

7

Appeal No. **41 OF 1970**

Supreme Court of Ceylon,  
No. 167 (Final) of 1965.

District Court of Colombo,  
Case No. 10207/L.

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

BETWEEN

JOSEPHINE MARY ALOYSIA MORAIS of No. 23/2, Lauries Road,  
Bambalapitiya, Colombo.

(Defendant - Appellant)  
**APPELLANT**

AND

MRS. FRANCESCA VICTORIA *NEE* MORAIS of No. 267/2, Gal'e Road,  
Bambalapitiya, Colombo.

(Plaintiff - Respondent)  
**RESPONDENT**

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
10 MAY 1973  
25 RUSSELL SQUARE  
LONDON W.C.1

**RECORD  
OF PROCEEDINGS**

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No.....

Supreme Court of Ceylon,  
No. 167 (Final) of 1965.

District Court of Colombo,  
Case No. 10207/L.

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

BETWEEN

JOSEPHINE MARY ALOYSIA MORAIS of No. 23/2, Lauries Road,  
Bambalapitiya, Colombo.

( Defendant - Appellant )  
**APPELLANT**

AND

MRS. FRANCESCA VICTORIA *NEE* MORAIS of No. 267/2, Galle Road,  
Bambalapitiya, Colombo.

( Plaintiff - Respondent )  
**RESPONDENT**

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**RECORD  
OF PROCEEDINGS**

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No. 1

**JOURNAL ENTRIES**

**IN THE DISTRICT COURT OF COLOMBO**

No. 10207/L  
Class : V  
Amount : Rs. 855165/20  
Nature : Land.  
Procedure : Regular.

No. 1  
Journal Entries  
13. 5. 63  
to  
7. 4. 69.

Mrs. Francisca Victoria nee Morais.

10

*Plaintiff*

*Vs.*

J. M. Aloysia Morais.

*Defendant.*

**JOURNAL**

(1)

The Thirteenth day of May 1963.

Mr. D. N. Thurairajah files appointment and Plaint together with Documents marked.

Plaint accepted and summons ordered for 17-6-63.

20

Intld. ....  
*Additional District Judge*

(2)

31-5-63

Summons issued with Precept returnable the 10th day of June 1963.

Intld. ....

(3)

17-6-63

Mr. D. N. Thurairajah for Plaintiff.

Summons served on defendant.

30 J. M. A. Morais.

Proxy filed.

Answer on 22-7-63.

Intld. ....  
*Additional District Judge*

No. 1  
Journal  
Entries—  
13. 5. 63 to  
7. 4. 69.  
—Continued

(4)  
22-7-63  
Mr. S. Kanagarajah for Defendant.  
Answer due — on 16-9-63.

Intld. ....  
*Additional District Judge*

(5)  
16-9-63  
Answer due — filed.  
Trial 28-2-64.

10

Intld. ....  
16-9-63.

(6)  
13/14-2-64  
Proctor for Plaintiff with notice to Proctor for defendant files list of witnesses  
and documents and moves for Summons.  
1. File.  
2. Issue Summons

Intld. ....  
*Additional District Judge* 20  
14-2-64.

(7)  
14-2-64  
2 Subpoenas issued by Plaintiff.

Intld. ....

(8)  
26/27-2-64  
Proctor for Plaintiff with Notice to Proctor for defendant who objects, files  
additional list of witnesses and documents.

Intld. .... 30  
*Additional District Judge*

(9)  
28-2-64  
Mr. D. N. Thurairajah for Plaintiff.  
Mr. S. Kanagarajah for Defendant.  
*Vide* Journal Entry (5)

**Trial**

*Vide* proceedings.  
Trial 20-7-64

Intld. .... 40  
28-2-64.

(9a)  
Proceedings filed.

No. 1  
Journal  
Entries—  
13. 5. 63 to  
7. 4. 69  
—Continued

Intld. ....  
3-3-64.

(10)  
19/20-6-64

Proctor for Plaintiff with notice to Proctor for defendant files additional list of witnesses and documents and moves for Summons.

- 10 1. File.
- 2. Issue Summons

Intld. ....  
*Additional District Judge*

(11)  
6-7-64

1 Subpoena issued by Plaintiff.

Intld. ....

(12)  
6-7-64

Proctor for Plaintiff moves for leave of Court in terms of Section 94 of the Civil Procedure Code to deliver through Court the Interrogatories tendered on behalf of the Plaintiff for examination of the defendant. He also moves for leave of Court to have the said Interrogatories served on the Proctor for defendant.  
Allowed.

Sgd. ....  
*Additional District Judge*  
6-7-64.

(13)  
7-7-64

30 Interrogatories issued on defendant through his Proctor.

Intld. ....

(14)  
20-7-64

Mr. D. N. Thurairajah for Plaintiff.  
Mr. S. Kanagarajah for Defendant.  
*Vide* Journal Entry (9)

**Trial**

*Vide* proceedings.  
Trial refixed 23rd November and 24th November 1964. Specially.

40 Intld. ....  
*Additional District Judge*



No. 1.  
Journal  
Entries—  
13. 5. 63 to  
7. 4. 69.  
—Continued

(15)  
16/21-7-64

Proctor for Plaintiff with notice to proctor for defendant under registered post, files additional list of witnesses and documents and moves for summons.

1. File.
2. Issue Summons.

Intld. ....  
*Additional District Judge*  
23-7-64.

(16)  
3/7-8-64

10

For reasons stated proctor for plaintiff moves for the reissue of the Interrogatories for service on the Proctor for defendant.  
Allowed.

Intld. ....  
*Additional District Judge*  
7-8-64.

(17)

28 Sept. 1964. Notice reissued on Proctor for defendant returnable 10-11-64.

Intld. .... 20

(18)  
19/21-10-64

Reference the set of interrogatories delivered to him, Proctor for defendant tenders an answer to same by an affidavit from the defendant. Furnish deficiency of stamps.

Intld. ....  
*Additional District Judge*

(19)  
30-10-64

5-11-64

30

Proctor for Defendant tenders uncanceled stamps for Rs. 205/- being deficiency due in the case, and moves that the answer to the Interlocutory Order be accepted.

Cancel stamps and take into account.  
Answer to interrogatories accepted.

Sgd. ....  
*Additional District Judge*  
6-11-64.

(20)  
23-11-64  
Mr. D. N. Thurairajah for Plaintiff.  
Mr. S. Kanagarajah for defendant.  
*Vide* Journal Entry (14)

**Trial**

Plaintiff's list of witnesses filed.  
Proctor for defendant has cause to show.

*Vide* proceedings.  
10 Further hearing Tomorrow 24-11-64.

Sgd. ....  
*Additional District Judge*

(21)  
24-11-64  
Appearances as before.  
*Vide* Journal Entry (20)  
Trial — Further hearing.  
*Vide* proceedings.  
Further hearing and Addresses  
20 on 3-12-64.

Intld. ....  
*Additional District Judge*

(22)  
3-12-64  
Mr. D. N. Thurairajah for Plaintiff.  
Mr. S. Kanagarajah for defendant.  
*Vide* Journal Entry (21)  
Further hearing and addresses.  
Defendant's additional list of witness filed.  
30 Proctor for Plaintiff objects.  
*Vide* Proceedings.  
Further hearing 8-12-64 and  
9-12-64 at 9.30 a.m.

Intld. ....  
*Additional District Judge*

(23)  
8-11-64  
Mr. D. N. Thurairajah for Plaintiff.  
Mr. S. Kanagarajah for Defendant.  
40 *Vide* Journal Entry (22)  
Trial — Further hearing.  
*Vide* Proceedings.  
Further addresses 9-12-64.  
at 9.30 a.m.

Intld. ....  
*Additional District Judge*

No 1  
Journal  
Entries—  
13. 5. 63 to  
7. 4. 69  
—Continued

(24)		
9-12-64		
Mr. D. N. Thurairajah for Plaintiff.		
Mr. S. Kanagarajah for defendant.		
Vide Journal Entry (23)		
Further Addresses.		
Vide proceedings.		
Documents to be tendered		
Office —		
Call case 21-12-64		10
to fix date of Judgment.		
	Intld. ....	
		<i>Additional District Judge</i>
Proceedings filed.		
	Intld. ....	
		17-12-64.
Documents P1 to P40.		
filed with list		
	Intld. ....	
		16-12-64. 20
Documents filed in Volume II.		
	Intld. ....	
		16-12-64.
(25)		
21-12-64		
Mr. D. N. Thurairajah for Plaintiff.		
Vide Journal Entry (24).		
Case called to fix date of Judgment.		
Documents of Defendant tendered with list and further written submissions.		30
C. A.V. 25-1-65.		
	Intld. ....	
		<i>Additional District Judge</i>
Documents marked.		
D1 to D18 filed with list.		
	Intld. ....	
Deficiency due on Documents 107.60.		
(26)		
25-1-65		
Judgment delivered in open		
Court in the presence of : .....		40
2. Deficiency Rs. 107.60 due on documents tendered by proctor for defendant.		
Vide order in Sub-File.		
	Intld. ....	
		<i>Additional District Judge</i>
		26-2-65.

(27)

26-2-65

1. Judgment due — not ready.  
Same for 17-3-65.
2. Deficiency of Rs. 107/60 due on documents of defendant for 17-3-65.

Intld. ....  
*Additional District Judge*  
26/2.

(Sub File)

10 25-1-65

Judgment due — not ready.  
Judgment on 26-2-65.

Sgd. ....  
*Additional District Judge*  
25/1.

*Vide* Journal Entry (26).  
Sub File merged to the main record.

Intld. ....  
12-3-65.

20 (28)

17-3-65

1. Judgment delivered in Open Court in the presence of Proctor for Plaintiff.  
Mr. Senivaratne takes notice on behalf of Proctor for Defendant.
2. Deficiency of Rs. 107/60 due on documents of defendant.  
Same on 24-3-65.

Intld. ....  
*Additional District Judge*

Judgment filed.

30

Intld. ....  
17-3-65.

(29)

17-3-65

Mr. S. Kanagarajah files Petition of Appeal against the Judgment of this Court dated 17-3-65 together with uncanceled stamps to the value of Rs. 518/- and Rs. 306/- for Supreme Court Decree and Secretary's certificate respectively and moves to issue Notice of security on the plaintiff respondent served on her Proctor Mr. D. N. Thurairajah.

1. Accept Petition of Appeal.
2. Cancel stamps for Supreme Court order and keep in safe.
3. Issue notice of security when tendered for 31-3-65.
4. Call on 31-3-65.

Sgd. ....  
*Additional District Judge*  
17-3-65.

No. 1  
Journal  
Entries—  
13. 5. 63 to  
7. 4. 69.  
—Continued

The orders made re. accepting of security tendered by Appellant is without prejudice to the matter journalised under Journal Entry (36).

Sgd. ....  
*Additional District Judge*

(38)

5-4-65

Proctor for defendant-appellant files Bond, Kachcheri Receipts for Rs. 600/- and Rs. 100/- being security deposits and fees for typewritten copies of brief respectively and notice of appeal and moves to issue notice on Mr. D. N. Thurairajah, Proctor for Plaintiff-Respondent. 10

1. Bond filed.
2. Issue notice of appeal returnable 19-5-65.

Sgd. ....  
*Assistant Secretary*

(39)

5-4-65

Notice of appeal issued to Fiscal Western Province for service on the proctor for Plaintiff-Appellant.  
(Precept returnable. 17-5-65.)

Intld. .... 20

(40)

7-4-65

Mr. S. Kanagarajah for Defendant-Appellant. Objections due filed.  
Inquiry 29-7-65.

Intld. ....  
*Additional District Judge*

(41)

19-5-65

Notice of appeal served on Proctor for Plaintiff-Respondent — Absent.  
Forward record after Inquiry on 29-7-65 unless Registrar of Supreme Court 30 calls for record earlier.

Sgd. ....  
*Additional District Judge*

(42)

13-7-65

Proctor for Plaintiff tenders a list of witnesses and documents and moves for Summons on witnesses — 3-6. Proctor for defendant receives notice.

1. File.
2. Issue Summons.

Sgd. .... 40  
*Additional District Judge*  
13-7-65

(43)  
17-7-65  
4 Subpoenas issued by Plaintiff.

Intld. ....

No. 1  
Journal  
Entries—  
13. 5. 63  
to  
7. 4. 69  
—Continued

(44)  
23-7-65  
Proctor for defendant files defendant's list of witness and move for Summons.  
Issue Summons.

Sgd. ....  
*Additional District Judge*

10

(45)  
29-7-65  
Mr. S. Kanagarajah for Defendant–Appellant.  
Mr. D. N. Thurairajah for Plaintiff–Respondent *Vide* Journal Entry (41).  
Inquiry into objections.  
Settled.  
*Vide* proceedings.

Sgd. ....  
*Additional District Judge*

20

(46)  
6-8-65  
Record (In Two Volumes) forwarded to the Registrar Supreme Court, together  
with cancelled stamps to the value of Rs. 518/- for Supreme Court Decree.

Sgd. ....  
*Assistant Secretary*

30

(47)  
6-8-65  
Proctor for Defendant moves that a sub-file be made and a Deposit Note for  
Rs. 800/- be issued to deposit the amount due for the month of August 1965.  
Issue a Deposit Note for Rs. 800/-

Sgd. ....  
*Additional District Judge*

(48)  
10-8-65  
Re Journal Entry (47). Deposit Note No. B/080543 dated 10.8.65 in favour  
of J. H. Aloysia Morais issued (for Rs. 800/-).

Intld. ....  
10-8-65.

40

(49)  
14-8-65  
Kachcheri Receipt No. E/16 714706 of 10-8-65 for Rs. 800/- filed.

Intld. ....

No. 1  
Journal  
Entries-  
13-5-63  
to  
7-4-69  
—Continued

(50)

31-7-65

Proctor for plaintiff with notice to Proctor for defendant moves to confirm withdrawal of letters sent to persons mentioned in the motion.  
File.

Sgd. ....  
*Additional District Judge*  
17-8-65.

(51)

20-8-65

6-9-65

Proctor for defendant moves for a Deposit Note for Rs. 800/- to deposit due amount for the month of September, 1965.  
Issue Deposit Note for Rs. 800/-

10

Sgd. ....  
*Additional District Judge*  
6-9-65.

Deposit Note No. B/012667 of 7-9-65 for Rs. 800/- issued.

Intld. ....  
7-9-65. 20

(52)

17-9-65

Kachcheri Receipt No. E/16 718688 of 9-9-65 for Rs. 800/- filed.

Intld. ....

(53)

29-9-65

Proctor for defendant moves for a Deposit Note for Rs. 800/- to deposit the amount due for the month of October 1965.  
Issue Deposit Note for Rs. 800/-

Sgd. .... 30  
*Additional District Judge*  
7-10-65.

(54)

8-10-65

Deposit Note No. B. 012677 for Rs. 800/- issued.

Intld. ....

(55)

14-10-65

Kachcheri Receipt No. E/16 722551 of 8-10-65 for Rs. 800/- filed.

Intld. .... 40

(56)

28-10-65

Proctor for defendant moves for Deposit Note for Rs. 800/- to deposit amount due for November 1965.  
Issue Deposit Note for Rs. 800/-

Sgd. ....  
*Additional District Judge*  
30-10-65.

Deposit Note No. B. 012691 for Rs. 800/- issued.

10

Intld. ....  
1-11-65.

(57)

25-11-65

Proctor for Defendant moves for Deposit Note for Rs. 800/- to deposit the amount due for December 1965.  
Issue Deposit Note for Rs. 800/-

Sgd. ....  
*Additional District Judge*  
2-12-65.

20 Deposit Note No. B. 93757 issued.

Intld. ....  
3-12-65.

(58)

23-12-65

Kachcheri Receipt No. E/16 728664 of 10-11-65 for Rs. 800/- filed.

Intld. ....

(59)

23-12-65

Kachcheri Receipt No. E/16 733313 of 9-12-65 for Rs. 800/- filed.

30

Intld. .. .. .

(60)

28-12-65

Proctor for defendant moves for Deposit Note for Rs. 800/- in defendant's name, to deposit the amount due for the month of January 1966.  
Issue Deposit Note for Rs. 800/-

Sgd. ....  
*Additional District Judge*  
31-12-65.

Deposit Note No. B. 93766 issued.

40

Intld. ....  
12-1-66.



No. 1  
Journal  
Entries-  
13-5-63  
to  
7-4-69  
-Continued

(61)  
20-1-66  
Kachcheri Receipt No. E/16 736520 of 10-1-66 for Rs. 800/- filed.

Intld. ....

(62)  
8-2-66  
Proctor for defendant moves for a Deposit Note in favour of the defendant for Rs. 800/- being amount due for February 1966.  
Issue Deposit Note for Rs. 800/-

Sgd. .... 10  
*Additional District Judge*  
8-2-66.

Deposit Note No. B. 93774 issued.

Intld. ....  
9-2-66.

(63)  
25-2-66  
Proctor for Defendant moves for a Deposit Note for Rs. 800/- being amount due for March 1966.  
Issue Deposit Note for Rs. 800/-.

Sgd. .... 20  
*Additional District Judge*  
28-2-66.

(64)  
2-3-66  
Deposit Note No. B. 93789 for Rs. 800/- issued.

Intld. ....

(65)  
10-3-66  
Kachcheri Receipt No. E/16 741456 of 10.2.66 for Rs. 800/- filed.

Intld. .... 30

(66)  
19-3-66  
Kachcheri Receipt No. J/16 677162 of 10-3-66 for Rs. 800/- filed.

Intld. ....

(67)

23-3-66

Proctor for defendant moves for Deposit Note for Rs. 800/- to deposit the amount due for April 1966.  
Issue Deposit Note for Rs. 800/-.

Sgd. ....  
*Additional District Judge*  
24-3-66.

Deposit Note No. B. 93800/25-3-66.

10

Intld. ....  
25/3.

(68)

26-4-66

Kachcheri Receipt No. J/16 679980 of 9-4-66 for Rs. 800/- filed.

Intld. ....

(69)

24/28-4-66

Proctor for defendant moves for Deposit Note for Rs. 800/- to deposit the amount due for the month of May 1966.

20 Issue Deposit Note for Rs. 800/- to defendant.

Sgd. D. WIMALARATNE  
*Additional District Judge*  
29-4-66.

Deposit Note B/94160/30-4-66

(70)

14-5-66

Kachcheri Receipt No. J/16 686047 of 10-5-66 for Rs. 800/- filed.

Intld. ....

(71)

30 5-6-66

Proctor for defendant moves for Deposit Note for Rs. 800/- to deposit the amount for June 1966.

Issue Deposit Note for Rs. 800/-

Sgd. ....  
*Additional District Judge*  
6-6-66.

Deposit Note No. B/94173/8-6-66 issued.

Intld. ....

No. 1  
Journal  
Entries-  
13-5-63  
to  
7-4-69  
—Continued

(72)  
21-6-66  
Kachcheri Receipt No. J/16 690284 of 11-6-66 for Rs. 800/- filed.

Intld. ....

(73)  
3-7-66  
Proctor for Defendant moves for Deposit Note for Rs. 800/- to deposit the amount due for the month of July 1966.  
Issue Deposit Note for Rs. 800/-.

Sgd. .... 10  
*Additional District Judge*  
5-7-66.

Deposit Note No. B.94191  
7-7-66

(74)  
15-7-66  
Kachcheri Receipt No. J/16 693332 of 10-7-66 for Rs. 800/- filed.

Intld. ....

(75)  
1-8-66  
Proctor for defendant moves for Deposit Note for Rs. 800/- to deposit the amount due for the month of August 1966. 20

Issue Deposit Note for Rs. 800/-

Sgd. ....  
*Additional District Judge*  
2-8-66

Deposit Note No. B. 098804  
5-8-66

(76)  
19-8-66  
Kachcheri Receipt No. J/16 699292 of 10-8-66 for Rs. 800/- filed. 30

Intld. ....

(77)  
31-8-66  
*Vide* order at Journal Entry (44) in Case No. 9929/L.  
Case called.  
Call on 29-11-66.

Sgd. ....

(78)  
2-9-66

Proctor for defendant moves for a Deposit Note for Rs. 800/- being amount due for September 1966 to be deposited to the credit of this case.  
Issue Deposit Note for Rs. 800/-.

Sgd. ....  
*Additional District Judge*  
2-9-66.

