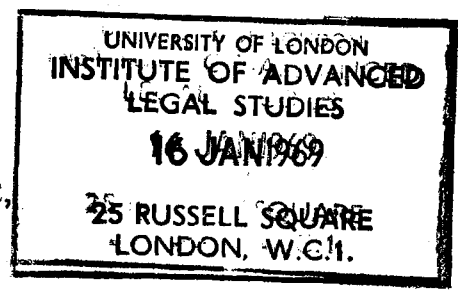
Supreme Court of Ceylon,
No. 36 (Final) of 1962.

District Court of Kurunegala,
Case No. 403/L.

IN HER MAJESTY'S PRIVY COUNCIL
ON AN APPEAL FROM
THE SUPREME COURT OF CEYLON

BETWEEN

1. DERWENT PEIRIS,
2. IVAN STEWART PEIRIS,
3. SRIKANTHA PEIRIS,
4. SITA LUCILLE WEERASINGHE,
5. CARL WINDSOR PEIRIS,
6. JOYCE WINIFRED PEIRIS,
7. DAVID RAGLAN PEIRIS,



all presently of Raglan Estate,
Kurunegala.....(*Plaintiffs-Respondents*)
APPELLANTS

And

ABEYSIRI MUNASINGHE LAIRIS APPU, presently of
"KUSUMSIRI", Puttalam Road, Kurunegala.
(Defendant-Appellant)
RESPONDENT

(U. B. SENANAYAKE of Kurunegala - *2nd Defendant* - since
discharged from the case.)

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No. 1
Journal Entries

No. 1
Journal Entries
18. 3. 59
to
28. 8. 66

IN THE DISTRICT COURT OF KURUNEGALA.

<p>No.403/L Class: VI Amount: Rs. 500,000/- Nature: Declaration of title & recovery Procedure: Regular</p>	<ol style="list-style-type: none"> 1. Derwent Peiris 2. Ivan Stewart Peiris 3. Srikantha Peiris 4. Sita Lucille Weerasinghe all of 820A Batagama Road, Weligampitiya, Ja-Ela. 5. Carl Windsor Peiris) all of 820A 6. Joyce Winifred Peiris) Batagama Road, 7. David Raglan Peiris) Weligampitiya, Ja-Ela The 5th 6th and 7th Plaintiffs being minors appearing by their Next-Friend 8. Hilda Peiris also of 820A Batagama Road, Weligampitiya, Ja-Ela <i>Plaintiffs.</i> <p style="text-align: center;">vs.</p> <p>Abeyasiri Munasinghage Lairis Appu of Puttalam Road, Kurunegala. <i>Defendant.</i></p>
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JOURNAL

The 18th day of March, 1959. Mr. F. B. Markus and his assistant, Mr. S. H. Abdul Cader Proctor S. C. of Kurunegala, files appointment and Complaint and moves that the same may be accepted and that a date be given to issue summons on the defendant until service.

Plaint accepted and Summons ordered for 23. 4. 59.

Sgd.....
District Judge.

9. 4. 59

30 Summons issued on defendant to Fiscal, North Western Province with Precept returnable the 2nd day of April, 1959.

Mr. F. B. Markus for..... *Plaintiff*

23. 4. 59

Summons on defendant issued (personal) Defendant is.....Proxy and answer by Mr. Wettewe on 28.5.59.

Intd.....
District Judge.

28. 5. 59

Proxy filed.
Answer - 25.6.59.

40

Intd.....
District Judge.

25. 6. 59	Motion filed. Call 9. 7. 59 re motion.	Intd <i>District Judge</i>
9. 7. 59	Case called vide motion of Proctor for Defendant under section 104 of Civil Procedure Code Call on 23. 7. 59.	Intd..... 10 <i>District Judge.</i>
23. 7. 59	Case Called. Call on 6. 8. 59.	Intd..... <i>District Judge.</i>
6. 8. 59	Case Called. Call on 3. 9. 59.	Intd..... 20 <i>District Judge.</i>
3. 9. 59	Case called - on 8. 10. 59.	Intd. <i>Disirict Judge</i>
22. 10. 59	Case Called. Answer on 19. 11. 59.	Intd. <i>District Judge 30</i>
19. 11. 59	Answer on 17. 12. 59	Intd..... <i>District Judge</i>
17. 12. 59	Answer finally on 28. 1. 60	Intd..... <i>District Judge.</i>
28. 1. 60	Answer on 18. 2. 60	Intd..... 40 <i>District Judge.</i>

18.2.60

Answer filed.
Consideration on 3.3.60

Intd
District Judge.

Deficiency Rs. 58/00

Intd.....

3.3.60

Deficiency of stamps in Answer—Rs. 58/-due.
Consideration.

10

Trial on 20.6.60

Intd.....
District Judge.

20.6.60

TRIAL

The 8th Plaintiff is said to be dead
Call on 30.6.60

Intd.....
District Judge.

20 30. 6. 60

Case called.
Guardian Ad Litem papers filed.
1st Plaintiff is the eldest brother of these minors. He consents
to be their Next Friend. Appoint as usual.
Act on 14. 7. 60
Call on 14. 7. 60 to fix trial.

Intd.....
District Judge.

14. 7. 60

30 Trial on.
Act and Proxy of *Guardian Ad Litem* filed.
Call on 27. 7. 60

Intd.....
District Judge.

27. 7. 60

Case called.
Call on 3. 8. 60

Intd
District Judge.

40 2. 8. 60

Trial on 28. 10. 60

Intd.....
District Judge.

27. 9. 60

As the Plaintiffs have failed to produce for inspection by the Defendant the documents referred to in their Plaint, Proctor for Defendant moves for a notice under 104 of Civil Procedure Code on 1, 2, 3, 4, Plaintiffs and on 8th Plaintiff by service on their Proctor on record (under section 26 of Civil Procedure Code) to produce for inspection by the Defendant's Proctors in Court, on 7th October, 1960 and to permit them to take copies of the following documents:

(1) Last Will No. 4199 of 3. 6. 1910 attested by Arthur Alwis, Notary Public, or certified copy thereof. 10

(2) Indenture No. 1725 dated 31. 5. 1917 attested by H. P. Weerasooriya, Notary Public, or certified copy thereof.

(3) Last Will mentioned in paragraph 5 of Plaint of Richard Stewart Peiris or certified copy thereof.

(4) The reference to the arbitration mentioned in para 6 of the Plaint or certified copy thereof.

(5) The award mentioned in the said para 6 or certified copy thereof.

He further moves that as the trial is fixed for 28. 10. 60, that Defendant be permitted to take the notice in hand returnable 7. 10. 60 to have the same served by Special Fiscal's Server. 20

Allowed. Issue notice in hand for 7. 10. 60.

Intd.....
District Judge.

27. 9. 60.

Proctor for defendant moves for a notice, returnable 7. 10. 60 on Ukku Banda Senanayake of Parade Street, Kurunegala, to warrant and defend title conveyed by him to defendant on deed No. 306 of 9. 8, 1952 attested by H. M. Ranasinghe, Notary Public.

He further moves that defendant be permitted to take the said notice in hand, to have it served by Special Server, as the case is fixed for trial for 28. 10. 60 30

Allowed. Issue notice in hand for 7. 10. 60

Intd.....
District Judge.

1. Notice on Defendant issued – Fiscal North Western Province.

2. Notice to warrant and defend title issued to Fiscal North Western Province.

Intd.....
30. 9. 60.

7. 10. 60

Mr. F. B. Markus for Plaintiffs.

Mr. D. A. B. Ratnayake for Defendant.

Notice to produce documents served on Plaintiffs' Proctor, Mr. F. B. Markus.

Notice to appear and warrant and defend title served on U. B. Senanayake. 40

Messrs. Perera & Perera file proxy of party noticed. Add him as 2nd Defendant. Mr. Markus takes notice on behalf of Plaintiff and undertakes to produce the documents on 10. 10. 60.
Call on 10. 10. 60.

Intd.....
District Judge.

10. 10. 60
Called vide Journal Entry of 7. 10. 60
Documents due.

10 *Vide* Proceedings. Take case off trial roll.
Answer of 2nd Defendant on 10.11.60.

Intd.....
District Judge.

10. 11. 60
Answer of 2nd defendant due—on 1. 12. 60

Intd.....
District Judge.

1. 12. 60
Mr. Markus for Plaintiff.

20 Mr. D. A. B. Ratnayake for Defendant.
Answer of 2nd Defendant due—finally on 15. 12. 60

Intd.....
District Judge.

15. 12. 60
Answer of 2nd Defendant due finally—filed.
Call on 22. 12. 60 to fix trial.

Intd.....
District Judge.

22. 12. 60
30 Case called to fix date of Trial.
Call on 19. 1. 61 to fix trial.

Intd.....
District Judge.

19. 1. 61.
Called to fix Trial.
Call on 26. 1. 61

Intd.....
District Judge.

26. 1. 61
Called - Trial on 25. 4. 61 to suit counsel.

40

Intd.....
District Judge.

Mr. Markus for Plaintiff. Mr. D. A. B. Ratnayake for Defendant.	
25. 4. 61 Trial (1)— <i>Vide</i> Motion filed call 9. 5. 61 to fix date of trial.	Intd <i>District Judge</i>
9. 5. 61 Called to Fix Trial. Trial 4/9/61	Intd 10 <i>District Judge.</i>
31.8.61 Proctor for plaintiff files list of witnesses and documents.	Intd
4. 9. 61 Mr. Markus for Plaintiffs. Mr. D. A. B. Ratnayake for 1st Defendant. M/s Perera & Perera for 2nd Defendant.	
TRIAL (2)	
<i>Vide</i> Proceedings - Trial 5/12/61	Intd 20 <i>District Judge.</i>
29. 11. 61 2nd Defendant's list of witnesses filed.	Intd.....
4. 11. 61 Proctor for 2nd Defendant files list of witnesses. Mr. Markus for Plaintiff. Mr D. A. B. Ratnayake for 1st Defendant. M/s. Perera & Perera for 2nd Defendant.	Intd..... 30
TRIAL (3)	
5.12.61 <i>Vide</i> Proceedings. Documents 11/12/61	Intd..... <i>District Judge.</i>
11.12.61 Documents Document marked 1D1 filed.	40

Documents marked P1-P9 filed.
Judgment 18/1/62.

Intd.....
District Judge.

18. 1. 62

Judgment delivered in open Court in the presence of Proctors.
Mr. Cader for the plaintiff.
Mr. Kodagoda takes notice on behalf of Mr. D. A. B. Ratnayake.

Intd.....
District Judge.

10

18. 1. 62

Decree entered.

Intd.....

Eo die

Proctor for Plaintiffs files application for execution of decree by
issue of writ of Possession to Fiscal, North Western Province.

Issue writ of Possession.

Intd.....
District Judge.

20 18. 1. 62

Proctor for 1st Defendant-Appellant files Petition of appeal from
the 1st Defendant-Appellant with-

- | | |
|-------------------------------------|------------|
| (a) Petition of Appeal | Rs. 159.00 |
| (b) Supreme Court Judgment | Rs. 318.00 |
| (c) Notice of Security and schedule | Rs. 51.00 |
| (d) Notice of appeal and schedule | Rs. 51.00 |
| (e) Certificate of appeal | Rs. 159.00 |
| (f) Binding | Rs. .50 |

(g) Application for typewritten copies with Kachcheri Receipt No. 1660
30 of 18. 1. 62 for Rs. 50/- and moves that the same be accepted and that
notice of security be issued forthwith and that the petition of appeal
be forwarded to the Supreme Court for hearing in due course.

1. Petition of appeal and papers filed.
2. Issue notice of tender of security for 7.2.62.
3. Report appeal to Supreme Court.

Intd.....
District Judge.

Issued 7 notices of security to Fiscal Western Province.

1 notice of security to Fiscal North Western Province.

40

Intd.....
20.1.62

18. 1. 62

Proctor for 1st Defendant–Appellant files petition under section 761 of the Civil Procedure Code from the 1st Defendant–Appellant and moves that the Court be pleased to make order staying execution of the decree. Stay execution pending inquiry.
Notice Plaintiff–Respondents for 7/2/62.

Intd
District Judge.

Notice issued to Fiscal North Western Province 1–5 Plaintiff–Respondents

Intd **10**
20. 2. 62

7. 2. 62

1. Notice of security served on Mr. S. Abdul Cader Proctor S. C.
2. Notices of Security not served on 1st–5th Plaintiff–Respondents and 1st Plaintiff–Respondent as *Guardian–ad–Litem* over 6 & 7 Plaintiff Respondents (minors)
3. Notice of writ not served on 1st to 5th Plaintiff–Respondents.
Vide Proceedings–Issue notice of appeal on bond being filed returnable 1/3/62
Inquiry 27/2

Intd **20**
District Judge.

7. 2. 62

Bond filed.

Intd

7. 2. 62

Notice of appeal on Proctor issued to Fiscal North Western Province
Notice of appeal on 1st Plaintiff–Respondent to 5th Plaintiff–Respondents issued to Fiscal Colombo.

Intd **30**
7. 2. 62

22. 2. 62

Plaintiff's list or witnesses filed,
1 Summons issued in hand.

Intd

23. 2. 62

Plaintiff's list of Documents filed.

Intd

27. 2. 62

INQUIRY (1)

Mr. Markus for Plaintiff.
Mr. D. A. B. Ratnayaka for 1st Defendant.
Messrs. Perera & Perera for 2nd Defendant.
Vide proceedings – Dispensed.

Intd.....
District Judge.

10 Mr. Markus for Plaintiff.
Mr. D. A. B. Ratnayake for 1st Defendant.
Messrs. Perera and Perera for 2nd Defendant.

1. 3. 62

1. Notice of appeal served on Mr. S. H. Abdul Cader-Proctor and
1, 3 & 9 Respondents—Absent.
2. Not served on 2, 4 & 5 Respondents.
Reissue for 22. 3. 62

Intd.....
District Judge.

2. 3. 62

20 Notice of appeal on 2, 4, & 5 Respondents issued to Deputy Fiscal
Negombo. Registered Post.

Intd

Return on 2 & 5 Plaintiff-Respondents received and filed.

Intd.....
19/3

22. 3. 62

Notice of appeal served on 2 & 5 Plaintiff-Respondents. Absent.
Not served on 4th Plaintiff-Respondent.
Reissue for 12/4/62

30

Intd.....
District Judge.

Eo die

Notice on 4th Plaintiff-Respondent reissued to Deputy Fiscal Negombo.

Intd.....

Received & filed.

Intd.....
6. 4.

28. 3. 62

40 Mr. S. H. Abdul Cader, Proctor for Plaintiffs, in terms of order
of Court of 27. 2. 62 tenders Security Bond No. 569 of 27. 3. 62 attested

by Mr. S. H Abdul Cader, Notary Public, together with valuation Report and certificate of no encumbrances and moves that the same be accepted and that writ of delivery of possession be issued.

Security Bond filed. Forward for registration. Issue Writ of Possession
Intd.....
District Judge.

Eo die

Security Bond No. 569 of 27. 3. 62 sent to Registrar of Lands for Registration.

Intd..... **10**

Posted on 2. 4. 62 Registered Post,

Intd

Eo die

Writ of Possession issued to Fiscal North Western Province

Intd.....
Secretary

28. 3. 62

Proctor for defendant states that the defendant has not been given an opportunity to examine the Security tendered by the plaintiff and moves that the Court do stay execution of Writ pending defendant's examination of the Security. **20**

Stay execution till tomorrow.

Intd.....
District Judge.

29. 3 62

Proctor for defendant tenders objections to the Security tendered by the plaintiff and certificate regarding encumbrances to the security tendered by the plaintiff and moves that the Security be rejected.

Call on the Bench today. Inform Proctors.

Intd..... **30**
District Judge.
29. 3.

Later

Case called.

Vide proceedings - Issue Writ of Possession.

Intd

District Judge.

Eo die

Writ of Possession issued to Fiscal North Western Province.

Intd..... **40**

29. 3. 62

Mr. S. H. Abdul Cader, Proctor for Plaintiff moves that the Security bond No. 569 of 27.3.62 attested by him which has already been tendered be registered in Folio H 642/189 at the Land Registry, Kurunegala.

Forward Security Bond to Registrar of Lands
giving this reference.
Vide Journal Entry of 28. 3. 62 Intd.....
Intd..... *District Judge.*

10 9. 4. 62

Mr. D. A. B. Ratnayake Proctor for 1st Defendent-Appellant files-
Petition of Appeal with stamps for Supreme Court Judgment,
Certificate in Appeal, seven schedules, Notice of Appeal with seven
schedules, and application for typewritten copies.

And moves that same may be accepted and Notice of Security
be issued forthwith and Petition of Appeal be forwarded for hearing
in due course to Supreme Court.

1. Petition of appeal and papers filed.
2. Issue notice of tender of security for 19. 4. 62.

20 3. Report appeal to Supreme Court.

Intd.....
District Judge.

- 6 Notices to Western Province.
1 Notice to North Western Province.

Intd.....

12. 4. 62

Notice of appeal not served on 4th Plaintiff-Respondent. She is
said to be at Rajagiriya. *Vide* Journal Entry of 22. 3. 62.

Reissue to correct address for 24/5/62.

30

Intd.....
District Judge.

Mr. Markus for plaintiff.
Mr. D. A. B. Ratnayake for 1st defendant.
Messrs Perera & Perera for 2 defendant.

19. 4. 62

Notice of security served on Mr. S. H. Abdul Cader.
(re appeal dated 9. 4. 62) - Absent.

Notice of Security on 1 - 5 & 9 Plaintiff-Respondents returned
for an extension of time.

40 Mr. Wettewe states he is reissuing notice on the Respondents.
Security tendered and accepted.

Issue notice of appeal - Bond to be filed for 24/5/62.

Intd.....
District Judge.

Security Bond received and filed.

Intd.....
15/5

Notice of appeal issued
1 to Fiscal North Western Province
6 to Fiscal Western Province

Intd..... 10
19/5

Mr. Markus for Plaintiff
Mr. D. A. B. Ratnayake for 1st Defendant
Messrs. Perera & Perera for 2nd Defendant

24. 5. 62

1. Correct address of 4th Plaintiff-Respondent not tendered to reissue notice (re appeal dated 22. 3. 62)

vide appeal (2. Notice of appeal served on Mr. S. H. Abdul Cader-Present
dated 9.4.62 (3. Notice of appeal not served on 1st to 5th & 9th 20
(Plaintiff-Respondents.

Reissue for 21/6/62

Intd.....
District Judge.

Return to notice of appeal on 1-5 & 9 Respondents filed.

Intd.....
18/6

21. 6. 62

Notices of appeal not served on 1st to 5th and 9th Plaintiff-Respondents
Reissue on supply of correct addresses for 19/7/62. 30

Intd.....
District Judge.

APPEAL

IN THE DISTRICT COURT OF KURUNEGALA

No. 403/L 1. Derwent Peiris and others *Plaintiffs*
vs.

1. Abeyasiri Munasinghage Lairis Appu of Puttalam
Road, Kurunegala and another *Defendants*

Mr. Markus for Plaintiff

Mr. D. A. B. Ratnayake for 1st defendant

Messrs. Perera & Perera for 2nd defendant

40

21. 6. 62

Notice of appeal not served on 1st to 5 & 9th Plaintiff-Respondents
Reissue on supply of correct addresses for 19. 7. 62.

Intd: W. E. A.
District Judge.

19. 7. 62

Present addresses of 1 - 5 & 9th Plaintiff-Respondents not supplied
to reissue notices of appeal.

Record not returned from Supreme Court.

10 Reissue notice for 6/9/62.

Intd
District Judge.

Eo die

Notices filed in record.

Intd.....

23. 8. 62

The Fiscal North Western Province returns Writ of Possession
and reports that possession of the property mentioned in the Writ
of Possession was delivered to 1st, 2nd, 3rd and 5th Plaintiffs for
20 themselves and on behalf of the others on 30. 3. 62.

File.

Intd.....
District Judge.

Mr. Markus for Plaintiff

Mr. D. A. B. Ratnayake for 1st Defendant

Messrs. Perera & Perera for 2nd Defendant

6. 9. 62

1. Present address of 1-5 & 9th Plaintiffs not supplied to reissue
notices of appeal.

30 2. The notices of appeal referred to above are filed in the record
sent to Registrar of Supreme Court

Call 4/10/62

Intd.....
District Judge

25. 9. 62

Proctor for Plaintiff moves for a Deposit Note in favour of 1st to
3rd Plaintiffs for Rs. 30,000.00 as per order of Supreme Court dated
21. 9. 62, a certified copy of which and terms of settlement is tendered.

Await Record from Registrar, Supreme Court.

40

Intd.....
District Judge

Issued Deposit Note No. B 065354 for Rs. 30,000. 00 to 1 – 3 Plaintiffs.

Intd
25. 9

25. 9. 62

Registrar, Supreme Court forwards record to take necessary action in terms of order of Supreme Court dated 21. 9. 62, i.e. “The record is returned to the District Court on the application of learned Counsel for the Petitioner.”

The Supreme Court order is not to be found in the case record. However as Proctor for the plaintiff has filed a certified copy of the Supreme Court order with his motion, issue Deposit Note in favour of the plaintiff as applied. 10

Intd
District Judge.
28. 9

Deposit Note Issued.

Intd

28. 9. 62

Kachcheri Receipt No. 2451 of 25. 9. 62 for Rs. 30,000. 00 filed.

Intd 20
Secretary.

2. 10. 62

Mr. S. H. Abdul Cader Proctor for plaintiff files Security Bond No. 1974 dated 29. 9. 62 attested by P. C. Soneviratne, Notary Public of Colombo and moves that the same be accepted and filed of record.

He further moves that Security Bond No. 569 dated 27 March 1962 attested by Mr. S. H. Abdul Cader Notary Public of Kurunegala filed of record be cancelled by Court in terms of Supreme Court order dated 21. 9. 62

1. New Security Bond hypothecating cash Rs. 30,000/-filed. 30
2. Cancel Security Bond No. 569 of 27. 3. 62 on stamps being supplied and send to Registrar of Lands.

Intd
District Judge.

Mr. Markus for Plaintiff

Mr. D. A. B. Ratnayake for Defendant-Appellant

Messrs. Perera & Perera for 2nd Defendant

4. 10. 62

Case called *Vide* Journal Entry of 6. 9. 62

Correct addresses of the 4th Plaintiff-Respondent not supplied to 40
reissue appeal notice re appeal dated 18. 1. 62

Correct addresses of the 1st to 5th & 9th Plaintiff-Respondents not supplied to reissue notice of appeal re appeal dated 9. 4. 62.

Reissue on supplying addresses for 18. 1. 63

Intd
District Judge

24. 1. 63

1. Correct addresses of the 1st to 5th & 9th Respondents not supplied to reissue notices re appeal dated 18. 1. 62 & 9. 4. 62.

Reissue same on supply of correct addresses for 31. 1. 63.

10 2. Case not called on 18. 1. 63 by an oversight.

Intd
District Judge.

Mr Markus for Plaintiff.

Mr. D. A. B. Ratnayake for Defendant-Appellant. Messrs. Perera & Perera for 2nd Defendant.

31. 1. 63

Correct addresses of Respondents due from Proctors for Appellant-Addresses supplied. Issue Notice returnable 21/2/63.

Intd
District Judge.

20

Eo Die

Notice on 1 - 5 & 9 Respondents re appeal dated 9. 4. 62 and 4th Respondent re appeal dated 18. 1. 62 issued to Fiscal, North Western Province.

Intd

21. 2. 63

Notices of Appeal on 1 - 5 & 9 Respondents not served. Fiscal North Western Province reports that they are not at the given address.

30 Reissue for 4/4/63.

Intd
District Judge.

Eo Die

Appeal Notices issued to Fiscal North Western Province 1 - 5, 9 & 4.

Intd

20. 2. 63

21. 2. 64

40 Proctor for Plaintiff moves that Security Bond No. 569 filed of record be cancelled by Court and returned to him to have the cancellation registered in the Land Registry.

Vide Journal Entry 2/10/62. Cancel Bond, and return it to Proctor for Plaintiff.

Intd.....
District Judge.

22. 2. 63

Bond No: 569 cancelled and discharged.

Intd.....
Secretary.

23. 2. 63

Received Bond No. 569.

Sgd/- A. H. Abdul Cader
23. 2. 63.

10

25. 3. 63

Registrar Supreme Court Colombo by his telegram dated 25. 3. 63 calls for record as application No. 198/62 is listed to be mentioned on Friday 29th instant.

Keep a sub - file and forward record.

Intd.....
District Judge.

Mr. Abdul Cader for Plaintiff.

Mr. D. A. B. Ratnayake for 1st Defendant.

20

4. 4. 63

Notice of appeal served on 1 - 5 & 9th Plaintiff - Respondents (2nd appeal) and 4th Plaintiff - Respondent (1st appeal)

Parties absent.

Record forwarded to Supreme Court. Mr. Wettewe moves that the case be called to verify whether all the notices have been served.

Call on 2/5/63.

Intd.....
District Judge.

30

2. 5. 63

Case called *Vide* Journal Entry of 4. 4. 63,

Record not received from Supreme Court yet. Mr. Wettewe states the affidavit is due. Call for record from Supreme Court and call case on 30/5/63.

Intd.....
District Judge.

Eo die

Called by letter.

Mr. Abdul Cader for Plaintiff.

Mr. D. A. B. Ratnayake for Defendant.

Intd.....

40

30. 5. 63

Case called *Vide* Journal Entry of 2/5/63.
Await record from Supreme Court for 20/6/63

Intd.....
District Judge

31. 5. 63

The Registrar, Supreme Court returns record.
Mention on 20. 6. 63.

Intd.....
District Judge

10

20. 6. 63

Case called *Vide* Journal Entry of 30. 5. 63 & 31. 5. 63
Reissue Notices on parties not served already. Correct addresses
supplied—for 11. 7. 63

Intd.....
District Judge

11. 7. 63

Notices served on all parties
Call 18/7/63

20

Intd.....

24. 6. 63

11. 7. 63

Mr. S. H. Abdul Cader, Proctor for Plaintiff-Respondent files appli-
cation for typewritten copies with Kachcheri Receipt No. 678 of 10. 6. 63 for
Rs. 100/-

File.

Intd.....
District Judge

18. 7. 63

30 Case called *Vide* Journal Entry of 11. 7. 63
Forward Record to Supreme Court.

Intd.....

23. 9. 63

This case is in appeal and the main record in this case has been
forwarded to Registrar of Supreme Court, Colombo on the 14th instant.

Mr. A. C. Amerasinghe Proctor, Supreme Court, files revocation of
Proxy granted to Mr. S. H. Abdul Cader by the Plaintiff, with his fresh
Proxy and moves that the same may be accepted and filed of Record.

Forward papers to Registrar of Supreme Court.

40

Intd.....
District Judge

No. 1
Journal Entries
18. 3. 59
to
28. 8. 66
—Continued

(1) 7. 9. 65

Registrar of Supreme Court forwards record. Appeal allowed. Plaintiff's action dismissed with costs in both Courts.

Deficiency of Stamps on Supreme Court Decree Rs. 400/- from Defendant-Appellant.

File. Proctors for parties to note. Call case on 16. 9. 65 for Deficiency of stamps.

Sgd.....

District Judge.

8. 9. 65

10

(2) 7. 9. 65

Whereas by the Decree entered by this Court on 18. 1. 62, Judgment was entered for the Plaintiff against the Defendant for damages and for ejection of the Defendant from the premises described in the Schedule to the Plaint and decree.

And whereas pending the Appeal by the Defendant to the Supreme Court the Plaintiff's applied for Writ of Ejection against the Defendant and whereas the Court ordered that the Plaintiffs do give security in Rs. 50,000/- for restituting any properties which may be taken in execution of the Decree and for the due performance of the Decree or Order of the Supreme Court in terms of Section 763 of the Civil Procedure Code. 20

And whereas the Plaintiffs furnished security as ordered, took out Writ of Ejection and were placed in possession of the premises described in the Schedule to the Decree and whereas the Defendant has been kept out of possession from 30th March 1962.

And whereas the Supreme Court set aside the Decree of the District Court and dismissed the plaintiffs' action with Costs.

And whereas the Defendant is entitled to be restored to possession of the said premises forthwith. 30

Proctor for Defendant tenders an application for execution and moves in terms of Section 777 of the Civil Procedure Code that the Court be pleased to direct the Fiscal North Western Province, Kurunegala to place the Defendant in possession of the premises he was dispossessed of.

Tender deficiency stamps and support application.

Sgd.....

District Judge.

8. 9. 65.

Mr. A. C. Amarasinghe for Plaintiff.

Mr. K. T. Wettewe for Defendant.

40

(3) 11. 9. 65

As the Plaintiffs in this case and Proctor for Plaintiffs - Respondents have given notice of their intention to appeal to Her Majesty in Council from the Order of Their Lordships of the Supreme Court dated 25th August 1965 to the Defendant - Appellant and his Proctor and as further steps to prefer and prosecute the said appeal in terms of the Privy Council Appeals Ordinance and Privy Council Rules will be taken. Proctor for Plaintiffs - Respondents moves that the application for Writ of Possession made by the 1st Defendant-

10 Appellant be stayed pending inquiry into the said application against which cause will be shown by the Plaintiffs - Respondents.

Support on 16. 9. 65

Sgd.....
District Judge.

(4) 13. 9. 65

Proctor for Defendant - Appellant tenders stamps to the value of Rs. 400/- being deficiency on Supreme Court Judgment and stamps affixed to Journal.

Intd.....
Secretary.

20

(5) 14. 9. 65

To support - *Vide* Journal Entry of 7. 9. 65. *Vide* Proceedings. Order on application of 7. 9. 65 on 15. 9. 65. Mr. Amarasinghe wishes to support his application on another day. He is entitled to do so.

Sgd
District Judge.

(6) 15. 9. 65

Mr. Amarasinghe for Plaintiff. Messrs. R & Wettewo for Defendant.

O R D E R

30 Order not delivered today. *Vide* reasons dictated. Consideration of plaintiff's application on 24th September 65.

Sgd.....
District Judge.

(7) 21. 9. 65

As Mr. E. S. Amarasinghe, Counsel for the Plaintiffs is unable to be present in Court on the 24th September 1965, Proctor for

Plaintiffs moves that the Court be pleased to refix the date of Inquiry for the 27th September 1965. Any inconvenience caused to Court by the alteration of the date is much regretted.

Proctor for Defendant received notice subject to the 27th being suitable to Counsel for defendant.

Call on 24. 9. 65

Sgd.....
District Judge.

(8) 24. 9. 65

Mr. Amerasinghe for Plaintiff. Messrs. R. & Wettewe for Defendants 10
Case called *Vide* Journal Entry (7) Call for consideration on 27th September 1965.

Sgd.....
District Judge.

(9) 27. 9. 65

Case Called. Consideration.
Vide notes of argument of Counsel.
Order on 5th October 1965.

Sgd..... 20
District Judge.

(10) 5. 10. 65

ORDER (1)

Order delivered in open Court in the presence of Mr. Wettewe and Mr. Amarasinghe, Proctors.

Application of 7. 9. 65 is refused.

Sgd.....
District Judge.

(11) 11. 10. 65

Fiscal North Western Province forwards prohibitory notice 30
seizing the sum of Rs. 30,000/- deposited as security for Costs of Appeal in execution of the writ issued in District Court Colombo case No. 56754/M.

Note in account sheet.

Sgd.....
District Judge.