(79)  
10 10-9-66

Deposit Note B. No. 098827 for Rs. 800/- issued.

Intld. ....

(80)  
20-9-66

Kachcheri Receipt No. J/16 704920 of 10-9-66 for Rs. 800/- filed.

Intld. ....

(81)  
4-10-66

Proctor for defendant moves for Deposit Note for Rs. 800/- to deposit the amount due for the month of October 1966.  
Issue Deposit Note for Rs. 800/-

Sgd. ....  
*Additional District Judge*  
4-10-66

Deposit Note No. B/098847 issued.  
4-10-66

Intld. ....

(82)  
11-10-66

30 Kachcheri Receipt No. J/16—708712 of 9-10-66 for Rs. 800/- filed.

Intld. ....

(83)  
31-10-66

Proctor for defendant moves for Deposit Note for Rs. 800/- to deposit the amount due for the month of November 1966.  
Issue Deposit Note for Rs. 800/-

Sgd. ....  
*Additional District Judge*  
31-10-66.

40 Deposit Note No. B/099306 issued.  
1-11-66

Intld. ....

No. 1  
Journal  
Entries-  
13-5-63  
to  
7-4-69  
—Continued

(84)  
10-11-66  
Kachcheri Receipt No. J/16 712593 of 7-11-66 for Rs. 800/- filed.

Intld. ....

(85)  
29-11-66  
Case called with case No. 9929/L.  
Call on 21-3-67

Sgd. ....

(86) 10  
1-12-66  
Proctor for defendant moves for Deposit Note for Rs. 800/- to deposit the amount due for the month of December 1966.  
Issue Deposit Note for Rs. 800/-.

Sgd. ....  
*Additional District Judge*  
2-12-66.

Deposit Note No. B/099322  
2-12-66 issued.

Intld. ....

(87)  
18-12-66  
Kachcheri Receipt No. J/16 717304 of 7-12-66 for Rs. 800/- filed.

Intld. ....

(88) 30  
4-1-67  
Proctor for defendant moves for a Deposit Note for Rs. 800/- with reference to Court order dated 29-7-65 being the amount due to the plaintiff for the month of January 1967.  
Issue Deposit Note for Rs. 800/-.

Sgd. ....  
*Additional District Judge*  
7-1-67.

Deposit Note No. B/099343 for Rs. 800/-.

Intld. ....

(89)  
17-1-67  
Kachcheri Receipt No. J/16 722955 of 9-1-67 for Rs. 800/- filed.

Intld. .... 40

(90)

30-1-67

Proctor for defendant moves for a Deposit Note for Rs. 800/- being amount due to the plaintiff for the month of February.

Issue Deposit Note for Rs. 800/- in favour of proctor for defendant.

Sgd. ....  
*Additional District Judge*

Deposit Note No. B/097656 issued.

Intld. ....

<sup>10</sup> (91)

16-2-67

Kachcheri Receipt No. L/16 828561 of 8-2-67 for Rs. 800/- filed.

Intld. ....

(92)

28-2-67

Proctor for defendant moves for a Deposit Note for Rs. 800/- being the amount due to the plaintiff for the month of March 1967.

Issue Deposit Note for Rs. 800/- in favour of proctor for defendant.

Sgd. ....  
*Additional District Judge*

20

Deposit Note No. B/099674 issued.

Intld. ....

(93)

13-3-67

Kachcheri Receipt No. L/16 832261 of 8-3-67 for Rs. 800/- filed.

Intld. ....

(94)

21-3-67

Mr. S. Kanagarajah for defendant — *Appellant*.

<sup>30</sup> Mr. D. N. Thurairajah for defendant — *Respondent*.

*Vide* Journal Entry (85).

Case called with case No. 9929/L.

Call on 2-7-67.

Sgd. ....

No. 1  
Journal  
Entries-  
13-5-63  
to  
7-4-69  
-Continued

(95)

3-4-67

31-3-67

Proctor for defendant moves for a Deposit Note for Rs. 800/- being amount due to the plaintiff for April.

Issue Deposit Note for Rs. 800/-

Sgd. ....  
*Additional District Judge*

Deposit Note No. B/099686 issued.

Intld. .... 10

(96)

15-4-67

Kachcheri Receipt No. L/16 837613 of 10-4-67 for Rs. 800/- filed.

Intld. ....

(96)

30-4-67

Proctor for defendant moves for a Deposit Note for Rs. 800/- being the amount due to the defendant for the month of May 1967.

Issue Deposit Note.

Sgd. .... 20  
*Additional District Judge*

Deposit Note No. B/099698.

Intld. ....

(97)

1-6-67

Proctor for defendant with reference to court order dated 29-7-65 moves court to direct that a Deposit Note for Rs. 800/- being amount due for the month of June 1967.

Issue Deposit Note for Rs. 800/-.

Sgd. .... 30  
*Additional District Judge*

Deposit Note No. C/011212 issued in favour of S. Kanagarajah.

Intld. ....

(98)

13-6-67

Kachcheri Receipt No. L/16 844278 of 10-6-67 for Rs. 800/- filed.

Intld. ....

(99)  
2-7-67  
Mr. S. Kanagarajah for Defendant — *Appellant*.  
Mr. D. N. Thurairajah for Plaintiff — *Respondent*.  
*Vide* Journal Entry (94).  
case called with case No. 9929/L.  
Call on 14-10-67.

Sgd. ....  
*Additional District Judge*  
2-7-67.

10

(100)  
9-7-67  
Mr. S. Kanagarajah for defendant moves for a Deposit Note for Rs. 800/-.  
*Vide* order of 29-7-65 for the month of July 1967.

Issue Deposit Note for Rs. 800/-.

Sgd. ....  
*Additional District Judge*

Deposit Note No. C/011227 issued.

Intld. ....

20

(101)  
13-7-67  
Kachcheri Receipt No. 841 of 10-7-67 for Rs. 800/- filed.

(102)  
30-7-67  
8-8-67  
Proctor for defendant moves for a Deposit Note for Rs. 800/- being the amount  
due for the month of August 1967.

Issue Deposit Note for Rs. 800/-.

Sgd. ....  
*Additional District Judge*

30

Deposit Note No. 011244 issued.

Intld. ....

(103)  
28-8-67  
5-9-67  
Proctor for defendant moves for a Deposit Note for Rs. 800/- being the amount  
due to plaintiff for the month of September 1967 be issued in favour of the  
defendant.

Issue Deposit Note for Rs. 800/-.

Sgd. ....  
*Additional District Judge*

40



No. 1  
Journal  
Entries-  
13-5-63  
to  
7-4-69  
-Continued

Deposit Note No. C/011907 issued in favour of S. Kanagarajah.

Intld. ....

(104)  
13-9-67

Kachcheri Receipt No. L/16 851394 of 10-8-67 for Rs. 800/- filed.

Intld. ....

(105)  
30-9-67

Proctor for defendant moves for a Deposit Note for Rs. 800/- being the amount due to the plaintiff for the month of October. 10

Issue Deposit Note for Rs.800/-

Sgd. C. V. UDALAGAMA  
Additional District Judge

Deposit Note No. C/011926 issued.

Intld. ....

(109)  
14-10-67

Mr. S. Kanagarajah for defendant — *Appellant*.  
Mr. D. N. Thurairajah for plaintiff — *Respondent*.  
Case called with case No. 9929/L. 20  
Call case after the appeal in D. C. 9929/L is decided.

Sgd. ....  
Additional District Judge

(110)  
15-10-67

Kachcheri Receipt No. 1208 (L/16 856113) of 10-9-67 for Rs. 800/- filed.

Intld. ....

(111)  
15-10-67

Kachcheri Receipt No. 934 (L/16 861832 of .....Rs. 800/- filed. 30

Intld. ....

(112)  
30-10-67

Proctor for defendant moves for a Deposit Note for Rs.800/- being amount due for November 1967.

Issue Deposit Note.

Sgd. C. V. UDALAGAMA  
Additional District Judge

Deposit Note No. C/011945

Intld. .... 40

(113)  
23-11-67  
Kachcheri Receipt No. 962 (L/16 865156) of 10-11-67 for Rs. 800/- filed.

No. 1  
Journal  
Entries-  
13-5-63  
to  
7-4-69  
—Continued

Intld. ....

(114)  
30-11-67  
Proctor for defendant with reference to the last order of Court dated 29-7-65 moves for a Deposit Note for Rs. 800/- being amount due to the plaintiff for the month of December 1967.

10 Issue Deposit Note.

Sgd. C. V. UDALAGAMA  
*Additional District Judge*

Deposit Note No. C/012421 issued.

Intld. ....

(115)  
17-12-67  
Kachcheri Receipt No. 927 (L/16 86844) of 10-12-67 for Rs. 800/- filed.

Intld. ....

20 (116)  
27-12-67  
4-1-68  
Proctor for defendant moves for a Deposit Note to deposit amount due to the plaintiff for the month of January 1968 for Rs. 800/-.

Issue Deposit Note.

Sgd. ....  
*Additional District Judge*

Deposit Note No. C/012435

Intld. ....

30 (117)  
18-1-68  
Kachcheri Receipt No. 930 (L/16 873619) of 10-1-68 for Rs. 800/- filed.

Intld. ....

No. 1  
Journal  
Entries-  
13-5-63  
to  
7-4-69  
-Continued

(118)  
31-1-68  
Proctor for defendant for the reasons stated in the motion moves for a Deposit Note for Rs. 800/- being the amount due to the plaintiff for February.

Issue Deposit Note.

Sgd. C. V. UDALAGAMA  
Additional District Judge

Deposit Note No. C/012905 issued.

Intld. ....

(119)  
19-2-68  
Kachcheri Receipt No. 1177 (L/16 352077) of 10-2-68 for Rs. 800/- filed.

10

Intld. ....

(120)  
1-3-68  
Proctor for defendant moves for a Deposit Note for Rs. 800/-.

Issue Deposit Note.

Sgd. C. V. UDALAGAMA  
Additional District Judge

Deposit Note No. 012922 issued.

20

Intld : ....

(121)  
20-3-68  
Kachcheri Receipt No. 1089 (N/16 356504) of 11-3-68 for Rs. 800/- filed.

Intld : ....

(122)  
31-3-68  
Proctor for defendant moves for a Deposit Note for Rs. 800/- being amount due for April 1968.

Issue Deposit Note.

Intld : .....  
Additional District Judge

30

Deposit Note No. C/012942 issued.

Intld : ....

(123)

20-4-68

Kachcheri Receipt No. 1200 (N/16 361040) of 10-4-68 for Rs. 800/- filed.

Intld : .....

No. 1  
Journal  
Entries-  
13-5-63  
to  
7-4-69  
--Continued

(124)

29-4-68

Proctor for defendant moves for a Deposit Note for Rs. 800/- being amount due to be deposited for the month of May.

Issue Deposit Note.

10

Sgd. C. V. UDALAGAMA  
Additional District Judge

Deposit Note No. C/021964.

Intld : .....

(125)

25-5-68

Kachcheri Receipt No. 944 (N/16 363822) 9-5-68 for Rs. 800/- filed.

Intld : .....

(126)

28-5-68

20 Proctor for defendant moves Court for a Deposit Note for Rs. 800/- being amount due by the defendant for the month of June 1968.

Issue Deposit Note.

Sgd : .....  
Additional District Judge  
30-5-68

Deposit Note No. C/021972.

Intld. ....

(127)

25-6-68

30 Kachcheri Receipt No. 1041 (N/16 36814 of 11-6-68 for Rs. 800/- filed.

Sgd : .....

(128)

5-7-68

Proctor for defendant with reference to the last order of Court dated 29-7-65 moves Court for a Deposit Note for Rs. 800/- being amount to be deposited for the month of July 1968.

Issue Deposit Note.

Sgd : D. WIMALARATNE  
Additional District Judge

40 Deposit Note No. Q21994.

Intld : .....

No. 1  
Journal  
Entries-  
13-5-63  
to  
7-4-69  
—Continued

(129)  
20-7-68

Registrar, Supreme Court forwards record together with Supreme Court decree dismissing the appeal with costs.

Proctors to Note.

Sgd : D. WIMALARATNE  
*Additional District Judge*

(130)  
20-7-68

Proctor for Plaintiff tenders application for execution of Decree. Moves 10 to issue writ for damages and writ of ejection and possession against the defendant.

Issue Writ and Writ of possession.

Sgd : D. WIMALARATNE  
*Additional District Judge*

(131)  
22-7-68

1. Writ of Execution against defendant issued to Fiscal, Western Province returnable on 20-7-69.
2. Writ of Possession issued to Fiscal Western Province returnable on 20-1-69.

Intld : .....

(132)  
25-7-68

Proctor for Petitioner tenders petition and affidavit from the petitioner together with a copy of the petition filed this day in the Supreme Court and for the reasons stated therein moves Court to direct the stay of execution of decree pending appeal.

Support with certified copy of application made in the Supreme Court for stay of execution. 30

Sgd : D. WIMALARATNE  
*Additional District Judge*  
25-7-68.

(133)  
27-7-68

Deputy Fiscal, Colombo forwards Notice under Section 232 of the Civil Procedure Code for seizure of Rs. 27,200/- out of the monies deposited by the defendant to the credit of action to satisfy a part of the writ amount.

Intld : .....

(134)

27-7-68

The Registrar, Supreme Court forwards order of Supreme Court Application No. 379 of 1968 stating that when the application came up before Supreme Court on 26-7-68 the Court made Order minuted of record as follows :

“ Let Notice be issued on respondent and execution of Writ be stayed pending disposal of this application. Let this Application be listed for hearing as expeditiously as possible.”

Stay execution of decree and recall Writ.

10

Sgd : D. WIMALARATNE  
Additional District Judge  
27-7-68.

(135)

10-8-68

Deputy Fiscal, Colombo returns writ for delivery of immoveable property unexecuted — vide report filed.

Intld : .....

(136)

10-8-68

20 Deputy Fiscal, Colombo returns Writ of execution unexecuted — vide report filed.

Intld : .....

(137)

10-8-68

Kachcheri Receipt No. 1126 (D/16 777120) of 10-7-68 for Rs. 800/- filed.

Intld : .....

(138)

29-7-68

10-8-68

30 Proctor for defendant moves for a Deposit Note for Rs. 800/- amount due for August.

Issue Deposit Note.

Sgd : C. V. UDALAGAMA  
Additional District Judge

Deposit Note issued.

Intld : .....

No. 1  
Journal  
Entries-  
13-5-63  
to  
7-4-69  
—Continued

(139)

30-7-68

The Manager, Hongkong & Shanghai Banking Corporation informs Court that they hold Rs. 36/70 lying in the account of the defendant — reference the Prohibitory Notice dated 26-7-68 served on them by Deputy Fiscal, Colombo.

File.

Sgd : C. V. UDALAGAMA  
*Additional District Judge*

(140)

27-8-68

Proctor for Defendant - Appellant for the reasons stated in the motion moves Court to make an order directing the Fiscal Western Province to withdraw the Prohibitory notices issued by him to the said Bank and others.

10

File with consent of Plaintiff.

Sgd : D. WIMALARATNE  
*Additional District Judge*

(141)

27-8-68

Proctor for defendant moves for a Deposit Note for Rs. 800/- being the amount due to the Plaintiff for September 1968.

20

Issue Deposit Note for Rs. 800/-.

Sgd : D. WIMALARATNE  
*Additional District Judge*

Deposit Note No. 022526 issued.

Intld : .....

(142)

2-10-68

Proctor for defendant moves for a Deposit Note for Rs. 800/- being the amount due to the plaintiff for the month of October 1968 in favour of the defendant. Issue Deposit Note for Rs. 800/-.

30

Sgd : D. WIMALARATNE  
*Additional District Judge*

(143)

31-10-68

Proctor for defendant moves for a Deposit Note for Rs. 800/- being the amount due for November 1968. Issue Deposit Note for Rs. 800/-.

Sgd : D. WIMALARATNE  
*Additional District Judge*

C/022936.

Intld : ..... 40

(144)

6-12-68

Proctor for defendant for the reasons stated in the motion moves for a Deposit Note for Rs. 800/- being amount due for December 1968.  
Issue Deposit Note for Rs. 800/-

No. 1  
Journal  
Entries-  
13-5-63  
to  
7-4-69  
*Continued*

Sgd : D. WIMALARATNE  
*Additional District Judge*

Deposit Note issued.

Intld : .....

10 (145)

13-12-68

Registrar, Supreme Court forwards for the information a copy of order of Supreme Court dated 28-11-68 in Supreme Court Application No. 379/68 for Conditional Leave to appeal to the Privy Council from the judgment of the Supreme Court dated 11-7-68 in this case.

Proctors to note.

File.

Sgd : D. WIMALARATNE  
*Additional District Judge*

20 Defendant to pay monthly Rs. 1,235/60 from 10-1-69.

(146)

17-12-68

Kachcheri Receipt No. 961 (D/16—783194) of 10-8-68 for Rs. 800/- filed.

Intld : .....

(147)

17-12-68

Kachcheri Receipt No. 1185 (D/16—787914) of 10-9-68 for Rs. 800/- filed.

Intld : .....

(148)

30 17-12-68

Kachcheri Receipt No. 1074 (P/16—812826) of 10-10-68 for Rs. 800/- filed.

Intld : .....

(149)

17-12-68

Kachcheri Receipt No. 1023 (P/16—817364) of 10-11-68 for Rs. 800/- filed.

Intld : .....

(150)

17-12-68

Kachcheri Receipt No. 597 (P/16—820334) of 9-12-68 for Rs. 800/- filed.

40

Intld : .....



No. 1  
Journal  
Entries—  
13-5-63  
to  
7-4-69  
—Continued

(151)

4/21-1-69

Proctor for Defendant moves for a Deposit Note for Rs. 1,235/60 being the amount due to the Plaintiff for the month of January 1969 in favour of the defendant.

Issue Deposit Note.

Sgd : .....  
*Additional District Judge*

Deposit Note 028269.

Intld : ..... 10

(152)

5-2-69

Proctor for defendant moves for a Deposit Note in favour of the defendant for Rs. 1235/60 being the amount due to the plaintiff for the month of February 1969.

Issue Deposit Note.

Sgd : D. WIMALARATNE  
*Additional District Judge*

Deposit Note No. 028285.

Intld : ..... 20

(153)

1-3-69

Proctor for defendant moves for a Deposit Note in favour of the defendant for Rs. 1235/60 being the amount due to the plaintiff for the month of March 1969.

Issue Deposit Note.

Sgd : D. WIMALARATNE  
*Additional District Judge*

Deposit Note issued.

Intld : ..... 30

(154)

22-3-69

Registrar, Supreme Court by his letter No. B. 19/69 of 22-3-69 calls for the record in this case as an appeal to the Privy Council has been allowed.

Forward Vol. I and II to Registrar, Supreme Court.

Sgd : D. WIMALARATNE  
*Additional District Judge*

(155)

7-4-69

Record forwarded to Registrar, Supreme Court.

Sgd : .....  
*Administrative Secretary*

40

No. 2

No. 2  
Plaint of  
the plaintiff-  
13-5-63

**PLAINT OF THE PLAINTIFF**  
**IN THE DISTRICT COURT OF COLOMBO.**

MRS. FRANCESCA VICTORIA NEE MORAIS  
of 267/2, Galle Road, Bambalapitiya,  
Colombo.

*Plaintiff.*

No. 10207/L.  
Procedure: Regular.  
10 Nature : Land.  
Value : Rs. 855165/20

*Vs.*

JOSEPHINE MARY ALOYSIA MORAIS of  
No. 23/2, Lauries Road, Bambalapitiya.  
Colombo.

*Defendant.*

On this 13th day of May, 1963.

The Plaintiff of the Plaintiff abovenamed appearing by D. N. THURAIRAJAH, her Proctor, states as follows:—

1. The Defendant resides, the lands and premises which form the subject  
20 matter of this action are situated and the causes of action hereinafter set out  
have arisen in Colombo within the local limits of the Jurisdiction of this Court.

**FOR A FIRST CAUSE OF ACTION**

2. Under and by virtue of Deed No. 2019 dated the 1st day of March 1901 attested by J. J. de Fry Notary Public of Colombo, one Mariam Morais deceased was the owner of the land and premises presently bearing assessment No. 34, St. Lucia's Street, Kotahena, Colombo which said land and premises are more fully described in the Schedule "A" hereto.

3. The said Mariam Morais was the owner of moveable and other immoveable properties.

30 4. The said Mariam Morais died on the 3rd day of February 1918 leaving a Last Will executed by him bearing No. 1080 dated the 8th day of September, 1917 and attested by G. A. Wille Notary Public of Colombo by which the said Mariam Morais appointed and constituted Maria Joseph Carvalho, Bernard Miranda and Stephen Corera the Executors and Trustees of his said Last Will.

5. The said Last Will was admitted to Probate in Testamentary proceedings No. 6237 of this Court and Probate was issued to the said Executors.

6. By the said Last Will the Testator Mariam Morais having made certain specific bequests of moveable and immoveable property devised and bequeathed all the rest and residue of his real, immoveable, personal and moveable properties, estate and effects whether in possession expectancy reversion, or remainder or otherwise including the property described in the Schedule "A" hereto unto the said three Trustees upon inter alia the following trusts namely:—

- (a) to convey the immoveable properties belonging to the said Trust Estate which included the land and premises described in the Schedule "A" hereto unto his son Lewis Anthony Morais on his attaining the age of thirty five years on the twentyfifth day of July one Thousand nine hundred thirty three, subject to the conditions that is to say "that the said Lewis Anthony Morais shall in no wise sell mortgage or otherwise alienate or encumber the said properties and premises hereby conveyed or any portion thereof but shall only have possess and enjoy the rents issues and profits arising and accruing therefrom during the term of his natural life and that at his death the said properties and premises shall devolve on his lawful son or sons only (if more than one in equal shares) absolutely but if there be no lawful son surviving him at his death then and in that event the same shall devolve on his lawful daughter or daughters (if more than one in equal shares) absolutely the lawful issue of a deceased son or daughter taking the share to which his, her or their parent would have become entitled to if living".
- (b) Upon trust to sell and convert into money such of the said immoveable properties belonging to the said Trust Estate as the said Trustees shall in their absolute discretion think advisable or expedient to sell by reason of the said properties not giving fair or reasonable rent income or return therefrom and from the proceeds of the sale thereof to purchase other immoveable property or properties and any such immoveable property or properties purchased as aforesaid shall form part of the said Trust Estate and be subject to the same trusts as are expressed and contained in the said Last Will.

7. In terms of the said Last Will and in the exercise of the powers conferred on them thereby the said three Trustees Maria Joseph Carvalho, Bernard Miranda and Stephen Corera by Deed No. 1208 dated the 21st day of September 1933 and attested by P. M. de S. Seneviratne Notary Public of Colombo granted conveyed assigned transferred and set over unto the said Lewis Anthony Morais *inter alia* the land and premises described in the Schedule "A" hereto subject to the following reservations and restrictions that is to say that the said Lewis Anthony Morais shall in no wise sell mortgage or otherwise alienate or encumber the said properties and premises hereby conveyed or any portion thereof but shall only have possess and enjoy the rents issues and profits arising and accruing therefrom during the term of his natural life and that at his death the said properties and premises shall

devolve on his lawful son or sons only (if more than one in equal shares) absolutely but if there be no lawful son surviving him at his death then and in that event the same shall devolve on his lawful daughter or daughters (if more than one in equal shares) absolutely the lawful issue of a deceased son or daughter taking the share to which his, her or their parent would have become entitled to if living."

No. 2  
Plaint of  
the Plaintiff-  
13-5-63  
—Continued

8. The said Lewis Anthony Morais had two children namely a daughter, the Plaintiff, and a son Maria Xavier Morais who died on the 14th August 1933 without leaving any issue. The said Lewis Anthony Morais died on  
10 the 2nd day of September 1958 leaving an only surviving child namely his daughter who is the plaintiff in this action.

9. Lewis Anthony Morais as fiduciary under and in terms of the said Last Will and/or under the said Deed No. 1208 and his predecessors in title have been in undisturbed and uninterrupted possession of the land and premises more fully described in the Schedule "A" hereto for a period of over 10 years by a title adverse to and independent of that of the Defendant, and the Plaintiff as the fideicommissary successor in title is entitled to and claims the benefit of section 3 of Prescription Ordinance.

10. Upon the death of the said Lewis Anthony Morais the Plaintiff  
20 abovenamed became the owner of the land and premises described in the Schedule "A" hereto.

11. Since the date of the death of the said Lewis Anthony Morais, the Defendant abovenamed, who is his widow, has been in wrongful and unlawful possession of the said land and premises without any manner of right or title and has been disputing the Plaintiff's title thereto.

12. By reason of the said wrongful and unlawful possession of the said land and premises the plaintiff has sustained damages at Rs. 66.28 per month aggregating to Rs. 3,711.68 and is continuing to sustain damages at the said rate. However in regard to accrued damages the plaintiff limits her claim to  
30 Rs. 2,319.80 being damages sustained by her for the period from 1st June 1960 to 30th April 1963.

13. A cause of action has therefore accrued to the Plaintiff to sue the defendant (a) for a declaration of title to the said land and premises more fully described in the Schedule "A" hereto, (b) for the ejection of the Defendant therefrom (c) for the recovery of the sum of Rs. 2,319.80 being accrued damages from 1st June 1960 to 30th April 1963 and for the recovery of continuing damages at Rs. 66.28 per month from 1st May 1963 to the date of delivery of the said land and premises more fully described in the Schedule "A" hereto unto the Plaintiff.

#### 40 FOR A SECOND CAUSE OF ACTION

14. Under and by virtue of Deed No. 68 dated the 8th day of May 1913 attested by E. G. Gratiaen of Colombo the said Mariam Morais was the owner of the lands and premises presently bearing assessment Nos.10/4, 10/10,

10/12, 10/12A, 10/14, 10/15, 10/16, 10/17, 10/18, 10/19, 10/20, 10/21, 10/22, 10/23, 12, 14, 16, 18, 20, 22, 24, 26 and 28 Kochchikade Street (now known as St. Anthony's Mawatte) in Colombo which said lands and premises are more fully described in the Schedule "B" hereto.

15. The Plaintiff reiterates the averments in paragraphs 3,4 and 5 of the Plaintiff.

16. By the said Last Will, the Testator Mariam Morais having made certain specific bequests of moveable and immoveable property divided and bequeathed all the rest and residue of his real, immoveable, personal and moveable properties estate and effects whether in possession expectancy reversion<sup>10</sup> or remainder or otherwise including the property described in the Schedule "B" hereto unto the said three Trustees upon inter alia the following trusts namely:—

- (a) to convey the immoveable properties belonging to the said Trust Estate which included the lands and premises described in the Schedule "B" hereto unto his son Lewis Anthony Morais on his attaining the age of thirty five years on the twentyfifth day of July One thousand nine hundred and thirty three, subject to the conditions that is to say "that the said Lewis Anthony Morais shall in no wise sell mortgage or otherwise alienate or encumber the said properties and<sup>20</sup> premises hereby conveyed or any portion thereof but shall only have possess and enjoy the rents issues and profits arising and accruing therefrom during the term of his natural life and that at his death the said properties and premises shall devolve on his lawful son or sons only (if more than one in equal shares) absolutely but if there be no lawful son surviving him at his death then and in that event the same shall devolve on his lawful daughter or daughters (if more than one in equal shares) absolutely the lawful issue of a deceased son or daughter taking the share to which his, her or their parent would have become entitled to if living."<sup>30</sup>
- (b) Upon trust to sell and convert into money such of the said immoveable properties belonging to the said Trust Estate as the said Trustees shall in their absolute discretion think advisable or expedient to sell by reason of the said properties not giving a fair or reasonable rent income or return therefrom and from the proceeds of the sale thereof to purchase other immoveable property or properties and any such immoveable property or properties purchased as aforesaid shall form part of the said trusts, estates and be subject to the same trusts as are expressed and contained in the said Last Will.

17. In terms of the said Last Will and in the exercise of the powers<sup>40</sup> conferred on them thereby the said three Trustees Maria Joseph Carvalho, Bernard Miranda and Stephen Corera by the said Deed No. 1208 granted conveyed assigned transferred and set over unto the said Lewis Anthony Morais inter alia the land and premises described in the Schedule 'B' hereto subject to the following reservations and restrictions that is to say "that the said Lewis Anthony Morais shall in no wise sell, mortgage or otherwise alienate

or encumber the said properties and premises hereby conveyed or any portion thereof but shall only have possess and enjoy the rents issues and profits arising and accruing therefrom during the term of his natural life and that at his death the said properties and premises shall devolve on his lawful son or sons only (if more than one in equal shares) absolutely but if there be no lawful son surviving him at his death then and in that event the same shall devolve on his lawful daughter or daughters (if more than one in equal shares) absolutely the lawful issue of a deceased son or daughter taking the share to which his, her or their parent would have become entitled to if living."

No. 2  
Plaint of  
the Plaintiff -  
13-5-63  
—Continued

10 18. The plaintiff reiterates the averments in paragraph 8 of the Plaintiff.

19. Lewis Anthony Morais as fiduciary under and in terms of the said Last Will and or under the said Deed No. 1208 and his predecessors in title have been in undisturbed and uninterrupted possession of the lands and premises more fully described in the Schedule 'B' hereto for a period of over 10 years by a title adverse to and independent of that of the Defendant, and the Plaintiff as the fidei-commissary successor in title is entitled to and claims the benefit of section 3 of the Prescription Ordinance.

20. Upon the death of the said Lewis Anthony Morais the Plaintiff above-named became the owner of the said land and premises described in the 20 Schedule "B" hereto.

21. Since the date of the death of the said Lewis Anthony Morais, the Defendant abovenamed who is his widow has been in wrongful and unlawful possession of the said lands and premises without any manner of right or title and has been disputing the Plaintiff's title thereto.

22. By reason of the said wrongful and unlawful possession of the said lands and premises the Plaintiff has sustained damages at Rs. 156.89 per month aggregating to Rs. 8,785.84 and is continuing to sustain damages at the said rate. However in regard to accrued damages the Plaintiff limits her claim to Rs. 5,491.15 being damages sustained by her for the period from 1st June 30 1960 to 30th April 1963.

23. A cause of action has therefore accrued to the Plaintiff to sue the defendant (a) for a declaration of title to the said lands and premises more fully described in the Schedule 'B' hereto (b) for the ejectment of the defendant therefrom and (c) for the recovery of the sum of Rs. 5,491.15 being accrued damages from 1st June 1960 to 30th April 1963 and for the recovery of continuing damages at Rs. 156.89 per month from 1st May 1963 to the date of delivery of the said lands and premises more fully described in the Schedule "B" hereto unto the Plaintiff.

#### FOR A THIRD CAUSE OF ACTION

40 24. Under and by virtue of Deed No. 708 dated the 5th day of November 1915 and attested by W. E. V. de Rooy Notary Public of Colombo the said Mariam Morais was the owner of the land and premises presently bearing assessment No. 20 situated at Galpotta Street, Kotahena, Colombo which said land and premises are more fully described in the Schedule "C" hereto.

of his real immoveable personal and moveable properties, estate and effects whether in possession expectancy reversion or remainder or otherwise including the property described in the Schedule "D" hereto unto the said three Trustees upon inter alia the following trusts namely

37. (a) to convey the immoveable properties belonging to the said Trust Estate which included the land and premises described in the Schedule "D" hereto unto his son Lewis Anthony Morais on his attaining the age of thirty five years on the Twentyfifth day of July One thousand nine hundred and thirty three, subject to the conditions that is to say "that the said Lewis Anthony Morais shall in no wise 10 sell, mortgage or otherwise alienate or encumber the said properties and premises hereby conveyed or any portion thereof but shall only have possess and enjoy the rents issues and profits arising and accruing therefrom during the term of his natural life and that at his death the said properties and premises shall devolve on his lawful son or sons only (if more than one in equal shares) absolutely but if there be no lawful son surviving him at his death then and in that event the same shall devolve on his lawful daughter or daughters (if more than one in equal shares) absolutely the lawful issue of a deceased son or daughter taking the share to which his, her or 20 their parent would have become entitled to if living."

(b) Upon trust to sell and convert into money such of the said immoveable properties belonging to the said Trust Estate as the said Trustees shall in their absolute discretion think adviseable or expedient to sell by reason of the said properties not giving a fair or reasonable rent income or return therefrom and from the proceeds of the sale thereof to purchase other immoveable property or properties and any such immoveable property or properties purchased as aforesaid shall form part of the said Trust Estate and be subject to the same trusts as are expressed and contained in the said Last Will. 30

38. In terms of the said Last Will and in the exercise of the powers conferred on them thereby the said three Trustees Maria Joseph Carvalho, Bernard Miranda and Stephen Corera by the said Deed No. 1208 granted conveyed assigned transferred and set over unto the said Lewis Anthony Morais inter alia the land and premises described in the Schedule "D" hereto subject to the following reservations and restrictions that is to say "that the said Lewis Anthony Morais shall in no wise sell mortgage or otherwise alienate or encumber the said properties and premises hereby conveyed or any portion thereof but shall only have possess and enjoy the rents issues and profits arising and accruing therefrom during the term of his natural life and that at his 40 death the said properties and premises shall devolve on his lawful son or sons only (if more than one in equal shares) absolutely but if there be no lawful son surviving him at his death then and in that event the same shall devolve on his lawful daughter or daughters (if more than one in equal shares) absolutely the lawful issue of a deceased son or daughter taking the share to which his, her or their parent would have become entitled to if living."

39. The plaintiff reiterates the averments in paragraph 8 of the Plaintiff.

40. Lewis Anthony Morias as fiduciary under and in terms of the said Last Will and or under the said Deed No. 1208 and his predecessors in title have been in undisturbed and uninterrupted possession of the land and premises more fully described in the Schedule "D" hereto for a period of over 10 years by a title adverse to and independent of that of the defendant, and the Plaintiff as the fideicommissary successor in title is entitled to and claims the benefit of section 3 of the Prescription Ordinance.

41. Upon the death of the said Lewis Anthony Morais the Plaintiff abovenamed became the owner of the land and premises described in the 10 Schedule "D" hereto.

42. Since the date of the death of the said Lewis Anthony Morais the Defendant abovenamed, who is his widow, has been in wrongful and unlawful possession of the said land and premises without any manner of right or title and has been disputing the Plaintiff's title thereto.

43. By reason of the said wrongful and unlawful possession of the said land and premises, the Plaintiff has sustained damages at Rs. 60.50 per month aggregating to Rs. 3,388/- and is continuing to sustain damages at the said rate. However in regard to accrued damages, the Plaintiff limits her claim to Rs. 2,117.50 being damages sustained by her for the period from 1st June 20 1960 to 30th April 1963.

44. A cause of action has therefore accrued to the Plaintiff to sue the Defendant (a) for a declaration of title to the said land and premises more fully described in the Schedule "D" hereto, (b) for the ejectment of the Defendant therefrom (c) for the recovery of the sum of Rs. 2,117.50 being accrued damages from the 1st June 1960 to 30th April 1963 and for the recovery of continuing damages at Rs. 60.50 per month from 1st May 1963 to the date of delivery of the said land and premises more fully described in the Schedule "D" hereto unto the Plaintiff.

#### FOR A FIFTH CAUSE OF ACTION

30 45. Under and by virtue of the said Deed No. 708 the said Mariam Morais was the owner of the lands and premises presently bearing assessment Nos. 6, 6/6, 6/10, 6/12, 6/13, 6/14, 6/15, 6/16, 6/17, 6/18, 6/19, 6/20, 6/21, 6/22, 6/23, 6/24, 6/25, 6/26, 6/29, 6/30 and 6/31 situated at Galpote Street, Colombo and which said lands and premises are more fully described in the Schedule "E" hereto.

46. The Plaintiff reiterates the averments in paragraphs 3,4 and 5 of the Plaintiff.

47. By the said Last Will, the Testator Mariam Morais having made certain specific bequests devised and bequeathed all the rest and residue of 40 his real immoveable personal and moveable properties, estate and effects whether in possession expectancy reversion or remainder or otherwise including



the property described in the Schedule “E” hereto unto the said three Trustees upon inter alia the following trusts namely:—

- (a) to convey the immoveable properties belonging to the said Trust Estate which included the lands and premises described in the Schedule “E” hereto unto his son Lewis Anthony Morais on his attaining the age of thirtyfive years on the Twentyfifth day of July One thousand nine hundred and thirty three, subject to the conditions that is to say “that the said Lewis Anthony Morais shall in no wise sell, mortgage or otherwise alienate or encumber the said properties and premises hereby conveyed or any portion thereof 10 but shall only have possess and enjoy the rents issues and profits arising and accruing therefrom during the term of his natural life and that at his death the said properties and premises shall devolve on his lawful son or sons only (if more than one in equal shares) absolutely but if there be no lawful son surviving him at his death then and in that event the same shall devolve on his lawful daughter or daughters (if more than one in equal shares) absolutely the lawful issue of a deceased son or daughter taking the share to which his her or their parent would have become entitled to if living.”
- (b) Upon trust to sell and convert into money such of the said immove- 20 able properties belonging to the said Trust Estate as the said Trustees shall in their absolute discretion think advisable or expedient to sell by reason of the said properties not giving a fair or reasonable rent income or return therefrom and from the proceeds of the sale thereof to purchase other immoveable property or properties and any such immoveable property or properties purchased as aforesaid shall form part of the said Trust Estate and be subject to the same trusts as are expressed and contained in the said Last Will.

48. In terms of the said Last Will and Testament and in the exercise of the powers conferred on them thereby the said three Trustees Maria Joseph 30 Carvalho, Bernard Miranda and Stephen Corera by the said Deed No. 1208 granted conveyed assigned transferred and set over unto the said Lewis Anthony Morais inter alia the lands and premises described in the Schedule “E” hereto subject to the following reservations and restrictions that is to say “that the said Lewis Anthony Morais shall in no wise sell, mortgage or otherwise alienate or encumber the said properties and premises hereby conveyed or any portion thereof but shall only have possess and enjoy the rents issues and profits arising and accruing therefrom during the term of his natural life and that at his death the said properties and premises shall devolve on his lawful son or sons only (if more than one in equal shares) absolutely but if there be no 40 lawful son surviving him at his death then and in that event the same shall devolve on his lawful daughter or daughters (if more than one in equal shares) absolutely the lawful issue of a deceased son or daughter taking the share to which his, her or their parent would have become entitled to if living.”

49. Lewis Anthony Morais as fiduciary under and in terms of the said Last Will and or under the said deed No. 1208 and his predecessors in title have been in undisturbed and uninterrupted possession of the lands and premises

more fully described in the Schedule "E" hereto for a period of over 10 years by a title adverse to and independent of that of the Defendant and the plaintiff as the fideicommissary successor in title is entitled to and claims the benefit of section 3 of the Prescription Ordinance.

No. 2  
Plaint of  
the Plaintiff-  
13-5-63  
—Continued

50. The plaintiff reiterates the averments in paragraph 8 of the Plaintiff.

51. Upon the death of the said Lewis Anthony Morais the Plaintiff abovenamed became the owner of the land and premises described in the Schedule "E" hereto.

52. Since the date of the death of the said Lewis Anthony Morais, the 10 Defendant abovenamed, who is his widow, has been in wrongful and unlawful possession of the said lands and premises without any manner of right or title and has been disputing the plaintiff's title thereto.

53. By reason of the said wrongful and unlawful possession of the said lands and premises the Plaintiff has sustained damages at Rs. 283.72 per month aggregating to Rs. 15, 888.32 and is continuing to sustain damages at the said rate. However in regard to accrued damages the Plaintiff limits her claim to Rs. 9,930.20 being damages sustained by her for the period from 1st June 1960 to 30th April 1963.

54. A cause of action has therefore accrued to the Plaintiff to sue the 20 Defendant (a) for a declaration of title to the said lands and premises more fully described in the Schedule "E" hereto (b) for the ejection of the defendant therefrom (c) for the recovery of the sum of Rs. 9,930.20 being accrued damages from 1st June 1960 to 30th April 1963 and for the recovery of continuing damages at Rs. 283.72 per month from 1st May 1963 to the date of delivery of the said lands and premises more fully described in the Schedule "E" hereto unto the Plaintiff.