(12) 18. 10. 65

Proctor for Applicant-Appellant files Petition of Appeal of the Applicant-Appellant from the Order of this Court dated 5th October 1965 in this action together with -

(a) Petition of Appeal	306.00
(b) Certificate of Appeal	306.00
(c) Supreme Court Judgment	718.00
(d) Binding	.50
(e) Notice of Security	56.55
(f) Notice of Appeal	56.55
(g) Application for typewritten copies with Kachcheri Receipt for	25.00

and moves that the same be accepted and that the Petition of
10 Appeal be forwarded to the Supreme Court for hearing in due
course.

1. Petition of Appeal and papers filed.
2. Issue Notice of Security for 29. 10. 65.
3. Report appeal to Registrar Supreme Court.

Sgd.....
District Judge.

Notice of Security issued to Fiscal North Western Province.

Intd.....
18. 10. 65

20 (13) 29. 10. 65

Notice of Security served on Mr. A. C. Amerasinghe. Kachcheri
Receipt for Rs. 500/- and Security Bond tendered.

Proctor for Plaintiff accepts Security.

Security is accepted. Issue Notice of appeal returnable 16. 12. 65.

Sgd.
District Judge.

(14) 29. 10. 65

Notice of Appeal issued to Fiscal North Western Province.

Intd.

30 (15) 1. 11. 65

Proctor for 1st Defendant moves for a requisition in favour of
the 1st Defendant for Rs. 500/- being Security deposited by him for
an Interlocutory Appeal (*Vide* Kachcheri Receipt No. 1589 of 18. 4. 62)

The matter in appeal was settled and no costs of appeal to either
side was awarded.

Proctor for Plaintiff consents.

By consent allowed.

Sgd.....
District Judge.

(16) 1. 11. 65

Requisition for Rs. 500/- issued to 1st Defendant

Intd.....
Secretary.

Received Requisition

Sgd
Proctor for 1st Defendant

(17) 16. 12. 65

Notice of Appeal served on Mr. A. C. Amerasinghe.

He is present.

Forward Record to Supreme Court.

10

Sgd.....
District Judge.

(18) 27. 6. 66

Proctor for Defendant tenders a certified copy of the Order of the Supreme Court dated 21st June 1966 together with the Writ of Possession and moves that the Court be pleased to issue Writ of Possession to the Fiscal to place the defendant in possession of the premises which was the subject matter of this action.

Call on 28. 6. 66

20

Sgd.....
District Judge

Mr. A. C. Amerasinghe for Plaintiff

Mr. K. T. Wettewe for Defendant.

(19) 28. 6. 66

Case called—*Vide* Journal Entry of 27. 6. 66

Vide Proceedings.

Issue Writ of Possession

Sgd.....
District Judge

30

28. 6. 66

(20) 28. 6. 66

Writ of Possession issued to Fiscal North Western Province.

Intd.....
Secretary.

(21) 4. 7. 66

Registrar Supreme Court forwards a certified copy of the Order in Supreme Court Application No. 7 of 1966 and informs that the Decree will follow when the reasons are delivered.

Vide Journal Entry (18) onwards.
File

Sgd.....
District Judge.

(22) 11. 7. 66

Fiscal North Western Province reports that his officer R. M. Punchi Banda delivered possession of the property mentioned to Mr. S. K. Munasinghe for and on behalf of the defendant on 3. 7. 66.

File.

10

Sgd.....
District Judge.

(23) 21. 8. 66

Registrar Supreme Court Colombo, requests that the record in this case be forwarded to him as an application for revision has been filed and dealt with and decree has to be entered.

Forward.

Sgd.....
District Judge.

(24) 28. 8. 66

20 Registrar Supreme Court Colombo requests that the record in this case with all the documents be forwarded to him as Final Leave has been granted to appeal to the Privy Council against the Judgment of the Supreme Court.

Forward.

Sgd.....
District Judge

No. 2

Plaint of the Plaintiffs

IN THE DISTRICT COURT OF KURUNEGALA.

30

No. 403/L

1. Derwent Peiris
2. Ivan Stewart Peiris
3. Srikantha Peiris
4. Sita Lucille Weerasinghe all of 820A
Batagama Road, Weligampitiya, Ja-Ela.
5. Carl Windsor Peiris) All of 820A
6. Joyce Winifrod Peiris) Batagama Road
7. David Raglan Peiris) Weligampitiya
Ja-Ela.

The 5th 6th and 7th plaintiffs being minors appearing by their Next-Friend.

8. Hilda Peiris also of 820A, Batagama Road, Weligampitiya, Ja-Ela.....*Plaintiffs.*

Vs.

1. Abeyasiri Munasinghege Lairis Appu of Puttalam Road, Kurunegala. *Defendant.*
 2. Ukku Banda Senanayake of Kurunegala. *Added Defendant.*

On this 18th day of March, 1959.

10

The plaint of the plaintiffs abovenamed appearing by F. B. Markus and his assistant S. H. Abdul Cader their Proctor states as follows:-

1. The land forming the subject matter of this action is described in the schedule hereto. It is situated at Akaragane, Boyagane, Wilbawa Talkote and Nailiya all in Tiragandaha Korale in Weuda Willi Hatpattu within the jurisdiction of this Court. The defendant is also resident at Kurunegala within the said jurisdiction.

2. The aforesaid land was the property of the late Adeline Winifred Peiris, wife of Richard Stewart Peiris.

20

3. The said Adeline Winifred Peiris executed Last Will No. 4688 dated the 3rd June 1910 attested by A. Alwis, Notary Public. By the said Last Will she devised the Western residue of her property which included the aforesaid land to her three sons, Richard Louis De Fonseka Peiris, Lionel De Fonseka Peiris and Bertram De Fonseka Peiris subject to certain conditions mentioned in the said will, which the plaintiffs state create a valid fidei commissum in favour of the 1st to 7th plaintiffs and the lawful children of the said Richard Louis De Fonseka Peiris.

4. The said Adeline Winifred Peiris and her husband Richard Stewart Peiris also executed Indenture No. 1725 dated 31st May 1917 attested by H. P. Weerasooriya Notary Public, by which Indenture the said Adeline Winifred Peiris agreed to convey the aforesaid land which formed part of Moragolla Group, referred to in the said Last Will and in the said Indenture to the aforesaid Richard Louis De Fonseka Peiris subject to certain conditions which the plaintiffs state create a valid fidei-commissum in favour of the 1st to 7th plaintiffs.

5. Richard Stewart Peiris died on the 23rd October 1918 leaving a Last Will which was duly proved in District Court Colombo Testamentary Case No. 6569. The aforesaid Adeline Winifred Peiris died on the 20th of December 1918 leaving the aforesaid Last Will mentioned in paragraph 3 above and the Last Will was duly proved in District Court Colombo Testamentary Case No. 6571.

40

6. The effect of the terms of the Indenture mentioned above on the dispositions contained in the aforesaid Last Will of Adeline Winifred Peiris was referred by the heirs of the said Richard Stewart Peiris to arbitration in the aforesaid Testamentary Cases and an award was duly made holding that the terms of the aforesaid Indenture were binding and effective on the heirs of the said Adeline Winifred Peiris.

7. By reason of the premises averred in the preceding paragraph the plaintiffs state that the entirety of the aforesaid land described
10 in the schedule hereto and which was part of Moragolla Group referred to above is subject to a valid Fidei commissum in favour of the 1st to 7th plaintiffs.

8. The aforesaid Richard Louis De Fonseka Peiris, the father of the 1st to 7th plaintiffs, who had only a fiduciary interest in the aforesaid land, purported by Deed No. 306 dated 9th August 1952 attested by H. M. Ranasinghe Notary Public to convey the said land to the defendant abovenamed. The plaintiffs state that the said deed was effective in law to convey to the defendant only the fiduciary interest of the said Richard Louis De Fonseka Peiris, which said
20 fiduciary interest would cease upon his death.

9. The said Richard Louis De Fonseka Peiris died on or about the 13th of December 1954 and thereupon the aforesaid land vested in the 1st to 7th plaintiffs.

10. The defendant is in unlawful possession of the said land as from 13th December 1954, denying the title of the 1st to 7th plaintiffs.

11. A cause of action has accrued to the 1st to 7th plaintiffs to sue the defendant for a declaration of title to the said land and for recovery of damages.

12. The plaintiffs value the said land at Rs. 400,000/- and assess
30 the damages claimed from the defendant at Rs. 50,000/- per annum.

13. The 1st to 7th plaintiffs and their predecessors in title claim the benefit of the prescriptive possession and claim the benefit of prescriptive title.

14. The 5th to 7th plaintiffs are minors and the 8th plaintiff their mother is their duly appointed Next-Friend in Next-Friend Proceedings No. 4586 of this Court.

15. The plaintiffs claim damages at the rate mentioned in paragraph 12 above for a period of 2 years prior to this action and for continuing damages at the same rate until the plaintiffs are restored to possession.

40 Wherefore the plaintiffs pray that the Court be pleased

(a) to declare the 1st to 7th plaintiffs entitled to the land described in the schedule hereto.

No. 2
Plaint of the
Plaintiffs
18. 3. 59
-Continued

- (b) to eject the defendant from the said land and to place the 1st to 7th plaintiffs in quiet possession thereof.
- (c) to award the 1st to 7th plaintiffs the damages at the rate mentioned in paragraph 12 above for a period of 2 years precedent to the filing of this plaint and for such period thereafter until the 1st to 7th plaintiffs are placed in quiet possession of the said land.
- (d) to grant the plaintiffs costs and all such other relief as to this Court may seem meet.

Sgd. F. B. MARKUS. 10
Proctor for Plaintiffs.

THE SCHEDULE REFERRED TO.

ALL that land called Raglan Estate of Two Hundred and Seventy One Acres and One Rood (271A. 1R. OOP) in extent together with the buildings and everything standing thereon situated at Akaragane, Boyagane, Wilbawa, Talkote and Nailiya all in Tiragandahe Korale in Weuda Willi Hatpattu in the District of Kurunegala North Western Province and bounded on the North by land claimed by Villagers and Crown Land, East by land claimed by Villagers and Crown Land, South by property of Mrs. Jayasooriya, Road and land appertaining to the Railway 20 and West by land claimed by Villagers and Road and Registered under A 594/54 its connected folios.

Drawn and settled by)
Kingsley Herat Esqr.) Advocates
W. G. N. Weeraratne Esq.)

Sgd. F. B. MARKUS
Proctor for Plaintiff.

No. 3
Answer of the
1st Defendant-
18. 2. 60

No. 3

Answer of the 1st Defendant

IN THE DISTRICT COURT OF KURUNEGALA

30

No. 403/L

1. Derwent Peiris
2. Ivan Stewart Peiris
3. Srikantha Peiris
4. Sitha Lucille Weerasinghe all of 820A Batagama Road, Weligampitiya, Ja-Ela.
5. Carl Windsor Peiris
6. Joyce Winifred Peiris

7. David Raglan Peiris the 5th, 6th and 7th Plaintiffs being minors appearing by their Next Friend.

No. 3
Answer of the
1st Defendant-
18. 2. 60
-Continued

8. Hilda Peiris all of 820A Batagama Road, Weligampitiya, Ja-Ela..... Plaintiffs

vs

Abeyesiri Munasinghege Lairis Appu of Puttalam Road, Kurunegala..... Defendant

On this 18th day of February 1960

10 The answer of the Defendant abovenamed appearing by his Proctors Damian Adrian Bernard Ratnayake and his assistant Kirthi Tissa Wettewe state as follows:

1. The defendant admits the averments in paragraph 1 of the plaint and denies all and singular the averments in paragraphs 7, 10, 11, 12 and 13 of the plaint.

2. Answering to paragraphs 2, 3, 4, 5 and 6 of the plaint the defendant denies all and singular the averments therein which are inconsistent with this answer.

3. Answering to paragraph 9 of the plaint the defendant states that 20 the defendant is unaware of the date of death of the said Richard Louis de Fonseka Peiris and puts the Plaintiffs to the proof thereof. The defendant denies all and singular the other averments in the said paragraph 9.

4. Answering the paragraph 14 of the plaint the defendant is unaware of the averments herein and puts the plaintiffs to the proof.

5. Answering to paragraph 15 of the plaint the defendant denies that the plaintiffs are entitled to any damages from the Defendant or to be placed in possession of the premises which are the subject matter of this action.

30 6. Answering to paragraph 8 of the plaint the defendant states that Richard Louis de Fonseka Peiris was at all material dates the absolute owner and seized and possessed of the estate plantations and premises which are the subject matter of this action and as he lawfully may have sold and conveyed the same for valuable consideration to Ukku Banda Senanayake on deed No. 196 of 2nd November, 1951. The defendant denies all and singular the other averments in paragraph 8 save and except as herein admitted.

40 7. By way of further answer the defendant states that the said Ukku Banda Senanayake sold and conveyed an extent of fifty acres out of the said premises by deed No. 199 of 11th November 1951 to Suriya Kumarasinghe Wasala Mudianselage alias Herat Mudianselage Punchi Banda who by deed No. 305 of 9th August 1952 reconveyed the said extent of fifty acres to the said Ukku Banda Senanayake.

No. 3
Answer of the
1st Defendant-
18. 2. 60
-Continued

8. The said Ukku Banda Senanayake who was on that date the owner of the said estate by deed No. 306 dated 9th August 1952 sold and conveyed the entirety of the said estate to the defendant who thereupon became the lawful owner thereof and entered into exclusive possession of the said estate.

9. The defendant pleads prescriptive title also to the said premises.

Wherefore the defendant prays:

- (a) that Plaintiff's action be dismissed with costs.
- (b) for such other and further relief as to the Court shall seem meet.

10

Sgd/- TISSA WETTEWE
Proctor for Defendant

Settled by

T. B. Dissanayake Esqr.
Advocate

N. E. Weerasooriya Esqr. *Q.C.*

No. 4
Proceedings
Before the
District Court-
10. 10. 60

No. 4
Proceedings before the District Court

10. 10. 60

Mr. Amerasinghe states that he had been noticed after this case 20 had been fixed for trial to warrant and defend title. He had filed proxy and he now moves for a date to file answer.

O R D E R

Since the case had been fixed for trial without notice to him, the case must be taken off the trial roll.

Take case off the trial roll.

Answer of 2nd Defendant for 10. 11. 60.

Intd.....
District Judge.

10. 10. 60.

30

No. 5

Answer of the 2nd Defendant

IN THE DISTRICT COURT OF KURUNEGALA.

No. 5
Answer of the
2nd Defendant-
15. 12. 60

No. 403/L.

10

1. Derwent Peiris
 2. Ivan Stewart Peiris
 3. Srikantha Peiris
 4. Sita Lucille Weerasinghe all of 820A
Batagama Road, Weligampitiya, Ja-Ela.
 5. Carl Windsor Peiris
 6. Joyce Winifred Peiris
 7. David Raglan Peiris all of 820A Batagama
Road, Weligampitiya, Ja-Ela. 5th, 6th and
7th plaintiffs being minors by their Next/Friend
the 1st plaintiff abovenamed *Plaintiffs*
- vs.*
1. A. M. Lairis Appu
 2. S. R. V. B. Senanayake both of Kurunegala
..... *Defendants.*

On this 15th day of December 1960.

20 The answer of the 2nd defendant abovenamed appearing by K. A. C. Amerasinghe and K. I. G. L. W. Perera, Proctors practising in partnership under the name style and firm of Perera and Perera states as follows:-

1. The 2nd defendant admits the jurisdiction of this Court to hear and determine this action but denies that he is liable in law to be called upon by the 1st defendant to warrant and defend title to the land which is the subject matter of this action.

30 2. While admitting that he conveyed the said land on deed No. 306 of 9th August 1952 unto the 1st defendant this defendant states that he was in truth and in fact the nominee of the 1st defendant when the said land was purchased in the name of the 2nd defendant on deed No. 196 of 2nd November 1951.

3. While not averring or conceding that title to the said land is bad, infirm or invalid, in respect of the said deeds Nos. 196 and 306 the 2nd defendant states that the said deeds were executed at the instance of the 1st defendant under whose domination and influence the 2nd defendant acted at and about the time of execution of the said deeds.

40 4. All investigations regarding title were made by the 1st defendant himself who nominated his own lawyers for the purpose of scrutinising and advising on title and for the purpose of executing the said deeds and also other deeds which were executed in relation to diverse transactions between the 1st and 2nd defendants.

No. 5
 Answer of the
 2nd Defendant-
 15. 12. 60
 -Continued

5. The application made by the 1st defendant to Court to join the 2nd defendant as a party to this action is not made bona fide and this defendant is not liable as a matter of law to warrant and defend the title of the 1st defendant in the premises.

Wherefore the 2nd defendant prays that in any event he be exonerated from liability to warrant and defend the title of the 1st defendant, that he be discharged from these proceedings and that the 1st defendant be ordered to pay him all costs incurred by him pursuant to the notice to warrant and defend his title and for such other and further relief as to this Court shall seem meet. 10

Sgd/- Perera & Perera
 Proctors for 2nd Defendant

No. 6.

Proceedings Before The District Court.

No. 6
 Proceedings
 before the
 District Court-
 4. 9. 61

4. 9. 61

1st to 4th plaintiffs and 2nd Defendant are present. Mr. Advocate Guneratne with Mr. Advocate Wijewardene instructed by Mr. Cader for the plaintiff.

Mr. D. A. B. Ratnayake for the 1st Defendant.

Mr. Amerasinghe of M/s. Perera & Perera for the 2nd Defendant. 20

Mr. Amerasinghe states that his Counsel is Mr. Guy Wickremanayake who is out of the Island and that his Counsel had informed the Counsel for the other parties that he (Mr. Guy Wickremanayake) would not be able to be present in Court to-day. He further states that Mr. D. A. B. Ratnayake has been informed and by an oversight Counsel for the plaintiff had not been informed. Mr. Amerasinghe applies for a date on personal grounds as his Counsel is out of the Island as his son is ill.

Mr. Guneratne for the plaintiff states that he has not been informed and he has come ready for trial today. Mr. Amerasinghe for the 2nd 30 Defendant states that he is unable to agree on costs.

The 2nd defendant will pay the plaintiff taxed costs of the day. Trial is postponed for 5. 12. 61.

Intd.....
 District Jndge.
 4/9/61.

No. 7
Issues Framed

5. 12. 61.

1st to 3rd, 6th and 7th plaintiffs and the 1st and 2nd defendants are present.

Mr. Advocate A. C. Guneratne with Mr. Advocate D. S. Wijewardena instructed by Mr. Abdul Cader for the plaintiffs.

Mr. Advocate C. V. Ranawaka with Mr. Advocate Pathirana and Mr. Advocate Dissanayake instructed by Mr. D. A. B. Ratnayake for the
10 1st defendant.

Mr. Advocate Jayakody instructed by Messrs. Perera & Perera for the 2nd Defendant.

Mr. Advocate Gunaratne, for the plaintiffs opens his case.

He states that the action is in respect of a coconut estate called Raglan Estate of about 271 acres. It forms one of the estates which formed Moragolla Group and originally belonged to Adeline Winifred Peiris. That is common ground.

Then she died leaving a Last Will dated 1910 devising all her properties, among others, to her 6 children - 3 daughters and 3 sons.
20 This property was devised to her son Richard Louis Peiris. That is also common ground.

Subject to certain conditions the contest arises in this fashion:

After the execution of the Last Will, the original owner (Adeline Winifred Peiris) and her husband, Richard Stewart Peiris, in 1917 executed an Indenture of agreement by which the wife (Adeline Winifred Peiris) agreed to transfer all her properties to her various children in a certain manner. Even in that agreement this property was given to Richard Louis.

These two documents - the Last Will and the agreement of 1917-
30 were discussed in the Testamentary Cases of these two parties after their deaths (Adeline Winifred and Richard Steuart) and it was agreed that the Last Will and the Indenture were binding on the heirs of these two. This is also common ground. That this property came to Richard Louis is common ground.

Richard Louis, the father of the plaintiffs in 1951 purported to sell this Raglan Estate to the 2nd defendant. *Although the date in the plaint is given as 1952, the actual date is 1951.*

As far as the Plaintiffs are aware 2nd Defendant was the nominee of the 1st Defendant. 2nd Defendant transferred to the 1st Defendant by deed
40 No. 306 of 9. 8. 52. Ultimately Raglan Estate came to the 1st Defendant and today 1st Defendant is in possession of Raglan Estate.

Richard Louis Peiris died on 3. 12. 54 and the plaintiffs say that on his death, in view of the terms and conditions in the Last Will and the Agreement this property was burdened with a *fidei commissum* in favour of the children of Richard Louis. Therefore on the death of Richard Louis in December 1954 the plaintiffs became the owners and from that date the 1st defendant has been in unlawful and forcible possession of this estate.

The plaintiffs filed action in 1959. Plaintiffs ask for a declaration of title, ejection of the defendants and damages. This is in short the case for the plaintiffs. 10

The main contest is whether the Last Will created a *fidei commissum* in favour of the children of Richard Louis Peiris. If there was no *fidei commissum* the plaintiffs are out of Court. Plaintiffs rely on both the Last will No. 4188 of 3. 6. 10 and the Indenture No. 1725 of 31. 5. 17 and also the Testamentary Case in the District Court.

At this stage, of consent, damages are agreed upon at Rs. 18,000/- per annum.

Intd 20
District Judge
5. 12. 61

I S S U E S

Mr. Gunaratne raises the following issues:-

1. Do Last Will No. 4188 of 3. 6. 10 and/or Indenture No. 1725 of 31. 5. 17 create a *fidei commissum* in favour of the plaintiffs in respect of Raglan Estate the subject matter of this action?

2. If so, are the plaintiffs the absolute owners of the said Raglan Estate after the death of their father Richard Louis Peiris? (It is agreed between the parties that Richard Louis Peiris, the father of the plaintiffs, 30 died on 13. 12. 1954.)

3. If so, is the 1st defendant in unlawful possession of the said estate from 13. 12. 54?

(Damages as agreed upon) (It is also agreed that plaintiffs will be entitled to recover damages only from 18th March, 1957)

Mr. Ranawaka suggests the following issues:-

4. Was the said land devised by Last Will No. 4188 to Richard Louis Peiris subject to a *fidei commissum*?

5. Does the Indenture referred to create a *fidei commissum* in favour of the plaintiffs.? 40

6. Or is the said Indenture a promise by which Adeline Winifred Peiris undertook to execute a deed embodying the terms contained in the said Indenture which deed she failed to execute?

No. 7
Issues Framed
-Continued

7. If the answer to issue No. 6 is in the affirmative, does the question of a *fidei commissum* arise at all in this case?

8. If there is no *fidei commissum* can the plaintiffs have and maintain this suit?

Mr. Jayakody suggests the following issues:-

9. Did the 1st defendant purchase the said land on deed No. 196 of 2. 11. 51 in the name of the 2nd defendant as his nominee?

10. If so, is the 2nd defendant liable to warrant and defend the title of the 1st defendant?

Mr. Ranawaka states that he would consider the question whether the 2nd defendant should be discharged from these proceedings and that he would intimate to Court his decision later in the day.

I accept all the issues.

Intd
District Judge
5. 12. 61

20

No. 8
Plaintiffs' Evidence

Mr. Gunaratne calls:-

IVAN PEIRIS. Sworn; 30 years; Poultry Farmer; Lindula.

I am the 2nd Plaintiff in this case. My father was Richard Louis Peiris and my mother Hilda Peiris. They were married in 1923 or so. They had 7 children.

No. 8
Plaintiffs'
Evidence
—
Evidence of
Ivan Peiris—
Examination.

30

1. Derwent Peiris the 1st Plaintiff.
2. Ivan Stewart Peiris myself the 2nd Plaintiff.
3. Srikantha Peiris the 3rd Plaintiff.
4. Sita Lucille Weerasinghe the 4th Plaintiff.
(she is now married to one Mr. Weerasinghe)
5. Carl Windsor Peiris the 5th Plaintiff.
6. Joyce Winifred Peiris the 6th Plaintiff and
7. David Raglan Peiris the 7th Plaintiff.

No. 8
 Plaintiffs'
 Evidence
 —
 Evidence of
 Ivan Peiris—
 Examination.
 -Continued

The last three Plaintiffs were minors and their mother Hilda Peiris was appointed their Next Friend. She is also now dead. She died last year and Carl Windsor Peiris the 5th Plaintiff is a major. The 6th and 7th Plaintiffs are still minors and they are now appearing by their next friend their brother Derwent Peiris the 1st Plaintiff.

The subject matter of this action is a coconut estate in the Kurunegala District about 271 acres in extent. It forms one of the estates in the group known as Moragolla Group consists of 4 Estates:

1. Raglan
2. Moragolla
3. Rock Cave
4. Nailiya.

10

They are all contiguous estates and form about 1012 acres in all.

This group of estates originally belonged to my grandmother Adeline Winifred Peiris. She was married to Richard Steuart Peiris My grand-father. My grand-mother, Adeline Winifred, was, in addition to Moragolla Group, entitled to several large estates in various districts of the Island. She was one of the largest land owners during her time in Ceylon.

She by Last Will No. 4188 of 3. 6. 10, a certified copy of which I produce marked P1, devised the rest and residue of her property which included Raglan Estate, to her three sons

1. Richard Louis
2. Lionel and
3. Bertram.

This property was subsequently devised to my father Richard Louis by Agreement No. 1725 of 31. 5. 17, a certified copy of which I produce marked P2.

Subsequent to the execution of the Agreement (P2) my grand-parents died. The first to die was Richard Steuart Peiris my grand-father on 23. 10. 18. His estate was administered in District Court Colombo Case No. 6569 Testy.

My grand-mother died subsequently on 20. 12. 18 and this Last Will P1 was proved in her Testy. Case No. 6571 District Court Colombo. The two Testy Cases-6569 and 6571-were subsequently amalgamated and the effect of P2 on the terms of the Last Will was referred to arbitration in the Testy. Cases and an award was made in the said Testy cases. I produce a certified copy of the award marked P3.

That award was made a rule of Court on 17. 12. 25. I produce a certified copy of order dated 17. 12. 25 marked P4.

40

I say that according to the terms of the Last Will (P1) and also the agreement (P2) my father got only the right to possess Raglan Estate during his life time. That is what I say. That is our case.

No. 8
Plaintiffs'
Evidence

—
Evidence of
Ivan Peiris—
Examination.
-Continued

My father died on 13. 12. 54. That fact has been admitted. Therefore I have not produced the death certificate. I say that from 13. 12. 54 the seven of us plaintiffs are the owners of this property.

My father during his life time, purported to sell this property on deed No. 196 of 2. 11. 51, P5, to the 2nd defendant. The 2nd defendant sold 50 acres of this estate on deed No. 199 of 11. 11. 51, P6, to one H. M. Punchi Banda from whom he re-purchased the said 50 acres
10 on deed No. 305 of 9. 8. 52, P7. Thereafter the 2nd defendant sold the entirety of Raglan Estate on deed No. 306 of 9. 8. 52, P8, to the 1st defendant and from that date the 1st defendant is in possession of this property. I know that personally. From the date of the death of my father the 1st Defendant is in possession of this land unlawfully and I ask for a declaration that the 7 of us plaintiffs be declared entitled to this property. We also ask for ejection of the 1st defendant and damages as agreed upon at Rs. 18,000/- from 18th March, 1957. (It is not denied that the plaintiffs are the children of Richard Louis Peiris).

20 I produce marked P9, a certified copy of the birth certificate of the 1st plaintiff showing that he was born on 31. 3. 1930. His parents are my father Richard Louis Peiris and my mother Hilda Peiris.

Cross-examination by Mr. Ranawaka:

According to my evidence my parents got married about 5 years after the Indenture P2. My parents got married about 1922 or 1923. My mother belonged to a different caste than that of my father.

Evidence of
Ivan Peiris—
Cross-
Examination.

I do not know if the 1st Defendant at the time he bought this property, was holding a lease of the property.

(Mr. Ranawaka marks as IDI Lease No. 2398 of 30. 9. 49)

30 The 1st Defendant is a well known citizen of this place. It may be that he is one of the richest persons of the place.

Evidence of
Ivan Peiris—
Cross-
Examination.
-Continued

(Mr. Ranawaka states that he admits that the 2nd Defendant did not possess the land at any time).

Cross-examination by Mr. Jayakody: N I L

Intd.....
District Judge.
5. 12. 61

Plaintiffs' case closed. P1 to P9 read in evidence.

Addresses to Court

Mr. Ranawaka states that he is not calling any evidence for the 10 1st Defendant. He reads in evidence 1DI. He states that the matter is only a question of law.

At this stage Mr. Ranawaka agrees to have the 2nd Defendant discharged from these proceedings without costs.

Of consent the 2nd Defendant is discharged from these proceedings without costs.

Intd.....
District Judge.
5. 12. 61

Mr. Ranawaka for the 1st Defendant addresses Court. 20

He submits that for the construction of the documents it would be helpful to go into the background and the history of the family.

Richard Steuart Peiris and his wife Adeline Winifred Peiris were some of the largest land owners in Ceylon in their time as already pointed out. They had three daughters and three sons. The sons were

Richard Louis, father of these plaintiffs,
Lionel and
Bertram (in order of seniority).

It would appear that Adeline wanted to give a fairly larger share of the properties than was fair to Irene one of the daughters on the occasion 30 of her marriage. Thereupon disputes arose between the husband and

wife—Richard Stuart and Adeline Winifred— the husband's position being that he would not give his consent to a deed in favour of Irene unless his wife (Adeline) gave a fair distribution of the properties to all the children. The marriage of Irene was fixed and there was only a short time to go and Adeline agreed, that, as there was not much time for the marriage, within three months of the marriage taking place she would execute a fair distribution of the properties among the children.

No. 9
Addresses to
Court
-Continued

Then Richard Stuart gave his consent to the gift in favour of
10 Irene which was another very valuable property.

Three months passed—this was 1917—but for some reason or other, which we do not know, the deed which she promised to execute, was not executed.

The dispute between the husband and wife—Richard Stuart and Adeline Winifred—was settled by an Indenture where she (Adeline Winifred) said that within three months of its execution, she would execute a deed making a fair distribution of the properties among her children. The deed which she promised to execute was not executed and she died in the next year 1918 and strangely enough both husband
20 and wife died within two months of each other. That is the position in which parties are placed in this case.

The Indenture does not create a *fidei commissum*. She agreed to create a *fidei commissum* but she did not do so. There is no *fidei commissum*.

Then we come to the Last Will. Does the Last Will create a *fidei commissum*? The Last Will was the subject matter of arbitration proceedings and the Arbitrator himself has stated that the Last Will had nothing to do with the estate in question.

Apart from that the Last Will does not devise this property to
30 this son Richard Louis Peiris. If the Last Will is read, this is shown clearly. It does not give Moragolla Estate to Richard Louis Peiris. Moragolla Estate comes in the Indenture (P2) and apart from that the property is not devised to Richard Louis Peiris.

If it is assumed for argument, that the Last Will creates a *fidei commissum* then Court will be called upon to explain the terms of it. The Last Will does not create a *fidei commissum* for it gives the husband full power to do anything he thinks fit with the estate. What was

left over after that will be subject to a *fidei commissum*. Neither the Last Will nor the Indenture creates a *fidei commissum*. That is why a specific issue was raised by him (Mr. Ranawaka) about *fidei commissum*.

The arbitration was done by the late Mr. Balasingham who went into the whole matter. He said that the Indenture was binding but he did not state that there was a *fidei commissum* created.

Mr. Ranawaka submits that this case is not free from difficulties. In Ceylon there is no authority covering this point.

If the plaintiffs say that this Last Will creates a *fidei commissum* in favour of the children of Richard Louis, Mr. Ranawaka says his answer is:- 10

- (1) It does not create a *fidei commissum* at all.
- (2) Richard Louis Peiris does not by this Last Will get this property in dispute.

Mr. Ranawaka refers to the Last Will P1.

He states that the disputes between the husband and wife (Richard Steuart and Adeline Winifred) arose really as the property was bought with the money of the husband in the name of the wife.

Mr. Ranawaka reads the Last Will P1. "I give, devise, bequeath all the rest, residue and remainder of my property.....unto my sons..... in equal shares." That does not mean that Moragolla Estate was given 20 to Richard Louis.

Establishing that there is a *fidei commissum* is a very difficult matter as the presumption in law is against a *fidei commissum*. Mr. Ranawaka refers to the clause where the testatrix states that she gives the property to the sons and if anyone dies etc.This Last Will does not create a *fidei commissum* in respect of Moragolla Estate much less does it create a *fidei commissum* in favour of the children of Richard Louis Peiris.

Mr. Ranawaka refers to what the Arbitrator Balasingham has stated about the Last Will and to the findings of Mr. Balasingham. Whatever 30 Mr. Balasingham, the Arbitrator did, he cannot impose a *fidei commissum* on the properties. Mrs. Adeline Winifred Peiris does not impose a *fidei commissum*.

Plaintiffs want court to hold that this Last Will created a *fidei commissum* over Raglan Estate in favour of the children of Richard Louis Peiris. There is no such *fidei commissum*.

Next Submission (2)

No. 9
Addresses to
Court
-Continued

The Indenture (P2) merely provides for the execution of a deed by Mrs. Adeline Winifred Peiris as soon as the marriage of her daughter Irene takes place since the dispute arose over her dowry. The deed was to embody the terms contained in this indenture. The deed should embody the agreement. Mr. Ranawaka submits that Adeline Winifred Peiris did not execute such a deed and apart from a promise to do she executed no such deed. The Indenture does not and cannot create *fidei commissum*.

10 The Court can give effect to deeds, wills and other instruments by interpretation of these documents and make a decision as to whether there is a *fidei commissum* or not, but it cannot on its own impose a *fidei commissum* on other people's properties.

As to how a *fidei commissum* is created is set out in Article 12 of Ramachandram's Book.

Therefore this Indenture does not create a *fidei commissum*.

3rd Point.

For the purpose of argument, assuming but not conceding that this Indenture creates a *fidei commissum*, he invites the Court to examine
20 its contents, to see whether there is a *fidei commissum* created.

No doubt Counsel for plaintiffs will argue that the original intention of the parents was to impose a *fidei commissum* but the difficulty is that the words used by them have defeated the purpose. With the best of intentions parents go to a Notary and he writes out a deed in such a way that the words used by him defeat the purpose and intentions of the parents.

The conditions relating to Moragolla Estate leave us in the dark The Indenture says that the estate is given to Richard Louis and that if he dies unmarried or leaving such issue who are not majors-
30 but it does not say what is to happen if there are majors. This is only a condition and does not create a *fidei commissum*. If Richard Louis dies unmarried or without leaving majors as issue then the property must go to Bertram and Bertram has to take it subject to certain conditions. Mr. Ranawaka states that his point is that the conditions affects Bertram if Richard Louis dies unmarried but it does not say anything about the children. The children will get in the ordinary course of inheritance but if the father sold they have no rights

Mr. Ranawaka addresses Court on the principle of the Roman Dutch Law called *Si Sine Liberis*....

There is a condition upon which Bertram was to get but the instrument does not impose a *fidei commissum*. In a *fidei commissum* you must state who the Beneficiaries are.

Mr. Ranawaka reads the Indenture (P2).

“And Whereas the said Richard Steuart Peiris withholding his consent from.....unless and until a fair distribution and settlement of other property of the said Adeline Winifred Peiris is madefor their benefit. 10

“And Whereas.....decided to effect the same as soon as possible.....”

There were huge liabilities on the estate.

“And Whereas.....and binding herself thereby to effect a distribution and settlement of her other property.....”. Which she failed to do.....

“And Whereas in consideration.....the said Adeline Winifred Peiris has agreed to execute this Indenture.....” This Indenture does not create a *fidei commissum*.

Mr. Ranawaka refers to para 7 of P2 Para 11 concerns Moragolla Group.

“Within three months from date hereof.....” 20

This is the first time we are aware of the fact that Moragolla Group was to be given to Richard Louis Peiris. Of Moragolla three portions have been sold to outsiders and they are in possession. There is no prohibition against alienation in this Instrument. The most important part in P2 is Sub-para (d) in Para 11.

“If the said Richard Louis Peiris was to die without issue.....” Richard Louis was married to a lady of a different caste and we cannot say whether the parents would have given their consent to the marriage.

In other words if there were no majors what was to happen? Then it would be the property of Bertram. It does not say anything 30 as to majors and the reasonable construction is that in the event of there being majors Bertram would not get. If Bertram does not get the children will get as heirs in the normal course.

Mr. Ranawaka refers to para 17 of P2.

“The arrangements hereinbefore mentioned.....”

They were merely contemplating an instrument for the future which would embody these terms, which terms on examination do not create a *fidei commissum*.

Mr. Ranawaka, therefore, asks Court to take a view in this matter which fits in with the general principles of law governing *fidei commissum*. Then what are these principles?

No. 9
Addresses to
Court
-Continued

The principles are:

(a) **There is a presumption** against *fidei commissum*.

He cites Roman Dutch Law by Professor Nadaraja page 28.

He submits that the evidence led for the plaintiffs does not satisfy Court beyond reasonable doubt that there was a *fidei commissum*. He asks Court to consider this a case where there is an element of doubt
10 and it were better to leave the land unfettered.

(b) **Court cannot go into the intention** of the Testators.

The question of intention does not arise for the simple reason that intention will operate only in cases of Last Wills. A Last Will is a unilateral act. Intention does not come into operation in the case of deeds *inter vivos*. Even assuming that this a deed *inter vivos*, intention cannot come into operation. But this is a deed not between the donee and the grantor.

Cites 3 C.L. Recorder page 19.

22 N. L. R. page 433 Thiyagarajah Vs. Thiyagarajah.

20 This is the second principle by which Court should be guided.

(c) **Si Sine Leberis clause.**

This clause is a controversial point. But so far as the Ceylon Law is concerned Si Sine Liberis clause comes to bear only in testamentary dispositions in Last Wills.

Cites 2 C. W. R. page 208. Ahamadu Lebbe Vs. Sularigamma and others. In view of the absence of definite authority on the point and the controversies that are raging or being raged elsewhere, we have to apply these three principles to see whether there is a *fidei commissum*.

Mr. Ranawaka refers to the Agreement and states that no provision
30 is made in the event of the death of Richard Louis leaving majors. Thus this does not create a *fidei commissum*.

He cites 44 N. L. R. page 276

He sums up his position and states that the interpretation of the terms in the instrument means that there were three children who are majors and the gift to Bertram fails and there is no *fidei commissum*. So far as Bertram is concerned the deed may operate as a *fidei commissum*.

No. 9
Addresses to
Court
-Continued

But that does not mean that the child-majors became the fidei commissari because the condition itself does not transfer to them anything. The *Si Sine Liberis* clause does not transfer to them anything. The children will merely succeed *ab intestio* to the father and if the father during his life time dealt with the property, they cannot claim. That is the position in the present case. They will succeed only *ab intestio* Bertram is out. He cites a case which he says is very much in point:

30 N. L. R. page 266 at 269.

It is merely a condition upon which the right of Bertram depends. So that if there were majors then Bertram is out but on the majors there was no conferment of fidei commissari interests. Incidentally the Court will notice that there is no *Si Sine Liberis* clause. If he dies without children then it will go to Bertram. If he leaves children *Si Sine Liberis* clause does not apply for the Indenture has nothing to do with the children who are alive. There is a slight variation of the *Si Sine Liberis* clause but the principle governing is the same. 10

The difficulties in this case are not better put than by Walter Perera page 444; Lees Translation Volume I page 153.

This is a case of doubt.

Cites 62 N. L. R. page 553 at 555. 20

Counsel for the Plaintiffs argument will be that there is an implied *fidei commissum*. There is authority against it, and if the 3 principles mentioned are applied there are facts in conflict. One cannot argue that there is an implied *fidei commissum* for the reason that in this case it is something different from a case where there is a *Si Sine Liberis* clause. In this case if there are majors what happens?

The Last will does not create a *fidei commissum* and part from that the Last Will has been taken into consideration in the arbitration proceedings and Mr. Balasingham has stated that the Last Will does not create a *fidei commissum* and it goes out. Then the question is whether the Agreement P2 creates a *fidei commissum*. It does not. 30

Intd.....

District Judge

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Adjourned for lunch at this stage.

After resumption.

Mr. Ranawaka continues his address and requests Court to consider the case in 62 N.L.R. very carefully. At page 556 Justice Fernando refers to the case 1905.

No. 9
Addresses to
Court
-Continued

He concludes his address.

Mr. A. C. Gunaratne for the plaintiffs addresses Court.

Mr. Gunaratne states that he agrees with Counsel for the 1st Defendant that this is a very interesting and involved question of law and sometimes according to Roman Dutch Law it is not answerable. This involves a very intricate point of law. Mr. Gunaratne submits
10 that Mr. Ranawaka has not dealt with all the law involved. He has argued as follows:

Plaintiffs depend on two documents P1 and P 2. P1 is the Last Will Assuming that there is a *fidei commissum* in P1, there is no devising of this property to Richard Louis. Therefore even if there is a *fidei commissum* in P1, it cannot take effect in respect of this property. His second argument was that the agreement P2 is only an agreement which has not been given effect to. Therefore the agreement is of no force or value in law. Defendants Counsel argues that P1 does not deal with Moragolla Group and does not devise it to Richard Louis. It is
20 the agreement P2 that refers to it and the agreement has not been given effect to. Therefore it is useless arguing any further and there is no *fidei commissum*. He says that this property is not subject to a *fidei commissum*.

The question is not so simple as that. Then there need not be authorities. The issues are very much more involved and involve very fine questions of law.

Learned Counsel for the Defendant also referred to 3 principles on which whether the existence of *fidei commissum* is to be decided. He stated that firstly there was a doubt regarding the creation of a *fidei*
30 *commissum*. The mere fact that there is a doubt does not necessarily mean that the benefit of the doubt be given against the existence of a *fidei commissum* and Court held that there is no *fidei commissum*. From the time the authorities started from the first volume of the N.L.R. there have been doubts of the existence of *fidei commissum*. That is why there has been considerable argument on this matter. That would not be the correct proposition of law. Where there is a doubt Court must go into the matter and find out whether the essentials necessary to create a *fidei commissum* are found. If that is so, the doubt must be resolved in favour of the *fidei commissum*.

Learned Counsel for the defendant has also referred to a second principle that the intention of the parties is not relevant to the decision as to the existence or otherwise of a *fidei commissum*. That is a wrong proposition of law. Because his (Mr. Gunaratne's) submission is that the intention is of paramount importance and it has been so held in several cases.

Mr. Gunaratne cites 6 N.L.R. page 344. There the *fidei commissum* was in the last will. "In considering a will the intention of the Testator is of paramount importance". So it is not correct to say that the intention of the parties should be ignored. 10

Cites Nadaraja at page 28 - Principles at page 36. This is an accepted authority on *fidei commissum*.

So that not only in the case of Last Will but in cases of deeds too the intention of parties is of great importance.

Mr. Gunaratne refers to the 3rd principle discussed by Mr. Ranawaka viz. the *Si Sine Liberis* clause. That principle will only apply in testamentary dispositions is the argument of Mr. Ranawaka. Although that submission is not correct, Mr. Gunaratne states he is not going to attack it because the document the parties are concerned with is of a testamentary disposition. So that it is satisfactory if it is accepted that the principle of *Si Sine Liberis* applies to testamentary dispositions. 20

Mr. Gunaratne now refers to the facts in this case.

It is common ground that Adeline Winifred Peiris was the owner of this property. That she executed a Last Will is also common ground. The husband and wife died within a period of 2 months. Their two testy. cases were amalgamated and an award was made in the amalgamated case which has been produced marked P3.

It is on the last Will P1 that the owner of the property Adeline Winifred Peiris gave these properties and declared them subject to a *fidei commissum*. She gave them to her various children. No specific reference is made in P1 to Moragolla Group. Mr. Gunaratne states that by P1 a *fidei commissum* was created. 30

Then the documents P2, which is an agreement, set out the disposition of the various properties of Adeline Winifred Peiris. We must take the two documents together-one creates the *fidei commissum* viz. P1 and the other P2 sets out the dispositions of the various properties. She has given a number of lands making a total of 4 to 5 thousand acres. Counsel for the Defendants argument is that P2 being an agreement was a temporary expedient in view of the impending marriage of the eldest daughter, Irene and there was an agreement that there was to 40

be a deed executed in terms of that agreement P2. Therefore P2 is of no avail. What is the effect of these two documents—the last will and the agreement—and the whole matter being referred to arbitration in Testy. case and the arbitrator's award being made a rule of Court? It is hardly necessary for me to argue that when a matter is made a rule of Court it becomes a decree of Court. Thirdly, a decree of Court is much more binding and of greater value than a deed. His submission is that once the agreement P2 and P1 were referred to arbitration and an award made on P2 and it was made a rule of
 10 Court, then the agreement P2 is binding on the heirs. Mr. Balasingham, the arbitrator, went into all these matters. Arbitration was due to certain objections being filed by some of the heirs. All heirs were parties and certain acts were questioned. These matters were referred to arbitration by Mr. Balasingham. P1 and P2 were also submitted to him. He says "I hold that the indenture (P2) is binding on the children of Richard Steuart..."

Mr. Gunaratne states that he does not say that P2 creates a *fidei Commissum*. What he states is that when P2 was held to be binding on the heirs of Richard Steuart and Adeline Winifred, the
 20 various terms and conditions in P2 bound the various sons and daughters of these persons. The award P3 was made an award of Court. Therefore it is a decree of Court. If that is correct then the dispositions of these properties to the 6 children of Richard Steuart and Adeline Winifred must be in terms of the agreement P2. So that the dispositions will be according to P2. That is clear.

The case of the defendant is that Richard Louis was the sole owner and 1st defendant bought from him. Their claim also will be on the same agreement P2. Otherwise on the footing of an intestacy Richard Louis will get only a 1/6th share. Their title is also on the authority of P2.

30 P2 clearly sets out how the properties are to be divided among the children. So that Moragolla Group went to Richard Louis the father of the plaintiffs. Then the only question is to find out whether there was a *fidei commissum* and we have to go back to the Last Will P1. We have to find out whether under the terms and conditions of P1 the properties which these parties got under P2 were subject to a *fidei commissum* or not, whether under P1, Richard Louis was the sole owner or only a fiduciary owner.

Mr. Gunaratne refers to the various passages in the Last Will. So far as the daughters are concerned the *fidei commissum* is clear. So that the intention was clear at least as far as the daughters were concerned that the properties should be burdened with a *fidei commissum*. One must have that fact in mind in going in to the subsequent clauses of the Last Will.

Mr. Gunaratne refers to the Will where the husband is given the absolute power to do anything he likes with the property during his life time. He is given even the right to sell. He was given an absolute right. 10

There are two requisites for a *fidei commissum*:

1. clear designation of the parties to benefit-fidei commissari and
2. implied or express prohibition against alienation.

These two are essential for the creation of a *fidei commissum*. Mr. Gunaratne submits that in the Last Will P1 the *fidei commissari* are clearly designated. A prohibition against alienation is implied and one must read P1 carefully to find out whether there is a prohibition against alienation, implied in the terms of the Last Will. This is found out easily. Mr. Gunaratne refers to para 3 of P1. 20

Mr. Gunaratne submits:

1. That all that this clause implies is that the sons should not sell the property. If the argument of Counsel for Defendant is correct then the clause should read "without having disposed of the property." Then it goes to the brothers and brothers' children. The sisters have been excluded. That is why he states that there is an implied condition that the sons cannot sell.

2. Then we go further. "Subject further to the right of the widow of such sons who shall.....to receive during her widowhood a 1/4th share of the nett income of the property....." 30

By this clause the testatrix limits the right of the inheriting brother and brother's children.

He also refers to the clause: "If any of my said sons shall die leaving children and also a widow....." If there was no *fidei commissum* and the sons died, the widow and children obviously would get 1-2 and 1-2. That is the common law. But that is not the principle of inheritance set out in this deed. If any of the sons was to die leaving children and a widow then in such event the testatrix directs that the widow should get 1/4th of the income of the property, to which her children "would be entitled to under this my will." She states 40

in unmistakable terms that if any of her sons dies leaving a widow and children, during the widowhood the widow was to get a 1/4th share of the income of the property. She gets no title to the property. She gets only a 1/4th share of the income to which the children would be entitled to under the Last Will. So that the Testatrix has definitely stated in the will that it is the children of her sons who would be entitled to under her Last Will. Otherwise that clause has no meaning. If the son Richard Louis had got absolutely then this statement would have no meaning. That clause, he submits, makes it quite clear beyond any
 10 manner of doubt, that the ultimate recipients must be the children of her children-her grand-children. That clause leaves the matter beyond any doubt. Mr. Gunaratne states that he is stressing that sentence as this type of clause was not found in any of the authorities cited to Court. Mr. Gunaratne states that the 62 N.L.R. case is one of the authorities for the *Si Sine Liberis* clause but in that case there was no clause similar to this.

He reads the Will P1. The Testatrix gives absolute power only to her husband Richard Steuart and the other parties referred to in the Last Will are excluded from selling or alienating. The Notary who
 20 attested is Arthur Alwis one of the best known Notaries. He would not have made a mistake.

Therefore these three points in the Last Will clearly show two things: 1. Without any manner of doubt the parties to benefit are the parties clearly designated. 2. There is an implied prohibition to sell or alienate against everybody viz. the children of Adeline Winifred. So that on a clear and true reading of P1 it is clear that there is a *fidei commissum* created.

Mr. Gunaratne refers to a South African case reported in South African Law Reports, Supreme Court Vol. 25. This case he states is
 30 considered fully in the 62 New Law Reports, case. In the case discussed in the 62 New Law Reports, case there is the clause which it was contended imposed the *fidei commissum*. It was on that clause alone that they should to establish the existence, of a *fidei commissum* unlike in this case. Justice Fernando there refers to Chapter 5 Nadaraja.

Mr. Gunaratne cites Chapter 5 Nadaraja page 88, at page 91. What he states is that in the case of strangers the indication must be very strong whereas in the case of direct descendants it may be slight and is sufficient. In this case these indications are there. If Court holds that the indications are there.

No. 9
Addresses to
Court
-Continued

There are three other indications in this last will:

1. Prohibition against the daughters. My submission is that the same prohibition would apply to the sons.
2. If the sons were to die unmarried and without issue which does not arise but if they were to die leaving a widow then the widow was to get a 1/4th share of the income.
3. The clause that..... "would be entitled to under this my Will".

The succession is not under intestacy. There can be no more clear way of directing that her grand-children were to be the owners. These are the indications that are contemplated under the Roman Dutch Law authorities and in Mr. Justice Fernando's judgment. 10

There is an indication in the Last Will that the grand children should ultimately be the owners of the property and Richard Louis should not sell the land but have a life interest and nothing more. The 1st defendant would have been entitled to possess during the life time of Richard Louis and thereafter his possession is unlawful. Plaintiffs would be entitled to damages thereafter.

P1 was the subject matter of two testy. Cases. It was referred to arbitration by Balasingham. Mr. Balasingham held that P2 was binding on the heirs of Adeline Winifred. Such award was made a rule of Court and therefore a decree of Court. The disposition of property of this lady was according to P2. 20

A *fidei commissum* is created by P1 and the disposition of property is by P2. The disposition by P2 must be accepted by the 1st defendant because by that same instrument his predecessor got title whether absolutely or as a beneficiary. If Court accepts that P1 creates a *fidei commissum* then plaintiffs must succeed otherwise plaintiffs fail.

Mr. Ranawaka states that he has got a right to reply on the law and informs me that he should like to reply on the law. 30

He submits that if P1 creates a *fidei commissum*, it must specifically set out the fiduciary as well as the *fidei commissari*. Here the 3 sons are the fiduciary and the father is given the absolute power to sell. If the father did sell or do anything with the property there would be nothing left to the sons and this Will cannot create a *fidei commissum*. The award does not show that there is a *fidei commissum*.

Documents on 11. 12. 61.

Intd.....
District Judge. 40
5. 12. 61.

Judgment of the District Court.

No. 10
Judgment of the
District Court
18. 1. 62

18. 1. 62

J U D G M E N T.

The plaintiffs in this case are suing the 1st defendant for a declaration of title to the land called Raglan Estate described in the schedule to the plaint; and for ejection and damages.

It is not disputed that Raglan Estate formed one of the 4 estates in the Group known as Moragolla Group, and they originally belonged
10 to the plaintiffs' grand-mother, Adeline Winifred Peiris, wife of Richard Steuart Peiris. They had 6 children by their marriage viz- 3 daughters, Lillian, Irene and Caroline and 3 sons Richard Louis, Lionel and Bertram. By Last Will No. 4188 of 3. 6. 1910 (P1) Adeline Winifred Peiris devised all her properties to her 6 children subject to certain conditions. After the execution of P1, the Testatrix and her husband, Richard Steuart Peiris, executed the Indenture No. 1725 of 31. 5. 17. (P2) and by P2 it was agreed that Moragolla Group should be given to Richard Louis Peiris, the plaintiffs' father. Subsequent to this agreement (P2) the plaintiffs' grand parents died. Richard Steuart
20 Peiris died on 23. 10. 18 and his Estate was administered in District Court Colombo Case No. 6569 Testy. Adeline Winifred Peiris died on 20. 12. 18 and her Estate was administered in District Court Colombo Case No. 6571 Testy. These two Testamentary cases were subsequently amalgamated and thereafter referred to arbitration along with the Indenture (P2) and the Arbitrator's award (P3) was made a rule of Court (P4) on 17. 12. 1925.

Plaintiffs' father, during his life time, purported, as absolute owner, to sell Raglan Estate on deed No. 196 of 1951 (P5) to R. U. B. Senanayake, the 2nd defendant, who by deed No. 199 of 1951 (P6)
30 sold an extent of 50 acres to H. M. Punchi Bandara from whom he re-purchased on deed No. 305 of 1952 (P7). Thereafter by deed No. 306 of 1952 (P8) the 2nd defendant sold the entirety of Raglan Estate to the 1st defendant and from that date the 1st defendant is admittedly in possession of the entire property.

The plaintiffs' father died on 13. 12. 54 and the plaintiffs' case is that the Last Will (P1) created a *fidei commissum* in their favour and their father had only a fiduciary interest in the property.

No. 10
 Judgment of the
 District Court
 18. 1. 62
 -Continued

Learned Counsel for the 1st defendant contended that the Last Will (P1) did not create a *fidei commissum* and even if it did create a *fidei commissum* Raglan Estate had not been devised under the Last Will to the plaintiffs' father. He also contended that the Indenture (P2) merely provided for the execution of a deed embodying the terms in the Indenture by Adeline Winifred Pieris soon after the marriage of her daughter, Irene, and the deed was not executed and therefore the Indenture does not create a *fidei commissum*. Learned Counsel for the plaintiffs conceded that the Indenture (P2) did not create a *fidei commissum*. He argued that the Last Will (P1) should be read 10 along with the Indenture (P2) and the award (P3) which was made a rule of Court, is binding on the heirs of Adeline Winifred Pieris and Richard Steuart Peiris. He referred to relevant passages in P1 and argued that the Will created a valid *fidei commissum* and the Indenture (P2) set out the dispositions of the various properties that belonged to Adeline Winifred Pieris.

The 1st defendant's title to the property is also based on P2 and the only point, therefore, that arises for decision is whether Richard Louis Pieris was the absolute owner or whether he had only a fiduciary interest in the property. The relevant passages in the Last 20 Will (P1) read as follows:-

"I give devise and bequeath all the rest residue and remainder of my property and estate and immovable movable unto my sons in equal shares subject to the express condition that my said husband Richard Steuart Peiris shall be entitled during the term of his life to take receive enjoy and appropriate to himself for his own absolute use and benefit all rents income produce and profits of all the said property and estate with full liberty to expend for the management cultivation and upkeep thereof of all such sums of money as he on his absolute discretion shall think fit and with full power and authority to my said 30 husband should he deem it necessary to mortgage the said properties or any of them for the purpose of raising and borrowing money for any purpose whatsoever and upon such terms and conditions as he shall deem fit and proper and also subject to such conditions and restrictions as my said husband shall according to his absolute discretion and wish think fit to impose when conveying such property or properties to my sons.

"Should any of my sons die unmarried or married but without leaving issue then and in such case I desire and direct that the share of such dying son shall go to and devolve upon his surviving brothers 40 and the children of any deceased brother such children taking only amongst themselves the share to which their father would have taken

or been entitled to if living subject however to the right of the widow of such son who shall have died leaving no issue to receive during her widowhood one fourth of the nett income of the property or share to which her husband was or would have been entitled to hereunder.

No. 10
Judgment of the
District Court
18. 1. 62
-Continued

“If any of my said sons shall die leaving children and also a widow then and in such case I desire and direct that the mother of such children during her widowhood shall be entitled to and receive one fourth of the nett income of the property to which her children would be entitled to under this my will”.

10

“I hereby grant and confer full power and authority only to my executor the said Richard Steuart Pieris to sell and dispose by private contract or public auction all or any or any parts of my properties estate and effects at such price or prices and upon such terms and conditions and at such time or times as he shall in his absolute discretion think fit and proper and to apply the proceeds of such sale in the purchase of any other land or lands with full and absolute power and authority to him to give such lands to my daughters or sons under the provisions of this my will And I declare
20 that on any sale or mortgage by the said Richard Steuart Pieris in exercise of the powers conferred on him hereby the purchaser or mortgagee shall not be obliged or concerned to enquire into the necessity or propriety of such sale or mortgage or as to the application of the money”.

It is pretty clear from these passages that the Testatrix had given her husband, Richard Steuart Pieris, full power and authority to dispose of her properties in any manner he desired, but in the case of her sons there is an implied prohibition against alienating or disposing of her properties otherwise these clauses in the Will are
30 meaningless. The intention of the Testatrix obviously has been that the properties should remain in the family and should go to her grand-children, who are the plaintiffs in this case. There is a clear designation of the *fidei commissum* in this case and there is an implied prohibition against alienation by the sons under the Last Will and I hold that the Last Will (P1) creates a valid *fidei commissum* in favour of the plaintiffs and the Indenture (P2) sets out the disposition of the various properties belonging to the Testatrix. The plaintiffs' father, Richard Louis Pieris, had only a fiduciary interest although he purported to transfer absolute dominium on deed P5 and the plaintiffs
40 are, therefore, entitled to the property from the date of his death.

No. 10
Judgment of the
District Court
18. 1. 62
-Continued

I answer the issues raised as follows:-

- No. 1 - Yes, the Last Will and the Indenture create a *fidei commissum* in favour of the plaintiffs (1 to 7) in respect of Raglan Estate.
- No. 2 - Yes, Plaintiffs (1 to 7).
- No. 3 - Yes.
Damages as agreed upon at Rs. 18,000/- per annum from 18. 3. 57.
- No. 4 - The Last Will creates a valid *fidei commissum* but the disposition of this property was by the Indenture No. 1725. **10**
- No. 5 - No. The Indenture does not create a *fidei commissum*. It only sets out the disposition of the various properties.
- No. 6 - Adeline Winifred Pieris undertook to execute a deed embodying the terms contained in the Indenture and she died before the deed was executed. This Indenture along with the Last Will was referred to arbitration and the award made by the Arbitrator is binding on the children of Richard Steuart Pieris and Adeline Winifred Pieris. **20**
- No. 7 and 8 - do not arise in view of my answer to Issue No. 1.
- No. 9 - Does not arise as the 2nd defendant was discharged from these proceedings.
- No. 10 - Does not arise.

I, therefore, enter judgment for the plaintiffs as prayed for with costs but with damages at Rs. 18,000/- per annum from 18. 3. 57.

Sgd. W. E. ABAYAKOON

District Judge.

18. 1. 62.

30

No. 11
Decree of the
District Court
18. 1. 62

No. 11

Decree of the District Court

D E C R E E.

IN THE DISTRICT COURT OF KURUNEGALA

1. Derwent Peiris
2. Ivan Stewart Peiris
3. Srikantha Peiris
4. Sita Lucille Weerasinghe all of 820A Batagama Road, Weligampitiya, Ja-Ela.

5. Carl Windsor Peiris
6. Joyce Winifred Peiris
7. David Raglan Peiris all of 820A Batagama Road Weligampitiya, Ja-Ela.

No. 11
Decree of the
District Court
18. 1. 62
Continued

The 5th, 6th and 7th Plaintiffs being minors appearing by their Next-Friend.

- Dead - 8. Hilda Peiris also of 820A, Batagama Road, Weligampitiya, Ja-Ela.

6th and 7th Plaintiffs only are now minors and they are appearing by their next friend 1st Plaintiff after the death of 8th Plaintiff.

10

.....*Plaintiffs*

No: 403/L.

vs.

1. Abeyasiri Munasinghe Lairis Appu of Puttalam Road, Kurunegala.
2. Ukku Banda Senanayake.....*Defendants*

This action coming on for final disposal before W. E. Abayakoon Esquire, District Judge of Kurunegala on the 5th day of December, 1961 and on the 18th day of January 1962 in the presence of Mr. Advocate A. C. Gunaratne, instructed by Mr. S. H. Abdul Cader, Proctor on the part of the Plaintiffs, of Mr. Advocate C. V. Ranawaka with Mr. Advocate J. Pathirana instructed by Mr. D. A. B. Ratnayaka, Proctor on the part of the 1st Defendant and of Mr. Advocate D. R. Jayakody instructed by Messrs. Perera and Perera Proctors on the part of the 2nd Defendant.

20

It is hereby ordered and decreed that the 1st to 7th Plaintiffs be and they are hereby declared entitled to the land called Raglan Estate, more particularly described in the schedule hereto.

It is further ordered and decreed that the 1st Defendant be ejected from the said premises and the Plaintiffs 1st to 7th be put, placed and quieted in possession thereof.

30

It is further ordered and decreed that the 1st Defendant do pay to the Plaintiffs 1st to 7th damages as agreed upon Rs. 18,000/- per annum from 18th March, 1957 until the Plaintiffs 1st to 7th are placed in possession of the said premises.

It is further ordered and decreed that the 1st Defendant do pay to the Plaintiffs (1 to 7) the costs of this suit as taxed by the officer of this Court.

Sgd/- (Illegibly)
District Judge.

40

18th January, 1962.

No. 11
Decree of the
District Court
18. 1. 62.
-Continued

The Schedule above referred to:

All that land called Raglan Estate of Two Hundred and Seventy One Acres and one Rood (271A. IR. 00P) in extent together with the buildings and everything thereon situated at Akaragane, Boyagane, Wilbawa, Talkote and Nailiya all in Tiragandahe Korale in Weuda Willi Hatpattu in the District of Kurunegala North Western Province and bounded on the North by land claimed by Villagers and Crown Land, East by land claimed by Villagers and Crown Land South by property of Mrs. Jayasooriya, Road and land appertaining to the Railway and West by land claimed by Villagers and Road and registered under 10 A. 594/54 and its connected folios.

Sgd/ (Illogibly)
District Judge.

18th January, 1962.
Drawn by me.
Sgd/-S. H. Abdul Cader
Proctor for Plaintiff.

No. 12
Petition of
Appeal to the
Supreme Court
18. 1. 62

No. 12

Petition of Appeal to the Supreme Court.