#### **FOR A SIXTH CAUSE OF ACTION**

55. Under and by virtue of Deed No. 857 dated the 22nd day of August 1916 attested by G. A. H. Wille Notary Public of Colombo the said Mariam 30 Morais was the owner of the lands and premises presently bearing assessment Nos. 165/1, 165/2, 165/3, 165/4, 165/6, 165/7, 165/8, 165/9, 165/9A, 165/10, 165/12A, 165/14, 165/15, 165 1/1 and 167 Chekku Street (now known as Srikathireshan Street) Colombo which said lands and premises are more fully described in the Schedule "F" hereto.

56. The Plaintiff reiterates the averments in paragraphs 3, 4 and 5 of the Plaintiff.

57. By the said Last Will the Testator Mariam Morais having made certain specific bequests devised and bequeathed all the rest and residue of his real, immoveable personal moveable properties estate and effects whether in 40 possession expectancy reversion or remainder or otherwise including the property described in the Schedule "F" hereto unto the said three Trustees upon inter alia the following trusts namely:

- (a) to convey the immoveable properties belonging to the said Trust Estate which included the lands and premises described in the Schedule "F" hereto unto his son Lewis Anthony Morais on his attaining the age of thirty five years on the Twentyfifth day of July One thousand nine hundred and thirty three, subject to the conditions that is to say "that the said Lewis Anthony Morais shall in no wise sell, mortgage or otherwise alienate or encumber the said properties and premises hereby conveyed or any portion thereof but shall only have possess and enjoy the rents issues and profits arising and accruing therefrom during the term of his natural 10 life and that at his death the said properties and premises shall devolve on his lawful son or sons only (if more than one in equal shares) absolutely but if there be no lawful son surviving him at his death then and in that event the same shall devolve on his lawful daughter or daughters (if more than one in equal shares) absolutely the lawful issue of a deceased son or daughter taking the share to which his, her or their parent would have become entitled to if living."
- (b) Upon trust to sell and convert into money such of the said immoveable properties belonging to the said Trust Estate as the said Trustees 20 shall in their absolute discretion think advisable or expedient to sell by reason of the said properties not giving a fair or reasonable rent income or return therefrom and from the proceeds of the sale thereof to purchase other immoveable property or properties and any such immoveable property or properties purchased as aforesaid shall form part of the said Trust Estate and be subject to the same trusts as are expressed and contained in the said Last Will.

58. In terms of the said Last Will and in the exercise of the powers conferred on them thereby the said three Trustees Maria Joseph Carvalho, Bernard Miranda and Stephen Corera by the said Deed No. 1208 granted conveyed 30 assigned transferred and set over unto the said Lewis Anthony Morais inter alia the lands and premises described in the Schedule "F" hereto subject to the following reservations and restrictions that is to say "that the said Lewis Anthony Morais shall in no wise sell mortgage or otherswie alienate or encumber the said properties and premises hereby conveyed or any portion thereof but shall only have possess and enjoy the rents issues and profits arising and accruing therefrom during the term of his natural life and that at his death the said properties and premises shall devolve on his lawful son or sons only (if more than one in equal shares) absolutely but if there be no lawful son surviving him at his death then and in that event the same shall devolve on his 40 lawful daughter or daughters (if more than one in equal shares ) absolutely the lawful issue of a deceased son or daughter taking the share to which his, her or their parent would have become entitled to if living."

59. The Plaintiff reiterates the averments in paragraph 8 of the Plaintiff.

60. Lewis Anthony Morais as fiduciary under in terms of the said Last Will and or under the said Deed No. 1208 and his predecessors in title have been in undisturbed and uninterrupted possession of the lands and

premises more fully described in the Schedule "F" hereto for a period of over 10 years by title adverse to and independent of that of the defendant and the plaintiff as a fideicommissary successor in title is entitled to and claims the benefit of section 3 of the Prescription Ordinance.

No. 2  
Plaint of  
the Plaintiff -  
13-5-63  
—Continued

61. Upon the death of the said Lewis Anthony Morais the Plaintiff abovenamed became the owner of the lands and premises described in the Schedule "F" hereto.

62. Since the date of the death of the said Lewis Anthony Morais the Defendant abovenamed, who is his widow, has been in wrongful and unlawful possession of the said lands and premises without any manner of right or title and has been disputing the plaintiff's title thereto.

63. By reason of the said wrongful and unlawful possession of the said lands and premises the Plaintiff has sustained damages at Rs. 314.80 per month aggregating to Rs. 17,628.80 and is continuing to sustain damages at the said rate. However in regard to accrued damages the plaintiff limits her claim to Rs. 11,018.00 being damages sustained by her for the period from 1st June 1960 to 30th April 1963.

64. A cause of action has therefore accrued to the Plaintiff to sue the defendant (a) for a declaration of title to the said land and premises more fully described in the Schedule "F" hereto (b) for the ejectment of the defendant therefrom (c) for the recovery of the sum of Rs. 11,018/- being accrued damages from the 1st June 1960 to 30th April 1963 and for the recovery of continuing damages at Rs. 314.80 per month from 1st May 1963 to the date of delivery of the said land and premises more fully described in the Schedule "F" hereto unto the Plaintiff.

#### FOR A SEVENTH CAUSE OF ACTION

65. Under and by virtue of the said Deed No. 857 the said Mariam Morais was the owner of the lands and premises presently bearing Assessment Nos. 44A, 44/1, 44/2, 44/3, 44/4, 44/5, 44/7, 44/8, 44/9, 44/11 and 44/12, situated at Brass-founder Street, Colombo which said lands and premises are more fully described in the Schedule "G" hereto.

66. The plaintiff reiterates the averments in paragraphs 3,4 and 5 of the Plaint.

67. By the said Last Will the Testator Mariam Morais having made certain specific bequests devised and bequeathed all the rest and residue of his real immoveable personal and moveable properties estate and effects whether in possession expectancy reversion or remainder or otherwise including the property described in the Schedule "G" hereto unto the three Trustees upon inter alia the following trusts namely:

- 40 (a) to convey the immoveable properties belonging to the said Trust Estate which included the lands and premises described in the Schedule "G" hereto unto his son Lewis Anthony Morais on his attaining the age of Thirtyfive years on the twentyfifth day of

July One thousand nine hundred and thirtythree, subject to the conditions that is to say “that the said Lewis Anthony Morais shall in no wise sell mortgage or otherwise alienate or encumber the said properties and premises hereby conveyed or any portion thereof but shall only have possess and enjoy the rents issues and profits arising and accruing therefrom during the term of his natural life and that at his death the said properties and premises shall devolve on his lawful son or sons only (if more than one in equal shares) absolutely but if there be no lawful son surviving him at his death then and in that event the same shall devolve on his 10 lawful daughter or daughters (if more than one in equal shares) absolutely the lawful issue of a deceased son or daughter taking the share to which his, her or their parents would have become entitled to if living.”

- (b) Upon trust to sell and convert into money such of the said immoveable properties belonging to the said Trust Estate as the said Trustees shall in their absolute discretion think advisable or expedient to sell by reason of the said properties not giving a fair or reasonable rent income or return therefrom and from the proceeds of the sale thereof to purchase other immoveable property or properties 20 and any such immoveable property or properties purchased as aforesaid shall form part of the said Trust Estate and be subject to the same trust as are expressed and contained in the said Last Will.

68. In terms of the said Last Will and in the exercise of the powers conferred to them thereby the said three Trustees Maria Joseph Carvalho, Bernard Miranda and Stephen Corera by the said Deed No. 1208 granted conveyed assigned transferred and set over unto the said Lewis Anthony Morais inter alia the lands and premises described in the Schedule “G” hereto subject to the following reservations and restrictions that is to say “that the said Lewis Anthony Morais shall in no wise sell, mortgage or otherwise 30 alienate or encumber the said properties and premises hereby conveyed or any portion thereof but shall only have possess and enjoy the rents issues and profits arising and accruing therefrom during the term of his natural life and that at his death the said properties and premises shall devolve on his lawful son or sons only (if more than one in equal shares) absolutely but if there be no lawful son surviving him at his death then and in that event the same shall devolve on his lawful daughter or daughters (if more than one in equal shares) absolutely the lawful issue of a deceased son or daughter taking the share to which his, her or their parent would have become 40 entitled to if living.”

69. The Plaintiff reiterates the averments in paragraph 8 of the Plaintiff.

70. Lewis Anthony Morais as fiduciary under and in terms of the said Last Will and or under the said Deed No. 1208 and his predecessors in title have been in undisturbed and uninterrupted possession of the lands and premises more fully described in the schedule “G” hereto for a period of over 10 years by a title adverse to and independent of that of the defendant and the Plaintiff as the fideicommissary successor in title is entitled to and claims the benefit of section 3 of the Prescription Ordinance.

71. Upon the death of the said Lewis Anthony Morais the Plaintiff abovenamed became the owner of the Lands and premises described in the Schedule "G" hereto.

No. 2  
Plaint of  
the Plaintiff-  
13-5-63  
—Continued

72. Since the date of the death of the said Lewis Anthony Morais the Defendant abovenamed, who is his widow, has been in wrongful and unlawful possession of the said lands and premises without any manner or right or title and has been disputing the plaintiff's title thereto.

73. By reason of the said wrongful and unlawful possession of the said lands and premises the Plaintiff has sustained damages at Rs. 124.05 per month aggregating to Rs. 6,946.80 and is continuing to sustain damages at the said rate. However in regard to the accrued damages the Plaintiff limits her claim to Rs. 4,341.75 being damages sustained by her from the period from 1st June 1960 to 30th April 1963.

74. A cause of action has therefore accrued to the plaintiff to sue the Defendant (a) for a declaration of title to the said lands and premises more fully described in the Schedule "G" hereto (b) for the ejectment of the Defendant therefrom (c) for the recovery of the sum of Rs. 4,341.75 being accrued damages from 1st June 1960 to 30th April 1963 and for the recovery of continuing damages at Rs. 124.05 per month from 1st May 1963 to the date of delivery of the said lands and premises more fully described in the Schedule "G" hereto unto the Plaintiff.

#### FOR A EIGHTH CAUSE OF ACTION

75. Under and by virtue of the said Deed No. 857 the said Mariam Morais was the owner of the lands and premises presently bearing assessment Nos. 42, 42/2 42/3, 42/4, 42/5, 42/6, 42/7, 42/9 42/10 and 42/11 at Brassfounder street, Colombo which said lands and premises are more fully described in the Schedule "H" hereto.

76. The Plaintiff reiterates the averments in paragraphs 3, 4 and 5 of the plaint.

77. By the said Last Will the Testator Mariam Morais having made certain specific bequests devised and bequeathed all the rest and residue of his real immoveable personal and moveable properties estate and effects whether in possession expectancy reversion or remainder or otherwise including the property described in the Schedule "H" hereto unto the said three Trustees upon inter alia the following trusts namely:—

(a) to convey the immoveable properties belonging to the said Trust Estate which included the lands and premises described in the Schedule "H" hereto unto his son Lewis Anthony Morais on his attaining the age of thirtyfive years on the Twentyfifth day of July One thousand nine hundred and thirtythree, subject to the conditions that is to say "that the said Lewis Anthony Morais shall in no wise sell mortgage or otherwise alienate or encumber the said properties and premises hereby conveyed or any portion thereof but shall

only have possess and enjoy the rents issues and profits arising and accruing therefrom during the term of his natural life and that at his death the said properties and premises shall devolve on his lawful son or sons only (if more than one in equal shares) absolutely but if there be no lawful son surviving him at his death then and in that event the same shall devolve on his lawful daughter or daughters (if more than one in equal shares) absolutely lawful issue of a deceased son or daughter taking the share to which his, her or their parent would have become entitled to if living.”

- (b) Upon trust to sell and convert into money such of the said immove- 10  
 able properties belonging to the said Trust Estate as the said trustees shall in their absolute discretion think advisable or expedient to sell by reason of the said properties not giving a fair or reasonable rent income or return therefrom and from the proceeds of the sale thereof to purchase other immoveable property or properties and any such immoveable property or properties purchased as aforesaid shall form part of the said Trust Estate and be subject to the same trusts as are expressed and contained in the said Last Will.

78. In term of the said Last Will and in the exercise of the powers conferred to them thereby the said three Trustees Maria Joseph Carvalho, 20  
 Bernard Miranda and Stephen Corera by the said Deed No. 1208 granted conveyed assigned transferred and set over unto the said Lewis Anthony Morais inter alia the lands and premises described in the Schedule “H” hereto subject to the following reservations and restrictions that is to say “that the said Lewis Anthony Morais shall in no wise sell mortgage or otherwise alienate or encumber the said properties and premises hereby conveyed or any portion thereof but shall only have possess and enjoy the rents issues and profits arising and accruing therefrom during the term of his natural life and that at his death the said properties and premises shall devolve 30  
 on his lawful son or sons only (if more than one on equal shares) absolutely but if there be no lawful son surviving him at his death then and in that event the same shall devolve on his lawful daughter or daughters (if more than one in equal shares) absolutely the lawful issue of a deceased son or daughter taking the share to which his, her or their parent would have become entitled to if living.”

79. The plaintiff reiterates the averments in paragraph 8 of the Plaintiff.

80. Lewis Anthony Morais as fiduciary under and in terms of the said Last Will and or under the said Deed No. 1208 and his predecessors in title have been in undisturbed and uninterrupted possession of the lands and premises more fully described in the Schedule “H” hereto for a period of 40  
 over 10 years by a title adverse to and independent of that of the Defendant and the Plaintiff as the fideicommissary successor in title is entitled to and claims the benefit of section 3 of the Prescription Ordinance.

81. Upon the death of the said Lewis Anthony Morais the Plaintiff abovenamed became the owner of the lands and premises described in the Schedule “H” hereto.

82. Since the date of the death of the said Lewis Anthony Morais the defendant abovenamed who is his widow, has been in wrongful and unlawful possession of the said lands and premises without any manner of right or title and has been disputing the plaintiff's title thereto.

No. 2  
Plaint of  
the Plaintiff-  
13-5-63  
---Continued

83. By reason of the said wrongful and unlawful possession of the said lands and premises the plaintiff has sustained damgaes at Rs. 113.65 per month aggregating to Rs. 6,364.40 and is continuing to sustain damages at the said rate. However in regard to accrued damages the plaintiff limits her claim to Rs. 3,977.75 being damages sustained by her for the period from 1st June  
10 1960 to 30th April 1963.

84. A cause of action has therefore accrued to the Plaintiff to sue the Defendant (a) for a declaration of title to the said lands and premises more fully described in the Schedule "H" hereto (b) for the ejection of the Defendant therefrom (c) for the recovery of the sum of Rs. 3,977.75 being accrued damages from the 1st June 1960 to 30th April 1963 and for the recovery of continuing damages at Rs. 113.65 per month from 1st May 1963 to the date of delivery of the said lands and premises more fully described in the Schedule "H" hereto unto the Plaintiff.

#### FOR A NINTH CAUSE OF ACTION

20 85. Under and by virtue of the said Deed No. 857 August 1916 attested by G. A. H. Wille Notary Public of Colombo the said Mariam Morais was the owner of premises presently bearing assessment Nos. 38/1, 38/2, 38/3, 38/4, 38/6, 38/7, 38/8, 38/9 and 38/10 situated at Brassfounder Street in Colombo and which said lands and premises are more fully described in the Schedule "I" hereto.

86. The plaintiff reiterates the averments in paragraphs 3, 4 and 5 of the Plaint.

87. By the said Last Will the Testator Mariam Morais having made certain specific bequests devised and bequeathed all the rest and residue of  
30 his real immoveable personal and moveable properties estate and effects whether in possession expectancy reversion remainder or otherwise including the property described in the Schedule "I" hereto unto the said Three Trustees upon inter alia the following trusts namely:—

40 (a) to convey the immoveable property belonging to the said Trust Estate which included the lands and premises described in the Schedule "I" hereto unto his son Lewis Anthony Morais on his attaining the age of Thirtyfive years on the twentyfifth day of July One thousand nine hundred and thirtythree subject to the conditions that is to say "that the said Lewis Anthony Morais shall in no wise sell, mortgage or otherwise alienate or encumber the said properties and premises hereby conveyed or any portion thereof but shall only have possess and enjoy the rents issues and profits arising and accruing therefrom during the term of his natural life and that at his death the said properties and premises shall devolve on his



lawful son or sons only (if more than one in equal shares) absolutely but if there be no lawful son surviving him at his death then and in that event the same shall devolve on his lawful daughter or daughters (if more than one in equal shares) absolutely the lawful issue of a deceased son or daughter taking the share to which his, her or their parent would have become entitled to if living.”

- (b) upon trust to sell and convert into money such of the said immoveable properties belonging to the said Trust Estate as the said Trustees shall in their absolute discretion think advisable or expedient to sell by reason of the said properties not giving a fair or 10· reasonable rent income or return therefrom and from the proceeds of the sale thereof to purchase other immoveable property or properties and any such immoveable property or properties purchased as aforesaid shall form part of the said Trust Estate and to subject to the same trusts as are expressed and contained in the said Last will.

88. In terms of the said Last Will and in the exercise of the powers conferred on them thereby the said three trustees Maria Joseph Carvalho, Bernard Miranda and Stephen Corera by the said Deed No. 1208 granted conveyed and assigned transferred and set over unto the said Lewis Anthony Morais 20 inter alia the lands and premises described in the Schedule “I” hereto subject to the following reservations and restrictions that is to say “that the said Lewis Anthony Morais shall in no wise sell, mortgage or otherwise alienate or encumber the said properties and premises hereby conveyed or any portion thereof but shall only have possess and enjoy the rents issues and profits arising and accruing therefrom during the term of his natural life and that at his death the said properties and premises shall devolve on his lawful son or sons only (if more than one in equal shares) absolutely but if there be no lawful son surviving him at his death then and in that event the same shall devolve on his lawful daughter or daughters (if more than one in equal shares) 30 absolutely the lawful issue of a deceased son or daughter taking the share to which his, her or their parent would have become entitled to if living.”

89. The Plaintiff reiterates the averments in paragraph 8 of the Plaintiff.

90. Lewis Anthony Morais fiduciary under and in terms of the said Last Will and or under the said Deed No. 1208 and his predecessors in title have been in undisturbed and uninterrupted possession of the lands and premises more fully described in the Schedule “I” hereto for a period of over 10 years by a title adverse to and independent of that of the Defendant and the Plaintiff as the fideicommissary successor in title is entitled to and claims the benefit of section 3 of the Prescription Ordinance. 40

91. Upon the death of the said Lewis Anthony Morais the Plaintiff abovenamed became the owner of the lands and premises described in the Schedule “I” hereto.

92. Since the date of the death of the said Lewis Anthony Morais the Defendant abovenamed, who is his widow, has been in wrongful and unlawful possession of the said lands and premises without any manner of right or title and has been disputing the Plaintiff’s title thereto.

93. By reason of the said wrongful and unlawful possession of the said Lands and premises the Plaintiff has sustained damages at Rs. 104.15 per month aggregating to Rs. 5,832.40 and is continuing to sustain damages at the said rate. However in regard to accrued damages the Plaintiff limits her claims to Rs. 3,645.25 being damages sustained by her for the period from 1st June 1960 to 30th April 1963.

No. 2  
Plaint of  
the Plaintiff—  
13-5-63  
—Continued

94. A cause of action has therefore accrued to the Plaintiff to sue the Defendant (a) for a declaration of title to the said lands and premises more fully described in the Schedule "I" hereto (b) for the ejectment of the Defendant therefrom (c) for the recovery of the sum of Rs. 3,645.25 being accrued damages from 1st June 1960 to 30th April 1963 and for the recovery of continuing damages at Rs. 104.15 per month from 1st May 1963 to the date of delivery of the said lands and premises more fully described in the Schedule "I" hereto unto the Plaintiff.

#### FOR A TENTH CAUSE OF ACTION

95. Under and by virtue of the said Deed No. 857 the said Mariam Morais was the owner of the land and premises presently bearing assessment No. 44 situated at Andival Street, Colombo and more fully described in the Schedule "J" hereto.