IN THE DISTRICT COURT OF KURUNEGALA.

20

1. Derwent Peiris.
2. Ivan Stewart Peiris.
3. Srikantha Peiris.
4. Sita Lucille Weerasinghe all of 820A, Batagama Road, Weligampitiya, Ja-ela.
5. Carl Windsor Peiris.
6. Joyce Winifred Peiris.
7. David Raglan Peiris, 6th and 7th plaintiffs being minors appearing by the Next Friend.

Dead 8. Hilda Peiris all of Batagama Road, Weligampitiya, Ja'ela and now appearing by substituted Next Friend, 1st Plaintiff to wit. 30

No. 403/L.

9. Derwent Peiris..... *Plaintiffs.*

vs.

S. C. No. 36 (F)
1962

1. Abeyasiri Munasinghe Lairis Appu of Puttalam Road, Kurunegala..... *Defendant.*

2. U. B. Senanayake of Kurunegala.
..... *Defendant-added.*

(Since discharged from case)

40

AND IN THE MATTER OF AN APPEAL TO THE HONOURABLE THE
SUPREME COURT OF CEYLON.

No. 12
Petition of
Appeal to the
Supreme Court
18. 1. 62
—Continued

Abeyasiri Munasinghe Lairis Appu of Puttalam Road,
Kurunegala.....1st Defendant - Appellant.

and

- 10
1. Derwent Peiris
 2. Ivan Stewart Peiris
 3. Sirikantha Peiris
 4. Sita Lucille Weerasinghe all of 820A, Batagama Road, Weligampitiya, Ja-ela.
 5. Carl Windsor Peiris.
 6. Joyce Winifred Peiris.
 7. David Raglan Peiris, the 6th & 7th plaintiffs being minors appearing by their Next Friend
 - dead 8. Hilda Peiris all of Batagama Road, Weligampitiya Ja-ela and now appearing by substituted Next Friend, 1st plaintiff to wit.
 9. Derwent Peiris
- Plaintiffs-Respondant.

20 This 18th day of January, 1962.

To,

Their Lordships The Honourable the Chief Justice and the other Honourable Justices of the Honourable the Supreme Court of Ceylon.

The humble petition of appeal of the 1st defendant-appellant abovenamed appearing by their Proctors Damian Adrian Bernard Ratnayake and his Assistant Kirthi Tissa Wettewe states as follows:-

30 1. This is an action rei vindicatio in respect of an estate called Raglan Estate where the only question that arose for determination was whether the document P1 and/or P2 created a valid *fidei commissum* in favour of the plaintiffs/respondents, children of one Richard Louis Peiris.

2. The 1st defendant-appellant had on P8 purchased the said land from the 2nd defendant, who had himself purchased the same from the said Richard Louis upon P5 free of any *fidei commissum*.

3. After the trial the Learned District Judge by his order of the 18th January, 1962 held in favour of the plaintiffs.

4. Being aggrieved by the said order the Appellant begs to appeal therefrom to Your Lordships' Court on the following among other grounds that may be urged by Counsel at the hearing of this appeal:-

40 (a) It is submitted that even if there had been an intention to create a *fidei commissum* by P1 the words employed and the conditions stated defeat the object;

No. 12
Petition of
Appeal to the
Supreme Court
18. 1. 62
-Continued

- (b) The document P2 which is an indenture, provides for the execution by one of the parties thereto of a deed embodying terms and conditions which purport to create a *fidei commissum*, but the said deed was never executed.
- (c) It is further submitted that even if such a deed had been executed the said terms and conditions which contained a "Si Sine Liberis" clause do not create a valid *fidei commissum*.
- (d) The plaintiffs relied on an arbitrator's award followed by a rule of Court, but the said award merely says that the indenture P2 was binding on the said Richard Louis and his brothers and sisters, and the rule of Court which adopted the award, it is submitted, cannot have the effect of bringing into existence a *fidei commissum*. 10

Wherefore the Appellant prays that Your Lordships' Court may be pleased to set aside the said order of the Learned District Judge and declare the Appellant absolute owner of the said land with costs in both courts and for such further and other relief as to Your Lordships' Court may seem meet.

Sgd/- D. A. B. Ratnayake.
Proctor for 1st defendant-appellant. 20

Settled by:
C. V. Ranawake
Advocate.

No. 13
Proceedings
before the
District Court
7. 2. 62
27. 2. 62

No. 13
Proceedings before the District Court.

7. 2. 62

Mr. Advocate Carthigesu instructed for Plaintiffs-Respondents.

Mr. Advocate Pathirana instructed for 1st Defendant-Appellant.

Mr. Pathirana states that notice of security had been served on the Plaintiffs' Proctor in this case and that the notice could not be served on the plaintiffs as they are not to be found at the addresses given. 30

Mr. Carthigesu waives notice of tendering security on the Plaintiffs-Respondents.

O R D E R

Security of appeal in a sum of 1000/- is accepted by Court. Issue notice of appeal on bond being filed returnable 1. 3. 62.

Intd.....
District Judge.
 7. 2. 62

No. 13
 Proceedings
 before the
 District Court
 7. 2. 62
 27. 2. 62
 -Continued

Mr. Pathirana states that the notice to stay writ had not been served on the plaintiffs-respondents for the same reason.

10 Mr. Carthigesu states that on behalf of his clients he takes notice of it, but objects to writ being stayed and asks that Court do fix the matter for inquiry.

Inquiry regarding the stay of execution on 27. 2. 62.

Intd.....
District Judge.
 7. 2. 62

27. 2. 62

Mr. Advocate Gunaratne with Mr. Advocate Carthigesu instructed for plaintiffs-respondents.

20 Mr. Advocate Pathirana instructed for 1st defendant-appellant plaintiffs 1 to 4 and defendant present.

Mr. Pathirana states that it is not prudent to ask for stay of execution.

It is agreed that the 1st defendant-petitioner withdraws his application for stay of execution.

Of consent: It is agreed that the plaintiffs-respondents be handed over possession of the property on the plaintiffs-respondents or someone on their behalf hypothecating the property with the Secretary of the District Court to the value of Rs. 30,000/- to the satisfaction of Court. On tendering security, the plaintiffs-respondents will be entitled to take out 30 writ without notice to the 1st defendant-petitioner.

The 1st defendant-petitioner undertakes not to cause any damage to the land.

Intd.....
District Judge.
 27. 2. 62

No. 14

Statement of Objections of the 1st Defendant
 IN THE DISTRICT COURT OF KURUNEGALA.

1. Dervent Peiris and 8 others said to be of Batagama Road, Welligampitiya, Ja-Ela.....*Plaintiffs*
 vs.

No. 14
 Statement of
 Objections of the
 1st Defendant
 29. 3. 62

Abaysiri Munasinghe Lairis Appu of Kurunegala
*Defendant*

No. 14
 Statement of
 Objections of the
 1st Defendant
 29, 3, 62
Continued

The 29th day of March 1962.

The statement of objections of the Defendant abovenamed appearing by his Proctors Damian Adrian Bernard Ratnayake and his assistant Kirthi Tissa Wettewe states as follows:

1. The property secured with Court as Security is not worth Rs. 30,000/-
 2. Even if it is worth Rs. 30,000/- the property is subject to two mortgage bonds, according to the registers in the Land Registry:
 - (a) No: 4010 dated 16th January 1956 attested by 10
 R. C. de Silva, Notary Public, for Rs. 5000/- at fifteen per centum per annum.
 - (b) No: 1490 dated 12th January 1960 attested by
 F. A. I. Ratnayake, Notary Public for Rs. 3000/- at four and half per centum per annum.
 3. The sureties are persons who have been indebted and who are being assisted by the Board of Trustees of the Lady Lochore Fund, in whose favour the bond No: 1490 aforesaid is executed.
 4. No prior registration reference has been cited on the face of the Security bond and that will provide an opportunity for getting 20 the bond registered in a fresh and unconnected folio and defeating the rights under the bond.
 5. The Security Bond has been signed by the Next Friend of the plaintiffs without authority as a duly appointed Curator and the said bond is void in law.
 5. The Plaintiffs are attempting under cover of the right allowed to them to possess the lands to place in possession impecunious persons who are offering the Security. The defendant respectfully submits his objection to strangers to the action being placed in possession.
 6. The defendant has no objection to the property in suit being 30 placed in the custody of Court.
- Wherefore the Defendant prays:-
- (a) that the application of the Plaintiffs to issue writ of possession on the basis of the Security tendered be disallowed.
 - (b) for costs
 - (c) for such other and further relief as to this Court shall seem meet.

Sgd. D. A. B. RATNAYAKE
Proctor for Defendant.

No. 15

Proceedings before the District Court

No. 15
Proceedings
before the
District Court
29-3-62

Mr. Cader for plaintiffs-respondents
Mr. Advocate Pathirana instructed by Mr. D. A. B.
Ratnayake for the 1st defendant appellant.

Mr. Pathirana refers to the order dated 27.2.62. He states that there was an understanding between the Proctors that Mr. D. A. B. Ratnayake was to peruse the security tendered. Mr. Pathirana states that the property is not worth the amount certified to be the value.

10 He further states that the deed does not bear the prior registration.

I point to Mr. Pathirana that the order of 27.2.62 was that the plaintiffs-respondents should give security to the satisfaction of Court. Accordingly the respondents furnished security and court was satisfied with it and made order on 28.3.62 for the issue of writ of possession.

Mr. Pathirana desires that the Court should impose the following conditions:

That the security bond should be registered in the correct folio and the discharge of the mortgage bonds registered and that on this security the judgment creditors and no one else be put in possession.

20 Mr. Pathirana states that his client is prepared to hand over possession today itself but that the security is inadequate. He further submits that when Court made order for issue of writ, Court was not aware of certain facts and those facts are placed before Court today and the Court is entitled to vacate its order which was made per incuriam.

I inform Mr. Pathirana I have no power to vacate my order.

Mr. Cader undertakes to have the security bond registered in the correct folio. He states that it will take 3 weeks to register the bond.

Issue writ.

Intd.
District Judge.
29. 3. 62

30

No. 16

Petition of Appeal to the Supreme Court
IN THE DISTRICT COURT OF KURUNEGALA.

No. 16
Petition of
Appeal to the
Supreme Court
9-4-62

1. Derwent Peiris
2. Ivan Stewart Peiris
3. Srikantha Peiris
4. Sita Lucille Weerasinghe

No. 16
Petition of
Appeal to the
Supreme Court
9-4-62
-Continued

- 5. Carl Windsor Pieris
- 6. Joyce Winifred Pieris
- 7. David Raglan Pieris, all of Batagama Road,
Weligampitiya, Ja-ela, the 6th and 7th plaintiffs
being minors appearing by their duly appointed
Next Friend.
- 9. Derwent Peiris aforesaid who has been substituted
as Next Friend in place of
- (Dead) 8. Hilda Peiris

No. 403/L

Plaintiffs. 10

vs.

S. C. 44 (Inty)
1962

- 1. Abeyasiri Munasinghe Lairis Appu of Puttalam
Road, Kurunegala.....*Defendant.*
- 2. U. B. Senanayake of Kurunegala
.....*Defendant-Added.*
(Since discharged from the case)

AND

In the matter of an Appeal to the Supreme Court 20
of Ceylon

BETWEEN

Abeyasiri Munasinghe Lairis Appu of Puttalam Road,
Kurunegala.....*1st Defendant-Appellant.*

AND

- 1. Derwent Pieris
- 2. Ivan Stewart Pieris
- 3. Srikantha Pieris
- 4. Sita Lucille Weerasinghe
- 5. Carl Windsor Pieris 30
- 6. Joyce Winifred Pieris
- 7. David Raglan Pieris, all of Batagama Road,
Weligampitiya, Ja-ela, the 6th and 7th plaintiffs
being minors appearing by their duly appointed
Next Friend
- 9. Derwent Pieris aforesaid who has been substituted
as Next Friend in place of

(Dead) 8. Hilda Pieris

Plaintiffs-Respondents.

This 9th day of April, 1962.

To,

40

Their Lordships the Honourable the Chief Justice and the other
Honourable Justices of the Honourable The Supreme Court of Ceylon.

The humble petition of appeal of the 1st Defendant-Appellant abovenamed appearing by his Proctors Damian Adrian Bernard Ratnayake and his assistant Kirthi Tissa Wettewe states as follows:-

No. 16
Petition of
Appeal to the
Supreme Court
9-4-62

—Continued

1. On 18th January, 1962 judgment was entered in favour of the plaintiffs-respondents declaring them entitled to the premisses in suit which are a large coconut and rubber estate of 271A-1R-000 valued in the plaint at Rs. 400,000/- with damages at Rs. 18,000/- per annum from 18th March, 1957 until plaintiffs are restored to possession and costs of suit.

10 2. On the same day the plaintiffs-respondents applied for execution of the decree while the Defendant-Appellant filed petition of appeal and also an application for stay of execution of the decree.

3. On 27th February 1962 the application for stay of execution was taken up for inquiry and of consent it was agreed that the plaintiffs-respondents be given possession of the decreed property on their, or on someone on their behalf, hypothecating property with the Secretary of the District Court to the value of Rs. 30,000/- to the satisfaction of Court. On tendering the Security the Plaintiffs-Respondents were to be entitled to take out writ of possession.

20 4. On 27th March, 1962 the Proctor for Plaintiffs-Respondents tendered without notice to the Proctor for Defendant-Appellant, a Security Bond and a valuation Report, and moved that the same be accepted and that writ of delivery of possession do issue. The Motion was minuted on the 28th March 1962 and forthwith allowed, but the Proctor for Defendant-Appellant having come to know of the application and order, filed a motion on the same day i. e. on 28th March that execution be stayed pending examination of the security.

5. The Court stayed execution but only till the following day i. e. 29th March, 1962.

30 6. The Defendant-Appellant's Proctor, however, having found in the books of the Land Registry the existence of two undischarged mortgage bonds and having also found that the security was not worth the valuation of Rs. 35,000/- given in the report and that the bond bore no prior registration references, filed objections on 29th March, 1962 and moved that the security be rejected.

7. The objections were supported by Counsel on the same day but the Court held that it had no power to vacate its order which it had already made (on the previous day) accepting the Security, and ordered that writ of possession do issue.

No. 16
Petition of
Appeal to the
Supreme Court
9-4-62

-Continued

8. Aggrieved by the said order the Appellant humbly begs to appeal therefrom to Your Lordships' Court on the following among other grounds that may be urged by Counsel at the hearing of this appeal:

- (a) The said Order is contrary to law and against the weight of the objections submitted to Court and which it refused to consider:
 - (b) One of the executants is the Next Friend of the 6th and 7th Minor Plaintiffs and executed the bond in that capacity as one of the principal debtors without the authority of Court thereto specifically obtained and the said bond is voidable and therefore does not provide the security for the Defendant-Appellant which the order of 27th February, 1962 was meant to ensure. 10
 - (c) When the consent order of 27th February 1962 was being formulated the Proctor for the Defendant-Appellant wanted it to be recorded that the security be subject to his approval. But on the assurance of Counsel for the plaintiffs-respondents in open Court that, though the court would be the ultimate arbiter on the question whether any security tendered was good and sufficient, the Proctor for the Defendant-Appellant would be given an opportunity according to the normal procedure in the said Court, of examining the same and making his submissions to court before the court made order, the consent motion was recorded in the words appearing on record. 20
- It is respectfully submitted that the Plaintiffs-Respondents' Proctor should not have tendered, and the Learned District Judge should not have entertained, the surreptitious application for writ of possession made on 27th March, 1962.
- (d) When the circumstances surrounding the tendering of the motion for the writ of possession was brought to the notice of Court in the statement of objections filed on 29th March, 1962 by the Proctor for Defendant-Appellant and submissions made that the order of Court allowing the application for writ had been made per incuriam, the Court should have proceeded to consider the objections; and its view that it had no power to vacate the order merely because it was an order already made by it (even per incuriam), is wrong in law. 30
 - (e) The security tendered being subject to two undischarged mortgages, will perish if either of the two earlier mortgages is enforced.

- 10 (f) although the Proctor for the Plaintiffs-Respondents stated that the two bonds had in fact been redeemed though the discharges were not registered, he did not produce the discharged bonds before Court to bear out his statement. Encumbrance sheets obtained after 29th March 1962 do not show that any discharges had been registered up to date of issue of the same. There was no proof of the statement in the report of the Proctor for Plaintiffs-Respondents that the security was unencumbered, while the registration showed the existence of two mortgages.
- (g) No prior registration was quoted in the bond and it could easily have got registered in the wrong folio and the security bond would thereby have become of no effect.
- 20 (h) One of the unredeemed mortgages is to the Lady Lochore Fund and the surety is a Government Servant and it is evident that the Surety is impecunious and is a public servant who had to have recourse to the Fund for assistance. For that reason and because he was a public servant entering into a bond without sanction from the Government the said bond and the said security should not have been accepted by Court.
- 30 (i) The surety is the brother-in-law of the Proctor for Plaintiffs-Respondents and the report on the title and on the encumbrance is issued by the Proctor for the Plaintiffs-Respondents (and not by a disinterested Proctor) and to the best of the knowledge information and belief of the 1st Defendant - Appellant the person who is in possession of the land after the execution of the writ of possession is the father of the Proctor for Plaintiffs-Respondents. It is respectfully submitted that the obtaining of the writ of possession in these circumstances constituted a fraud practised on Court.
- 40 (j) The security tendered is a house in Kurunegala town tenanted as a boarding house run by an eating house keeper. The surety has complained to Court in case No. 1258/L of the Court of Requests, Kurunegala (where he is suing his tenant the eating house keeper for ejection) that the occupants have caused wanton damage to the house. It is a property depreciating in value and even if at the time of the termination of this litigation the property is free of the mortgages above mentioned, the value of the security would have depreciated. Mr. Maurice Fernando has not taken the above matters into

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9-4-62

-Continued

consideration. He did not visit the house either before or after the tendering of the security. Even if his valuation of Rs. 35,000/- is accepted, a property of only Rs. 35,000/- in value would not be sufficient security for an obligation to meet Rs. 30,000/- about two years hence, especially when the property is according to the surety being damaged wantonly and the tendency would be for the property to depreciate in value.

- (k) The consent given on 27th February, 1962 was to possession by the Plaintiffs-Respondents and not to possession by third parties under colour of the writ of possession. The party in possession is not the Plaintiffs-Respondents. 10
- (l) The property in suit is liable to land tax in Rs. 5,000/- per annum and income tax. If impecunious strangers are allowed to possess the premises the same will be liable to be sold up for taxes. If strangers are to possess they should be liable to control by Court and should deposit in court monthly a sum sufficient (about Rs. 2,000/-) to meet the taxes and the damages if ultimately the property comes back to Defendant-Appellant.

Wherefore the Defendant-Appellant prays:

20

- (a) that the order of the Learned District Judge allowing writ of possession be vacated and the defendant restored to the possession which he enjoyed of the premises in suit before the said order was made;
- (b) for costs.
- (c) for such other and further relief as to

YOUR LORDSHIPS' COURT SHALL SEEM MEET.

Sgd/- D. A. B. Ratnayake.
Proctor for Defendant-Appellant

Settled by
J. Pathirana
Advocate.

30

No. 17
Decree of the
Supreme Court
in S. C. Applica-
tion No. 198/62
3-4-63

No 17

Decree of the Supreme Court in S. C. Application No. 198/62.

S. C. Application No. 198/62

ELIZABETH THE SECOND QUEEN OF CEYLON AND OF HER
OTHER REALMS AND TERRITORIES,
HEAD OF THE COMMONWEALTH
IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for Revision in District Court Kurunegala Case No. 403/L. Abeyesiri Munasinghage Lairis Appu of Puttalam Road Kurunegala*Defendant-Petitioner.*

No. 17 Decree of the Supreme Court in S. C. Application No. 198/62 3-4-63 —Continued

Against

Derwent Peiris of No. 820A, Batagama Road, Weligampitiya, Ja-ela and others *1st to 7th Plaintiffs-Respondents.*

Action No. 403/Land

10 District Court of Kurunegala

This case coming on for hearing and determination on the 3rd day of April, 1963 before the Honourable Miliani Claude Sansoni, Puisne Justice, and the Honourable Leonard Bernice de Silva, Puisne Justice of this Court, in the presence of Counsel for the Defendant-Petitioner and no appearance for the Plaintiffs-Respondents.

It is considered and adjudged that the withdrawal of the application be and the same is hereby allowed.

It is ordered and decreed that there will be no costs of this application.

20 Witness the Honourable Hema Henry Basnayake, Q. C., Chief Justice at Colombo, the 27th day of May, in the year One Thousand Nine Hundred and Sixty Three and of Our Reign the Twelfth.

Sgd. B. F. PERERA

Deputy Registrar, Supreme Court.

(Seal)

No. 18

Judgment of the Supreme Court in Appeals

Nos. 36(F)/'62 and 44 (Inty.)/'62

No. 18 Judgment of the Supreme Court in appeals Nos. 36 (F) '62 and 44 (Inty) '62 25. 8. 65

S. C. No. 36(F)/'62

S. C. No. 44 (Inty)/'62.

District Court Kurunegala No. 403/L

30 ABEYASIRI MUNASINGHE LAIRIS APPU of Puttalam Road, Kurunegala

vs.

DERWENT PEIRIS and Seven others, all of Batagama Road, Weligampitiya.

Present: H. N. G. Fernando, S. P. J., Abeyesundere, J.

Counsel: H. W. Jayawardene, Q. C., with L. C. Seneviratne, Sepala Moonesinghe and B. Eliathamby for the *First Defendant-Appellant*.

H. V. Perera, Q. C., with A. C. Gooneratne for the *Plaintiffs-Respondents*.

Argued on: 16th, 17th and 18th June, and 21st, 22nd and 23rd July 1965.

Decision and Reasons on: 25th August, 1965.

H. N. G. FERNANDO, S. P. J.

10

The plaintiffs brought this action for a declaration of title to a land called Raglan Estate stated to be of an extent of Two Hundred and Seventy One acres. Their case was that the Estate formed part of the property of one Adelene Winifred Peiris (who will be referred to as "the Testatrix") who died in December 1918 leaving a last Will bearing No. 4188 dated 3rd June 1910. By this Last Will she made certain bequests to her daughters, and then bequeathed the residue of all her property to her sons in equal shares subject to certain conditions to which I will later refer. The plaintiffs' case was that Raglan Estate was one of the properties covered by this residuary bequest 20 to the sons of the Testatrix, who were three in number and who all survived their mother. However, on 31st May 1917 she and her husband entered into an Indenture by which she agreed to bind herself, her heirs, executor and administrators that her properties shall be distributed and settled in the manner mentioned in the Indenture. Paragraph 11 of this Indenture provided that, within three months of the date of the Indenture or whenever thereafter called upon by her husband, she shall convey by way of gift to her eldest son Richard Louis her Moragolla Group of Estates stated to be about one thousand acres, subject again to certain conditions. It was the 30 plaintiffs' case that the Moragolla Group of Estates included Raglan Estate. The agreement in this indenture was apparently not carried out and the husband who had the right to call for performance of the agreement died a few weeks before his wife.

The plaintiffs in the present action are the children of Richard Louis, who died in December 1954. They claim that the combined effect of the Last Will and of the Indenture was that the Moragolla Group of Estates passed on the death of the testatrix to Richard Louis, and that, by reason of the conditions contained in the residuary bequest in the Last Will, Richard Louis 40

held the Moragolla Group, which included Raglan Estate, under a *fidei commissum* in favour of his children. On this basis the title to Raglan Estate vested in the plaintiffs on the death of their father Richard Louis in 1954.

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-Continued

In November 1951 Richard Louis sold Raglan Estate to one U. B. Senanayake, by virtue of certain subsequent transactins of Senanayake the title he acquired from Richard Louis passed on 9th August 1952 to the person who is now the appellant in this appeal, and who was in possession of the Estate at the time of the institution of this action.

- 10 The claim of the plaintiffs that the Last Will and the subsequent Indenture had a combined effect is an unusual one.

It would appear that after the death of Adelene Winifred Peiris and her husband, disputes arose among the heirs, presumably because of the provisions in the Indenture by which she had agreed to distribute her property in a specified manner. All matters in dispute were apparently referred to arbitration. The award of the arbitrator was subsequently made a rule of Court in the Testamentary proceedings in which the Will was declared proved. This award declared that, although the agreement in the Indenture of 1917 had not been implemented

20 during the life of Adelene Peiris, it was nevertheless binding on her heirs. Although the matter was not clarified in any way at the trial of this action, Counsel for the plaintiffs in Appeal has argued that certain assumptions may now be made upon the pleadings. One such assumption is to be that the three sons of the Testatrix, who were entitled under the Last Will to the whole residuary estate in equal shares, each took instead properties which their mother agreed by the Indenture to transfer to each of them. There is no evidence whatever of any actual division of property nor of any conveyance by executors. Nevertheless in disposing of this appeal I can accept the correctness

30 of this assumption. In doing so I should point out that in the pleadings, the defendant (i. e. the present Appellant), while claiming that Richard Louis was absolute owner of Raglan Estate, did not present as a ground for that claim any basis different from that relied on by the plaintiffs, viz., that Richard Louis took the entirety of Morogolla Estate because of the Indenture of 1917 and the award of the arbitrator and that his two brothers took other properties in lieu of shares in the residuary estate. If as the appellant claimed, Richard Louis became the owner of Raglan Estate then on the evidence in this case he could have become owner of the entirety

40 through some such arrangement as was suggested in the argument of plaintiffs' Counsel.

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The learned trial Judge held that "the Last Will created a *fidei commissum* in favour of the plaintiffs, but the disposition of the property was by the Indenture". But the position of the appellant has been that the Last Will does not affect the property which is the subject of this action. This position was based upon a finding of the arbitrator in his award P3 that the Indenture of 1917 "is binding on the heirs" of the testatrix and her husband, and that, "the two testaments do not therefore deal with the properties dealt with by the Indenture." (I should state that the second testament here mentioned is the Last Will of Adelene Winifred's husband, 10 which also was a subject of the arbitration, although nothing is known as to its terms). In the result the first contention for the appellant has been that, even if the Last Will of the Testatrix created a *fidei commissum*, the property which Richard Louis took by virtue of the Indenture and award is free of that *fidei commissum*. The effect of the Indenture, it was argued, was to render the earlier Last Will in-operative, at least in respect of the properties specifically dealt with in the Indenture. An alternative contention (taken for the first time in appeal) was that even if the *fidei commissum* attaches, it can affect only a one-third share of Raglan Estate, for that was the only 20 interest in Raglan Estate which was devised to Richard Louis by and under the conditions of the Last Will.

In my understanding, Counsel for the plaintiffs in appeal furnished what might be an effective answer to these contentions. His position was that so soon as the Last Will was admitted to probate its provisions became immediately operative, and Richard Louis became entitled to a one-third share of the residuary estate subject to the conditions set out in the will. If those conditions created a *fidei commissum* in favour of Richard Louis' children, then born or unborn, the rights of those *fidei commissaries* could not thereafter be prejudiced 30 by any act or compromise on the part of Richard Louis, except a bona fide compromise concerning the division or distribution of the estate among the three devisees. The question whether the Will created a *fidei commissum*, being one which principally affected the rights of the contemplated *fidei commissaries*, could not be resolved to the detriment of those rights in any proceeding or agreement between the three devisees *inter-se*. Even therefore, if the arbitrator intended to decide that the conditions of the residuary devise did not apply to the property which Richard Louis actually took, that decision does not bind the *fidei commissaries* on the question whether or not that 40

property was subject to the *fidei commissum*. But in so far as the award can be regarded as a scheme of division of properties in accordance with the Indenture, in substitution for the division of residuary property in three equal shares to Richard Louis and his two brothers, the award was made in furtherance of a bona fide agreement for a settlement by arbitration of disputes concerning an equitable mode of distribution. There being no plea in this case that the division was sought or secured in bad faith, the division itself binds the *fidei commissaries* who are now plaintiffs. The division also binds
 10 Richard Louis and his brothers because it was made a rule of Court, and it also binds Richard Louis' successor in title to Raglan Estate who is the appellant in this case.

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-Continued

In brief, the position taken by Counsel for the plaintiffs is that the original one-third share of the residue devised to Richard Louis by the Will became covertured by reason of the award into the Moragolla Group of Estates, of which Raglan Estate is one, and that his title to Raglan Estate was subject to the same conditions as were imposed by the Will in respect of the one-third share. If then those conditions created a *fidei commissum* in favour of the plaintiffs, title to
 20 Raglan Estate passed to them on the death of Richard Louis as claimed in the plaint. I have stated my acceptance for present purposes of this position and have referred to certain other matters in order to record briefly the arguments presented in appeal. But I do not find it necessary to refer to the authorities upon which Counsel relied, or to decide whether or not Raglan Estate did devolve on the plaintiffs' father under the Last Will. For even if so in any event the conditions in the Last Will did not create a *fidei commissum* in favour of the plaintiffs.

The clauses of the Last Will upon which the plaintiffs rely are
 30 the following:-

(a) "I give devise and bequeath all the rest residue and remainder of my property and estate movable and immovable unto my sons in equal shares subject to....."

(b) "Should any of my sons die unmarried or married but without leaving issue then and in such case I desire and direct that the share of such dying son shall go to and devolve upon his surviving brothers and the children of any deceased brother such children only taking amongst themselves the share to which their father would have taken or been
 40 entitled to if living subject however to the right of the widow

of such son who shall have died leaving no issue to receive during her widowhood one fourth of the nett income of the property or share to which her husband was or would have been entitled to hereunder”.

- (c) “If any of my said sons shall die leaving children and also a widow then and in such case I desire and direct that the mother of such children during her widowhood shall be entitled to and received one fourth of the nett income of the property to which her children would be entitled to under this my will”.

10

It is useful to set out the events and consequences contemplated in the above clause which has been for convenience lettered (b); and I will do so in the context of the actual fact that Adelene Winifred's three sons all survived her :-

(1) If of the three sons, A, B and C, A dies unmarried, the share of A will devolve upon B and C.

(2) If A dies married but issueless, leaving a widow, the share of A will again devolve on B and C but subject to the widow's right to one fourth of the income of the property or share to which A was entitled.

20

(3) If B had predeceased A and left children surviving him, then on A's death the share (in this context better described as “the interest”) which would devolve on B if he were to have been then living would devolve instead on his children.

(4) In the event contemplated at (3) above, then on the subsequent death of C unmarried or issueless, the one-third share devised to C by the Will will devolve on B's children.

This analysis of the events contemplated in clause (b) is not exhaustive, but it suffices for present purposes. So also, it is not necessary to consider whether the interest which would on A's death devolve on B and C in terms of (1) and (2) above, would or would not continue to be governed by the conditions in clause (b).

Passing now to clause (c), it provides:-

(5) That if A, B or C dies leaving issue and a widow, then the widow will be entitled to one fourth of the income of the property to which her children would be entitled under the Will.

Having regard to the provisions in clause (b) which entitle the children of a deceased son to certain interests as may devolve on those children upon the death issueless of an uncle (which have been referred to at (3) and (4) above), clause (c) has a plain meaning, namely that such interests will be subject to the right of the mother of those children to receive one fourth of the income therefrom.

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-Continued

The clauses therefore expressly provide for two matters: firstly the imposition of a *fidei commissum* upon the share of each son, conditional upon his death without issue, in which event the *fidei*
 10 *commisaries* will be the surviving brothers, the children of a deceased brother taking by representation in his place; and secondly that the widow of a son dying childless will have a right to a part of the income of the property or share which that son had, and that the widow of a son dying with children surviving him will have a similar right to income from any property which may devolve on those children under the Will. So far as these express provisions go, the children of a son who dies leaving issue will not on the death of their father succeed him as *fidei commissary* substitutes.