96. The Plaintiff reiterates the averments in paragraphs 3, 4 and 5 of the Plaintiff.

97. By the said Last Will the Testator Mariam Morais having made certain specific bequests devised and bequeathed all the rest and residue of his real immoveable personal and moveable properties estate and effects whether in possession expectancy reversion or remainder or otherwise including the property described in the Schedule "J" hereto unto the said three Trustees upon inter alia the following trusts namely:

- (a) to convey the immoveable properties belonging to the said Trust Estate which included the lands and premises described in the Schedule "J" hereto unto his son Lewis Anthony Morais on his attaining the age of thirtyfive years on the twentyfifth day of July One thousand nine hundred and thirtythree, subject to the conditions that is to say "that the said Lewis Anthony Morais shall in no wise sell, mortgage or otherwise alienate or encumber the said properties and premises hereby conveyed or any portion thereof but shall only have possess and enjoy the rents issues and profits arising and accruing therefrom during the term of his natural life and that at his death the said properties and premises shall devolve on his lawful son or sons only (if more than one in equal shares) absolutely but if there be no lawful son surviving him at his death then and in that event the same shall devolve on his lawful daughter or daughters (if more than one in equal shares) absolutely the lawful issue of a deceased son or daughter taking the share or which his, her or their parent would have become entitled to if living."

- (b) upon trust to sell and convert into money such of the said immoveable properties belonging to the said Trust Estate as the said Trustees shall in the absolute discretion think advisable or expedient to sell by reason of the said properties not giving a fair or reasonable rent income or return therefrom and from the proceeds of the sale thereof to purchase other immoveable property or properties and any such immoveable property or properties purchased as aforesaid shall form part of the said Trust Estate and be subject to the same trusts as are expressed and contained in the said Last Will.

98. In terms of the said Last Will and in the exercise of the power conferred on them thereby the said three Trustees Maria Joseph Carvalho, Bernard Miranda and Stephen Corera by the said Deed granted conveyed assigned transferred and set over unto the said Lewis Anthony Morais inter alia the land and premises described in the Schedule "J" hereto subject to the following reservation and restrictions that is to say "that the said Lewis Anthony Morais shall in no wise sell mortgage or otherwise alienate or encumber the said properties and premises hereby conveyed or any portion thereof but shall only have possess and enjoy the rents issues and profits arising and accruing therefrom during the term of his natural life and that at his death the said properties and premises shall devolve on his lawful son or sons only (if more than one in equal shares) absolutely but if there be no lawful son surviving him at his death then and in that event the same shall devolve on his lawful daughter or daughters (if more than one in equal shares) absolutely the lawful issue of a deceased son or daughter taking the share to which his, her or their parent would have become entitled to if living."

99. The Plaintiff reiterates the averments in paragraph 8 of the Plaintiff.

100 Lewis Anthony Morais as fiduciary under and in terms of the said Last Will and or under the said Deed No. 1208 and his predecessors in title have been in undisturbed and uninterrupted possession of the land and premises more fully described in the Schedule "J" hereto for a period of over 10 years by a title adverse to and independent of that of the Defendant and the plaintiff as the fideicommissary successor in title is entitled to and claims the benefit of section 3 of the Prescription Ordinance.

101. Upon the death of the said Lewis Anthony Morais the Plaintiff abovenamed became the owner of the land and premises described in the Schedule "J" hereto.

102. Since the date of the death of the said Lewis Anthony Morais, the Defendant abovenamed, who is his widow, has been in wrongful and unlawful possession of the said land and premises without any manner of right or title and has been disputing the plaintiff's title thereto.

103. By reason of the said wrongful and unlawful possession of the said land and premises the Plaintiff has sustained damages at Rs. 71.33 per month aggregating to Rs. 3,994.48 and is continuing to sustain damages at the said rate. However in regard to accrued damages the Plaintiff limits her claim to Rs. 2,496.55 being damages sustained by her for the period from 1st June 1960 to 30th April 1963.

104. A cause of action has therefore accrued to the Plaintiff to sue the Defendant (a) for a declaration of title to the said land and premises more fully described in the Schedule "J" hereto (b) for the ejectment of the Defendant therefrom (c) for the recovery of the sum of Rs. 2,496.55 being accrued damages from 1st June 1960 to 30th April 1963 and for the recovery of continuing damages at Rs. 71.33 per month from 1st May 1963 to the date of delivery of the said land and premises more fully described in the Schedule "J" hereto unto the Plaintiff.

No. 2  
Plaint of  
the Plaintiff-  
13-5-63  
—Continued

#### FOR AN ELEVENTH CAUSE OF ACTION

10 105. The Plaintiff reiterates the averments contained in paragraphs 3, 4, and 5 of the Plaint.

106. By the said Last Will the Testator Mariam Morais having made certain specific bequests of moveable and immoveable properties devised and bequeathed all the rest and residue of his real immoveable personal and moveable properties estate and effects whether in possession expectancy reversion or remainder or otherwise hereto unto the said three Trustees upon inter alia the following trusts namely:

20 (a) to convey the immoveable properties belonging to the said Trust Estate unto his son Lewis Anthony Morais on his attaining the age of Thirtyfive years on the 25th day of July 1933 subject to the condition that is to say "that the said Lewis Anthony Morais shall in no wise sell mortgage or otherwise alienate or encumber the said properties and premises hereby conveyed or any portion thereof but shall only have possess and enjoy the rents issues and profits arising and accruing therefrom during the term of his natural life and that at his death the said properties and premises shall devolve on his lawful son or sons only (if more than one in equal shares) absolutely but if there be no lawful son surviving him at his death then and in that event the same shall devolve

30 on his lawful daughter or daughters (if more than one in equal shares) absolutely the lawful issue of a deceased son or daughter taking the share to which his, her or their parent would have become entitled to if living," and

40 (b) Upon trust to sell and convert into money such of the said immoveable properties belonging to the said Trust Estate as the said Trustees in their absolute discretion shall think advisable or expedient to sell by reason of the said properties not giving a fair or reasonable rent income or return therefrom and from the proceeds of the sale thereof to purchase other immoveable property or properties and any such immoveable property or properties purchased as aforesaid shall form part of the said Trust Estate and be subject to the same trusts as are expressed and contained in the said Last Will.

107. In terms of the said Last Will and in the exercise of the powers conferred on them thereby the said three Trustees Maria Joseph Carvalho, Bernard Miranda and Stephen Corera purchased inter alia with the money

lying to the credit of the Trust Fund of the Estate of Mariam Morais under Deed No. 658 dated the 13th of June 1921 attested by Leslie Mack Notary Public of Colombo the land and premises presently bearing assessment No. 157 Chekku Street (now known as Sri Kathiresan Street) in Pettah, Colombo which said land and premises are more fully described in the Schedule "K" hereto.

108. In terms of the said Last Will and Testament and in the exercise of the powers conferred on them thereby the said three Trustees Maria Joseph Carvalho, Bernard Miranda and Stephen Corera by the said Deed No. 1208 granted conveyed assigned transferred and set over unto the said Lewis Anthony Morais inter alia the land and premises described in the Schedule "K" hereto subject to the following reservations and restrictions that is to say "that the said Lewis Anthony Morais shall in no wise sell, mortgage or otherwise alienate or encumber the said properties and premises hereby conveyed or any portion thereof but shall only have possess and enjoy the rents issues and profits arising and accruing therefrom during the term of his natural life and that at his death the said properties and premises shall devolve on his lawful son or sons only (if more than one in equal shares) absolutely but if there be no lawful son surviving him at his death then and in that event the same shall devolve on his lawful daughter or daughters (if more than one in equal shares) absolutely the lawful issue of a deceased son or daughter taking the share to which his, her or their parents would have become entitled to if living."

109. The Plaintiff reiterates the averments in paragraph 8 of the Plaintiff.

110. Lewis Anthony Morais as fiduciary under and in terms of the said Last Will and/or under the said Deed No. 1208 and his predecessors in title have been in undisturbed and uninterrupted possession of the land and premises more fully described in the Schedule "K" hereto for a period of over 10 years by a title adverse to and independent of that of the Defendant and the Plaintiff as the fideicommissary successor in title is entitled to and claims the benefit of section 3 of the Prescription Ordinance.

111. Upon the death of the said Lewis Anthony Morais the Plaintiff abovenamed became the owner of the land and premises described in the Schedule "K" hereto.

112. The Plaintiff avers that since the date of the death of the said Lewis Anthony Morais the defendant abovenamed, who is his widow, has been in wrongful and unlawful possession of the said land and premises without any manner of right or title and has been disputing the Plaintiff's title thereto.

113. By reason of the said wrongful and unlawful possession of the said land and premises more fully described in the Schedule "K" hereto the Plaintiff has sustained damages at Rs. 129.33 a month aggregating to Rs. 7,242.48 and is continuing to sustain damages at the same rate. However in regard to accrued damages the Plaintiff limits her claim to Rs. 4,526.55 being damages sustained by her for the period from 1st June 1960 to 30th April 1963.

dant therefrom (c) for the recovery of the sum of Rs. 6,198.15 being accrued damages from 1st June 1960 to 30th April 1963 and for the recovery of continuing damages at Rs. 177.09 per month from 1st May 1963 to the date of delivery of the said lands and premises described in the Schedule "L" hereto unto the Plaintiff.

No. 2  
Plaint of  
the Plaintiff-  
13-5-63  
--Continued

### FOR A THIRTEENTH CAUSE OF ACTION

125. The Plaintiff reiterates the averments contained in paragraphs 3,4 and 5 of the Plaint.

126. By the said Last Will the Testator Mariam Morais having made certain specific bequests of moveable and immoveable properties devised and bequeathed all the rest and residue of his real immoveable personal and moveable properties estate and effects whether in possession expectancy reversion or remainder or otherwise unto the said three Trustees upon inter alia the following trust namely:

(a) to convey the immoveable property belonging to the said Trust hereto unto his son Lewis Anthony Morais on his attaining the age of thirty five years on the 25th day of July 1933, subject to the condition that is to say "that the said Lewis Anthony Morais shall in no wise sell, mortgage or otherwise alienate or encumber the said properties and premises hereby conveyed or any portion thereof but shall only have possess and enjoy the rents issues and profits arising and accruing therefrom during the term of his natural life and that at his death the said properties and premises shall devolve on his lawful son or sons only (if more than one in equal shares) absolutely but if there be no lawful son surviving him at his death then and in that event the same shall devolve on his lawful daughter or daughters (if more than one in equal shares) absolutely the lawful issue of a deceased son or daughter taking the share to which his, her or their parents would have become entitled to if living", and

(b) Upon trust to sell and convert into money such of the said immoveable properties belonging to the said Trust Estate as the said Trustees in their absolute discretion shall think advisable or expedient to sell by reason of the said properties not giving a fair or reasonable rent income or return therefrom and from the proceeds of the sale thereof to purchase other immoveable property or properties and any such immoveable property or properties purchased as aforesaid shall form part of the said Trust Estate and be subject to the same trusts as are contained or expressed in the said Last Will.

127. In terms of the said Last Will and in the exercise of the powers conferred on them thereby the said three Trustees Maria Joseph Carvalho, Bernard Miranda and Stephen Corera purchased inter alia with the money lying to the credit of the Trust Fund of the Estate of Mariam Morais under Deed No. 570 dated the 21st day of November 1923 and Deed No. 600 dated the 1st March 1924 both attested by P. M. de S. Seneviratne Notary Public of

Colombo the lands and premises presently bearing assessment Nos. 131, 131/30, 131/35, 131/37, 131/41, 131/42, 131/43, 131/44, 131/45, 131/46, 131/47, 131/48, 131/49, 131/50, 131/51, 131/52, 131/57, 131/58, 131/61, 131/61A, 131/62, 131/62A, 131/64, 131/65A, 131/65B, 131/65C, 131/65D, 131/65E, 131/66, 131/67, 131/68, 131/69, 131/70, 131/71, 131/72, 131/73, 131/74, 131/75, 131/76, 131/78, 131/79, 131/80, 131/81, 131/82, 131/83, 131/84, 131/85, 131/86, and 131/87 situated at Jampettah Street and more fully described in the Schedule "M" hereto.

128. In terms of the said Last Will and in the exercise of the powers conferred on them thereby the said three Trustees Maria Joseph Carvalho, 10 Bernard Miranda and Stephen Corera by the said Deed No. 1208 granted conveyed assigned transferred and setover unto the said Lewis Anthony Morais inter alia the lands and premises described in the Schedule "M" hereto subject to the following reservations and restrictions that is to say "that the said Lewis Anthony Morais shall in no wise sell, mortgage or otherwise alienate or encumber the said properties and premises hereby conveyed or any portion thereof but shall only have possess and enjoy the rents issues and profits arising and accruing therefrom during the term of his natural life and that at his death the said properties and premises shall devolve on his lawful son or sons only (if more than one in equal shares) but if there be no lawful son surviving him at his death then and in that event the same shall devolve on his lawful daughter or daughters (if more than one in equal shares) absolutely the lawful issue of a deceased son or daughter taking the share to which his, her or their parents world have become entitled to if living."

129. The Plaintiff reiterates the averments in paragraph 8 of the Plaintiff.

130. Lewis Anthony Morais as fiduciary under and in terms of the said Last Will and or under the said deed and his predecessors in title have been in undisturbed and uninterrupted possession of the lands and premises more fully described in the Schedule "M" hereto for a period over 10 years by a title adverse to and independant of that of the Defendant and the Plaintiff as 30 the fideicommissary successor in title is entitled to and claims the benefit of section 3 of the Prescription Ordinance.

131. Upon the death of the said Lewis Anthony Morais the Plaintiff abovenamed became the owner of the lands and premises described in the Schedule "M" hereto.

132. The plaintiff avers that since the date of the death of the said Lewis Anthony Morais the Defendant abovenamed, who is his widow, has been in wrongful and unlawful possession of the said lands and premises without any manner of right or title and has been disputing the plaintiff's title thereto.

133. By reason of the said wrongful and unlawful possession of the said 40 lands and premises more fully described in the Schedule "M" hereto the Plaintiff has sustained damages at Rs. 334.40 a month aggregating to Rs. 18,726.40 and is continuing to sustain damages at the same rate. However in regard to accrued damages the Plaintiff limits her claim to Rs. 11,704/- being damages sustained by her for the period from 1st June 1960 to 30th April 1963.

134. A cause of action has therefore accrued to the Plaintiff to sue the Defendant (a) for a declaration of title to the said lands and premises more fully described in the Schedule "M" hereto (b) for the ejectment of the defendant therefrom (c) for the recovery of the sum of Rs. 11,704/- being accrued damages from 1st June 1960 to 30th April 1963 and for the recovery of the continuing damages at Rs. 334.40 per month from 1st May 1963 to the date of delivery of the said lands and premises described in the Schedule "M" hereto unto the Plaintiff.

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135. The Plaintiff avers that the value of the subject matter of this action  
10 aggregates to Rs. 855,165.20.

**WHEREFORE the Plaintiff prays:—**

- (a) that the plaintiff be declared entitled to the said lands and premises described in the Schedules "A" to "M" hereto.
- (b) that the Defendant be ejected from the lands and premises described in the said Schedule "A" to "M" hereto and that delivery of possession of same be given to the Plaintiff.
- (c) for judgment in a sum of Rs. 70,165.20 as accrued damages from the 1st June 1960 to 30th April 1963 and continuing damages at Rs. 2,004.72 per month from 1st May 1963 to the date of delivery  
20 of possession of the said lands and premises described in the said Schedules "A" to "M" hereto with interest on the aggregate amount of the decree at 5 per centum per annum commencing from the date of the decree to the date of payment in full.
- (d) for costs of suit, and
- (e) for such other and further relief as to this court shall seem meet.

Sgd. D. N. THURAIRAJAH  
*Proctor for Plaintiff.*

**SCHEDULE A**

All that part of a garden with the buildings standing thereon formerly  
30 bearing assessment No. 11 presently bearing assessment No. 34 situated at St. Lucia's Street, Kotahena within the Municipality of Colombo aforesaid bounded on the North by the road on the East by the property belonging to Salohamy on the South by the garden of Siriwardene Lama Etena and on the West by the portion belonging to Francisco Appu containing in extent Fourteen Thirty seven one hundredth square perches (AO. RO. P14, 37/100) according to the figure of survey thereof dated the 6th day of July 1869 and made by C. C. Smith Surveyor.

**SCHEDULE B**

All that allotment of land or three adjoining portions of a garden with  
40 the buildings standing thereon formerly bearing assessment Nos. 88 and 89 (subsequently bearing assessment Nos. 10 (4-23), 12, 14, 16, 18, 20, 22, 24, 26



and 28) situate and lying at Kochchikadde within the Municipality of Colombo aforesaid bounded on the North by a house and ground of Ponnambalam Mudliyar on the East and South by St. Thomas Church Yard and on the West by Sea Street containing in extent Twenty nine square perches and thirty four one hundredth of a square perch (AO. RO. P29. 34/100) which said premises are according to the Survey and description thereof (No. 76 dated 14th January 1913 made by James W. Amerasekera Licensed Surveyor and Leveller) described as follows to wit:-

An allotment of land with the buildings thereon formerly bearing assessment Nos. 88 and 89 subsequently bearing assessment Nos. 10 (4-23), 12, 14, 16, 18, 20, 22, 24, 26 and 28 and presently bearing assessment Nos. 10/4, 10/10, 10/12A, 10/14, 10/15, 10/16, 10/17, 10, /18, 10/19, 10/20, 10/21, 10/22, 10/23, 12, 14, 16, 18, 20, 22, 24, 26 and 28 situated at Kochchikade Street (now known as St. Anthony's Mawatta) within the Municipality of Colombo aforesaid bounded on the North by premises belonging to Ponnambalam Mudliyar now the Satharam (Hindu Temple) on the East and South by St. Thomas Church premises and on the West by Kochchikade Street containing in extent Thirty three square perches and sixty four one hundredths of a square perch (AO. RO. P33, 64/100).

#### SCHEDULE C

20

All that house and ground formerly bearing assessment No. 49 presently bearing assessment No. 20 situated at Galpotte Street within the Municipality of Colombo aforesaid bounded on the North by premises bearing assessment No. 48 belonging to M. H. M. Sulaiman on the East by premises bearing assessment No. 53 formerly belonging to the Estate of C. G. Perera subsequently belonging to the Estate of the late Mariam Morais and bequeathed to Lewis Anthony Morais on the South by premises bearing assessment No. 50 formerly belonging to the estate of C. G. Perera subsequently belonging to the Estate of the late Mariam Morais and bequeathed to the said Lewis Anthony Morais and on the West by Galpotte Street containing in extent Fourteen 30 square perches (AO. RO. P14) according to the survey and description thereof No. 303 dated 21st June 1914 made by James W. Amerasekera Licensed Surveyor and Leveller and which aforesaid premises No. 49 divided and defined portion of and from all that property and premises bearing assessment Nos. 49, 50, 51, 52 and 53 and situated at Galpotte Street in Kotahena Ward No. 5 within the Municipality of Colombo aforesaid and bounded on the North by premises bearing Assessment No. 48 belonging to M. H. M. Sulaiman on the East by land belonging to George de Silva Mohandiram on the South by land acquired by the Crown and on the West by Galpotte Street containing in extent Two Roods and twenty four perches and ninety eight one hundredth 40 of a perch (AO. R2. P24. 98/100).

#### SCHEDULE D

All that house and ground formerly bearing assessment No. 50 presently bearing assessment No. 16 situated at Galpotte Street within the Municipality of Colombo aforesaid bounded on the North by premises bearing assessment No. 49, formerly belonging to the Estate of C. G. Perera subsequently belonging

to the Estate of the late Mariam Morais and bequeathed to Lewis Anthony Morais on the East by premises bearing assessment No. 53 formerly belonging to the estate of C.G. Perera subsequently belonging to the estate of the late Mariam Morais and bequeathed to the said Lewis Anthony Morais on the South by premises No. 51 formerly belonging to the Estate of C. G. Perera subsequently belonging to the estate of the late Mariam Morais and bequeathed to Soosai Ammal Morais wife of Stephen Corera and on the West by Galpotte Street containing in extent Eleven square perches and fifty two one hundredths of a square perch (AO. RO. P11, 52/100) according to the survey and description thereof No. 304 dated 27th June 1914 made by James W. Amerasekera Licensed Surveyor and leveller and which aforesaid premises No. 50 is a divided and defined portion of and from all that property and premises bearing Assessment Nos. 49, 50, 51, 52 and 53 and situated at Galpotte Street in Kotahena Ward No. 5 within the Municipality of Colombo aforesaid and bounded on the North by premises bearing assessment No. 48 belonging to M. H. M. Sulaiman on the East by land belonging to George de Silva Mohandiram on the South by land acquired by the Crown and on the West by Galpotte Street containing in extent two Roods twenty four perches and ninety eight one hundredths of a perch (AO. R2. P24, 98/100).

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#### SCHEDULE E

All that house and ground formerly bearing assessment No. 53, subsequently bearing assessment Nos. 2 and 6 (6, 10, 12, 14, 20, 22, 16 - 19, 23 - 34, 26, 29/31) and presently bearing assessment Nos. 6/6, 6/10, 6/12, 6/13, 6/14, 6/15, 6/16, 6/17, 6/18, 6/19, 6/20, 6/21, 6/22, 6/23, 6/24, 6/25, 6/26, 6/29, 6/30 and 6/31 situated at Galpotte Street within the Municipality of Colombo aforesaid bounded on the North by premises bearing assessment No. 48 belonging to M. H. M. Sulaiman on the East by land belonging to George de Silva Mudaliyar on the South by land acquired by the Crown and on the West by premises bearing assessment Nos. 49, 50, 51 and 52 formerly belonging to the estate of C. G. Perera subsequently belonging to the estate of the late Mariam Morais and bequeathed to Lewis Anthony Morais, Soosai Ammal Morais and Mary Ammal Morais respectively containing in extent including the passage One Rood Sixteen Perches and one, one hundredths of a perch (AO. R1. P16, 1/100) according to the survey and description thereof No. 425 dated 7th September 1915 made by James W. Amerasekera Licensed Surveyor and Leveller and which said premises No. 53 is a divided and a defined portion of an and from all that property and premises bearing assessment Nos. 49, 50, 51, 52 and 53 and situated at Galpotte Street in Kotahena Ward No. 5 within the Municipality of Colombo aforesaid and bounded on the North by premises bearing assessment No. 48 belonging to M. H. M. Sulaiman on the East by land belonging to George de Silva Muhandiram on the South by land acquired by Crown and on the West by the Galpotte Street containing in extent Two Roods, Twenty Four Perches and ninety eight one hundredths of a perch (AO. R2. P24, 98/100).

#### SCHEDULE F

All that allotment of land with the buildings thereon formerly bearing assessment No. 48 subsequently bearing assessment Nos. 165 (1-16) and presently bearing assessment Nos. 165/1, 165/2, 165/3, 165/4, 165/7, 165/8, 165/9,

165/10, 165/12A, 165/14, 165/15, 165/11 and 167 situated at Chekku Street (now known as Sri Kathiresan Street) within the Municipality of Colombo aforesaid bounded on the North by premises bearing assessment No. 49 of P. Ramanathan Esquire K. C. on the East by the pavement along Chekku Street on the South by premises bearing assessment No. 47 belonging to the estate of Ramalingam Shroff and on the West by premises bearing assessment No. 147 Sea Street of Ananda K. Coomaraswamy Esquire containing in extent Twenty Two square perches and seventy five one hundredths of a perch (AO. RO. P22. 75/100) according to the Survey Plan thereof No. 862 dated the 6th October 1910 made by H. G. Dias Licensed Surveyor and Leveller. 10

### SCHEDULE G

All that house and ground formerly bearing assessment No. 43 subsequently bearing assessment No. 44 and presently bearing assessment Nos. 44A, 44/1, 44/2, 44/3, 44/4, 44/5, 44/7, 44/8, 44/9, 44/11 & 44/12 situated at Brassfounder Street within the Municipality of Colombo aforesaid bounded on the North by the property of Pedro Soosai Sithambalapulle on the East by the property of Tambo on the South by the property of Jeronis Morais and on the West by the Brassfounder Street containing in extent Fourteen Sixty six upon hundredths square perches (AO. RO. P14, 66/100) according to the figure of Survey thereof dated 21st December 1852 made by C. A. Siegartz 20 Land Surveyor.

### SCHEDULE H

All that house and ground situated at Brassfounder Street aforesaid bearing assessment No. 44 subsequently bearing assessment No. 42 (2-11) and presently bearing assessment Nos. 42, 42/2, 42/3, 42/4, 42/5, 42/6, 42/7, 42/9, 42/10 and 42/11 and bounded on the North by the house formerly of Armuhettipulle thereafter of V. Ponnasamy subsequently premises No. 43 belonging to Casie Visvunatha Kurukkul Thiyagarajah Kurukkul on the East by the garden of Peduru Silva Domingo Silva and Madachi Silva subsequently said to belong to S. K. Maharajah on the South by the house of Christobo 30 Silva, Pedro Pulle now Premises No. 45 belonging to Casie Visvunatha Kurukkul Thiyagarajah Kurukkul and on the West by the Brassfounder Street containing in extent Seven and one fifth square perches (AO. RO. P7. 1/5) according to the Figure of Survey thereof dated 7th May 1804 authenticated by G. Schneider Surveyor General but subsequently found to contain in extent Eighth three fourth perches according to the Plan thereof No. 3427 dated 18th March 1914 made by G. P. Weeraratne Surveyor.

### SCHEDULE I

All that house and ground formerly bearing assessment No. 45 subsequently bearing assessment Nos. 38 (1-10) and presently bearing assessment 40 Nos. 38/1, 38/2, 38/3, 38/4, 38/6, 38/7, 38/8, 38/9 and 38/10 situated at Brassfounder Street within the Municipality of Colombo aforesaid and comprising the following parcels of land which adjoin each other and now form one property to wit:—

- (a) All that land and buildings thereon situated at Brassfounder Street aforesaid bounded on the North by house of Philip Fernando Abraham Pulle on the East by the garden of Peduru Silva, Domingo

Silva and Mathachi Silva on the South by the house of Antony Silva and on the West by Brassfounder Street containing in extent Six Square Perches and seventy seven one hundredths of a square perch according to the Survey dated 20th April 1904 authenticated by the Land Surveyor General.

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the Plaintiff,  
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—Continued

- (b) All that portion of land situated towards the East of Brassfounder Street aforesaid bounded on the North by the other portion of this land belonging to Jaromius Morayus Pulle on the East by the garden of Ramasamy Moodeley Coomarappa Moodeley on the South by the garden of Juan Silva Pedru Pulle and on the West by the garden of Christobo Silva Pedro Pulle containing in extent according to the Plan dated 19th July 1858 by J. R. Zybrangsz Four square perches and fifty upon hundred of a perch (AO. RO. P4, 50/100) which said two parcels of land are according to the Plan No. 3427 of 18th March 1914 made by G. P. Weeraratne Licensed Surveyor bounded on the North by the premises No. 44 on the East by the property of Tambo by the garden of Pedro Silva, Domingo Silva and Madatchi Silva which latter subsequently belongs to S. R. Maharajah on the South by the garden of Juan Silva Pedru Pulle and by the house of Anthony Silva now bearing assessment No. 46 and on the West by Brassfounder Street and contains in extent Fourteen Perches (AO. RO. P14).

#### SCHEDULE J

All that allotment of land with the buildings thereon bearing assessment No. 3 presently bearing assessment No. 44 situated at Andival Street within the Municipality of Colombo aforesaid comprising the premises described in Title Plan No. 19824 of the 20th February 1821 authenticated by G. Schneider Surveyor General and premises described in Title Plan No. 55961 of the 31st December 1861 authenticated by Charles Sim Esquire Surveyor General bounded as follows:- On the North by Andival Street on the East by the Property of the Estate of the late K. Sinniah Pulle bearing assessment No. 2 on the South by the property of the Estate of the late J. A. Perera Muhandiram bearing assessment No. 25 Wolfendhal Street and on the West by the property of the estate of the late S.T. Muthiaya bearing assessment No. 4 containing in extent Five and forty four hundredths of a square Perch (AO. RO. P5, 44/100).

#### SCHEDULE K

All that allotment of land with the buildings standing thereon formerly bearing Assessment No. 47 and Ward No. 388 presently bearing assessment No. 157 situated at Chekku Street (now known as Sri Kathiresan Street) in Pettah within the Municipality of Colombo aforesaid bounded on the North East by the Property belonging to Kurugal bearing assessment No. 48 on the South East by Chekku Street on the South West by the property belonging to Mrs. T. Sanmugam bearing assessment No. 46 and on the North West by the Property belonging to F. X. Pereira bearing assessment No. 150 Sea Street containing in extent Nineteen and ninety five hundredths perches (AO. RO. P19, 95/100) according to the figure of Survey thereof No. 335 dated 18th May 1916 made by S. Saba Ratnam Registered Licensed Surveyor.

## SCHEDULE L

All that allotment of land with the buildings, trees and plantations thereon situated in the reservation for Jampettah Street extension within the Municipality of Colombo aforesaid bearing assessment Nos. 238/54 to 239/59 subsequently bearing assessment Nos. 245, 247, 249, 251, 253, 255, 257, 259, 261, 263 (1-3), 265, 267, 269, 271, 275 and presently bearing assessment Nos. 245, 247, 249, 251, 253, 255, 257, 259, 261, 263/2, 263/3, 263/4 and 265 Jampettah Street bounded on the North by the property of G. Morais bearing assessment No. 229 - 237/5 on the East by the property of Mrs. George de Silva bearing assessment No. 2707 B-G/1 B-G on the South by road reservation (Jampettah Street) containing in extent Twenty three Perches and eighty five hundredths of a Perch (AO.R.O. P23.85) according to Plan No. 216 dated the 20th August 1924 under the hand of J. M. Blizzard Esquire Municipal Engineer.

## SCHEDULE M

All that allotment of land with the buildings trees and plantations thereon formerly bearing assessment Nos. 131, 131 (20-24), 131 (61-63), 131 (64), 131 (62 and 65), 131 (66-81) and 131 (82-87) and presently bearing assessment Nos. 131, 131/30, 131/35, 131/37, 131/41, 131/42, 131/43, 131/44, 131/45, 131/46, 131/47, 131/48, 131/49, 131/50, 131/51, 131/52, 131/57, 131/58, 131/61, 131/61A, 131/62, 131/62A, 131/64, 131/65A, 131/65B, 131/65C, 131/65D, 131/65E, 131/66, 131/67, 131/68, 131/69, 131/70, 131/71, 131/72, 131/73, 131/74, 131/75, 131/76, 131/78, 131/79, 131/80, 131/81, 131/82, 131/83, 131/84, 131/85, 131/86 and 131/87 situated at Jampettah Street within the Municipality of Colombo aforesaid comprising of the following parcels of land which adjoin each other and which from their situation as respects each other can be included in one survey and forming one property to wit:—

- (a) All that allotment of land marked letter "A" with the buildings, trees and plantations thereon bearing the following assessment Nos. viz:—31A- 32/24 1-14 33/24 15-19 34/24 20-24 35/24 25-28 36/24 29 37/24 30-30A 38/24 31-33 39/24 32 40/24 34-40 40A/24 32A 30 situated at Jampettah Street within the Municipality and District of Colombo Western Province formerly bearing assessment Nos. 24, 25, 26, 27, 28, 29, 30, 31, 32 and 34 being a divided protion of all that allotment of land formerly bearing Nos. 24, 25, 26, 27, 28, 29, 30, 31, 32 and Nos. 34, 35 and 36 situated at Jampettah Street aforesaid which said allotment of land marked letter "A" is bounded on the North by the field of J. H. Jorhard formerly of Mr. M. Ondatjie on the East by the field of Francis Nonis Candappa formerly of P. F. Pauloo Pulle and by the premises bearing assessment Nos. 41, 42 and 43 of the heirs of the late Mr. John Melho 40 Asarappa formerly the property of Peduru Peiris Asarappa on the South by the premises bearing assessment Nos. 37 and 38 of Ravanna Moona Chenna Sinna Kannu premises bearing assessment No. 39 of Peter Benedict Anandappa and by the Premises bearing assessment No. 40 of Anthony Rodrigo and by the other part of this property marked letter "B" bearing assessment Nos. 35 and 36 and

by Jampettah Street and on the West by the premises bearing assessment Nos. 23 and 23A of Mr. J. H. Jorhard formerly the property of Mr. M. Ondatjie containing in extent One acre Two roods and five and thirty seven one hundredths square perches (A1. R2. P5, 37/100) according to the survey No. 777 dated 2nd September 1909 made by W. Z. G. Rajapakse Licensed Surveyor.

No. 2  
Plaint of  
the Plaintiff-  
13-5-63  
—Continued

10 (b) All that allotment of land marked letter "B" bearing assessment Nos. 35 and 36 being a divided portion of all that allotment of land bearing assessment Nos. 24, 25, 26, 27, 28, 29, 30, 31, 32 and Nos. 34, 35 and 36 Jampettah Street within the Municipality of Colombo aforesaid bounded on the North and West by the other part of this property marked Letter "A" bearing assessment Nos. 24, 25, 26, 27, 28, 29, 30, 31, 32, and 34 East by the premises bearing Nos. 37 and 38 of Ravanna Muna Chena Sinna Kannu formerly the property of Anthony Rodrigo and South by Jampettah Street containing in extent Twenty four Perches and forty four hundredths of a perch (AO. RO. P24.44) according to the Survey Plan No. 777A dated the 2nd September 1909 made by W. Z. G. Jajapakse Licensed Surveyor.

20 Sgd. D. N. THURAIRAJAH  
*Proctor for Plaintiff.*

### NO. 3

#### ANSWER OF THE DEFENDANT

#### IN THE DISTRICT COURT OF COLOMBO

MRS. FRANCESCA VICTORIA NEE MORAIS of 267/2, Galle Road,  
Bambalapitiya, Colombo.

*Plaintiff.*

No. 10207/L

*Vs.*

30 JOSEPHINE MARY ALOYSIA MORAIS of No. 23/2, Lauries Road,  
Bambalapitiya, Colombo.

*Defendant.*

This 16th day of September, 1963.

The answer of the defendant abovenamed appearing by S. Kanagarajah her proctor is as follows :—

1. Answering paragraph 1 of the plaint, this defendant admits that she resides and that the lands and premises described in the schedule to the plaint are situated, within the jurisdiction of this Court. This defendant denies that any cause of action has accrued to the plaintiff to sue this defendant.

2. This defendant denies all and singular the remaining averments in  
40 the plaint save and except those as are herein-after expressly admitted. This

No. 3  
 Answer of the  
 Defendant—  
 16-9-63  
 —Continued

defendant puts the plaintiff to the proof of all the non-admitted averments in the Plaintiff.

3. By way of answer this defendant states (a) that the properties referred to in the schedules to the plaint were seized and sold by the Fiscal Western Province under several writs of execution issued in several cases against the late Lewis Anthony Morais inclusive of writs issued by the Income Tax Department.

(b) that the recitals from the documents referred to in the plaint contain no prohibition against alienation in invitum.

(c) that the said Lewis Anthony Morais and this defendant (his wife) 10 executed their Joint Last Will and Testament No. 1454 dated 4th July 1947 attested by P. S. P. Kalpage of Colombo aforesaid Notary Public whereby either of them nominated and appointed the survivor of them the sole heir.

(d) that the said Lewis Anthony Morais died on 2nd September 1958 and the said Joint Last Will and Testament was admitted to probate in Testamentary Proceedings No. 20494/T of this Court on an application by this defendant.

(e) this defendant is the sole owner of the properties described in the schedules to the plaint and is in possession as she lawfully might.

4. (a) The plaintiff had instituted against this defendant proceedings 20 No. 9929/L of this Court for the recovery of two allotments of land and premises with buildings standing thereon bearing assesment (1) No. G 20 (1-12) Brassfounder Street Colombo and (2) 219, 223, 225, 227(1-3) 231, 233, and 239 Jampettah Street on the ground that these belonged to the estate of Mariam Morais or were purchased out of the funds of the said estate and that the same had devolved on her.

(b) Though grouped under thirteen items in this case the claim for the recovery of thirteen lands, is on the same ground as in 9929/L.

(c) This defendant states that the plaintiff having omitted to sue in respect of, or intentionally relinquished to claim the thirteen lands in procee- 30 dings No. 9929/L is debarred in law from now suing in respect of the thirteen lands so omitted or relinquished.

Wherefore this defendant prays :—

(a) that plaintiff's action may be dismissed,

(b) for costs of suit,

(c) and for such further or other relief in the premises as to this Court shall seem meet.

Sgd. S. KANAGARAJAH  
*Proctor for Defendant.*

**PROCEEDINGS BEFORE THE DISTRICT COURT**

**28-2-64**

**NOT PRINTED**

**INTERROGATORIES ON BEHALF OF THE  
PLAINTIFF FOR THE EXAMINATION OF THE DEFENDANT  
IN THE DISTRICT COURT OF COLOMBO**

No. 5  
Interrogatories  
on behalf of the  
Plaintiff for the  
Examination of  
the Defendant-  
3-7-64

10

**MRS. FRANCESCA VICTORIA NEE MORAIS**

*Plaintiff.*

*Vs.*

**JOSEPHINE MARY ALOYSIA MORAIS**

*Defendant.*

Interrogatories on behalf of the abovenamed Plaintiff for the examination of the above named defendant.

1. Does the defendant admit that Mariam Morais was the owner of the lands and premises, described in the following schedules to the Plaint, under the deeds hereinafter mentioned against the said Schedules.

20

Schedule A .. Deed No. 2019 dated 1-3-1901 attested by J. J. de Fry of Colombo Notary Public

Schedule B .. Deed No. 68 dated 8-5-1913 attested by E. G. Gratiaen Notary Public.

Schedule C .. Deed No. 708 dated 5-11-1915 attested by W. E. V. de Rooy Notary Public.

Schedule D .. Deed No. 708 dated 5-11-1915 abovementioned.

Schedule E .. Deed No. 708 dated 5-11-1915 abovementioned.

Schedule F .. Deed No. 857 dated 22-8-1916 attested by G. A. H. Wille Notary Public.

Schedule G .. Deed No. 857 dated 22-8-1916 abovementioned.

30

Schedule H .. Deed No. 857 dated 22-8-1916 abovementioned.

Schedule I .. Deed No. 857 dated 22-8-1916 abovementioned.

Schedule J .. Deed No. 857 dated 22-8-1916 abovementioned.



No. 5  
Interrogatories  
on behalf of the  
Plaintiff for the  
Examination of  
the Defendant-  
3-7-64  
--Continued

2. If not (a) who were the original owners of the said lands and premises according to the Defendant?

(b) how does the Defendant claim title through such original owners?

3. Does the defendant admit :—

(a) that the said Mariam Morais died on or about 3-2-1918?

(b) that the said Mariam Morais left a last will bearing No. 1080 dated 8-9-1917 attested by G. A. Wille Notary Public?

(c) That by the said Last Will be the said Mariam Morais appointed Maria Joseph Carvalho, Bernard Miranda and Stephen Corera the executors and trustees of his Last Will ? 10

(d) that the said Last Will was admitted to Probate in Testamentary case No. 6237 of this Court and Probate thereof was issued to the said executors?

4. Does the Defendant admit that by the said Last Will the said Mariam Morais having made certain specific bequests of movable and immovable property devised and bequeathed the rest and residue of his property to the said three trustees inter alia upon the trusts set out in para 6 of the Plaintiff?

5. Does the Defendant admit that the said trustees in the exercise of powers conferred on them by the said Last Will No. 1080 conveyed the premises in schedules A to J of the Plaintiff, by deed No. 1208 dated 21-9-1933 attested by P. M. de S. Seneviratne Notary Public, to Lewis Anthony Morais subject to the terms and conditions set out in paras 7, 17, 27, 38, 48, 58, 68, 78, 88 and 98 of the Plaintiff. 20

6. Does the Defendant admit that the said Lewis Anthony Morais had two children viz: (a) the Plaintiff and (b) a son Maria Xavier Morais who died on or about 14-8-1933 without leaving issue?

7. Does the Defendant admit that the said Lewis Anthony Morais left only one surviving lawful child namely the Plaintiff?

8. Does the Defendant deny that upon the death of the said Lewis Anthony Morais, the Plaintiff became owner of the lands and premises described in Schedule (A) to (J) of the Plaintiff. 30

9. (a) Does the Defendant admit that a reasonable assessment of the monthly income from the premises described in Schedules A to J of the Plaintiff is as follows :—

Schedule A	..	Rs.	66/28
Schedule B	..	Rs.	156/89
Schedule C	..	Rs.	68/53
Schedule D	..	Rs.	60/50

Schedule E	..	Rs. 283/72
Schedule F	..	Rs. 314/80
Schedule G	..	Rs. 124/05
Schedule H	..	Rs. 113/65
Schedule I	..	Rs. 104/15
Schedule J	..	Rs. 71/33

No. 5  
Interrogatories  
on behalf of the  
plaintiff for the  
Examination of  
the Defendant—  
3-7-64  
—Continued

(b) If not state what according to the Defendant is a reasonable assessment of income of the said premises.