The argument for the plaintiffs depends on the fact that clause (b)
 20 is a *si sine liberis decesserit* clause. That argument was rejected in two recent decisions of this Court in *de Silva v Rangohamy* (62 N. L. R. 553) and *Rasammah v Govindar Manar* (65 N. L. R. 467). I need not here re-capitulate the reasons for that rejection which are stated in my judgment in the former case. But Counsel for the plaintiffs has urged that the testatrix in the present Will has indicated her intention to make a gift-over to the children of her son Richard Louis upon his dying leaving issue. This indication, it is argued, is shown by the fact that, under the clause which I have lettered (b), the children of a deceased son B are designated as *fidei commissaries*
 30 in the event of the subsequent death without issue of the son A. But it has to be noted that in the case thus contemplated the children of B only take the place of their deceased father. Every *si sine liberis* clause has the effect of nominating the persons who will take in the event of the death without issue of a donee. But the mere fact that the children of one deceased donee are thus nominated as heirs after the death of another donee is no indication of an intention to fetter the property in the hands of a donee who in fact has issue.

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It should not be supposed that the judgments in the two recent cases evince any special readiness of the Courts to uphold the existence of a *fidei commissum* when property is subject to a *si sine liberis* clause. Such a clause is only one circumstance, taken with the others, which may together suffice to establish an intention to make a gift-over to the children of a donee who does not die issueless. Any readiness to assume such an intention from the mere existence of the clause would be in conflict with the principle of construction "*Expressio unius est exclusio alterius*".

The conclusion I have reached, that the two relevant clauses of the Will do not create a *fidei commissum* in favour of the plaintiffs operative on the death of their father, is confirmed by other considerations. 10

For instance, it is at least doubtful whether if Richard Louis predeceased the testatrix but left children surviving him, those children would by representation have taken their father's one third share upon the death of the testatrix. If she failed to provide for the grand-children in that event, there is little room to suppose that she intended that the property which Richard Louis actually took under her Will should be subject to a gift-over to those grand-children after their father's death.

Again when invited to infer such a gift-over from the clause lettered (b) I think it prudent to compare this clause with the earlier clause in the same Will applicable to the gifts which the Testatrix directed for her daughters. That clause is easily summarised. It contains:- 20

- (1) A prohibition against alienation and a restriction of the enjoyment of the gift to the life time of each donee.
- (2) A condition that after the death of a donee, the property will devolve on her children in equal shares.
- (3) A *si sine liberis* clause, in favour of the surviving sisters of the donee and of the children of a deceased sister.

The provision mentioned at (2) quite clearly and simply creates a *fidei commissum* in favour of a donee's children operative on the death of the donee. Equally clearly, the third provision provides for a *fidei commissum* operative in the alternative event of a donee dying childless. It is only this third provision of the devise to daughters that corresponds to the clauses providing for the devise to the sons, the only difference being that in the latter case the widow of a deceased son can take certain interests. 30

To accept the arguments of the plaintiffs upon the clause lettered (b) would be to assume that the Notary, who had carefully provided for the object to be secured by the second provision of the earlier clause, thought at a later stage of his work that the same object could 40

have been secured by the third provision alone. Plaintiffs' Counsel himself referred to the experience and reputation which the particular Notary had enjoyed. The significant difference between the earlier clause and the clause lettered (b) makes it apparent that, in the case of the devise to the sons of the testatrix, the Notary had no instructions that the devise should be subject to the *fidei commissum* for which the plaintiffs contend.

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and 44 (Inty)'62
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—Continued

10 One matter which arose only at the stage of appeal was whether probate of the Last Will had been duly granted. We permitted the plaintiffs to produce relevant material with regard to this question. The record of the testamentary case is apparently incomplete and parts of it are missing, but there was produced the original of a grant of probate by the District Court of Colombo of the Will dated 3rd June 1910 of Adelene Winifred Peiris. This grant of probate bears stamps to the value of over Rs. 10,000/- and specifies the value of the total estate. The Will was not attached to this grant, but there is a copy of the Will No. 4188 of 3rd June 1910, certified on behalf of the Secretary of the District Court of Colombo, to the effect that it is a true copy of the Will filed in Court in an action bearing the same number as 20 does the probate. This and other material sufficed to establish that the probate of the Will now propounded was in fact granted.

I hold that even if Raglan Estate or any share thereof devolved on the father of the plaintiffs under the Last Will of the testatrix, the terms of the Will did not create a *fidei commissum* in favour of the plaintiffs operative on the death of their father. The appeal is allowed and the plaintiffs' action is dismissed with costs in both Courts.

Sgd. H. N. G. Fernando
Senior Puisne Justice

Abeyesundere, J.

30

I agree.

Sgd. A. W. H. Abeyesundera
Puisne Justice

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Supreme Court
in appeals Nos.
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No. 19

Decree of the Supreme Court in Appeals

Nos. 36 (F)'/62 and 44 (Inty.)'/62.

S. C. 36/62(F) and

S. C. 44/62(Inty.)

ELIZABETH THE SECOND QUEEN OF CEYLON AND OF HER
OTHER REALMS AND TERRITORIES,
HEAD OF THE COMMONWEALTH

10

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

Derwent Peiris of 820A, Batagama Road, Weligampitiya,
Ja-ela and others.....*Plaintiffs.*

vs.

Abeyasiri Munasinghege Lairis Appu of Puttalam Road,
Kurunegala and another.....*Defendants.*

Abeyasiri Munasinghege Lairis Appu of Puttalam
Road, Kurunegala.....*1st Defendant-Appellant.*

Against.

Derwent Peiris of 820A, Batagama Road, Weligampitiya, 20
Ja-ela and others.....*Plaintiffs-Respondents.*

Action No. 403/L.

District Court of Kurunegala.

This cause coming on for hearing and determination on the 16th,
17th, 18th June, 1965, 21st, 22nd, 23rd July, 1965 and 25th August,
1965, upon an appeal preferred by the 1st Defendant-Appellant before
the Honourable Hugh Norman Gregory Fernando, Senior Puisne
Justice and the Honourable Asoka Windra Hemantha Abeyesundere,
Q. C. Puisne Justice of this Court, in the presence of Counsel for the
1st Defendant-Appellant and the Plaintiffs-Respondents.

30

It is considered and adjudged that the appeal be and the same is
hereby allowed and the plaintiffs' action is dismissed with costs in both
Courts.

(Vide copy of Judgment attached)

Witness the Honourable Hugh Norman Gregory Fernando, Acting Chief Justice at Colombo, the 1st day of September, in the year One Thousand Nine Hundred and Sixty Five and of our Reign the Fourteenth.
(Seal)

(Sgd.) B. F. Perera
Deputy Registrar Supreme Court.

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Decree of the
Supreme Court
in appeals Nos.
36 (F)/62 and
44 (Inty)/62
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No. 20

Application for Conditional Leave to Appeal to the Privy Council

No. 20
Application for
Conditional
Leave to Appeal
to the Privy
Council
14. 9. 65

10 IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application under the Privy Council Appeals Ordinance Chapter 100 Volume IV of the Revised Legislative Enactments of Ceylon.

1. Derwent Peiris
2. Ivan Stewart Peiris
3. Srikantha Peiris
4. Sita Lucille Weerasinghe
5. Carl Windsor Peiris
6. Joyce Winifred Peiris
7. David Raglan Peiris

Application
20 No. 359/65
District Court
Kurunegala
No. 403/L-
S. C. No. 36/F/
1962

All presently of Raglan Estate, Kurunegala
.....*Plaintiffs - Appellants-Petitioners.*

vs.

Abeyasiri Munasinghe Lairis Appu, presently of
"Kusumsiri" Puttalam Road, Kurunegala.....
.....*Defendant-Respondent.*

To:

30 The Honourable the Chief Justice and the other Judges of the Honourable The Supreme Court of Ceylon.

On this fourteenth day of September, 1965.

The petition of the Plaintiff Appellant Petitioners appearing by their Proctors Albert Clarence Amarasinghe assisted by Anton P. Ratnayake states as follows:-

1. Feeling aggrieved by the Judgment and Decree of this Honourable Court in the above styled action pronounced on the 25th day of August, 1965 the petitioners are desirous of appealing therefrom to Her Majesty in Council.

40 2. The said Judgment is a final judgment and the matter in dispute is of the value of Rs. 400,000/- and the appeal involves a claim and question respecting property and civil rights over the value of Rs. 5000/- in terms of Rule 1 (a) of the Schedule to Chapter 100 above specified.

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3. That the Proctor for the Petitioners has given notice to the Respondent of our and his intention to appeal by his registered letter dated 26th August, 1965 covered by Registered Postal Article Receipt No. 4769 of the same date and to his Proctor by registered letter of the same date covered by Registered Postal Article Receipt No. 5242 of 27th August, 1965.

4. The 1st, 3rd and 6th Petitioners have given notice of their intention to appeal to the Respondent by registered letter dated 26th August, 1965 covered by Registered Postal Article Receipt No. 5243 dated 27th August, 1965. 10

5. The 4th and 7th Petitioners have given notice of their intention to appeal to the Respondent by registered letter dated 26th August, 1965 covered by Registered Postal Article Receipt No. 4768 of the same date.

6. The 5th Petitioner has given notice of his intention to appeal to the Respondent by registered letter dated 26th August 1965 covered by Registered Postal Article Receipt No. 6387 dated the 27th August 1965.

7. The the 2nd Petitioner has given notice of his intention to appeal to the Respondent by registered letter dated 30th August, 1965 covered by Registered Postal Article Receipt of the 31st August 1965 having No. 6304. 20

8. The said notices were couched in the following terms:-

“I (we) hereby give notice that I (we) intend appealing to her Majesty in Privy Council from the Judgment of the Honourable the Supreme Court delivered on the 25th August, 1965. The application to the Supreme Court for leave to appeal will be duly made.”

WHEREFORE the Petitioner Appellants pray for:

- (a) Conditional Leave to appeal to her Majesty in Council against the judgment of this Honourable Court dated 25th August, 1965, and 30
- (b) for such other and further relief as to Your Lordships' Court shall seem meet.

(Sgd.) A. C. AMARASINGHE
Proctor for Plainiffs Appellant Petitioners.

No. 21
Proceedings before the District Court

No. 21
 Proceedings
 before the
 District Court
 14. 9. 65
 15. 9. 65
 27. 9. 65

14. 9. 65

Mr. Advocate A. C. Seneviratne instructed for the 1st Defendant. The 2nd Defendant was discharged and now there is one Defendant namely the 1st Defendant.

Counsel submits that an inquiry was held on the 27th of February, 1962. In appeal the Plaintiffs' action was dismissed with costs.

It is submitted that this application has been made under Section 777 of the Civil Procedure Code. Even where a Supreme Court decree does not mention the manner in which the decree is to be executed, the Lower Court would decide what benefit the appellant would have obtained by a reversal of the decree. It is submitted that by virtue of a wrong act the defendants were ejected, and therefore the parties should be placed in possession. Counsel submits that by a reversal of the decree the defendants would be entitled to recover the costs from the plaintiffs. Counsel cites a case reported in 35 N.L.R. at 28; section 583 of the Indian Authorities. Counsel cites Volume 21 of Indian Law Reports Calcutta Series 1894 at page 340 and 343. He also cites another case reported in the same Volume at 984 and 994. Although the plaintiffs were in possession now the defendant should be placed in possession.

Counsel submits that no notice is necessary for the other party according to Section 777 and that one year has not lapsed. Counsel also submits that there is no appeal in this case.

At this stage I indicate to Mr. Seneviratne that the application made by the Proctor for the plaintiff to stay writ in view of plaintiffs' intended appeal to the Privy Council. No notice of this had been given to the defendant but I inform Mr. Seneviratne of this motion to ascertain what he has to say.

It is submitted that a valid application should be made to Court to stay of writ according to Section 761 & 762 of the Civil Procedure Code. It is further submitted that the reasons given by the plaintiffs are insufficient to stay execution of writ. The Privy Council Ordinance does not supercede Section 777. The motion which is dated 11. 8. 1965 (which should be dated 11. 9. 65) does not constitute a valid application firstly - under Section 762 the application should be made in the way of a petition and secondly - under Section 762 the judgment-

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creditor should be named a respondent. It is therefore submitted that the Court cannot act on this motion. It is further submitted that there is no proper reason has been given in the motion, and the mere intention is insufficient to stay execution of a decree. It is submitted that the defendant should not be obstructed in writ not being executed and also exercising the lawful rights.

Mr. Amarasinghe submits that he is not prepared to support the motion dated 11th September, 1965 today.
Order on 15th September, 1965.

(Sgd.) 10
District Judge.

15. 9. 65.

Mr. Amerasinghe for the Plaintiffs
Mr. Wettewe for Defendants.

When the 1st defendant made his application for the issue of writ on 7. 9. 65. Order made by me was to tender deficiency stamps and support the application. On 11. 9. 65. Proctor for Plaintiffs had made an application to stay writ asked for by the 1st defendant. On this application I made order to support it on 16. 9. 65. The 1st defendant tendered the deficiency stamps due and supported his application on 14. 9. 65. At that time without noticing the fact that the order on the plaintiffs' application was to support on 16. 9. 65. I fixed my order on the 1st defendant's application for today. In the plaintiffs' Application they have volunteered to show cause against the 1st defendant's application though no notice had been issued to them of the 1st defendant's application. In these circumstances, I find I should not deliver my order today as the date fixed for supporting the plaintiffs' application is tomorrow. 20

Without paying attention to the date fixed to support the plaintiffs' application I have stated yesterday that the Proctor for plaintiffs was 30 entitled to support his application on another day.

In these circumstances, I inform Mr. Wettawe that I am not delivering order today. I shall hear the Proctor for plaintiffs too, before I make my order.

I therefore, fix the consideration of the application made by the Plaintiffs on 11. 9. 65. for 24. 9. 65.

(Sgd.).....
District Judge.
15. 9. 65,

27. 9. 65

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 Proceedings
 before the
 District Court
 14. 9. 65
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 27. 9. 65
 —Continued

Mr. Advocate Eric Amerasinghe instructed for the Plaintiffs.

Mr. Advocate Nadarasa with Mr. Advocate Seneviratne instructed for the Defendants.

Mr. Amarasinghe submits that the application made by the 1st defendant is for execution of a decree assuming that there is a decree for execution without granting it. It is submitted that the first decree of the District Court has been set aside by a decree of the Supreme Court. Notice of appeal has been given and before that, notice of the
 10 intention of appeal has been served on the defendant who has admitted that fact, in the application for execution of writ. It is submitted that this is a matter the Plaintiffs-Respondents have a right of appeal from the judgment of the Supreme Court. The appeal should commence with a notice of intention of appeal within fourteen days. Since that date has gone it was the next stage of filling papers for conditional leave to appeal and notice of that has been served on the defendant-application No. 359. Counsel submits that therefore an appeal has been filed against the judgment of the Supreme Court. It is submitted that there is an undoubted fact that the judgment of the Supreme Court
 20 has been appealed from because the Plaintiffs-Respondents are exercising a right and has commenced the process to perfect that right. It is submitted that when the judgment of the Supreme Court is appealed from this Court is asked to execute the decree under section 777 of the Civil Procedure Code.

It is submitted that the only section brought forward are sections with regard to execution, but regarding stay of writ the Section 761, 762 & 763 have not been brought forward in respect of a Supreme Court decree. It is submitted that Section 761, 762 & 763 have not been brought into operation with regard to the Supreme Court decree.

30 Counsel submits that an application of this nature cannot be made to this Court and all this Court has to do is to execute the decree of the Supreme Court. It is submitted that if there was no possible way of appealing and no right of appeal then perhaps the District Court has to proceed to execute the Supreme Court decree. Counsel submits that Rules under the Privy Council's Ordinance-Rules 7, 8 & 9 have a bearing on this matter. Counsel refers to Section 761. It is submitted that if there is a breach of the performance how relief is to be given must be considered. Counsel refers to Rule 8. It is submitted that the merits of the appeal have not been inquired into yet. It is further submitted
 40 that the granting or the stay of the writ are matters vested in the

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 —Continued

Supreme Court. This Court has no power to take Security, and this Court has only to execute the decree. The application before this Court is for execution of a decree of the Supreme Court and nothing else. Counsel refers to the case of *Silva Vs. King* reported in 37 N. L. R. at 133. It is submitted that Section 777 in the cited case has no application because it was a matter before the appeal to the Supreme Court. It is submitted that on the 5th of April, 1933 decree was entered in favour of the plaintiff. On the 7th of April, 1933 writ was issued but execution was stayed on the application pending appeal. On the 28th of March 1934 the appeal was dismissed. On the 28th of 10
 March 1934 defendant gave notice of the intention of appeal to the Privy Council. Thereafter the plaintiff applied for writ. On the 25th of April, 1934 leave was granted. Application of the plaintiff was allowed on the 4th of May, 1934 and writ allowed on the 30th of May, 1934, by the District Court. It is submitted that the plaintiff did not apply for leave under Rule 7.

Counsel refers to a case reported in 60 N. L. R. at 61 and a case reported in 60 N. L. R. at 189. It is submitted that the proper place for deciding this matter is elsewhere. Counsel cites a case reported in 61
 N. L. R. at 402 where the Supreme Court has decided whether the 20
 execution should be allowed or stayed. It is further submitted that this Court has no power to deal with this matter as this matter is in appeal. Section 777 gives power to execute a decree. Counsel cites the case reported in 35 N. L. R. at 28. It is further submitted that this Court has no power to issue writ. If the Court accepts the submissions the result is to dismiss the application or otherwise to make any order and lay this case aside until the decision of the Privy Council. If the first application is allowed the plaintiffs are entitled to costs.

Mr. Advocate Nadarasa in reply submits that the possession of the land was given to the plaintiff on the 30th of March, 1962 i. e. according 30
 to the journal entry dated 23rd August, 1962 at page 32. Counsel refers to page 55 of the proceedings where under the date 5th December, 1961 of consent damages were fixed at Rs. 18,000/- per annum. The security ordered by this Court was Rs. 30,000/- and on the 27th of February 1962 it was agreed upon between the parties. It is submitted that today the amount agreed on damages would come to Rs. 63,000/- whereas in fact only a sum of Rs. 30,000/- have been deposited. The buildings on this property have come down.

Counsel refers to a case reported in 12 N. L. R. at 35 which was decided in 1908. He refers to page 37. In 35 N. L. R. 28 there is a reference in regard to the execution of a decree. It is submitted that this is not a decree in that sense. A decree in that sense is what is referred to in the Privy Council Appeal Rules. Counsel refers to Volume 4, page 146 Rule 7. It is submitted that if originally the land has been in the possession of the plaintiff and the plaintiff was asked to give the property to us it comes under this section. It is submitted that when the plaintiffs originally came to Court they did not have a property.

- 10 According to the document P5 what was paid for the property was Rs. 160,000/- by the defendant and having paid this amount on the agreed basis he had been deprived of Rs. 37,000/-. It is submitted that the Plaintiffs are delaying this for the purpose of continuing to enjoy Rs. 18,000/- per annum.

- It is submitted that the Rules cited by the Counsel for the plaintiffs do not apply in this case. Counsel cites a case reported in 19 N. L. R. at 50. It is submitted that at the time of the application of the defendant there was no such application of appeal. It was argued that Section 777 does not apply but it was held that Section 777 continues to apply
- 20 till the Supreme Court orders. It is submitted that it is open to the plaintiffs to make any application to the Supreme Court, but at the time the application was made their was nothing. It is submitted that it was clear from the arguments that any application should have been to the Supreme Court but not to this Court. Counsel submits that it is not a execution of a decree in that sense, but the defendant has come to Court under Section 777. Counsel cites Annual Practice 1962 at page 1695. Counsel cites a case reported in 41 N. L. R. at 84. It is submitted that all these do not apply to this present situation. It is submitted that the defendant is asking under Section 777 that some
- 30 wrongful act be rectified. Counsel cites a case reported in 21 Indian Law Reports (Calcutta) page 1894 and 989.

Mr. Amarasinghe submits that the 12 N. L. R. case is before the Privy Council order came into operation. The reference is to the application for review and it was considered that it should be considered in the Privy Council. Counsel cites a case reported in 37 N. L. R. at 134.

Order on 5th October, 1965.

Sgd.....
District Judge.

No. 21
Proceedings
before the
District Court
14.9.65
15.9.65
27.9.65
—Continued

Order of the District Court.

5th October 1965.

ORDER

Decree was entered in this case on 18. 1. 62 declaring the 1st to 7th plaintiffs entitled to the land called Raglan Estate, ordering the ejection of the 1st defendant and the payment of damages by the 1st defendant to the plaintiffs.

The plaintiffs applied for a writ of possession and the 1st defendant in turn appealed against the judgment and applied for stay of execution 10 pending appeal.

The 2nd defendant who had been made a party to warrant and defend the title of the 1st defendant was discharged from the case during the course of the trial.

In pursuance of an agreement arrived at between the parties the plaintiffs after giving security in a sum of Rs. 30,000/- issued writ of possession and obtained possession of the land on 30. 3. 1960 (vide journal entry of 23. 8. 60)

The appeal of the 1st defendant against the judgment of this Court was allowed and by the decree of the Supreme Court dated 1. 9. 1965 20 the plaintiffs' action was dismissed with costs in both Courts.

The 1st defendant now moves for a writ of possession to have him restored to possession of the land whilst the plaintiffs object to this on the ground that steps have been taken to appeal to the Privy Council and that therefore this Court cannot entertain an application for execution of the Supreme Court decree.

If the question of an appeal to the Privy Council did not arise, the case reported in 35 N. L. R. 28 shows that though the Supreme Court decree only dismissed the plaintiffs' action without specifying the right to the 1st defendant to be placed in possession of the property, yet 30 the 1st defendant is entitled under section 777 of the Civil Procedure Code to obtain from this Court a writ to have him restored to possession.

In his application for execution of the decree, the 1st defendant has stated that notice of intention to appeal to the Privy Council has been given.

In the case reported in 37 N. L. R. 133 when the District Court allowed an application for writ, the Supreme Court had already granted to the other party conditional leave to appeal to the Privy Council. In that respect the 37 N. L. R. case differs from the present case. Both cases are similar because in the 37 N. L. R. case as well as in the present case at the time that the application for execution of the Supreme Court decree was made, notice of intention to apply for leave to the Privy Council had been given. In the course of his judgment His Lordship Maartensz J. stated "Although notice was served of the intended
10 application for conditional leave in March 28, 1934, the plaintiff did not apply for any order under rule 7 to this Court, but his counsel argued that he has the right to apply for execution direct to the District Court. This, he undoubtedly, may do, so long as no proceedings are taken by the appellant to have this appealed to the Privy Council".

Even in the present case the 1st defendant has taken proceedings to appeal to the Privy Council and according to the passage just quoted the 1st defendant has no right to apply to this Court for execution of the Supreme Court decree.

As the position is made clear by this case, it is not necessary
20 to consider the other arguments put forward on behalf of the parties.

For these reasons I hold that the 1st defendant has no right to apply to this Court for execution of the Supreme Court decree in view of the steps taken by the plaintiffs to appeal to the Privy Council.

With regard to the question of costs, I have set out in my order of 15. 9. 1965 the circumstances in which the parties came to be heard. The plaintiffs had not given notice of their motion of 11. 9. 1965 to the 1st defendant. If this had been done, both matters could have been taken up on one day and it may not have become necessary to the plaintiffs to retain Counsel on two occasions. I therefore award no
30 costs of this application.

The application of 7. 9. 65 is refused.

Sgd.....
District Judge

5. 10. 65

No. 23
Petition of
Appeal to the
Supreme Court-
18. 10. 65.

No. 23

Petition of Appeal to the Supreme Court
IN THE DISTRICT COURT OF KURUNEGALA.

1. Derwent Pieris
 2. Ivan Stewart Pieris
 3. Srikantha Pieris
 4. Sita Lucille Weerasinghe
 5. Carl Windsor Pieris
 6. Joyce Winifred Pieris
 7. David Raglan Pieris, all of 'Raglan Estate' Kurunegala 10
- *Plaintiffs*

vs.

Abeyesiri Munasinghe Lairis Appu, of 'Kusumsiri' Puttalam Road, Kurunegala.....*Defendant*
In the matter of an appeal to the Honourable The Supreme Court of Ceylon.

Between

Abeyesiri Munasinghe Lairis Appu, of 'Kusumsiri', Puttalam Road, Kurunegala.....*Applicant - Appellant*

vs

20

1. Derwent Pieris
 2. Ivan Stewart Pieris
 3. Srikantha Pieris
 4. Sita Lucille Weerasinghe
 5. Carl Windsor Pieris
 6. Joyce Winifred Pieris
 7. David Raglan Pieris, all of 'Raglan Estate', Kurunegala
-*Respondents*

To:

The Honourable the Chief Justice and the other Justices of the Honourable the Supreme Court of the Island of Ceylon. 30

On this 18th day of October, 1965.

The petition of appeal of Applicant-Appellant appearing by his Proctors Damian Adrian Bernard Ratnayake and his Assistant Kirithi Tissa Wettewa state as follows:

1. The Respondents abovenamed instituted this action against this appellant for a declaration of title to and the ejection of the appellant from the land called Raglan Estate described in the schedule to the plaint and for damages.

S. C. 115 (Inty)
1965

2. Decree was entered in the District Court of Kurunegala in the said action on 18. 1. 1962 in favour of the respondents declaring them entitled to the said land and ordering the ejection of the defendant therefrom and for payments damages by this appellant to the respondents.

No. 23
Petition of
Appeal to the
Supreme Court-
18. 10. 65.

—Continued

3. The respondents applied for writ of possession in the execution of the said decree and this appellant appealed to Your Lordships Court against the said judgment and decree of the District Court of Kurunegala and also applied for the stay of execution of the said decree pending the appeal.

10 4. By agreement entered into by the respondents and the appellant abovenamed it was agreed that writ of possession was to issue on the respondents depositing as security a sum of Rs. 30,000/- in the District Court of Kurunegala. Thereafter writ of possession was duly issued and the appellant was ejected from the said land and possession thereof was delivered to the respondents on 30. 3. 1962.

5. On 25. 8. 1965 Your Lordships Court delivered judgment in the appeal of this appellant against the said judgment and decree of the District Court of Kurunegala allowing the said appeal and dismissing the respondents action with costs in both Courts. Decree of the Supreme
20 Court was entered accordingly on 1. 9. 1965.

6. On or about 26. 8. 1965 notice of intention to appeal to the Privy Council against the said judgment of Your Lordships Court was served by the respondents on this appellant.

7. On 7. 9. 1965 this appellant made an application under Section 777 of the Civil Procedure Code to the District Court of Kurunegala to execute the decree of the Supreme Court of 1. 9. 1965 and asking that this appellant be restored to possession of the said land. On 14. 9. 1965 this application was supported on behalf of this appellant by Counsel and order thereon was reserved by the learned District Judge.

30 8. On 14. 9. 1965 order was made by Your Lordships Court issuing notice of the application of the respondents for conditional leave to appeal to the Privy Council from the judgment of 25. 8. 1965.

9. On 15. 9. 1965 application was made in the District Court of Kurunegala by Counsel on behalf of the respondents that they be allowed to show cause against the application of this appellant of 7. 9. 1965 to execute decree of the Supreme Court and the matter was fixed for inquiry on 27. 9. 1965.

No. 23
 Petition of
 Appeal to the
 Supreme Court—
 18. 10. 65.
 —Continued

10. At the said inquiry the respondents took objection to the said application on the ground that at the time the said application was made steps had been taken by them to appeal to the Privy Council and that the District Court had, therefore, no jurisdiction to entertain the said application. The learned District Judge delivered order on the 5th October, 1965 upholding the said objection of the respondents and refusing the application of the appellant to execute the said decree of the Supreme Court.

11. Being agrieved of the said order this appellant begs to appeal to Your Lordships Court against the said Order of the Learned District Judge on the following among other grounds that may be urged at the hearing of the said appeal by Counsel on behalf of the said appellant. 10

- (a) that the said order is contrary to law,
- (b) that the interpretation of the District Judge of the judgment in the case reported in 37 N. L. R. 133 is wrong; that the case decided only that once conditional leave to appeal to the Privy Council has been granted, then an application to execute the decree of the Supreme Court can be made only to the Supreme Court and not to the District Court,
- (c) it is submitted that steps taken to obtain conditional leave to appeal to the Privy Council does not constitute an 'appeal' which would necessitate an application to execute the Supreme Court decree being made in the Supreme Court, 20
- (d) It is further submitted that where the decree is silent as the benefits granted to the appellant the decree could only be executed under provisions of Section 777 of the Civil Procedure Code and that the District Court has the right to entertain this application,
- (e) it is respectfully stated that the Rule 7 of the Privy Council Appeal Ordinance applies only in the case where the decree requires the payment of money or the performance of a duty,
- (f) the Learned District Judge has misdirected himself on the application of Section 777 of the Civil Procedure Code, 30
- (g) once the judgment of the District Court was set aside by Your Lordships Court and the plaintiffs' action dismissed the District Court was bound to restore the *Status quo ante* and place the defendant-appellant in possession. There was no legal basis under which the plaintiff-respondents could claim to remain in possession,

WHEREFORE the Appellant prays that Your Lordships Court be pleased:

- (a) to set aside the order of the Learned District Judge.
- (b) to grant the said application of the appellant to execute the said decree of the Supreme Court and to be placed in possession of the said land,
- (c) for cost, and
- (d) for such other and further relief as to this Court shall seem meet.

No. 23
 Petition of
 Appeal to the
 Supreme Court-
 18. 10. 65.
 —Continued

Sgd.....
Proctor for Applicant-Appellant

10

No. 24

Application for Revision (No. 7/66)

No. 24
 Application for
 Revision
 (No. 7 66)-
 21. 12. 65

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an Application by way of Revision against the Order of the Learned District Judge in District Court Kurunogala Case No. 403/L of 5th October, 1965.

Aboysiri Munasinghege Lairis Appu, of "Kusumsiri", Puttalam Road, Kurunogala.
 ...*Defendant-Applicant-Petitioner.*

20 Application
 No. 7/66.

vs.

- 1. Derwent Peiris,
- 2. Ivan Stewart Peiris.
- 3. Srikantha Poiris,
- 4. Sita Lucille Weerasinghe,
- 5. Carl Windsor Pieris,
- 6. Joyce Winifred Pieris,
- 7. David Raglan Pieris, All of "Raglan Estate", Kurunogala.*Plaintiffs-Respondents.*

To:

30 The Honourable the Chief Justice and the other Justices of the Honourable the Supreme Court of the Island of Ceylon.

On this 21st day of December, 1965.

No. 24
Application for
Revision
(No. 7/66)-
21. 12. 65
--Continued

The Petition in Revision of the Applicant Petitioner abovenamed by his Proctors Damian Adrain Bernard Ratnayake and his Assistant Tissa Wettewe states as follows-

1. The respondents abovenamed instituted this action against this Petitioner for a declaration of title to and ejection of the Petitioner from the land called Raglan Estate described in the schedule to the plaint and for damages.

2. Decree was entered in the District Court of Kurunegala in the said action on 18. 1. 1962 in favour of the respondents declaring them entitled to the said land and ordering the ejection of the defendant applicant petitioner therefrom and for the payment of damages by this petitioner to the respondent. 10

3. The Respondents applied for writ of possession in the execution of the said decree and this Petitioner appealed to Your Lordships Court against the said judgement and decree of the District Court of Kurunegala and also applied for the stay of execution of the said decree pending the appeal.

4. Of consent the respondents and petitioner abovenamed agreed that writ of possession was to issue on the respondents depositing as security a sum of Rs. 30,000/- in the District Court of Kurunegala. 20 Thereafter writ of possession was duly issued and the petitioner was ejected from the said land and possession thereof was delivered to the respondents on 30. 3 1962.

5. On 25. 8. 1965, Your Lordships Court delivered judgment in the appeal of this Petitioner against the judgment and decree of the District Court of Kurunegala referred to in paragraph 2 and 3 above, allowing the said appeal and dismissing the respondents action with costs in both courts. Decree of the Supreme Court was entered accordingly on 1. 9. 1965.

6. On or about 26. 8. 1965 notice of intention to appeal to the Privy Council against the said judgment of Your Lordships Court was served by the respondents to the petitioner. 30

7. On 7. 9. 1965 this petitioner made an application under section 777 of the Civil Procedure Code to the District Court of Kurunegala to give effect to the decree of the Supreme Court of 1. 9. 65 and asking that this petitioner be restored to possession of the said land.

On 14. 9. 65 this application was supported on behalf of this petitioner by Counsel and order thereon was reserved by the learned District Judge. A true copy of the said application to give effect to the decree of the Supreme Court of 1. 9. 65 and a certified copy of the proceedings of 14. 9. 65 are annexed hereto marked P1 and P2 respectively.

No. 24
Application for
Revision
(No. 7/66)-
21. 12. 65.
—Continued

8. On 14. 9. 65 order was made by Your Lordships Court issuing notice of the application of the respondents for conditional leave to appeal to the Privy Council from the judgment of 25. 8. 65 and the
10 notice thereof has now been served on this petitioner which said notice is attached hereto marked P3.

9. On 15. 9. 65 application was made in the District Court of Kurunegala by Counsel on behalf of the respondents that they be allowed to show cause against the application of this petitioner of 7. 9. 65 marked P1 above to give effect to the decree of the Supreme Court and the matter was fixed for inquiry on 27. 9. 65. A certified copy of the application and proceedings of 15. 9. 65 is annexed hereto marked P4.

10. At the inquiry the respondents took objection to the said
20 application marked P1 on the ground that at the time the said application was made steps had been taken by them to appeal to the Privy Council and that the District Court had, therefore, no jurisdiction to entertain the said application. The Learned District Judge delivered order on 5th October, 1965, upholding the objection of the respondents and refusing the application of the Petitioner to execute the said decree of the Supreme Court. A certified copy of the proceedings of 27. 9. 65 and the order of 5. 10. 65 are annexed hereto marked P5 and P6.

11. Being aggrieved by the said order the said petitioner makes this application to Your Lordships Court in Revision against the said
30 order of the Learned District Judge on the following among other grounds that may be urged at the hearing of the said application by Counsel on behalf of the said petitioner.

- (a) that the said order is contrary to law,
- (b) that the interpretation of the District Judge of the Judgment in the case reported in 37 N. L. R. 133 is wrong; that the case decided only that once conditional leave to appeal to

No. 24
Application for
Revision
(No. 7/66)-
21. 12. 65.
—Continued

the Privy Council has been granted, then an application to execute the decree of the Supreme Court can be made only to the Supreme Court and not to the District Court,

- (c) it is submitted that steps taken to obtain conditional leave to appeal to the Privy Council does not constitute an 'appeal' which would necessitate an application to execute the Supreme Court decree being made in the Supreme Court,
- (d) it is further submitted that where the decree is silent as to the benefits granted to the petitioner the decree could only be executed under provisions of Section 777 of the Civil Procedure Code and that the District Court has the right to entertain this application,
- (e) it is respectfully stated that the Rule 7 of the Privy Council Appeal Ordinance applies only in the case where the decree requires the payment of money or the performance of a duty.
- (f) the Learned District Judge has misdirected himself on the application of Section 777 of the Civil Procedure Code.
- (g) Once the judgment of the District Court was set aside by Your Lordships Court and the plaintiffs' action dismissed the District Court was bound to restore the *status quo ante* and place the defendant-petitioner in possession. There was no legal basis under which the plaintiff respondents could claim to remain in possession.
- (h) This Petitioner states that he was in possession of the said land for several years prior to and at the time of the institution of this action and was ejected from this property on the judgment of the Learned District Judge of Kurunegala which has now been set aside in appeal.

12. This Petitioner further states that he has also appealed to Your Lordships Court from the said Order of 5. 10. 65 of the Learned District Judge but makes this application in as much as it would be a considerable time before this appeal is heard and to avoid hardship and loss to this petitioner which he would incur by being out of possession of the said property.

Wherefore the petitioner prays that Your Lordships Court acting in Revision be pleased:-

- (i) to set aside the Order of the Learned District Judge dated 5. 10. 65.
- (ii) to grant the said application of the Petitioner to execute the said decree of the Supreme Court and to be placed in possession of the said land.
- (iii) to call for the record in this case from the District Court of Kurunegala.
- (iv) for costs and,
- (v) for such other and further relief as to Your Lordships Court shall seem meet.

No. 24
Application for
Revision
(No. 7/66)-
21. 12. 65.
—Continued

10

Sgd. TISSA WETTEWE
Proctor for the Defendant Applicant Petitioner.

No. 25

**Judgment of the Supreme Court and Reasons therefor
in S. C. Application No. 7/66.**

No. 25
Judgment of the
Supreme Court
and reasons
therefor in
S. C.
Application
No. 7/66-
21. 6. 66
11. 7. 66

Application 7/66

District Court Kurunegala 403/L

Present: H. N. G. Fernando, S. P. J. & G. P. A. Silva, J.

Counsel: H. W. Jayawardene, Q. C., with L. C. Seneviratne and S. Munasinghe for the..... *Defendant Applicant Petitioner.*

20 A. C. Gooneratne Q. C. with R. C. Gooneratne for the.....
..... *Plaintiffs - Respondents*

Argued and decided on:- 21st June, 1966

H. N. G. Fernando S. P. J.

30 We set aside the order of the District Court made on 5th October, 1965, and direct that a writ of possession be issued by the District Judge for the purpose of placing the defendant petitioner in possession of the land which was the subject of the action No. 403/L District Court Kurunegala and to make such ancillary orders as may from time to time be necessary for the purpose of restoring the defendant petitioner into possession of the said land. The defendant petitioner will be entitled to the costs of this application and to the costs of the inquiry in the Lower Court. We shall later give our reasons for this order.

Sgd. H. N. G. Fernando
Senior Puisne Justice

G. P. A. Silva J.

I agree.

Sgd. G. P. A. Silva
Puisne Justice

No. 25
Judgment of the
Supreme Court
and reasons
therefor in
S. C.
Application
No. 7/66-
21. 6. 66
11. 7. 66
—Continued

Application 7/66

District Court Kurunegala 403/L

Present: H. N. G. Fernando, S.P.J., G. P. A. Silva, J.

Counsel: H. W. Jayawardena, Q. C., with L. C. Seneviratne and
S. Munasinghe for the *Defendant-Applicant-Petitioner*
A. C. Gooneratne, Q. C., with R. C. Gooneratne for the.....
..... *Plaintiffs-Respondents*

Argued and decided on: 21st June 1966

Reasons delivered on: 11th July, 1966.

H. N. G. Fernando S. P. J.

This was an action for declaration of title to a land, and ejectment 10
of the defendant therefrom. The District Court in January 1962 upheld
the claim of the plaintiffs, granted a declaration of title and ordered
the ejectment of the defendant from the land. Thereafter, the plaintiffs
applied for a writ of possession which was issued, and possession was
delivered under the writ to the plaintiffs on 30th March 1962. On
25th August 1965 the Supreme Court allowed the defendant's appeal
against the decree, set aside the decree and dismissed the plaintiffs'
action. On the next day the plaintiffs gave notice of their intention to
appeal to the Privy Council against the judgment of the Supreme
Court, and the application for leave to appeal is still pending in this 20
Court.

In September 1965, the defendant made an application under Section
777 of the Civil Procedure Code to the District Court asking that he
be restored to possession of the land. After inquiry the District Judge
made order on 5th October 1965 refusing the defendant's application
for restoration of possession, on the ground that because an appeal
to the Privy Council is pending the defendant had no right to apply
to the District Court for execution of the decree of the Supreme Court.

The opinion of the Learned District Judge is based upon a decision
of this Court in *Silva v King* (37 N.L.R. 133). In that case decree had 30
been entered in favour of the plaintiff for a certain sum of money
and an appeal to the Supreme Court against that decree had been
dismissed. The defendant thereupon applied for leave to appeal to the
Privy Council against the judgement of the Supreme Court and while
that application was pending, the plaintiffs sought and obtained from
the District Court a writ of execution for the recovery of the decreed
amounts. On appeal being taken from the refusal of the District Judge
to stay execution of the writ, this court held that the power to direct

that the judgment of the Supreme Court be carried into execution is vested in the Supreme Court under Rule 7 of the Rules in schedule 1 of the Privy Council (Appeals) Ordinance, and that therefore a District Court had no power while an application for Conditional Leave is pending to grant execution of the decree.

No. 25
Judgment of the
Supreme Court
and reasons
therefor in
S. C.
Application
No. 7/66-
21. 6. 66
11. 7. 66
—Continued

I respectfully agree with the decision in *Silva v King*. But the situation in the present case is not the same as was the situation dealt with in that decision. There what the plaintiffs sought from the District Court was an order which would enable him to recover the
 10 money decreed to him in a decree of the Supreme Court against which appeal was pending or probable. In the present case however, the order which the defendant sought from the District Court was not an order to execute the Supreme Court decree. That decree did not direct the defendant to be placed in possession of the land. What the defendant in reality sought from the District Court in this case was an order which would restore him to the status quo which had prevailed before the District Court on 30th March 1962, by virtue of its writ of possession, placed the plaintiffs in possession of the land. It does not at first sight appear that the Privy Council Appeal Rules provide for
 20 such a situation so that the making of an order by the District Court of the nature required in this case does not appear to be in conflict with the Privy Council Appeal Rules. Accordingly, the ground on which it was held in *Silva v King* that the execution could not be granted by the District Court does not affect the circumstances of this case.

It was held in *Asiriwathan v Mudelihamy* (35 N.L.R. 28) that Section 777 of our code like the corresponding Section 583 of the Indian code was in terms inadequate to meet all the cases where a party sought restitution of his rights after a decree had been passed in the Supreme Court. But following judgments in India construing section 583, it was
 30 held that Section 777 authorised a District Court "to cause restitution to be made of all the benefits of which the successful party in the appeal was deprived by the enforcement of the erroneous decree of the court of first instance". It is precisely that restitution for which the defendant applied to the District Court, after he obtained from this court a decree dismissing the plaintiffs' action. For these reasons we made order on 21st June 1966 directing the issue by the District Judge of a writ of possession.

Sgd. H. N. G. Fernando
Senior Puisne Justice

40 *G. P. A. Silva, J.*

I agree.

Sgd. G. P. A. Silva
Puisne Justice.

No. 26
Minute of
Order Granting
Conditional
Leave to
Appeal to the
Privy Council-
21. 6. 66

No. 26

**Minute of Order Granting 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 to the Privy Council under the Rules set out in the Schedule to the Appeals (Privy Council) Ordinance.

Supreme Court	1. Derwent Peiris,	
Application	2. Ivan Stewart Peiris,	10
No. 359/65	3. Srikantha Peiris,	
Supreme Court	4. Sita Lucille Weerasinghe,	
No. 36/F/1962	5. Carl Windsor Peiris,	
District Court	6. Joyce Winifred Peiris,	
Kurunegala	7. David Raglan Peiris,	
No. 403/L	all presently of Raglan Estate, Kurunegala.....	
 <i>Plaintiffs-Appellants-Petitioners.</i>	
	<i>vs.</i>	
	Abey Siri Munasinghe Lairis Appu, presently of	
	"Kusumsiri" Puttalam Road, Kurunegala.....	20
 <i>Defendant - Respondent.</i>	

The application of the abovenamed Plaintiffs-Appellants-Petitioners for Conditional Leave to Appeal to Her Majesty the Queen in Council from the judgment and decree of the Supreme Court of the Island of Ceylon pronounced on the 25th day of August, 1965 in 36 (Final) of 1962, District Court Kurunegala Case No. 403/L having been listed for hearing and determination before the Honourable Hugh Norman Gregory Fernando, Senior Puisne Justice, and the Honourable Gardiye Punchedewage Amaraseela Silva, Puisne Justice, in the presence of A. C. Gooneratne Esquire, Q. C., with R. C. Gooneratne Esquire, Advocates, for the Plaintiffs-Appellants-Petitioners and H. W. Jayewardene Esquire, Q. C., with S. Munasinghe Esquire, Advocates for the Defendant-Respondent, order has been made by Their Lordships on the 21st day of June, 1966 allowing the aforementioned application for Conditional Leave to Appeal to Her Majesty the Queen in Council,

Sgd. N. NAVARATNAM
Registrar of the Supreme Court.

No. 27
Order of the District Court

No. 27
Order of the
District Court-
28.6.66

Mr. Amerasinghe for the Plaintiff
Mr. Wettewe for the Defendant.

On 5.10.65 an application for Writ of Possession made by the 1st defendant was refused. Mr. Wettewe for the 1st Defendant has tendered to Court a certified copy of the Order of the Supreme Court dated 21st June 1966. According to this Order of the Supreme Court the 10 Order of 5.10.65 has been set aside, and the Supreme Court has directed that Writ of Possession be issued for the purpose of placing the 1st defendant in possession of the land which forms the subject matter of this action. The Order further states that their Lordships will give their reasons later.

Mr. Amerasinghe states that order should not be made by this Court till the Supreme Court has delivered its reasons.

As the 1st defendant has tendered a certified copy of the Supreme Court Order, I order that Writ of Possession be issued to place the 1st defendant in possession of the land which forms the subject matter 20 of this action.

Sgd.....
District Judge.
28.6.66

No. 28
Decree of the Supreme Court in
S. C. Application No. 7/66

No. 28
Decree of the
Supreme Court
in S. C.
Application
No. 7/66-
II. 7. 66

S. C. Application No. 7/66

ELIZABETH THE SECOND, QUEEN OF CEYLON AND OF HER
OTHER REALMS AND TERRITORIES
HEAD OF THE COMMONWEALTH
IN THE SUPREME COURT OF THE ISLAND OF CEYLON

30

In the matter of an Application for Revision of the Order of the District Judge dated 5th October 1965 in D. C. Kurunegala Cases No. 403/L.

Abeyisiri Munasinghe Lairis Appu of "Kusumsiri" Puttalam Road, Kurunegala.....*Petitioner.*

against

Derwent Peiris and others all of "Raglan Estate", Kurunegala*Respondents.*

No. 28
Decree of the
Supreme Court
in S. C.
Application
No. 7/66-
II. 7. 66
—Continued

Action No. 403/L

District Court of Kurunegala.

This Application coming on for hearing and determination on the 21st June 1966, 11th July, 1966 before the Honourable Hugh Norman Gregory Fernando, Senior Puisne Justice and the Honourable Gardiye Punchihewage Amaraseela Silva, Puisne Justice of this Court, in the presence of Counsel for the Petitioner and the Respondents.

It is considered and adjudged that the Order of the District Judge dated 5th October, 1965 be and the same is hereby set aside and it is directed that a writ of possession be issued by the District Judge **10** for the purpose of placing the defendant-petitioner in possession of the land which was the subject of the action No. 403/L District Court Kurunegala and to make such ancillary orders as may from time to time be necessary for the purpose of restoring the defendant-petitioner into possession of the said land.

It is ordered and decreed that the defendant-petitioner is entitled to the costs of this application and to the costs of the inquiry in the Lower Court.

(Vide copy of Judgment attached)

(Copy of Reasons is also attached)

20

Witness the Honourable Miliani Claude Sansoni, Chief Justice at Colombo the 12th day of September, in the year One Thousand Nine Hundred and Sixty Six and of Our Reign the Fifteenth.

Sgd. B. F. Perera

Deputy Registrar Supreme Court

(Seal)

No. 29

**Application for Final Leave to Appeal to the Privy Council
IN THE SUPREME COURT OF THE ISLAND OF CEYLON**

No. 29
Application for
Final Leave to
Appeal to the
Privy Council
20. 7. 66

Supreme Court Application No. 359/65 (for Conditional Leave to Appeal) Supreme Court 36(F)/1962 District Court Kurunegala Case No. 403/L. Supreme Court Application No. 290/66 (Final Leave to Appeal)	In the matter of an application for Final Leave to Appeal to Her Majesty the Queen in Council under 30 the Appeals (Privy Council) Ordinance. (Cap 100). 1. Derwent Peiris. 2. Ivan Stewart Peiris, 3. Srikantha Peiris, 4. Sita Lucille Weerasinghe, 5. Carl Windsor Peiris, 6. Joyce Winifred Peiris, 7. David Raglan Peiris, all presently of Raglan Estate Kurunegala <i>Plaintiffs-Appellants-Petitioners</i> 40 vs. Abeyesiri Munasinghe Lairis Appu, presently of "Kusumsiri" Puttalam Road, Kurunegala... <i>Respondent.</i>
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TO THE HONOURABLE THE THE CHIEF JUSTICE AND THE
OTHER JUDGES OF THE SUPREME COURT OF THE
ISLAND OF CEYLON.

No. 29
Application for
Final Leave to
Appeal to the
Privy Council
20. 7. 66
—Continued

On this 20th day of July, 1966.

The Petition of the Plaintiffs-Appellants-Petitioners abovenamed appearing by their Proctors Albert Clarence Amerasinghe assisted by Anton P. Ratnayake, states as follows:-

1. The Plaintiffs-Appellants-Petitioners (hereinafter referred to as the Petitioners), on the 21st day of June 1966, obtained conditional leave
10 to appeal to the Privy Council in S. C Application No. 359/65 against the Judgment and Decree pronounced by Your Lordships' Court on the 25th day of August, 1965 in S. C. 36(Final) of 1962 D. C. Kurunegala Case No. 403/L.

2. The Petitioners have in compliance with the conditions on which such leave was granted, deposited with the Registrar of the Supreme Court a sum of Rupees Three Thousand (Rs. 3,000/-) being security for costs of appeal and hypothecated the said sum of Rupees Three Thousand (Rs. 3,000/-) by bond on the 18th day of July 1966.

3. The Petitioners have also deposited with the said Registrar on
20 the 18th day of July 1966 a sum of Rs. 300/- in respect of the amounts and fees mentioned in Section 4(2) (b) and (c) of the Appeals(Privy Council) Ordinance.

4. The Petitioners have, at the same time at which they gave security for the prosecution of their appeal, lodged with the said Registrar stamps to the value of Rs. 518/- for the duty payable in respect of the Registrar's certificate in appeal as required by section 15 of the Appellate Procedure (Privy Council) Order, 1921.

WHEREFORE THE PETITIONERS PRAY THAT

- 30 (a) they be granted final leave to appeal against the said Judgment and Decree of the Honourable the Supreme Court of the Island of Ceylon dated the 25th day of August 1965, to Her Majesty the Queen in Council,
- (b) for costs, and
- (c) for such other and further relief as to Your Lordships' Court shall seem meet.

Sgd. A. C. Amerasinghe
Proctor for Plaintiffs-Appellants-Petitioners

No. 30
Minute of Order
Granting Final
Leave to
Appeal to the
Privy Council-
13. 8. 66

No. 30

**Minute of Order granting Final Leave to Appeal to the
Privy Council.**

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for Final Leave to Appeal to the Privy Council under the Rules set out in the Schedule to the Appeals (Privy Council) Ordinance.

- 1. Derwent Peiris,
 - 2. Ivan Stewart Peiris, 10
 - 3. Srikantha Peiris,
 - 4. Sita Lucille Weerasinghe,
 - 5. Carl Windsor Peiris,
 - 6. Joyce Winifred Peiris,
 - 7. David Raglan Peiris,
- all presently of Raglan Estate, Kurunegala
..... *Plaintiffs-Appellants-Petitioners*

S. C. Application
No. 290/66 (Final
Leave)

S. C. Application
No. 359/65

S. C. No. 36 (F) 1962
D. C. Kurunegala
No. 403/L

vs.

20

Abeysiri Munasinghe Lairis Appu, presently of
"Kusumsiri" Puttalam Road, Kurunegala.....
..... *Defendant-Respondent*

The application of the abovenamed Plaintiffs-Appellants-Petiitioners for Final Leave to Appeal to Her Majesty the Queen in Council from the judgment and decree of the Supreme Court of the Island of Ceylon pronounced on the 25th day of August 1965 in S. C. 36(Final) of 1962 D. C. Kurunegala Case No. 403/L, having been listed for hearing and determination before the Honourable Miliani Claude Sansoni, Chief Justice, and the Honourable Henry Wijayakone Tambiah, Q. C., Puisne Justice, in the presence of J. W. Subasinghe Esquire, with R. Gunaratne Esquire, Advocates, for the Plaintiffs-Appellants-Petitioners : and H. W. Jayawardene Esquire, Q. C., with L. C. Seneviratne Esquire, Advocates, for the Defendant- Respondent, order has been made by Their Lordships on the 13th day of August, 1966 allowing the aforementioned application for Final Leave to Appeal to Her Majesty the Queen in Council. 30

Sgd. N. Navaratnam
Registrar of the Supreme Court 40

PART II
EXHIBITS

P I

**Last Will No. 4188, attested by
Arthur W. Alwis, Notary Public.**

P I
Last will
No. 4188
attested by
Arthur W. Alwis
Notary Public-
3. 6. 1910

No. 4188

This is the Last Will and Testament of me Adeline Winifred Pieris wife of Richard Steuart Peries of "The Alcove" Turret Road, Cinnamon Gardens, Colombo.

I hereby revoke all former wills and other testamentary dispositions heretofore made by me.

10 I nominate and appoint my husband the said Richard Steuart Peiris the sole executor of this my will.

In the event of his death I appoint George Theobald Peiris, the Reverend George Benjamin Ekanayake and my eldest son Richard Louis de Fonseka Pioris the executors of this my will.

I give to each of these executors a sum of two thousand rupees as remuneration for his services.

I hereby will and direct that on the marriage of each of my daughters (with the sanction and approval of my said husband) my executor shall set apart and convey to her immovable property of the
20 value of one hundred thousand rupees subject to the conditions following: Viz.

That such daughter shall not sell, mortgage or otherwise alienate such property or properties but shall be entitled during the term of her natural life only to take enjoy and receive the rents income and produce thereof. She shall not be at liberty also to lease or demise such property or properties for any term exceeding four years at any one time or to receive in advance the whole of the rents for such period and subject to the further condition that on the death of such
30 daughter such property or properties so given to her shall go to and devolve on her children in equal shares. Should such daughter die without leaving issue then I will and direct that the properties so given to her shall devolve on her surviving sisters and the issue of such sister as shall then be dead. Such issue taking only amongst themselves the share to which another could have been entitled to or have taken if alive.

So long as my daughters or any of them shall remain unmarried and shall prove dutiful and obedient to my husband my executor shall pay to each of them monthly a sum of Two hundred and fifty rupees for her sole absolute use and benefit.

P I
 Last will
 No. 4188
 attested by
 Arthur W. Alwis
 Notary Public-
 3. 6. 1910
 —Continued

I give devise and bequeath all the rest residue and remainder of my property and estate and immovable movable unto my sons in equal shares subject to the express condition that my said husband Richard Steuart Peiris shall be entitled during the term of his life to take receive enjoy and appropriate to himself for his own absolute use and benefit all rents income produce and profits of all the said property and estate with full liberty to expend for the management cultivation and upkeep thereof all such sums of money as he on his absolute discretion shall think fit and with full power and authority to my said husband should he deem it necessary to mortgage the said properties 10 or any of them for the purpose of raising and borrowing money for any purpose whatsoever and upon such terms and conditions as he shall deem fit and proper and also subject to such conditions and restrictions as my said husband shall according to his absolute discretion and wish think fit to impose when conveying such property or properties to my sons.

Should any of my sons die unmarried or married but without leaving issue then and in such case I desire and direct that the share of such dying son shall go to and devolve upon his surviving brothers and the children of any deceased brother such children taking only 20 amongst themselves the share to which their father would have taken or been entitled to if living subject however to the right of the widow of such son who shall have died leaving no issue to receive during her widowhood one fourth of the nett income of the property or share to which her husband was or would have been entitled to hereunder.

If any of my said sons shall die leaving children and also a widow then and in such case I desire and direct that the mother of such children during her widowhood shall be entitled to and receive one fourth of the nett income of the property to which her children would be entitled to under this my will. 30

In regard to the properties to be so given to my daughters as aforesaid on the occasion of their respective marriages, I declare that the value set on them by my executor or executors shall be final and conclusive and that my daughters shall receive such properties as he or they shall in his or their discretion think fit to give.

I hereby grant and confer full power and authority only to my Executor the said Richard Steuart Pieris to sell and dispose by private contract or public auction all or any or any parts of my properties estate and effects at such price or prices and upon such terms and conditions and at such time or times as he shall in his absolute 40 discretion think fit and proper and to apply the proceeds of such sale

in the purchase of any other land or lands with full and absolute power and authority to him to give such lands to my daughters or sons under the provisions of this my will. And I declare that on any sale or mortgage by the said Richard Steuart Pieris in exercise of the powers conferred on him hereby the purchaser or mortgagee shall not be obliged or concerned to inquire into the necessity or propriety of such sale or mortgage or as to the application of the money.

P. I
Last will
No. 4188
attested by
Arthur W. Alwis
Notary Public-
3. 6. 1910
--Continued

In Witness whereof I the said Adeline Winifred Pieris have to this my last Will and Testament set my hand at Colombo on this Third day of June One thousand nine hundred and ten.

Signed by the above named Testatrix Adeline)
Winifred Peiris as and for her last Will and)
Testament in the presence of us present at the) Sgd/- A. W. Pieris
same time who at her request and in her presence)
and in the presence of one another have subscribed)
our names as witnesses)

Sgd/- K. J. A. Perera
Sgd/- Illegibly.

Sgd/- Arthur W. Alwis
Notary Public

I, Arthur William Alwis of Colombo in the Island of Ceylon Notary Public by lawful authority duly admitted do hereby certify and attest that the foregoing Last Will having been duly read over by the within named Adeline Winifred Pieris in my presence and in the presence of Kankenige John Andrew Perera of Timbirigasaya in Colombo and Simon Charles Henry de Fonseka of "Bridge View" Kalutara the subscribing witnesses thereto all of whom are known to me the same was signed by the said Adeline Winifred Pieris and also by the said witnesses and by me the said Notary in the presence of one another all being present at the same time at Colombo aforesaid on this third day of June One thousand nine hundred and ten.

30 Date of attestation)
) (SEAL)
3rd June 1910)

Notary Public

I, T. E. P. Goonetilleke, Addl. Registrar of Lands Colombo do hereby certify that the foregoing is a true copy of last Will made from the duplicate filed of record in this office and the same is granted on the application of Siri Peiris.

Sgd/- T. E. P. Goonetilleke
Additional Registrar of Lands.

Land Registry.

40 Colombo, June, 9, 1960.

P 2
Deed No. 1725
attested by
H. P. Weera-
sooriya, Notary
Public-
31. 5. 1917

**Deed No. 1725 Attested by H. P. Weerasooriya,
Notary Public.**

No. 1725

APPLICATION No. 4160

This indenture made this thirty first day of May One Thousand Nine Hundred and Seventeen between Richard Stewart Pieris of Broom-hill in Green Path Colombo of the one part and Adeline Winifred Peiris (nee de Fonseka) of "The Alcove" in Turret Road, Colombo of the other part. 10

Whereas the said Adeline Winifred Pieris (wife of the said Richard Stewart Pieris) is lawfully entitled to and seized and possessed of several lands estates houses and premises.

AND WHEREAS the said Adeline Winifred Pieris being desirous in view of the forthcoming marriage of her daughter Irene Frances of giving her as a gift the estates called Makandura and Wetakeyyawa caused a deed of Gift to be drawn by Arthur Alwis of Colombo, Notary Public.

AND WHEREAS the said Richard Stewart Pieris is withholding his consent from the said gift and willing to sign and execute the said deed unless and until a fair distribution and settlement of the other property of the said Adeline Winifred Peiris is made at the same time among their other children and for their benefit. 20

AND WHEREAS it is impracticable and inexpedient to make such distribution and settlement immediatly owing to the time before the said marriage being too short and also to the fact that the said property is subject to certain liabilities, but the said Adeline Winifred Pieris is convinced of the benefits and advantages to be derived by their children from a settlement such as the aforesaid and has decided to effect the same as soon as possible hereinafter and in the interval to brake such steps as may be necessary or expedient in order to cause the property which will form the subject of settlement to be reduced from liabilities. 30

AND WHEREAS the said Richard Stewart Pieris is willing to consent to the aforesaid gift and to sign execute and deliver the aforesaid deed to the said Irene Frances his daughter on the said Adeline Winifred Pieris executing this indenture and binding herself thereby to effect a distribution and settlement of her other properties in the manner hereinafter mentioned and to take all necessary steps to release the said property from liabilities in the manner hereinafter indicated or by such other means as the said Richard Stewart Pieris and Adeline Winifred Pieris may hereafter adopt by mutual consent. 40

AND WHEREAS in consideration of the said Richard Stewart Pieris having agreed to give his consent to the aforesaid Gift the said Adeline Winifred Pieris has agreed to execute this indenture whereby she binds herself her heirs executors and administrators that her property shall be distributed and settled in the manner hereinafter mentioned only and in no other manner whatsoever and to make certain settlements for the benefit of the said Richard Stewart Pieris in manner hereinafter appearing.

P 2
Deed No. 1725
attested by
H. P. Weera-
sooriya, Notary
Public-
31. 5. 1917
—Continued

AND WHEREAS the said Richard Stewart Pieris has consented
10 to the settlements and distributions herein proposed and to sign execute and deliver from time to time as the same may be regarded necessary or expedient all such deeds, powers, authorities or documents whatsoever as may be required of him and generally to assist the said Adeline Winifred Pieris to the best of his ability in all matters connected with the said distributions and settlements of property and all steps to be taken for the purpose of releasing the same from liabilities.

Now this indenture witnesseth and it is hereby agreed between the said parties hereto for themselves and their respective heirs executors administrators and assigns in manner following that is to say

20 1. That the said Adeline Winifred Pieris and Richard Stewart Pieris shall and will, soon after the execution of this indenture sign and execute the aforesaid deed of gift in favour of their daughter the said Irene Frances in default whereof this indenture to be null and void and of no effect whatsoever.

2. The property gifted by the said deed shall be freed from all encumbrances and for this purpose, the said property which is subject to a mortgage with another property shall be released from the said mortgage by leaving the other property alone as security for such mortgage subject to the approval of the mortgagee in the alternative
30 all such steps shall be taken as may be necessary to release the same from the said mortgage before any other property of the said Adeline Winifred Pieris shall be so released.

3. The said Adeline Winifred Pieris doth hereby acknowledge to have received from the said Richard Stewart Pieris her double string of pearls which has for some time been in the possession of the said Richard Stewart Pieris.

4. The said Adeline Winifred Pieris shall have full liberty to defray the expenses of the wedding of the said Irene Frances not exceeding the sum of Rupees five thousand (Rs. 5000/-) out of the
40 income of the properties of the said Adeline Winifred Pieris.