10. (a) Does the Defendant admit that the lands and premises described in the following Schedules to the Plaint were purchased by the said three Trustees under the deed hereinafter mentioned against the said Schedules:—

Schedule K ... Deed No. 658 dated 13-6-1921 attested by Leslie Mack Notary Public.

Schedule L .. Deed No. 932 dated 28-9-1929 attested by P.M. de S. Seneviratne Notary Public.

Schedule M .. Deed No. 570 dated 21-11-1923 and Deed No. 600 dated 1-3-1924 both attested by P. M. de S. Seneviratne Notary Public.

(b) Does the Defendant admit that the said purchases were (i) in the exercise of powers conferred by the said Last Will No. 1080 on the said trustees (ii) with money lying to the credit of the trust fund of the estate of Mariam Morais?

11. Does the Defendant admit that the said trustees in the exercise of power conferred on them by the said Last Will No. 1080 conveyed the premises in Schedules K to M to the Plaintiff, by deed No. 1208 dated 21-9-1933 attested by P.M. de S. Seneviratne Notary Public to Lewis Anthony Morais subject to the terms and conditions set out in paras 108, 118 and 128 of the Plaint?

12. (a) Does the Defendant admit that a reasonable assessment of the monthly income from the premises described in Schedules K to M of the Plaint is as follows:—

Schedule K	..	Rs. 129/33
Schedule L	..	Rs. 177/09
Schedule M	..	Rs. 334/40

(b) If not state what according to the defendant is a reasonable assessment of the income of the said premises.

13. (a) Does the Defendant admit that the aforesaid three trustees became the owners of the premises described in the said Schedules K to M subject to the terms of the Trust by virtue of the Conveyances referred to in para 10(a) above.

No. 5  
Interrogatories  
on behalf of the  
Plaintiff for the  
Examination of  
the Defendant—  
3-7-64  
—Continued

13. (b) If not, who were the original owners through whom the Defendant claims title?

(c) State how title devolved from such original owners on the Defendant?

14. (a) State whether the defendant claims title to the properties described in the said schedules A to M as sole heir of Lewis Anthony Morais under Joint Will No. 1454 dated 4-7-1947 attested by P. S. P. Kalpage Notary Public or under any other chain of title ?

(b) If under another chain of title set out details of the same ?

15. Does the Defendant admit or deny that at the date of his death<sup>10</sup> Lewis Anthony Morais was (a) the sole owner of the properties described in the said schedules A to M of the Plaint and (b) was in exclusive possession of same ?

Sgd. D. N. THURAIRAJAH  
*Proctor for Plaintiff.*

Colombo 3rd July 1964.

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No. 6

PROCEEDINGS BEFORE THE DISTRICT COURT

20-7-64

NOT PRINTED

20

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No. 7

AFFIDAVIT OF THE DEFENDANT ANSWERING  
INTERROGATORIES

IN THE DISTRICT COURT OF COLOMBO

MRS. FRANCESCA VICTORIA NEE MORAIS, No, 267/2, Galle Road,  
Bambalapitiya, Colombo.

*Plaintiff.*

No. 10207/L

*Vs.*

JOSEPHINE MARY ALOYSIA MORAIS, No. 23/2, Lauries Road, 30  
Bambalapitiya, Colombo.

*Defendant.*

I, Josephine Mary Aloysia Morais of Lauries Road, Bambalapitiya Colombo make oath and state as follows :—

1. I am the defendant abovenamed.

2. A set of interrogatories was served on my proctor on 12th October 1964 for my answer.

3. Regarding interrogatory 1 I am not aware of the ownership of Mariam Morais to the lands and premises described in schedules A to J to the plaint. I am not aware of the position set out in Interrogatories 10, 11 and 13(a). I do not know who the original owners of the lands described in the several schedules were.

4. Answering interrogatory 3(a) I admit that Mariam Morais died but I do not know anything else referred to in interrogatories 3(b), 3(c), 3(d), 10 4 and 5.

5. I do not admit the position set out in the interrogatories 6, 7 and 8.

6. Answering interrogatories 13(b), (c), 14 and 15 I claim title to the several properties from my husband the late Lewis Anthony Morais who by his Last Will 1454 dated 4th July 1947 devised all his properties to me. He was the sole owner of the properties and was in exclusive possession of same.

7. I do not admit the statements in interrogatories 9(a) and 12(a). After deduction for taxes, repairs and maintenances the income is as follows :—

	Premises No. 34 St. Lucia's Street, Colombo. . .	Rs. 43.30 per month
20	Premises Nos. 10/4-25, 12, 14, 16, 18, 20, 22, 24, 26 & 28 St. Anthony's Mawatte Colombo. . . . .	Rs. 261.33 per month
	Premises No. 20 Galpotte Street. . . . .	Rs. 37.60 per month
	Premises No. 16 Galpotte Street. . . . .	Rs. 34.00 per month
	Premises No. 6/6 Galpotte Street etc. . . . .	Rs. 156.06 per month
	Premises Nos. 165/1 & 167 Chekku St. Etc. . . . .	Rs. 138.97 per month
	Premises No. 42 Brassfounder Street Etc. . . . .	Rs. 28.00 per month
	Premises No. 44/1 Brassfounder Street Etc. . . . .	Rs. 28.00 per month
	Premises No. 38/1 Brassfounder Street Etc. . . . .	Rs. 28.00 per month
	Premises No. 44 Andival Street. . . . .	Rs. 35.50 per month
30	Premises No. 157 Chekku Street. . . . .	Rs. 49.46 per month
	Premises Nos. 245 to 263/3 Jampettah Street. . . . .	Rs. 123.79 per month
	Premises No. 131 Jampettah Street Etc. . . . .	Rs. 271.65 per month

The foregoing affidavit having been read and explained to the within named in Tamil and she appearing to understand the contents thereof swore to and set her signature to same at Colombo this 19th day of October 1964.

Sgd.  
J. M. A. MORAIS

Before me.

40

Sgd. A. V. PUSHPADEVI JOSEPH.  
Commissioner for Oaths.

**ISSUES FRAMED**

23-11-64.

**MR. ADV. RENGANATHAN** with **MR. ADV. H. E. P. COORAY** for  
the *Plaintiff*.

**MR. KANAGARAJAH** for the *defendant*.

When this matter was taken up Counsel for plaintiff Mr. Renganathan stated that there was also a connected case bearing an earlier No. 9927/L and that case is also between the same parties, but involving much less properties in number than the property involved in the instant case No. 10207/L. In these circumstances Counsel drew my attention to the fact that both cases No. 10207 and 992L7/ have been specially fixed for trial today, this case be given preference as it would eliminate once and for all, all the disputes between these parties for the reason that all the lands have been caught up in the schedule to this plaint, except the two lands mentioned in the schedule to the plaint in case No. 9927/L.

Mr. Kanagarajah states that the normal practice of having the earlier case taken up first may be adopted and he also states that he would be handicapped in the leading of certain evidence if case No. 10207/L is taken prior to case No. 9927/L.

20

Intld. ....  
*Additional District Judge*  
23-11-64

**ORDER**

There is no hard and fast rule in this Court that the earlier case would be heard first and that preference should be given to earlier cases. But normally as a practice in order to dispose of cases as and when they come up for trial a preference is given to the earlier number. In this case from the submissions made by both sides it would appear that the disputes are substantially the same. Whilst in case No. 9927/L. there are only two lands involved, in case No. 10207/L. 13 lands are involved and Counsel for plaintiff stated that he would be in a position to prove that large sums are involved as monthly collections in this case and earlier disposal of this case would be in the best interests of parties. In view of this fact and that Counsel appearing in both cases are the same I accede to the request of Mr. Renganathan and take up for trial this case No. 10207/L.

Sgd. ....  
*Additional District Judge*  
23-11-64.

**MR. RENGANATHAN SUGGESTS :**

No. 8  
Issues Framed  
—Continued

1. Was Mariam Morais the owner of the land described in the schedule to the plaint upon the deeds set out in paras 2, 14, 24, 34, 46, 55, 65, 75, 85 and 95 of the plaint ?
2. Did the said Mariam Morais die leaving a last will bearing No. 1080 of 8th September, 1917 ?
3. Did the said Mariam Morais by the said last will bequeath all the rest and residue of his properties including the properties described in schedules A to J of the plaint to the three trustees referred to in the said last will upon the trusts and subject to the conditions set out therein ?
4. Was the said last will admitted to probate in District Court Colombo Testamentary Case No. 6237 ?
5. Did the executor and/or trustee appointed under and in terms of the said last will No. 1080 purchase in exercise of the powers vested under the said last will and become the owners of the properties described in the schedule K, L and M of the plaint upon the deeds set out in paragraphs 107, 117 and 127 of the plaint ?
6. Did the said executors and/or trustees convey on deed No. 1208 of 21st September, 1933 the lands and premises described in schedules A to M of the plaint to Louis Anthony Morais subject to the terms and conditions contained therein.
7. Was the said Lewis Anthony Morais as the fiduciary under and in terms of the said Last Will and/or in terms of the said deed No. 1208 and his predecessors in title in possession of the said lands and premises described in schedules A to M of the Plaint undisturbedly and uninterruptedly by a title adverse to and independent of the defendant and others ?
8. Was the plaintiff the only surviving child of the said Lewis Anthony Morais at the time of his death on 2nd September, 1958 ?
9. Did the said lands and premises described in schedules A to M of the plaint vest in the plaintiff on the death of Lewis Anthony Morais on 2nd September, 1958 ?
10. If all or some of the above issues are answered in the affirmative is the plaintiff entitled to the lands described A to M of the Plaint ?
11. Is the defendant in wrongful and unlawful possession of the said premises from 2nd September, 1958 ?
12. What sum is due to the plaintiff from the defendant as accrued damages from 1st June, 1960 up to 30th April, 1963 and as continuing damages thereafter ?

**MR. KANAGARAJAH SUGGESTS :**

13. Is there any prohibition in the will of Mariam Moraes against forced alienation or alienation in invitum ?

14. Were the properties referred to in the Plaint seized and sold by the Fiscal against Lewis Anthony Moraes ?

15. If so can the plaintiff maintain this action ?

16. Did the late Antony Moraes and the defendant execute their joint last will No. 1454 of 4th July 1947 in respect of their properties ?

17. Was the said last will admitted to probate in testamentary proceedings No. 20494/T of this Court ?

10

18. If so is the defendant the sole owner of the properties referred to in the schedule to the plaint ?

19. (a) Is there any prohibition in the said last will of Mariam Moraes No. 1080 against the disposal of his properties by a last will by Lewis Anthony Moeaes ?

(b) If not can plaintiff maintain this action ?

20. Has the plaintiff instituted proceedings No. 9929/L of this Court for the recovery of certain properties mentioned therein on the basis of the last will of Mariam Moraes ?

21. Can the plaintiff having omitted to sue in respect of the lands mentioned in the schedule to the plaint in this case or intentionally relinquishing his claim to the lands described in the schedule to the plaint in case No. 9929/L. maintain her claim in these proceedings ?

Sgd. ....  
*Additional District Judge*  
23-11-64.

Trial adjourned for Lunch.

Sgd. ....  
*Additional District Judge*  
23-11-64.

30

Trial resumed after lunch.

Same appearances as in the morning.

Mr. Ranganathan refers me to issue No. 14 raised by Mr. Kanagarajah and states that that issue left at that gives no particulars whatsoever for the plaintiff to meet the case canvassed in the issue. He asks for particulars. Counsel cites Section 75 of the Civil Procedure Code and submits that it is precisely to meet pleadings of this nature that that section has been enacted.

Mr. Kanagarajah, on the other hand, states that the plaintiff was not without his own remedy, in that he could have got it clarified by way of interrogatories.

No. 8  
Issues Framed  
—Continued

Mr. Ranganathan now states that, in view of the fact that the plaintiff is keen to have this matter heard and disposed of, he would be satisfied if the necessary particulars are given and issue 14 is recast in terms of the particulars relating to the various sales referred to therein.

Mr. Kanagarajah recasts issue 14 giving all those details :

14. (a) Were all the properties referred to in the schedule to the plaintiff seized under writ of execution issued in D. C. Colombo case Nos. 9528/S and 19984/M by the Fiscal Western Province ?

(b) Were the said properties exposed to public sale on 1st December 1949 and 7-12-1949 by the Fiscal, Western Province ?

(c) Were all the said properties put up for sale on 1st December, 1949, and 7-12-49 by the Fiscal, Western Province ?

(d) Were the said properties purchased by Emmanuel Joseph Gaspar Casie Chitty ?

(e) Were conveyances Nos. 20201 of 19th July, 1951 and 20206 of 16-8-51 made out by the Fiscal, Western province, in favour of Emmanuel Joseph Gaspar Casie Chitty ?

Mr. Kanagarajah states that issue No. 14 as recast now gives all the necessary particulars and details sought to be canvassed in issue No. 14.

Mr. Ranganathan now refers me to issue No. 21 and moves that it be recast so as to bring it into direct conformity with the pleadings. Counsel states that he is seeking to have this matter split up as the issue No. 21 in its present form is suggestive of the fact that there was intentional omission and relinquishing with a purpose, both of which are denied by him.

Mr. Kanagarajah states that he would wish the issue to remain in the form he has framed it.

30 I find that issue No. 21 in its present form is somewhat involved, and I ask Mr. Kanagarajah to split it up.

Mr. Kanagarajah splits up the issue in the following form :

21. (a) Has the plaintiff omitted to sue in District Court, Colombo No. 9929/L in respect of all the lands mentioned in the schedule to the plaintiff in this case ?

(b) Has the plaintiff in District Court Colombo No. 9929/L intentionally relinquished her claim in respect of the lands described in the schedule to the plaintiff ?



(c) If (a) and/or (b) is answered in the affirmative, can the plaintiff maintain this action ?

Mr. Kanagarajah suggests a further part to issue No. 19.

The present issue No. 19 is marked 19(a).

19. (b) If not, can the plaintiff maintain this action.

All the issues are accepted.

Mr. Ranganathan now states that, on the basis that the fiduciary and after his death his widow should be deemed to have had custody of all the title deeds and connected plans relating to these lands in dispute, he had noticed the defendant to produce them. 10

Mr. Kanagarajah states that none of these documents are with them.

In the circumstances, Mr. Ranganathan moves for permission of Court to lead the evidence of the Registrar of Lands.

The application is allowed.

## No. 9

### PLAINTIFF'S EVIDENCE

MR. RANGANATHAN calls :—

**Allage Don Dharmadasa Perera.** — affirmed 46, Record Keeper, Land Registry, Colombo.

Q. The Registrar of Lands has been summoned to produce the duplicate 20 of deed No. 2019 dated 1st March, 1901, attested by Mr. J. J. de Fry, Notary Public ?

A. Yes.

I have brought the duplicate of that deed, and I produce it marked P1.

I have brought to Court the Duplicate of Deed No. 68 dated 8th May, 1913, attested by Mr. E. G. Gratiaen, Notary Public, I produce the duplicate, of this deed marked P2.

I have brought to Court the duplicate of deed No. 708 dated 5th November, 1915, attested by Mr. W. E. V. de Rooy, Notary Public, and I produce it marked P3. 30

I have brought to Court the Duplicate of deed No. 857 of 22nd August, 1916, attested by Mr. G. A. Willie, Notary Public, and I produce that deed marked P4.

I have brought to Court the duplicate of deed No. 658 of 13th June, 1921 attested by Mr. L. Mack, Notary Public, and I produce that deed marked P5.

I have brought to Court the Duplicate of deed No. 1208 of 21st September, 1933, attested by Mr. P. M. de S. Seneviratne, Notary Public, and I produce that deed marked P6.

I have brought to Court the duplicate of deed No. 932 dated 28th September 1929, attested by Mr. P. M. de S. Seneviratne, Notary Public and I produce that deed marked P7.

I have brought to court the duplicate of deed No. 570 dated 21st November, 1923, attested by Mr. P. M. de S. Seneviratne, Notary Public, which I produce marked P8.

I have brought to Court the duplicate of deed No. 600 dated 1st March, 1924, attested by Mr. P. M. de S. Seneviratne, Notary Public and I produce that deed marked P9.

I produce these documents P1 to P9 from the custody of the Registrar of lands.

I have also brought to Court the Protocol of the Last Will No. 1080 dated 8th September, 1917, attested by Mr. G. A. Willie, Notary Public. Mr. Willie is dead. His protocols are with the Registrar of lands. I produce the Protocol No. 1080 marked P10.

In view of the fact that Last Wills are normally not subject to the regulations whereby certified copies are issued on mere applications made, Counsel states that in the circumstances of this case and in view of the fact that the certified copy obtained from the District Court does not contain all the portions as they probably have been mutilated or destroyed, he asks that in these special circumstances this officer be directed to issue a certified copy of Last Will No. 1080 of 8th September, 1917.

**Order**

I allow the application.

30 Cross-examination — Nil.

Intld. ....  
*Additional District Judge*  
23-11-64.

**P. M. Seneviratne**, — affirmed 73, Proctor and Notary Public, Colombo.

(Shown duplicate of deed No. 1208 dated 21st September, 1933, P6) — This deed was attested by me. I have before me the duplicate of that deed. I can identify my signature on this deed. This deed was signed by the executors and the witnesses in my presence and in the presence of one another.

No. 9  
Plaintiff's  
Evidence

Evidence of  
A. D.  
Dharmadasa  
Perera—Exami-  
nation  
—Continued

Evidence of  
P. M. Senevi-  
ratne—Exami-  
nation

No. 9  
Plaintiff's  
Evidence  
—  
Evidence of  
P. M. Senevi-  
ratne—Exami-  
nation  
—Continued

I swear to the correctness of my attestation in this deed. I knew the executants and the witnesses. Two of the executants signed on one day and one signed on another day. There are two attestations to this deed. I swear to the correctness of both attestations.

(Shown duplicate of deed No. 932 dated 28th September, 1929. P7 —) This deed was attested by me. I identify my signature on this deed. The executants and the witnesses signed before me and in the presence of one another. I identify the signatures of the executants and of the witnesses. I swear to the correctness of my attestation.

(Shown deed No. 570 dated 21st November, 1923, P8) — This deed was attested by me. I identify my signature on this deed. I also identify the signatures of the executants and the witnesses. They signed before me and in the presence of one another. I swear to the correctness of my attestation.

(Shown duplicate of deed No. 600 dated 1st March, 1924, P9) — This deed was attested by me. I identify my signature on this deed. I also identify the signatures of the executants and the witnesses. They signed this deed before me, and in the presence of one another. I swear to the correctness of my attestation.

Cross-examination — Nil.

Sgd. .... 20  
*Additional District Judge*  
23-11-64.

Evidence of Sir  
Donatius Vic-  
toria—Exami-  
nation

**Sir Donatius Victoria** — SWORN, 72, of No. 38, Skelton Road, Havelock Town.

*Q.* Where is your native place ?

*A.* My ancestral home, the home of my parents, is in Manapad, Tirunelveli District, South India, but my father and mother settled down in Ceylon, and I was born and bred here. I received my education here. My ancestral properties are there in Manapad and in the surrounding districts, and in some other parts of the Tirunelveli District. 30

*Q.* Although your parents had come to Ceylon, did they go now and then to their ancestral home in Tirunelveli District ?

*A.* They had maintained contact with the ancestral home, and I used to go myself to South India and come back.

*Q.* Have you and your parents been regularly visiting your ancestral home in Tirunelveli District ?

*A.* During their time they visited the ancestral home to celebrate the festival in Manapad Church.

That was the festival of the Sacred Heart of Jesus. In Manipad, in memory of my parents, I have built a hospital, a church, a repository and a school, which have cost me over 11 or 12 lakhs of rupees, although my interests are here. Just because my parents are from Manipad, I thought that I should do that in memory of my parents. Today that very same home left by my parents is there, but I have renovated it and put up an upstairs and made it look modern, because it was an old and ancient building. This building is in Rajah Street in Manipad.