P 2
Deed No. 1725
attested by
H. P. Weera-
sooriya, Notary
Public-
31. 5. 1917
—Continued

5. The liabilities over the property of the said Adeline Winifred Pieris shall be paid off by the sale of sixteen acres (amounting to a proportion of two fifth) and of the land called Richiewatta in Bambalapitiya. If it is deemed expedient to sell the whole of this land or any part of the remaining three fifths share, the said Richard Stewart Pieris and the said Adeline Winifred Pieris shall consent to such sale but the proceeds realised by the sale of the said remaining three fifths share or any part thereof shall belong exclusively to the said Adeline Winifred Pieris.

6. If the proceeds of sale of the said sixteen acres of the said property be insufficient to pay off the said debts, one of the two following properties shall be sold and the proceeds applied to the payment of such debts, so far as the same shall be necessary namely either the half-share of the Agra-Elbedda estate in Agra Patna in Dimbulla District or the half share of Agra Tenne Estate in Passara District. 10

7. The said Richard Stewart Pieris shall be entitled to occupy the bungalows known as "Broomhill" in Green Path belonging to the said Adeline Winifred Pieris free of the rent or to rent it out and take the income and until the distribution and settlements herein mentioned are effected she shall also pay him monthly a sum of Rupees five hundred (Rs. 500/-) out of the income of her property. 20

8. The said Adeline Winifred Pieris shall transfer and convey to the said Richard Stewart Pieris the allotment of land (said to be about one acre in extent and which has not been built upon) Mar-Elle-Totte in Bandarawela Division to be held by him absolutely.

9. Their eldest son Richard Louis shall be paid monthly out of the income of the property of the said Adeline Winifred Pieris a sum of Rupees One hundred and twenty (Rs. 120/-) and shall have board and residence at "The Alcove" Turret Road until such time as he may leave for England for his education. While in England and receiving his education the said Richard Louis shall be paid a sum not exceeding three hundred and fifty pounds sterling (£ 350) annually as long as he makes satisfactory progress in his studies, and shall receive first class passage to and from England when he returns to Ceylon if he shall then have been called to the Bar, or shall be paid monthly a sum of Rupees Two hundred and fifty (Rs. 250/-) and shall have his board and residence subject to the discretion of the said Adeline Winifred Pieris at "The Alcove". In the event of the said Richard Louis contracting a marriage contrary to the wishes of his parents they shall have the power to reduce the said allowance. 30 40

10. The second son of the said Richard Stewart Pieris and Adeline Winifred Pieris, Lionel, shall be paid likewise a sum of Rupees One hundred and fifty (Rs. 150/-) monthly but he shall not, without the express sanction of both his parents have his residence at "The Alcove". In the event of the said Lionel contracting a marriage contrary to the wishes of his parents they shall have the power to reduce or cancel his allowance.

P 2
Deed No. 1725
attested by
H. P. Weera-
soorlya, Notary
Public-
31. 5. 1917
—Continued

11. Within three months from the date hereof or whenever thereafter called upon by the said Richard Stewart Pieris the said Adeline Winifred Pieris shall convey by way of Gift to their eldest son the abovenamed
- 10 Richard Louis the Moragolla Group of Estates in Kurunegala district (containing in extent about one thousand acres) subject to the conditions hereinafter set forth and such other conditions as may be imposed by the consent of the parties hereto at the time of the said gift, namely (a) that during the life time of his parents he the said donee shall receive out of nett income of the said property the sum of Rupees five thousand (Rs. 5000/-) annually; (b) the remainder of the said nett income shall be divided so that the said Richard Stewart Pieris shall receive seventy per cent thereof and the said Adeline Winifred Pieris twenty five per cent thereof and the said Richard Louis five per cent
- 20 (c) if the said Richard Stewart Pieris shall survive his wife and shall receive eighty per cent of the said nett income and the said Richard Louis twenty per cent thereof and if the said Adeline Winifred Peiris shall survive her husband she shall receive fifty per cent of the said nett income and the said Richard Louis the remaining fifty per cent provided however that if the said Richard Louis has ceased to make his permanent residence in Ceylon he shall not be entitled to any of the above payments or to any part of the nett income from the said property as long as either of his parents is living and in that event they on the above proportions above mentioned or the survivor of them solely shall be entitled to the said income.
- 30 (d) If the said Richard Louis shall die without issue or in the event of such issue dying before the age of majority the said Moragolla Group shall be the property of the youngest son of the said Richard Stewart Pieris and Adeline Winifred Pieris, Bertram, subject to payment by him of a sum of Rupees fifty thousand (Rs. 50000/-) to his brother Lionel and a sum of Rupees two hundred and fifty thousand (Rs. 250,000) to the endowment fund of a scholarship or scholarships according to directions in the last will of the said Richard Stewart Peiris or directions to be hereafter given by him and subject also to the right of the widow of the said Richard Louis to receive as long as she shall remain unmarried ten per
- 40 cent of the income of the said premises; and

P 2
Deed No. 1725
attested by
H. P. Weera-
sooriya, Notary
Public-
31. 5. 1917
—Continued

(e) in the event of the said Bertram being then dead or thereafter dying without issue and such issue dying before majority the said property shall form part of the said Scholarships Endowment Fund, subject to payment of the aforesaid ten per cent of the income to the widow of the said Richard Louis as aforesaid and subject further to the payment of another ten per cent of the said income to the widow of the said Bertram as long as she shall remain unmarried.

12. The Thorawetiya Estate in Nattandiya shall be divided into two blocks of equal value, and one of these shall be gifted to Lionel and the other to Bertram, each subject to *fidei commissum* in favour 10 of his children and in the event of there being no children or remote descendants in favour of his lawful heirs (excluding the wife) and subject to payment to the widow of such donee as long as she shall remain unmarried a sum of rupees five hundred (Rs. 500/-) monthly out of the income of the said premises. The said Adeline Winifred Pieris shall be entitled to receive to herself during her life the income and profits of the said estate.

13. The premises known as "Broomhill" in Green Path shall subject to the right reserved to the said Richard Stewart Pieris hereinbefore be gifted to Bertram and the said Adeline Winifred Pieris shall, in 20 the event of her surviving her husband, be entitled to the rents and profits thereof during her life. In the event of Bertram dying intestate and without issue, his heirs, at law (except his widow) shall subject to the rights hereinbefore specifically reserved become entitled to the said premises.

14. After the liabilities hereinbefore mentioned shall have been paid off the monthly allowance to Lionel shall be increased to Rupees Two Hundred subject however to the other conditions hereinbefore contained.

15. The cost of education and maintenance of the younger children 30 namely Bertram and Caroline Francesca shall be defrayed out of the income of the property of the said Adeline Winifred Pieris during their minority, Bertram shall be paid monthly a sum of Rupees Two Hundred (Rs. 200/-) after he attains majority which allowance shall be subject to be reduced in the event of his marrying contrary to the wishes of the parents.

16. Of the half shares of Agra Ellbedda Estate and of Agra Tenne estate that which remains unsold for the purpose hereinbefore mentioned shall be gifted to the above named Caroline Francesca

subject to terms similar to the restrictions or the gift to Irene Frances hereinbefore referred to or, if the said Adeline Winifred Pieris and Richard Stewart Pieris shall consider it more advantageous the said property shall be sold and a sum of Rupees Two Hundred and Twenty Five Thousand (Rs. 225,000) out of the proceeds thereof shall be set apart as a marriage gift for the said Caroline Francesca which sum or any property to be purchased therewith shall remain subject to the conditions above mentioned.

P 2
Deed No. 1725
attested by
H. P. Weera-
sooriya, Notary
Public-
31. 5. 1917
—Continued

17. The arrangements hereinbefore mentioned and the distributions
10 and settlements above referred to shall be effected with as little delay as possible and with no further delay than is absolutely necessary for the release of the said property from the aforesaid liabilities and the parties hereto shall enter into all necessary deeds and documents for the purpose of effecting making the said arrangements distributions and settlements with all practicable speed.

18. Except where provisions is specifically made herein with regard to the rents profits and income of the property to be distributed or settled according to the terms of these presents such settlement shall be deemed to be subject to the rights of the said Adeline Winifred Pieris
20 to receive during her life the said rents profits and income.

19. The monthly allowances hereinbefore in the 9th and 10th clauses mentioned shall cease after the distributions and arrangements above referred to are effected and the said distributions arrangements and settlements shall be made after the property forming the subject thereof shall have been released from the liabilities. Provided however that the gift of the Moragolla Group of Estates above mentioned shall if the said Richard Stewart Pieris shall so require be made before the release of the said property from the liabilities to which the same may be subject, but the conditions for
30 the payments out of the nett income thereof shall not take effect until after the settlement of the said liabilities.

In witness whereof the said Richard Stewart Pieris and Adeline Winifred Pieris have hereunto and to two others of the same tenor as these presents set their respective hands at Colombo aforesaid on the day of the month and year first above written.

Witnesses,

Sgd. Illegibly

Sgd. A. G. Silva

Sgd. R. S. Pieris

Sgd. A. W. Pieris

Sgd. H. P. WEERASOORIYA

Notary Public.

P 2
Deed No 1725
attested by
H. P. Weera-
sooriya, Notary
Public-
31. 5. 1917
—Continued

I, Herman Peter Weerasooriya of Colombo in the Island of Ceylon Notary Public do hereby certify and attest that the foregoing instrument having been read over by the within named Richard Stewart Pieris (who is known to me) in my presence and in the presence of Thomas Ambrose de Mel of Bambalapitiya in Colombo and Atudugamage Genoris Silva of Wellawatta in Colombo the subscribing witnesses thereto, both of whom are also known to me the same was signed by the said Richard Stewart Pieris and by the said witnesses and by me the said Notary in the presence of one another all being present at the same time at Colombo aforesaid on this Thirty First day of May One Thousand Nine Hundred and Seventeen. And I further certify and attest that the said instrument having been also read over by the within named Adeline Winifred Peiris (who is also known to me) in my presence and in the presence of the aforesaid witnesses the same was signed by the said Adeline Winifred Peiris and by the said witnesses and by me the said Notary in the presence of one another all being present at the same time at Colombo aforesaid on the said Thirty First day of May One Thousand Nine Hundred and seventeen. 10

And I do also certify and attest that in line 15 of page 3 of the duplicate of this instrument the words "also by this indenture" were struck off that in line 11 of page 6 of the duplicate and in line 13 of page 5 of the original thereof the words "or to rent it out and take the income" were interpolated between the words "rents" and "and" that in line 32 of page 8 of the duplicate and in line 33 of page 7 of the original thereof the words "intestate and" were struck off that in line 21 of page 9 of the duplicate and in line 19 of Page 8 of the original the words "and intestate" were struck off and the words "and such issue dying before majority" were interpolated between the words "issue" and "the" that in line 13 of page 10 of the original thereof the word "Frances" was struck off and that in line 25 of page 10 of the duplicate thereof the letters "speci" were struck off before the said instrument was read over as aforesaid and that a stamp of fifty cents (supplied by me) has been affixed to the duplicate thereof. 20 30

Date of attestation
31 May, 1917. (SEAL)

Sgd. H. P. WEERASOORIYA
Notary Public.

I, M. S. Fernando Additional Registrar of Lands Colombo hereby certify that the foregoing is a true copy of a deed of agreement made from the duplicate filed of record in this office and the same is granted on the application of Mr. S. Nalliah. 40

Land Registry,
Colombo.
5. 11. 1952

Sgd. M. S. FERNANDO
Registrar of Lands.

P3**Award in Testamentary Cases****Nos. 6569 and 6571 of the District Court of Colombo.**

District Court Testy Colombo 6569

District Court Testy Colombo 6571

P 3
Award in
Testamentary
Cases Nos. 6569
and 6571 of the
District Court of
Colombo.

Award

In these two cases the estates of Richard Stewart Pieris (hereinafter called Richard and his wife Adeline Winifred Pieris (hereinafter called Winifred) are being administered. All matters in dispute between the
 10 heirs have been referred to my arbitration. All parties agree to the two cases being consolidated. Richard Stewart Pieris died on the 23rd October 1918 leaving a last Will dated 25th April, 1917. Winifred died on 20th Dec. 1918 leaving a last will dated 3rd June 1910, Richard and Winifred died leaving them surviving 3 sons Viz. Louis, Lionel and Bertram and three daughters 1. Lilian 2. Irene and 3. Caroline.

In view of the contemplated marriage of her daughter Irene, Winifred was desirous of gifting to her two properties and instructed Mr. Arthur Alwis (Notary) to draw up the deed. Richard withheld his consent to the proposed gift unless and until a fair distribution of
 20 the other properties of Winifred was made at the same time among the other children. Winifred agreed to this. But there was some difficulty in doing it before the marriage of Irene (to quote the words of the indenture) "owing to the time before the marriage being too short and also to the fact that the said property is subject to certain liabilities". In the circumstances Richard and Winifred executed an indenture No: 1725 dated 31st May 1917. In the indenture, after giving the reasons which I have quoted above for not making a distribution of the property at once Winifred states that she has decided to effect
 30 to take such steps as may be necessary, or expedient in order to cause the property which will form the subject of a settlement to be redeemed from liabilities

In consideration of this promise Richard agreed to give his consent to the gift to Irene.

The reason for Richard insisting on a general division of the property before consenting to the gift to Irene was because he claimed to be the owner of all the properties though they were in the name

P 3
Award in
Testamentary
Cases Nos. 6569
and 6571 of the
District Court of
Colombo.
—Continued

of his wife. But whether this was so or not, the indenture is binding on Richard and Winifred and their heirs. The two testaments do not therefore deal with the properties dealt with by the indenture.

Only one of the heirs viz. Lionel contests the validity of the indenture. It is contended that effect cannot be given to the indenture for the following reasons:—

- (a) There is no consideration for the indenture.
- (b) In any event there is no consideration from the children who are trying to enforce it.
- (c) An agreement which is voluntary cannot be specifically enforced. 10
- (d) Some of the parties are minors and specific performance will not be granted to minors as no action for specific performance lies against minors. In other words there is lack of mutuality.
- (e) The agreement cannot be specifically enforced in portions only.

Consideration in the English sense is not necessary to support an agreement under our law.

There is sufficient cause for the indenture. Even a voluntary agreement can be enforced under our law. Minority of the heirs is no bar to enforcing specific performance on behalf of the minor heirs of a deceased party. 20

It may be noted that there is no minor heir or guardian who resists, the claim to specific performance.

It is also urged that it is impossible to carry out the agreement as 2/5th of Ritchiewatta was sold and the proceeds were not applied for the purpose indicated in the indenture — payment of mortgage debts.

It is time that a portion of the proceeds of sale was paid to unsecured creditors when they were pressing for payment. But that does not put an end to the indenture. These debts had to be paid and there is no prejudice whatever to any of the heirs by the payment. 30

I hold that the indenture is binding on the children of Richard and Winifred.

At the inquiry Lionel Pieris raised several objections to the accounts filed by the executors. These objections were all inquired into. At the end Lionel Pieris withdrew most of his objections being satisfied with the explanation tendered by the executors. On four points however there is no agreement between Lionel and Louis.

Fradds Case.

P 3
Award in
Testamentary
Cases Nos. 6569
and 6571 of the
District Court of
Colombo.

—Continued

It is contended that the executor (Louis) was not justified in charging the estate with the cost in Fradd's case. In 1918 Mr. and Mrs. Pieris mortgaged Thorawetiya Estate to Fradd for securing a loan for Rs. 200000/-. The interest payable was 12 per cent. Fradd gave this bond to the bank as security for an overdraft. As Fradd's financial position became bad the Bank pressed Fradd to put the bond in suit. The executors raised the money from Miss Jolliffe at 9 per cent.

10 The costs of suit amounted to only Rs. 1198/65. The executors had to pay three months interest for a period before the date of the bond in favour of Miss Jolliffe, as during that period the mortgagee had to keep the money ear marked for this purpose refusing other investments. By the reduction of the rate of interest objection is groundless.

Debts due by Richard to Winifred.

The inventory in Winifred's case shows a debt of Rs. 21331 as due from Richard to Winifred.

20 Lionel urged that this should have been recovered. He urged later that at least a pro rata share should have been recovered and debts to others should not have been preferred to this debt. The executor contended that there was really no debt due from Richard and that the alleged debts were really gifts from wife to husband. It was also contended that the money in the hands of Winifred was the income (torn
That is the reason why even if the item in question was to be regarded as a debt, there was no money left even for a pro rata payment. I do not consider that Lionel's objections is sound. I am satisfied with the explanation given.

30 Mrs. R. S. Pieris died on 20 December 1918. Mr. R. S. Peiris died on 23 October 1918. Mrs. R. S. Peiris left last will dated 3. 6. 10. In 1917 Miss Irene Frances, daughter, was going to get married and Mrs. Peiris was desirous of gifting "Makandura" and "Wetakeyyawa" Estates. An indenture No. 1725/31. 5. 17 was entered into between Mr. and Mrs. Peiris in order to obtain Mr. Peiris' written consent to the proposed Gift. The executors asked for probate of last will of Mrs. Peiris in case No. 6569 and annexed the indenture to the will.

Under the will the properties were to be divided equally among the three sons after giving the daughters immovable properties to the value of Rs. 100000/- each.

40 Under the indenture (1000 acres) Moragolla Group was to go to Richard Louis F. Peiris (executor) subject to condition in 11 (d). Thorawetiya was to go to Lionel and Bertram in two blocks of equal value subject to *fidei commissum* mentioned in para 12.

P 3
Award in
Testamentary
Cases Nos. 6569
and 6571 of the
District Court of
Colombo.
—Continued

Broomhill was to go to Bertram. Half share of Agra Elbedde and of Agratenne shall be gifted to Caroline Francesca (see para 16).

(1) How far if at all has Last Will been modified by the indenture. Moragolla Group was subject to a mortgage of Rs. 308000/- at the date of the death of both. Thorawetiya was similarly subject to a mortgage of Rs. 200000/-.

Broomhill was subject to a mortgage of Rs. 140000/- (along with Richewatta)

Page 8 of (illegible) account 14245/40 wrongly paid out of account of the estate of Mrs. Peiris' estate to Mr. Peiris. **10**

Rs. 21331/03 in inventory filed in this case should be explained. Page 12 of N's account.

(11) Payment of interest Rs. 17,320 estate should not be made to pay this as interest till due owing to the neglect of executor.

(III) Rs. 3000/- and Rs 71/- explanation necessary.

Rs. 49320.94 (page 17) due from executor (Louis) to estate.

What amounts were drawn by several heirs in 1923.

How much of the sums paid to heirs (page 17) on account of allowance and how much is loan to heirs.

Page 8 N Agra Elbedde Rs. 47436. 61. **20**

Bond on Thorawetiya has been put in suit—why was interest not paid?

Executor has taken advances for himself and raised money for himself for Moragolla Group: but so far has taken no steps to pay the Claim and interest on Thorawetiya.

What is the present liability of the estate on the debts outstanding at the dates of the death of Mr. and Mrs. Peiris.

What fresh liabilities have been created on the estate and if so how much?

Was the executor not in a position to reduce the debts of the **30** estate?

S. O. for 10. 3. 24.

10. 3. 24

Same Counsel as before.

Same parties present.

Handing over the estate to some Company for Managing it and paying debts.

For further objections see X

Page 52. Has amount Rs. 6438/95 appearing against January 1st 1919 in ledger 1919 been credited to the estate of Mrs. Peiris.

P 3
Award in
Testamentary
Cases Nos. 6569
and 6571 of the
District Court of
Colombo.

—Continued

Page 55. Has the entirety of the expenditure amount of Rs. 2579/61 on Lalugolla and Illukgolla Estates been wrongly debited against Mrs. Peiris' estate instead of one third. 1919 Ledger page 53 has one third of the value of the timber amounting to Rs. 866/84 in all been credited to the estate Page 15 Ledger 1919. Has the sum of Rs. 6843/46 due from Bellummahara Estate been credited to Mrs. Peiris' estate. Page 15 Ledger 1919. Same question to Bolagama Rs. 5451/86 Page 88.

10 Ledger 1919 Same question Re Rajamana Estate Rs. 10035.17.

True Copy.

Sgd.

Secretary District Court, Colombo.

18. 6. 46.

P 4

**Order of the District Court in
Cases Nos. 6569/T and 6571/T**

P 4
Order of the
District Court
in Cases Nos.
6569/T and
6571/T
17-12-45

17th December, 1925

Case called - No cause shown. The award is made a Rule of Court.
Intd. Illegible.

20

D. J.

True Copy/-

Sgd/-

Secretary, District Court Colombo

18.6.46.

Typed by. Intd.

Compared by. Intd. 2.55 - 3.10 p.m.

Time taken 1 - 2 on 15/x.

Folios 23

30 Fees. Rs. 13/80.

Notice

IN THE DISTRICT COURT OF COLOMBO.

In the matter of the Last Will and
Testamentary of A. W. Pieris late of

P 4
Order of the
District Court
in Cases Nos.
6569/T and
6571/T
17-12-25
—Continued

Testamentary
Jurisdiction

No: 6571 & 6569.

the Alcove Turret Road Colombo deceased
and in the matter of the Last Will &
Testament of R. S. Pieris of Colpetty
in Colombo, deceased.

1. Mrs. Lilian Wijetunge "Nurulyser" Frances Road, Wellawatte.
2. E. P. Wijetunge Proctor and Notary, Sriyagar, Matara.
3. Mrs. Irene Pieris wife of E. J. Pieris. The District Engineer's Bungalow, Matale. 10
4. E. J. Pieris District Engineer, The District Engineer's Bungalow, Matale.
5. St. L. H. de Zylva, Guardian ad litem for Bertram de F. Pieris, Richmond College, Galle.
6. Miss. C. F. Pieris c/o Lambert Pieris. "Peak View", Kandy.
7. T. A. de Mel, Guardian ad litem for Miss C. F. Pieris, No: 19 Upper Chatham Street, Fort, Colombo.
8. Lionel de F. Pieris, "Trelwaney" Bambalapitiya, 20
Colombo
9. Francis F. Krishnapillai, Auctioneer Assignee of the Insolvent Estate of Lionel de F. Pieris, Hulftsdorp, Colombo.
10. P. Cassius Jansz, Proctor and Notary, Attorney for Revd. G. B. Ekanayake, 117 Hultsdorf, Colombo.
11. R. L. de F. Peiris, No. 19 Upper Chatham Street, Fort, Colombo.

To: (1), (7) (8) (9) (10) and (11) parties above named.

Notice is hereby given that the Court will on the 3rd day of 30
December 1925 proceed to give Judgment according to the Award of
the Arbitrator which was filed in Court on the 1st September 1925 of
which you have been duly notified.

By Order of Court.
Sgd. A. A. Beling
Secretary

The 17th day of November 1925.

**Certificate of Birth of Derwent
Alistair Louis de Fonseka Peiris**

P 9
Certificate of
Birth of
Derwent Alistair
Louis de Fonseka
Peiris -
31-3-30

Appln. No: B. 18989/31.12.61.

No: 11119.

CEYLON

CERTIFICATE OF BIRTH

Western Province

Colombo District

No: 2 B South Division

10	1. Date and Place of Birth	Thirty first March 1930. Coniston Boswell Road, Wellawatte.
	2. Name	Derwent Alistair Louis de Fonseka Peiris
	3. Sex	Male
	4. Name and Surname of Father	Richard Louis de Fonseka Peiris
	5. Name and Maiden Name of Mother and Race	Muriel Hilda Peiris nee Wijesekera Gunawardena, Sinhalese.
	6. Rank or Profession, and Race of Father	Planter Sinhalese
	7. Were parents married?	Yes
20	8. Name and Residence of Informant and in what capacity he gives information	Charles Primrose Wijesekera Gunawardena, "Coniston" Boswell Road, Wellawatte. Inmate of house.
	9. Informant's signature	Sgd/- Illegibly
	10. When Registered	Sixth May 1930
	11. Signature of Registrar	Sgd/- Verona F. Wirasekera, L.M.S.
	12. Name, if added or altered after Registration of birth	---

P 9
Certificate of
Birth of
Derwent Alistair
Louis de Fonseka
Peiris -
31-3-30
—Continued

13. Date of addition or alteration

I do hereby certify that the foregoing is a true copy of a birth registration entry filed of record in this office.

Sgd/-

Registrar-General's Office,
Colombo 1.
10 Jany. 1961.

Asst. Registrar-General

I D I
Deed of Lease
No. 2398 attes-
ted by D. A. B.
Ratnayake
Notary Public
30. 9. 49

1 D 1

**Deed of Lease No. 2398 Attested by D. A. B. Ratnayaka
Notary Public.**

10

PRIOR REGISTRATON: A 93/157

I do hereby certify that the foregoing is a true copy made from my protocol of deed No. 2398 dated 30. 9. 1949 attested by me and issued to the Lessee withinnamed.

Sgd. D. A. B. Ratnayake
Notary Public

L E A S E

5.12.1961.

No. 2398.

20

This indenture made and entered into at Kurunegala on this Thirtieth day of September One Thousand Nine hundred and Forty Nine between Richard Louis De Fonseka Peiris of Raglan Estate, Kurunegala (hereinafter referred to as the Lessor) which term shall where the context so requires or admits mean and include the said Richard Louis De Fonseka Peiris his heirs executors administrators and assigns) of the one part and Abaysiri Munasinghe Lairis Appu of Kurunegala (hereinafter referred to as the Lessee which term shall where the context so requires or admits mean and include the said Abaysiri Munasinghe Lairis Appu of Kurunegala his heirs executors administrators and assigns)

30

WITNESSETH:

That in consideration of the sum of Rupees Thirty thousand (Rs. 30,000/-) paid by the lessee to the lessor to obtain surrender of the lease No. 1219 dated 11th October 1946 attested by S. L. Munasinghe the Notary Public which is not an advance on the rentals hereby reserved and in consideration of the sum of Rupees Six Hundred (Rs 600/-) being the lease rental for the first month of the period of

lease paid in advance at the execution of these presents by the Lessee to the Lessor (the receipt whereof the Lessor doth hereby admit and acknowledge) and also in consideration of the rents hereinafter reserved and the covenants and agreements hereinafter contained on the part of the Lessee to be paid observed and performed the Lessor doth hereby let lease demise unto the Lessee ALL THAT ESTATE plantations and premises called and known as RAGLAN ESTATE in the schedule hereto more particularly described together with the buildings and the Rubber and the Coconut plantations thereon and all rights ways easements servitudes and appurtenances whatsoever thereto belonging or in any/wise so over appurtenant to or hold to belong or be appurtenant to the said premises or used or enjoyed therewith.

10

TO HOLD THE SAID PREMISES hereby demised for the term or period of seven years commencing from the First October One Thousand Nine Hundred and Forty Nine to be fully completed and ended.

Yielding and paying thereafter unto the said LESSEE during the said term the clear annual rental of Rupees Seven Thousand Two Hundred (Rs. 7,200/-) by equal monthly instalments of Rupees Six Hundred (Rs. 600/-) each such instalment being payable in advance on or before the tenth day of each and every succeeding month during the first year of the term hereof.

20

AND the Lessee doth hereby covenant with the Lessor as follows:-

(1) To pay the rent reserved on the days and in the manner aforesaid.

(2) To keep the rubber and coconut plantations in a good state of cultivation and in a husband like manner and to weed and keep clear of wild herbs and plants the entire premises hereby demised and not to cut down or damage any of the trees of the said plantations.

30

(3) To cut drains on and harrow-plough the lands and manure the rubber and coconut plantations at least once in four years with suitable manure or fertilisers

(4) To keep the bungalow stores factory smoke room and other buildings on the said premises in good order repair and in a tenable condition and to carry out all necessary repairs to the bungalow stores factory smoke room and other buildings that may be required.

(5) To plant with coconut plants all vacant spaces on the area planted with coconut and to tend and look after same diligently until they are above the reach of cattle.

40

(6) To plant the said premises with food crops as required and provided by the rules and regulations formed under the Food Production Ordinances or under any other Ordinance or Provision of law in force during the continuance of these presents and to keep the said Lessor freed and indemnified from all prosecution fines and penalties thereunder.

I D I
Deed of Lease
No. 2398 attested by D. A. B. Ratnayake
Notary Public
30. 9. 49

—Continued

I D I
Deed of Lease
No. 2398 attes-
ted by D. A. B.
Ratnayake
Notary Public
30. 9. 49
—Continued

(7) To observe and comply with all the rules and regulations relating to the sanitation and conservancy of the Local Governing Body and to keep the said Lessor freed and indemnified from all prosecution fines and penalties thereunder.

(8) To keep all necessary check rolls registers pay books and other documents relating to the employment attendance leave and payment of wages and allowances of the labour force and the minor staff and employed in the said demised premises as required by any written law now prevailing or hereafter to be enacted and to keep the said Lessor freed and indemnified from all prosecution fines and penalties thereunder. 10

(9) To permit the said Lessor and his agents and all persons authorised in writing by the lessor to enter upon the demised premises at all reasonable hours during the day time between sunrise and sunset and to inspect the state order and condition of the buildings trees and plantations on the said premises.

(10) To surrender and yield up the demised premises at the determination of the tenancy in good order repair and condition (reasonable wear and tear and natural deterioration excepted) in accordance with the covenant herein contain. 20

AND the Lessor hereby covenant with the Lessee in the manner following, that is to say;

(1) To pay and discharge all existing and future rates taxes assessments duties impositions and outgoings whatsoever imposed or charged upon the demised premises or upon the owner or occupier thereof and whenever demanded to produce such receipts to the lessor

(2) To permit and allow the lessee peaceably and quietly to possess and enjoy the demised premises without any interruption or disturbance by the lessor on the lessee paying the rent hereinbefore reserve and observing and performing. 30

Provided always and it is hereby mutually agreed by and between the lessor and the lessee as follows, that is to say:

THAT if any rent hereby reserved or any part thereof be in arrears and unpaid for a period of two months after the same shall become payable and demand in writing for the payment of such rent shall have been made or in the event of any breach of any covenant and conditions on the part of the lessee herein contained then and in such case it shall be lawful for the lessor at any time thereafter to re-enter into and upon the demised premises or part thereof in the name of the whole and same to have again repossess and enjoy as and for his former estate and possession and thereby determine this demise without prejudice to the right of the lessor to claim and 40

recover from the lessee all the moneys hereunder due and payable as rent damages or otherwise.

AND it is hereby further agreed by and between the lessor and the lessee as follows:

(1) That in the event of the lessee erecting any buildings on the demised premises during the continuance of the tenancy he shall be entitled to demolish the same and remove the materials thereof at the determination of the tenancy.

(2)

Sgd/- R. L. de F. Pieris

Sgd/- Illegibly

Sgd/- D.A.B. Ratnayake

Notary Public.

10

No: 2398

(2) That the lessee shall be entitled to assign or sublet the premises hereby demised to him to any person or persons without any references to the lessor but in the event of such assignment or sub tenancy the assignee or sub tenant shall forthwith give notice in writing of the same to the lessor who shall thereafter be bound to accept such assignee or sub tenant as entitled to the rights and subject to the obligations of the lessee.

20

(3) That at the expiry or sooner determination of this tenancy the lessor shall pay to the lessee at the rate of rupees one (Rs.1/-) for every coconut tree planted by the lessee on the vacant spaces as aforesaid and which is above the reach of cattle.

(4) That at the expiry or sooner determination of this tenancy the lessee shall be entitled to remove from the said premises all the crops and produce ready for removal and all furniture tools utensil implements carts and cattle brought to the said premises by the lessee

30 All notices required to be given under these presents shall be deemed to have been duly given if sent under registered post to the lessor at No. 135 Nagoda Kandana and to the Lessee at "Shanti" Kandy Road, Kurunegala.

IN WITNESS WHEREOF the Lessor and Lessee do hereunto and to two others of the same tenor and date as these presents set out respective hands at Kurunegala on this Thirtieth day of September One Thousand Nine Hundred and Forty Nine.

THE SCHEDULE ABOVE REFERRED TO

40 ALL THAT the estate plantations and premises called and known as Raglan Estate containing in extent Two hundred and seventy one acres and one rood (271A. IR. OOP.) situated in the villages of Akaragane

I D I
Deed of Lease
No. 2398 attested by D. A. B. Ratnayake
Notary Public
30. 9. 49
—Continued

I D I
Deed of Lease
No. 2398 attes-
ted by D. A. B.
Ratnayake
Notary Public
30. 9. 49
—Continued

Boyagane, Wilbawa, Talkote and Nailiya in Tiragandahaye Korale of Weuda Willi Hatpattu in the District of Kurunegala North Western Province and bounded on the NORTH by the land claimed by the Villagers and Crown Land WEST by land claimed by villagers and Crown Land SOUTH by the property of Mrs. Jayasuriya, Road and land appertaining to the Railway WEST by land claimed by villagers and road and registered in A 539/185 which said premises are depicted in plan No. 2016 dated 2nd October 1946 made by D. H. Kalupahana Licensed Surveyor and for a specific defined portion from and out of the land called and known as Raglan Estate Registered in A 93/157. 10

WITNESSES

We do hereby declare that we are well)
acquainted with the said executant and)
know their proper names occupations and)
residences.)

Sgd/- R. L. D. F. Pieris

Sgd/- illegibly

1. Sgd/- illegibly
2. Sgd/- Illegibly

Sgd/- D. A. B. Ratnayake
Notary Public

I, Damian Adrian Bernard Ratnayake of Kurunegala in the 20
Island of Ceylon Notary Public do hereby certify and attest that
the foregoing instrument having been duly read over by the said
lessor who is known to me and explained by me the said Notary
to the lessee in Sinhalese language who is known to me in the
presence of the attesting witnesses thereto Manfred Charles Francis
Peiris of No. 138 Maliban Street Pettah Colombo and Abraham
Wijeratne Abayasundara of Pahabiyanwela Kadawatta both of whom
are known to me the same was signed by the said lessor and lessee
and by the said witnesses and by me the said Notary in my presence
and in the presence of one another all being present at the same time 30
at Kurunegala on this Thirtieth day of September One Thousand
Nine Hundred and Forty Nine the said lessor signing as "R. L. de F.
Pieris and the lessee signing illegibly in English characters and the said
witnesses signing illegibly in English characters respectively.

I further certify and attest that before the foregoing instrument
was read over explained and signed as aforesaid that in the dupli-
cate at page 1 line 15 "mo" in "mmono" line 20 "t" in "the" page
2 line 4 "au" in "Thousand" line 6 "a" in "thereafter" were
rectified page 3 line 23 "t" in "tenancy" page 4 line 14 "se" in
"demise" and at page 5 line 29 "at No. 135 Nugegoda, Kandana" 40

were typed over erasures and at page 5 line 3 "the" in line 33 "North Western Province" were interpolated respectively and in line 30 "in" was rectified, and in the original page 2 line 2 "a" in "Thousand" line 26 "or" in "more" page 3 line 16 "da" in "day" were typed over erasures at page 2 line 6 "2" in "(Rs.7200/-)" line 23 "q" in "required" page 3 line 30 "q" in "quietly" line 31 "ou" in "without" page 5 line 1 "o" in "or" line 31 "a" in "Nailiya" were rectified respectively and that in page 1 line 16 the word "the" after "Moonesinghe" was deleted, and that the duplicate of this instrument

10 bears eight stamps to the aggregate value of Rupees five hundred and fifty four (Rs. 554/-) and the original one stamp of the value of Rupee one and that the said stamps were supplied by me and that out of the consideration a sum of rupees six hundred was paid by the lessee to the lessor being the rent for the month of October 1949 in terms of this lease by Cheque No. 44319 drawn on the Bank of Ceylon, Kurunegala on this date by the lessee, and a sum of Rs.30,000/- was acknowledged by the lessor to have been paid to him by the lessee to obtain a surrender of the deed of lease No. 1219 dated 11th October 1946 attested by S. L. Munasinghe, Notary Public.

I D I
Deed of Lease
No. 2398 attested by D. A. B. Ratnayake Notary Public 30. 9. 49
—Continued

Which I attest.

20

Date of attestation)

The 30th day of September 1949)

(S E A L)

Sgd/- D. A. B. Ratnayake
Notary Public

P 5

**Deed of Transfer No. 196 Attested by
H. M. Ranasinghe, Notary Public.**

Prior Registration. A. 574/286.

True Copy

Sgd/-

NOTARY PUBLIC.

No: 196

TRANSFER

Rs. 135,000/-

TO ALL TO WHOM THESE PRESENTS SHALL COME

I, Richard Louis de Fonseka Pieris of No: 135, Nagoda, Kandana hereinafter referred to as "the said vendor") SEND GREETING.

WHEREAS I the said vendor am the lawful absolute owner and proprietor and possessed of or otherwise well and sufficiently entitled to the land and premises in the Schedule hereto morefully described.

P 5
Deed of Transfer
No. 196 attested
by H.M. Ranasinghe, Notary
Public,
2. 11. 51

30

P 5
Deed of Transfer
No. 196 attested
by H.M. Ranasin-
ghe, Notary
Public,
2. 11. 51
—Continued

AND WHEREAS I have agreed with Senanayake Rallage Ukku Banda Senanayake of Senanayake Hotel, Kurunegala (hereinafter referred to as "the said vendee" for the absolute sale and conveyance to him of the said premises free from encumbrances at or for the price or sum of Rupees one hundred and thirty five thousand only (Rs. 135,000/-).

NOW KNOW YE AND THESE PRESENTS WITNESS that the said vendor in pursuance of the said agreement and in consideration of the said sum of Rupees one hundred and thirty five thousand only (Rs. 135,000/-) of lawful money of Ceylon well and truly paid to me by the said Vendee (the receipt whereof I do hereby admit and acknowledge) DO HEREBY GRANT, SELL, ASSIGN, CONVEY, SET OVER and ASSURE unto the said vendee his heirs, executors, administrators and assigns the said land and premises in the Schedule hereto morefully described TOGETHER WITH all rights, liberties, privileges easements, servitudes, and appurtenances whatsoever to the said premises belonging or with the same now or heretofore held, used, occupied or enjoyed or reputed or known as part or parcel thereof AND all the estate, right, title, interest, property, claim and demand of me the said vendor in to out of or upon the said premises and every part thereof, and all the right title and interest of me the said vendor in and to indenture of lease No: 2398 dated 30th September 1949 attested by D. A. B. Ratnayake, Notary Public, together with all rights, which have accrued to the vendor up to this date to sue the lessee for the cancellation of the said indenture of lease and to receive and recover all rents due and damages arising from any act omission or default on the part of the Lessee. 10

TO HAVE AND TO HOLD the said premises with all and singular their rights, members and appurtenances unto the said vendee his heirs executors administrators and assigns for ever.

AND I the said vendor do hereby for myself and my heirs executors, and administrators covenant with the said vendee his heirs, executors administrators and assigns that not withstanding anything by me done omitted or knowingly or willingly suffered, I now have good right full power and absolute authority to grant convey and assure all the aforesaid premises and that the said premises are free from all encumbrances and charges whatsoever. And that I and my aforewritten shall and will always warrant and defend the title to the said premises and every part thereof unto the said vendee and his aforewritten against any person or persons whomsoever. 30

AND FURTHER that I and my aforewritten shall and will from time to time and at all times hereafter at the request and cost of the said vendee and his aforewritten make do and execute or cause to be made done and executed all such further and other acts deeds, assurances, matters and things for the further more effectually or satisfactorily 40

conveying and assuring the said premises or any part thereof as by the said vendee or his aforewritten shall or may be reasonably required or be tendered to be so made, done and executed.

THE SCHEDULE ABOVE REFERRED TO.

All that Estate plantations and premises called and known as Raglan Estate containing in extent Two Hundred and Seventy One acres and one rood (A271. R1. P00.) situated in the villages of Akaragane, Boyagana, Wilbawa, Talkote and Nailiya in Tiragandahe Korale of Weuda Willi Hatpattu in the District of Kurunegala North Western Province and bounded on the North by the land claimed by villagers and Crown Land, East by the land claimed by villagers and Crown Land, South by the property of Mrs. Jayasuriya, Road and land appertaining to the Railway and West by the land claimed by villagers and Road and registered in A 574/286 which said premises are depicted in Plan No: 2016 dated 2nd October 1946, made by D. H. Kalupahana, Licenced Surveyor and form a specific portion from and out of the land called and known as Raglan Estate registered in A 93/156, together with the buildings, stores, machinery, fixtures, furniture, tools, implements, cattle and other live and dead stock crops and produce thereon or belonging into or brought into the said Estate and premises.

Held and possessed by me the Vendor under and by virtue of paternal inheritance and an award entered in Testamentary Case No: 6569 of the District Court of Colombo.

IN WITNESS WHEREOF I the said vendor to these presents and to two others of the same tenor and date set my hand at Kurunegala on this second day of November one Thousand Nine Hundred and Fifty One.

We declare that we are well acquainted)
with the vendor within named and know)
his proper name occupation and residence)

Sgd/- R. L. de F. Pieris

- 30 1. Sgd. Illegibly
2. Sgd. Illegibly

Sgd/- H. M. Ranasinghe
Notary Public

I, HITIHAMY MUDIYANSELAGE RANASINGHE, of Kurunegala in the Island of Ceylon, Notary Public by lawful authority duly admitted do hereby certify and attest that the foregoing instrument having been duly read and explained by me the said Notary unto the said Richard Louis de Fonseka Pieris, who has signed in English, who is known to me, vendor, therein named in the presence of Ranasinghe Joseph Perera of Wehera, Kurunegala and Gamage Nandalal de Silva of Kandy Road, Kurunegala who have signed in English the subscribing witnesses thereto, who are known to me, the same was signed by the said vendor and also by the said witnesses and by me the said Notary in my

P 5
Deed of Transfer
No. 196 attested
by H.M. Ranasinghe,
Notary Public,
2. 11. 51
—Continued

P 5
Deed of Transfer
No. 196 attested
by H.M. Ranasinghe,
Notary Public,
2. 11. 51
—Continued

presence and in the presence of one another all being present at the same time at Kurunegala on this second day of November One Thousand Nine Hundred and Fifty One.

I further certify and attest that the original of this instrument bears a stamp of Re. 1/- and the duplicate bears 13 stamps of the value of Rs. 2159/- and that out of the consideration herein a sum of Rs. 2800/- was acknowledged to have been received earlier, a sum of Rs. 1000/- was set off in discharge of promissory note dated 19th October 1951, a sum of Rs. 1200/- was paid in cash in my presence and cheque No: 60673 dated 2nd November 1951 drawn on the Bank of Ceylon, Kurunegala for Rs. 40,000/- was given in my presence and a sum of Rs. 50,000/- was retained with the vendee to discharge mortgage bond No: 1218 dated 11th October 1946 attested by S. L. Moonasinghe Notary Public and the Vendee agreed to pay the balance Rs. 40,000/- later. 10

WHICH I ATTEST
Sgd/- H. M. Ranasinghe
Notary Public

Date of Attestation
This 2nd day of November 1951

(SEAL)

20

P 6
Deed of Transfer
No. 199 attested
by H.M. Ranasinghe,
Notary Public,
11. 11. 51

P 6
Deed of Transfer No. 199 Attested by H. M. Ranasinghe,
Notary Public

TRUE COPY
Sgd/- H. M. Ranasinghe
Notary Public

No: 199

30

T R A N S F E R

Rs. 20,000/-

TO ALL TO WHOM THESE PRESENTS SHALL COME

I, Senanayake Rallage Ukku Banda Senanayake of "Senanayake Hotel" Kurunegala (hereinafter referred to as "the said vendor")

SEND GREETING

WHEREAS I the said vendor and the lawful absolute owner and proprietor and possessed of or otherwise well and sufficiently entitled to the land and premises in the schedule hereto morefully described.

AND WHEREAS I have agreed with Suriya Kumarasinghe Wasala Mudiyansele alias Herat Mudiyansele Punchi Bandara of Madahapola (hereinafter referred to as "the said vendee" for the absolute sale and conveyance to him of the said premises free from encumbrances at or for the price or sum of Rupees twenty thousand only (Rs. 20, 000/-)

P 6
Deed of Transfer
No. 199 attested
by H.M. Ranasin-
ghe, Notary
Public,
II. II. 51
—Continued

NOW KNOW YE AND THESE PRESENTS WITNESS that the said vendor in pursuance of the said agreement and in consideration of the said sum of Rupees twenty thousand (Rs. 20,000/-) of lawful money of Ceylon well and truly paid to me by the said vendee (the receipt
10 whereof I do hereby admit and acknowledge) DO HEREBY GRANT, SELL, ASSIGN, CONVEY, SET OVER and ASSURE unto the said vendee his heirs, executors, administrators, and assigns the said land and premises in the schedule hereto morefully described together with all rights, liberties, privileges, easements, servitudes, and appurtenances whatsoever to the said premises belonging or with the same now or heretofore held, used, occupied or enjoyed or reputed or known as part or parcel thereof and all the estate, right, title, interest property, claim and demand of me the said vendor in to out of or upon the said premises and every part thereof.

20 TO HAVE AND TO HOLD the said premises with all and singular their rights members and appurtenances unto the said vendee his heirs, executors, administrators and assigns for ever.

AND the said vendor do hereby for myself and my heirs, executors and administrators covenant with the said vendee his heirs, executors, administrators and assigns that not withstanding anything by me done omitted or knowingly or willingly suffered, I now have good right full power and absolute authority to grant, convey, and assure all the aforesaid premises and that the said premises are free from all encumbrances and charges whatsoever. And that I and my aforewritten shall and
30 will always warrant and defend the title to the said premises and every part thereof unto the said vendee and his aforewritten against any person or persons whomsoever.

AND FURTHER that I and my aforewritten shall and will from time to time and at all times hereafter at the request and cost of the said vendee and his aforewritten make do and execute or cause to be made done and executed all such further and other acts deeds assurances, matters and things for the further more effectually or satisfactorily conveying and assuring the said premises or any part thereof as by the said vendee or his aforewritten shall or may be
40 reasonably required or be tendered to be so made done and executed.

THE SCHEDULE ABOVE REFERRED TO

P 6
Deed of Transfer
No. 199 attested
by H.M. Ranasinghe,
Notary Public,
II. II. 51
—Continued

An undivided extent of fifty acres from and out of all the estate plantations and premises called and known as Raglan Estate containing in extent Two Hundred and Seventy One acres and one rood (A 271 R 1. P 00) situated in the villages of Akaragane Boyagana, Wilbawa, Talkote and Nailiya in Tiragandahe Korale of Weuda Willi Hatpattu in Kurunegala District North Western province and bounded on the North by the land claimed by the villagers and Crown Land East by the land claimed by the villagers and Crown Land, South by the property of Mrs. Jayasooriya, Road and land appertaining to the Railway and West by land claimed by the villagers and Road and registered in A. 574/286 which said premises are depicted in Plan No. 2016 dated 2nd October 1946, made by D. H. Kalupahana, Licensed Surveyor and form a specific portion from and out of the land called and known as Raglan Estate registered in A 93/156 together with everything appertaining thereto, subject to the terms and conditions in Agreement No. 197 dated second day of November 1951, attested by the Notary attesting these presents. 10

Held and possessed by me under and by virtue of deed No. 196 dated 2nd November 1951 attested by the Notary attesting these presents subject however to the following conditions:- 20

- (a) The vendor reserves to himself all rights in and to indenture of Lease No. 2398 dated 30th September 1949, attested by D. A. B. Ratnayake, Notary Public.
- (b) The said extent of fifty acres shall not include any of the One Hundred acres which are free from the condition to re-transfer contained in deed No. 197 dated 2nd November 1951 attested by the Notary attesting these presents.

IN WITNESS WHEREOF I the said vendor to these presents and to two others of the same tenor and date set my hand at Kurunegala on this eleventh day of November One Thousand Nine Hundred and Fifty One. 30

We declare that we are well acquainted)
with the vendor within named and know)
his proper name occupation and residence.)

Sgd. Illegibly

1. Sgd. N. B. Jothiya (in Sinhalese)
Signature of Jothiya

2. Sgd. R. A. Siyatu Banda (in Sinhalese)
Signature of Siyatu Banda

Sgd. H. M. Ranasinghe
Notary Public. 40

I, HITIHAMY MUDIYANSELAGE RANASINGHE of Kurunegala in the Island of Ceylon Notary Public by lawful authority duly admitted do hereby certify and attest that the foregoing instrument having been duly read and explained by me the said Notary to the said Senanayake Rallage Ukku Banda Senanayake who has signed in English, who is known to me, vendor, therein named in the presence on Naran Beddalage Jothiya of Madithiyawala and Ratnayake Aratchillage Siyatu Banda of Nakkawatta, who have signed in Sinhalese, the subscribing witnesses thereto who are not known to me the same was
 10 signed by the said vendor and also by the said witnesses and by me the said Notary in my presence and in the presence of one another all being present at the same time at Kurunegala on this eleventh day of November One Thousand Nine Hundred and Fifty One.

P 6
 Deed of Transfer
 No. 199 attested
 by H.M. Ranasin-
 ghe, Notary
 Public,
 H. H. 51
 —Continued

I further certify and attest that the original of this instrument bears a stamp of Re. 1/- and the duplicate bears 7 stamps of the value of Rs. 319/- and that the consideration herein was acknowledged by the vendor to have been received previously and in the original in page 2 in line 22 the words "on the" and in the duplicate in page 2 line 22 the words "on the side" were deleted, before the deed was so
 20 explained.

WHICH I ATTEST.

Sgd. H. M. Ranasinghe
Notary Public.

Date of attestation

This 11th day of November 1951.

(SEAL)

P 7

**Deed of Transfer No. 305 Attested by H. M. Ranasinghe,
 Notary Public.**

P 7
 Deed of Transfer
 No. 305 attested
 by H.M. Ranasin-
 ghe, Notary
 Public,
 9. 8. 52

H. M. Ranasinghe,
 30 *Proctor S. C. and Notary Public.*

TRUE COPY
 Sgd. H. M. Ranasinghe
Notary Public.

No. 305

TRANSFER - Rs. 15,000/-

TO ALL TO WHOM THESE PRESENTS SHALL COME

P 7
Deed of Transfer
No. 305 attested
by H. M. Ranasinghe,
Notary
Public,
9. B. 52
—Continued

I, Suriya Kumarasinghe Wasala Mudiyanse- selage Punchi Bandara of Madahapola (hereinafter referred to as "the said vendor") SEND GREETING.

WHEREAS I the said vendor am the lawful absolute owner and proprietor and possessed of or otherwise well and sufficiently entitled to the land and premises in the Schedule hereto morefully described.

AND WHEREAS I have agreed with Senanayako Rallage Ukku Banda Senanayake of "Senanayake Hotel", Kurunegala (hereinafter referred to as "the said vendee") for the absolute sale and conveyance to him of the said premises free from encumbrances at or for the 10 price or sum of Rupees Fifteen thousand only (Rs. 15,000/-).

NOW KNOW YE AND THESE PRESENTS WITNESS that the said vendor in pursuance of the said agreement and in consideration of the said sum of Rupees Fifteen Thousand only (Rs. 15,000/-) of lawful money of Ceylon well and truly paid to me by the said vendee (the receipt whereof I do hereby admit and acknowledge) DO HEREBY GRANT SELL, ASSIGN, CONVEY, SET OVER and ASSURE unto the said vendee his heirs, executors, administrators, and assigns the said land and premises in the Schedule hereto morefully described together with all rights, liberties, privileges, easements, servitudes, and appurtenances 20 whatsoever to the said premises belonging or with the same now or heretofore held, used, occupied or enjoyed or reputed or known as part or parcel thereof and all the estate, right, title interest, property claim and demand of me the said vendor in to out of or upon the said premises and every part thereof.

TO HAVE AND TO HOLD the said premises with all and singular their rights members and appurtenances unto the said vendee his heirs executors, administrators and assigns for ever.

AND I the said vendor do hereby for myself and my heirs executors, and administrators covenant with the said vendee his heirs, 30 executors, administrators and assigns that notwithstanding anything by me done omitted or knowingly or willingly suffered, I now have good right full power and absolute authority to grant, convey and assure all the aforesaid premises and that the said premises are free from all encumbrances and charges whatsoever, And that I and my aforewritten shall and will always warrant and defend the title to the said premises and every part thereof unto the said vendee and his aforewritten against any person or persons whomsoever.

AND FURTHER that I and my aforewritten shall and will from time to time and at all times hereafter at the request and cost of the said 40 vendee and his aforewritten make do and execute or cause to be made done and executed all such further and other acts, deeds assurances, matters and things for the further more effectually or

satisfactorily conveying assuring the said premises or any part thereof as by the said vendee or his aforewritten shall or may be reasonably required or be tendered to be so made, done and executed.

THE SCHEDULE ABOVE REFERRED TO

An undivided extent of fifty acres from and out of all the estate plantations and premises called and known as Raglan Estate containing in extent Two Hundred and Seventy One acres and one rood (A. 271. R. 1. P. 00) situated in the Villages of Akaragane Boyagana, Wilbawa, Talkote, and Nailiya in Tirigandahe Korale of Weuda Willi Hatpattu in Kurunegala District, North Western Province and bounded on the North by the land claimed by Villagers and Crown Land, East by land claimed by Villagers and Crown Land, South by the property of Mrs. Jayasooriya, Road and land appertaining to the Railway and West by land claimed by Villages and Road and registered in A 574/286 which said premises are depicted, in Plan No. 2016 dated 2nd October 1946, made by D. H. Kalupahana, Licensed Surveyor and form a specific portion from and out of the land called and known as Raglan Estate registered in A 93/156 together with everything appertaining thereto, subject to the terms and conditions of Agreement No. 197 dated 2nd November 1951, attested by the Notary attesting these presents.

Held and possessed by me under and by virtue of deed No. 199 dated 11th November 1951 attested by the Notary attesting these presents.

IN WITNESS WHEREOF I the said vendor to these presents and to two others of the same tenor and date set my hand at Kurunegala on this ninth day of August One Thousand Nine Hundred and Fifty Two.

We declare that we are well acquainted)
with the vendor within named and know) Sgd. In Sinhalese
his proper name occupation and residence) Signature of Punchi Banda

1. Sgd. Illegibly in English.
2. Sgd. Illegibly in English.

Sgd. H. M. RANASINGHE
Notary Public.

I, HITIHAMY MUDIYANSELAGE RANASINGHE of Kurunegala in the Island of Ceylon, Notary Public, by lawful authority duly admitted do hereby certify and attest that the foregoing instrument having been duly read and explained by me the said Notary unto the said Suriya Kumarasinghe Wasala Mudiyansele alias Herat Mudiyansele Punchi Bandara, who has signed in Sinhalese who is known to me, vendor, therein named in the presence of Dunusinghe Mudiyansele Appuhamy and Gamage Nandalal de Silva both of Kurunegala, who have signed in English, the subscribing witnesses thereto who are known to me, the same was signed by the said vendor and also by the said witnesses and by me the said Notary in my presence and in the presence of one another all being present at

P 7
Deed of Transfer
No. 305 attested
by H.M. Ranasin-
ghe, Notary
Public,
9. 8. 52

—Continued

P 7
Deed of Transfer
No. 305 attested
by H.M. Ranasin-
ghe, Notary
Public,
9. 8. 52
—Continued

the same time at Kurungala on this Ninth day of August One Thousand Nine hundred and Fifty Two.

I further certify and attest that the original of this instrument bears a stamp of Re. 1/- and the duplicate bears 8 stamps of the value of Rs. 239/- and that the consideration herein a sum of Rs. 6000/- was paid by Cheque No. B 32658 of 9. 8. 52, a sum of Rs. 2460/- was paid by cheque No. B. 32659 of 9. 8. 52 both drawn on the Bank of Ceylon, Kurunegala and the balance was said to have been received earlier.

Which I attest.

10

Date of attestation
This 9th day of August 1952.

Sgd. H. M. RANASINGHE
Notary Public.

(SEAL)

P 8
Deed of Transfer
No. 306 attested
by H.M. Ranasin-
ghe, Notary
Public,
9. 8. 52

P 8
Deed of Transfer No. 306 Attested by H. M. Ranasinghe,
Notary Public.

Application No. 1486/15. 10. 52.

Prior Registration. A 594/54.

No. 306

TRANSFER Rs. 160,000/- 20

TO ALL TO WHOM THESE PRESENTS SHALL COME

I, Senanayake Rallage Ukkubanda Senanayake of "Senanayake Hotel" Kurunegala (hereinafter referred to as the said vendor) send greeting. Whereas I the said vendor and the lawful absolute owner and proprietor and possessed of or otherwise well and sufficiently entitled to the land and premises in the schedule hereto morefully described and whereas I have agreed with Abayasiri Munasinghege Lairis Appuhamy of Kandy Road, Kurunegala (hereinafter referred to as the said vendee) for the absolute sale and conveyance to him of the said premises free from encumbrances at or for the price or sum of Rupees One Hundred and Sixty Thousand only (Rs. 160,000/-). Now Know Ye and These presents witness:- that the said vendor in pursuance of the said agreement and in consideration of the said sum of Rupees One Hundred and Sixty Thousand only (Rs. 160,000/-) of lawful money of Ceylon well and truly paid to me by the said vendee (the receipt whereof I do hereby admit and acknowledge) do hereby Grant, Sell, Assign, Convey, Set Over and Assure unto the said vendee his heirs, executors, administrators and assigns the said lands and premises in the schedule hereto

30

morefully described together with all rights, liberties, privileges, easements, servitudes, and appurtenances whatsoever to the said premises belonging or with the same now or heretofore held, used, occupied, or enjoyed or reputed, or known as part or parcel thereof and all the Estate right, title, interest, property, claim and demand of me the said vendor in to out of or upon the said premises and every part thereof and all the right title and interest of me the said vendor in and to Indenture of Lease No. 2398 dated 30th September 1949 attested by D. A. B. Ratnayake, Notary Public together with all rights, which have occurred

10 to me the vendor up to this date sue the lessee for the cancellation of the said Indenture of Lease and to receive and recover all rents due and damage arising from any act omission or default on the part of the lease.

To Have and to Hold the said premises with all and singular their rights, members and appurtenances unto the said vendee his heirs, executors, administrators and assigns for ever.

And I the said vendor do hereby for myself and my heirs and executors and administrators covenant with the said vendee his heirs executors administrators and assigns that not withstanding by me done

20 omitted or knowingly or willingly suffered I now have good right full power and absolute authority to grant convey and assure all the aforesaid premises and that the said premises are free from all encumbrances and charges whatsoever and that I and my aforewritten shall and will always warrant and defend the title to the said premises and every part thereof unto the said vendee and his aforewritten against any person or persons or whomsoever. And further that I and my aforewritten shall and will from time to time at all times hereafter at the request and cost of the said vendee and his aforewritten make do and execute or cause to be done and executed all such further and

30 other acts deeds, assurances, matters, and things for the further more effectually or satisfactorily conveying and assuring that the premises or any part thereof as by the said vendee or his aforewritten shall or may be reasonably required or be tendered to be so made, done and executed.

THE SCHEDULE ABOVE REFERRED TO.

All that Estate plantations and premises called and known as Raglan Estate containing in extent two Hundred and Seventy one acres One rood (A271. R1. P00) situated in the Villages of Akaragane, Boyagane, Wilbawa, Talkote, and Nailiya in Tiragandabe Korale of Weuda Willi

40 Hatpattu in Kurunegala District North Western Province and bounded on the North by the land claimed by the villagers and Crown Land, East by the lands claimed by villagers and Crown Land, South by the property of Mrs. Jayasooriya, Road and land appertaining to the Railway and West by the land claimed by the villagers and Road and Registered in A 594/54 which said premises are depicted in Plan No. 2016

P 8
Deed of Transfer
No. 306 attested
by H.M. Ranasin
ghe, Notary
Public.
9. 8. 52
—Continued

P 8
Deed of Transfer
No. 306 attested
by H.M.Ranasin
ghe, Notary
Public-
9. 8. 52
—Continued

dated 2nd October, 1946 made by D. H. Kalupahana Licensed Surveyor and form a specific portion from and out of the land called and known as Raglan Estate Registered in A 93/156 together with the plantations, stores, machinery, fixtures, furnitures, tools, implements, cattle and other live and dead stock and crops and produce thereon or belonging into or brought into the said estate and premises subject to the terms and conditions contained in agreement No, 197 dated 2nd November 1951 attested by the Notary attesting these presents.

Held and possessed by me the said vendor under and by virtue of Deed No. 196 dated 2nd November 1951 attested by the Notary attesting these presents and deed No. 305 dated 9-8-1952 attested by the Notary attesting these presents. 10

In witness whereof I the said vendor to these presents and to two others of the same tenor and date set my hand at Kurunegala on the ninth day of August One Thousand Nine Hundred and Fifty Two.

We declare that we are well acquainted)
with the vendor within named and know) Sgd. Illegibly
his proper name occupation and residence) in English.

1. Sgd. Illegibly in English
2. Sgd. Illegibly in English

20

Sgd. H. M. RANASINGHE
Notary Public.

I, Hitihamy Mudiyansele Ranasinghe of Kurunegala in the Island of Ceylon Notary Public by lawful authority duly admitted do hereby certify and attest that the foregoing instrument having been duly read and explained by me the said Notary unto the said Senanayake Rallage Ukku Banda who has signed in English who is known to me, vendor, therein named in the presence of Dunusinghe Mudiyansele Appuhamy and Gamage Nandalal de Silva both of Kurunegala who have signed in English the subscribing witnesses thereto who are known to me the same was signed by the said vendor and also by the said witnesses and by me the said Notary in my presence and in the presence of one another all being present at the same time at Kurunegala on this ninth day of August one thousand nine hundred and fifty two, I further certify and attest that this instrument bears a stamp of Rs. 1/- and the duplicate bears 21 stamps to the value of Rs. 2559/- and that the consideration herein a sum of Rs. 48,770/- was set off against claim and costs in District Court Kurunegala Case No. 7789, Rs. 10,000/- was paid by Cheque No. B 29459 of 7.5.52 drawn on the Bank of Ceylon, Kurunegala, Rs. 60,000/- was secured by mortgage bond No. 307 of 9.8.52 attested by me, and Rs. 41,230/- was paid by cheque No. B 31892 of 9.8.52 drawn on the Bank of Ceylon, Kurunegala and in the dupli- 40

cate in page 1 in line 27 the words "vendors in and" were written over erasures before the deed was so explained.

Date of attestation

This 9th day of August 1952.

Which I attest,

Sgd/- H. M. Ranasinghe
Notary Public

P 8
Deed of Transfer
No. 306 attested
by H.M.Ranasinghe, Notary
Public-
9. 8. 52
—Continued

(S E A L)

I, W. A. Nelson Acting Registrar of Lands, Kurunegala, do hereby certify that the foregoing is a true copy of a Deed of Transfer made from the duplicate filed of record in this office and the same is
10 granted on the application of S. A. Nalliah Esqr., Proctor of Colombo.

Sgd/-

Actg. Registrar of Lands.

Land Registry,
Kurunegala.
18. 10. 52.

Printed by Mercantile Stationers.
No. 12, Baillie Lane, Fort. Colombo 1.
Telephone 6251