No. 9  
Plaintiff's  
Evidence  
—  
Evidence of Sir  
Donatius Vic-  
toria—Exami-  
nation  
—Continued

The plaintiff is married to my son Joseph Salvadore Victoria. The  
10 plaintiff is my daughter-in-law. My daughter-in-law's father is Anthony  
Louis Morais. Louis Anthony Morais is the son of the late Marian Morais.  
The mother of the plaintiff was the daughter of one Soosai Xavier Carvalho,  
who was also known as Pancras Carvalho.

Soosai Xavier Carvalho was a relation of mine. He married a second  
wife, one of my own cousins. He was also originally related to me. He is a  
first cousin of my own brother-in-law who has married my eldest sister, and  
who is still alive here.

I know Anthony Louis Morais. He was also from Manapad. His  
ancestral home was two doors next to my ancestral home in the same Rajah  
20 Street.

I produce a certified copy of the registration of marriage of Louis Anthony  
Morais and Mary Pancras Carvalho, marked P11. These are the plaintiff's  
parents.

Mr. Kanagarajah objects to the production of this document.

**To Court :**

*Q.* Were you present at this wedding ?

*A.* I am not quite sure.

*Q.* Can you remember whether you were present at this wedding referred  
to in this certificate ?

30 *A.* I am not certain, and I cannot definitely say that I was present.

*Q.* They lived as husband and wife for how many years ?

*A.* They were married somewhere in 1919.

*Q.* When did the first wife die ?

*A.* She died somewhere in 1921.

(Mr. Kanagarajah objects to this marriage certificate going in on the  
ground that it is not a public document, and that it is a private document.)

No. 9  
Plaintiff's  
Evidence

—  
Evidence of Sir  
Donatius Vic-  
toria—Exami-  
nation  
—Continued

For the advantage of Court, this document is read out by Mr. Ranganathan. The certificate attached to it is further read out, and he submits that this comes within the category of public documents referred to under Section 74.

**Order :**

On the face of it I find that all the formalities necessary for the purpose of receiving it in evidence are found on the document, and the certificate of the notary attached to it. I allow this document to be marked.)

*Q.* Are you able to remember dates and years ?

*A.* To the best of my knowledge I will say whatever it would be possible for me to say.

(Mr. Ranganathan marks the Notary's certificate attached to P11, as P11a).

I produce, marked P12, a certified copy of the certificate of Birth of Maria Thommai Franciscal. This is a certificate kept of the register of birth that occurred in the Manapad Village, Tiruchendur Taluk, in Tirunelveli Jilla in the year 1920.

(Mr. Kanagarajah objects to this document also going in.

**Order :**

It is accepted in view of the above ruling where the same certificate appears).

---

I produce the certificate of the Notary Public attached to P12, marked P12a, and the translation marked P12b.

The date of birth of the child is 5th April, 1920. The name of the father is Louis Morais. The name of the mother is Pancras Carvali. In India in the Manapad Village we call the name in Tamil as Carvali, but in English they call here Carvallo. The residence is given as Rajah Street. The Community is given as Baratha Catholic.

*Q.* I have read out to you the particulars given in this certificate of birth — the name of the father, the name of the mother, the street in which they were resident, and the community to which they belong ?

*A.* Yes.

*Q.* The father's name is given as Louis Morais, the mother's name is given as Pancras Carvali, the residence is given as Rajah Street, the community

is given as Catholic Baratha, the date of birth is given as 5th April 1920, and the name of the child is Maria Thommai Franciscal ?

No. 9  
Plaintiff's  
Evidence

A. Yes.

Q. From these particulars can you say to whom this certificate refers ?

Evidence of Sir  
Donatius Vic-  
toria—Exami-  
nation  
—Continued

A. This refers to my daughter-in-law the plaintiff in this case.

I also produce a certified copy of the registration of birth that occurred in Manapad Village, in Tiruchendur Taluk, of Tirunelveli Jilla in the year 1923, of a child by the name Marian Xavier Morais, marked P13, the Certificate of the Notary attached thereto marked P13A, and the translation  
10 marked P13B. The name of the father is given as Anthony Louis Morais, and the name of the mother is given as Pancras Carvali. The residence is given as Rajah Street. The community is given as Paravar Catholic. The date of birth is given as 11th June, 1923.

Q. From the particulars given here, namely, the names of the parents, their residence, their community, and the date of birth, can you say to whom this certificate refers ?

A. This refers to a son born to Mr. Anthony Louis Morais and Mary Pancras Carvallo. I remember to have been there during that time. It was an event which caused a great deal of jubilation because a son was  
20 born.

That child died within three months. I produce a certified copy of the Register of deaths that occurred in Manapad Village, Tiruchendur Taluk in Tinneveli Jilla during the year 1923, marked P14, I also produce the certificate of the Notary attached to P14, marked P14A, and the translation marked P14B.

Q. The particulars given in this certificate are as follows : Mariam Xavier ?

A. Yes, that is the grandfather's name.

Q. Son of Anthony Louis Morais ?

A. Yes.

30 Q. The date of death is 21st August, 1923 ?

A. Yes.

Q. Residence at the time of death is given as Rajah street ?

A. Yes.

Q. Community — Baratha Catholic ?

A. Yes.

No. 9  
Plaintiff's  
Evidence  
—  
Evidence of Sir  
Donatius Vic-  
toria—Exami-  
nation  
—Continued

I also produce a certified copy from the Register of Deaths from the same place during the year 1923 relating to the death of Pancras Carvali, mother of the plaintiff, marked P15. I also produce the certificate of the Notary attached to P15, marked P15A, and the translation P15B.

*Q.* From the particulars I have read out to you from P15, this is a certificate of death which occurred in 1923 ?

*A.* Yes.

*Q.* The name of the person who died is Pancras Carvali wife of Anthony Louis Morais, resident at the time of death at Rajah Street, date of death is 28th July 1923, community, Paravar Catholic ? 10

*A.* Yes.

*Q.* To whom does this death certificate refer ?

*A.* This death certificate refers to Mrs. Anthony Louis Morais, the first wife; that is, the plaintiff's mother.

Anthony Louis Morais married again. He married my sister in 1927. She is the defendant in this case.

(Mr. Kanagarajah wishes it to be noted that in view of the earlier ruling given to the admission of document P11, he has not formally objected as and when each of the documents P11 to P15 were tendered, but he wishes it to be noted that he objects to all these documents on the same ground as mentioned 20 earlier.)

My sister married Anthony Louis Morais in 1927. They lived most of the time in my own house at Rajah Street at Manapad. They also came to Colombo and lived with me in Colombo. They took their own bungalow afterwards.

*Q.* Do you know personally whether Louis Anthony Morais came by any property through his father ?

*A.* Yes, I made inquiries as to what the man was worth before I gave my sister in marriage to him, and I was told that his father left all the property to his one and only son. The marriage was not done for the sake 30 of the money alone, but because of the relationship.

All the properties were left to him by the Last Will of his father. These properties were handed to him when he reached the age of 35.

The properties were in the hands of the trustees at that time — three sons-in-law of the late Marian Morais.

*Q.* Do you remember the time the Trustees gave over the property to Anthony Louis Morais ?

- A. Anthony Louis Morais filed an action against the Trustees to hand over the properties, because they did not hand over the properties when he reached the age of 35.

No. 9  
Plaintiff's  
Evidence

I produce marked P16 a certified copy of the plaint filed by Anthony Louis Morais against Stephen Corera, M. J. Carvalho and J. B. Mirando, the three sons-in-law of Marian Morais.

Evidence of Sir  
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tion  
—Continued

(This document is objected to by Mr. Kanagarajah.

**Order :**

It is admitted for the same reason given earlier.)

- 10 This was for an accounting of all the properties left in trust by P10, and also in respect of the additional property transferred on deed No. 1208 of 21st September, 1933, P6.

(Mr. Kanagarajah further wishes it to be noted that he has not had sufficient time or notice of this document, as it was only a week ago that the document was filed.)

I produce a joint motion of settlement filed in that case, marked P16A.

(This document is objected to as Mr. Kanagarajah says that these are inadmissible in terms of section 42, 43 and 44.

**Order :**

- 20 This is a part of the very record already tendered, and I allow the document to be marked).

I must now refer to the application made by Mr. Kanagarajah at 3. p.m. today, informing court that he has been summoned by the Magistrate's Court of Galle to be in attendance there tomorrow, i.e. 24th November and stating that he will not be able to be present here in Court to conduct this case. This application is being strenuously opposed by Mr. Ranganathan.

The summons itself is shown to Court by Mr. Kanagarajah, and it is found that it is dated 23rd October, 1964, but Mr. Kanagarajah states that he was served with this summons sometime last week.

- 30 This case had been fixed specially for today and tomorrow. Normally a Court will not stand in the way of any witness or Counsel or Proctor appearing in another court, particularly when he is summoned as a witness, but I regret that the circumstances of this case are such that I will have to deviate from the normal practice of court.



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Plaintiff's  
Evidence

—  
Evidence of Sir  
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tion  
—Continued

This matter came up for trial for the first time on 28th February, 1964, and on that occasion this had been adjourned on the ground that Mr. Kanagarajah had stated to Court that certain documents that were necessary to be put to witnesses could not be obtained before that date. Thereafter it had been adjourned for a further period of five months, and the trial came up again on 20th July, 1964. On that date, quite unfortunately, Mr. Kanagarajah was ill, but special mention has been made of the special circumstances of this case and on the basis of those circumstances this matter had been specially fixed for two days, i.e. today and tomorrow, and both parties were informed that this case will be taken up on those two dates. Thereafter this matter has come up today. I must say that when this matter was marked ready in the morning, sometime round about 11 o'clock the fact that Mr. Kanagarajah was served with summons to appear in Galle was not brought to the notice of Court at that stage. As I have earlier stated, it was brought to the notice of Court only at 3. p.m. One has to take it that when a party or a lawyer says that the case is ready, they are ready under all circumstances, and that the case will go to trial on the dates fixed specially for that case. It may well be that Mr. Kanagarajah had not brought his mind to bear on this matter at that stage, but in the circumstances of this case, having regard to the fact that it has been specially fixed, and further that the summons was issued on the 23rd of October — about a month ago — and was served on him sometime last week, the least that Mr. Kanagarajah should have done was to have informed the Court or the other side about it. None of these things has been done. In these circumstances, I refuse a date. If so advised, Mr. Kanagarajah can make other arrangements to conduct the case. The trial will proceed tomorrow.

Sgd. ....  
*Additional District Judge*  
23-11-64.

24th November 1964

TRIAL RESUMED

30

SAME APPEARANCES AS YESTERDAY

**Sir Donatius Victoria, Sworn. Recalled.**

**Examination—in—chief (Continued)**

I know St. James church at Manapad. That is a very cold church. I have put up a school to that church also. I attended many weddings at that church whenever I happened to be in Manapad.

Anthony Louis Morais married my sister as his second wife. That wedding took place at St. James Church at Manapad. In that church there is a register kept of marriages. That register is kept by the Parish Priest of that Church.

**Q.** You told the Court yesterday that your parents and you visited Manapad annually ?

A. Yes, during the festival time.

The festival is held every year in the month of June or nine days preparatory to the festival. There is nine days Novena. They have service and benediction. The festival is done by me and my parents for nine days. Prior to my festival, Louis Anthony Morais used to celebrate at St. James Church the same festival for nine days.

I visited Manapad in the years 1920, 1921, 1922 and 1923. During this festival I used to meet Louis Anthony Morais and Pancras Carvallo. They were residing two doors next to my house in Rajah Street. During the years  
 10 1920, 1921, 1922 and 1923 I used to meet them whenever I went there, because I had to pass their house to go to my house. They used to go to church together, and I have seen them on the street going to church together. Sometimes when I got to church, I meet them also and go along with them to church.

Q. How was Pancras Carvallo related to Louis Anthony Morais ?

A. They were husband and wife.

Q. Did they get about as husband and wife ?

A. Yes.

Q. How did you know that ?

A. I have seen them at Manapad whenever I went there. They go to church  
 20 together.

( To Court :

Q. Did you regard them as husband and wife ?

A. Yes.

Q. Did the public react to them as husband and wife ?

A. Yes.

Q. Were they seen at functions together ?

A. Yes, they go for functions, and for Christmas they come to my house also.

Q. For all intents and purposes they were looked upon by the general public  
 30 as husband and wife ?

A. Yes.)

My son married the plaintiff in 1940. The proposal came to me from Anthony Louis Morais and I had to consult my own people. My sister was married to Anthony Louis Morais. She also got together and fixed up the

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nation  
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marriage between my son and the plaintiff. I did have a talk with Anthony Louis Morais in regard to the marriage. The father Anthony Louis Morais gave away the daughter in the church. The marriage was solemnized at St. Mary's church, Lauries Road, Bambalapitiya.

Q. You told the Court yesterday that Mariam Morais left certain property?

A. Yes.

I produce a certified copy of Deed No. 2019 of 1st March, 1901, attested by Mr. J. J. de Fry, Notary Public, marked P1A, which is the same as P1.

I produce a certified copy of Deed No. 68 of 8th May, 1913, attested by Mr. E. G. Gratiaen, Notary Public, marked P2A, which is the same as P2. 10

I produce a certified copy of deed No. 708 of 5th November, 1915, attested by Mr. W. E. V. de Rooy, Notary Public, marked P3A, which is the same as P3.

I produce a certified copy of deed No. 857 of 22nd August, 1916, attested by Mr. G. A. Willie, Notary, marked P4A, which is the same as p4.

I produce a certified copy of deed No. 658 of 13th June, 1921, attested by Mr. L. Mack Notary Public, marked P5A, which is the same as P5.

I produce a certified copy of deed No. 1208 of 21st September, 1933, attested by Mr. P. M. de S. Seneviratne, Notary Public, marked P6A, which is the same as P6. 20

I produce a certified copy of deed No. 932 dated 28th September, 1929, attested by Mr. P. M. de S. Seneviratne, Notary Public, marked P7A, which is the same as P7.

I produce a certified copy of deed No. 570 dated 21st November, 1923, attested by Mr. P. M. de S. Seneviratne, Notary Public, marked P8A, which is the same as P8.

I produce a certified copy of deed No. 600 dated 1st March, 1924, attested by Mr. P. M. de S. Seneviratne, Notary Public marked P9A, which is the same as P9.

I produce a certified copy of the Last Will No. 1080 dated 8th September, 1917, attested by Mr. G. A. Willie, Notary Public, issued by the District Court of Colombo marked P10A which is the same as P10. In this certified copy the early portion of the Last Will is missing. 30

Q. After the Trustees had transferred the property to Louis Anthony Morais, did you manage the property at any time ?

A. I managed all the properties of Morais.

Q. Did he give you a power of attorney for that purpose ?

A. Yes.

I produce a certified copy of Power of Attorney No. 1994 dated 12th October, 1936 marked P17. This is a general Power of Attorney to manage his properties.

Q. Why did you take over the management ?

A. Because at that time he was supposed to be a spendthrift; he was on the side of spending money. So I took it over and managed it for him.

I managed it for him for four or five years — I am not quite sure of the number of years. Louis Anthony Morais died on 2nd September, 1958.

10 I know the property that is the subject matter of this case. He possessed the property till he died. From 2nd September, 1958, the property has been in the possession of Mrs. Morais the defendant. Up to date she continues to be in possession of that property.

(Mr. Ranganathan marks the Indian Christian Marriage Act No. 15 of 1872, as P18 and the Births, Deaths and Marriages Registration Act No. 6 of 1886, P19).

Q. In regard to the property dealt with in Schedule A to the Plaint — No. 34, St. Lucia's Street, Kotahena the plaintiff has claimed a sum of Rs. 56/28 as damages per month ?

20 A. Yes.

Q. In respect of the properties which form the subject matter of this action, the plaintiff has claimed a sum of Rs. 2,004/72 as damages per month ?

A. Yes.

Q. Is that a fair assessment of the damages ?

A. Yes.

Q. During the time you were managing that property, what was the monthly collection of rent ?

A. Round about Rs. 3,000/- a month.

30 Out of this property, seven houses in Bambalapitiya were sold. Rs. 2,004/72 would be a fair assessment of damages taking into account that seven houses have been sold. There is another case filed for two properties.

Q. Leaving out these two properties and the seven houses at Bambalapitiya that were sold, do you think that Rs. 2,004/72 per month would be a fair assessment of damages ?

No. 9  
Plaintiff's  
Evidence

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Evidence of Sir  
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tion

—Continued

No. 9  
Plaintiff's  
Evidence

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Evidence of Sir  
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examination

A. Yes.

**Cross Examined :**

Q. You said yesterday that you were born and bred in Ceylon ?

A. Yes.

I was born on the 15th of October, 1893. My education was in Ceylon, but not throughout. I received a part of my education in India also. I was educated at St. Benedict's College, Kotahena. I cannot remember the year I entered St. Benedict's College, Kotahena. My early education was in Ceylon. I cannot remember when I started my early education.

Q. Was your early education from 1900 to 1915 ?

10

A. I cannot remember.

I cannot remember the year I started my education at St. Benedict's college, Kotahena.

**( To Court :**

Q. Can you remember the age you finished up your education, whether in India or Ceylon; how old were you then ?

A. I finished my education at Trichinopoly, St. Joseph's College. I was 21 or 22 years old at that time. My education in Ceylon and India was prior to that. )

Q. By the time you were about 23 years you had finished your studies both in India and in Ceylon ?

A. I cannot remember; it may be even earlier.

**( To Court :**

It was not a University education that I had at Trichinopoly.)

I cannot remember when I gave up studies. I was not employed in India; I was employed in Ceylon.

Q. At what age did you start earning; after the first World War or before the First World War ?

A. I cannot remember.

Q. Where did you get yourself first employed.

30

A. I was employed at two or three places in Ceylon. One was at Ragala under Mr. M. J. Carwallo, a Trustee.

I was learning work under him. He was a general merchant. I was an apprentice under him. At that time my father put me under him. I was working there. I worked with Mr. Carwallo at Ragala for about a year, but I am not quite sure. I cannot remember whether it was before or after the First World War. After that I was employed in the Galle Face Hotel. There also I wanted to learn work. I was in Galle Face Hotel for two or three years. Prior to that I was at Costa & Sons at Gampola. I was at Costa & Sons after I left Ragala. They are all from Manapad.

No. 9  
Plaintiff's  
Evidence

—  
Evidence of Sir  
Donatius Vic-  
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examination  
—Continued

During my apprenticeship under Mr. Carwallo, I lived with him. I was  
10 at Costa & Sons learning work. My apprentice required my constant atten-  
dance there. It was thereafter that I came to Galle Face Hotel. I was at  
Galle Face Hotel for nearly two years.

*Q.* That will bring you to 1922 or 1923 ?

*A.* I cannot remember that.

I was learning work at Galle Face Hotel. After that I took up my  
Father's business. He was running a business at Main Street, and I took over  
and ran that business myself. My father was not living at that time. He died  
sometime ago, but I cannot remember when he died.

*Q.* Could it be just before the second World War ?

20 *A.* I cannot remember.

*Q.* You cannot remember anything except the facts of this case ? . .

*A.* I cannot remember years.

I had a younger brother. His name was Peter Victoria.

*Q.* He also had the name Barnabus ?

*A.* He was Peter; he had a number of other names.

I had two sisters, one of whom is the defendant. The defendant is younger  
to me. The other sister was elder to me. She was married to one Mr.  
Carwallo.

My Parents had their own family home at Manapad.

30 *Q.* Your younger sister the defendant had her early education firstly at  
Manapad ?

*A.* I got her educated at the Kegalle Convent.

*Q.* Before that your younger sister had her education at Trichinopoly ?

*A.* In Trichinopoly for a short time.

No. 9  
Plaintiff's  
Evidence

Evidence of Sir  
Donatius Vic-  
toria - Cross-  
examination  
--Continued

*Q.* Then she came down to Ceylon and had her education at the Kegalle Convent ?

*A.* Yes.

When she was at the Kegalle Convent, my mother died.

*Q.* You as the elder brother spent for her education at the Convent ?

*A.* Yes.

*Q.* In duty bound you paid for her education at the Kegalle Convent ?

*A.* Yes.

*Q.* Your wife at that time was living at Manapad ?

*A.* She was in Manapad, but I am not quite sure.

10

*Q.* Your sister did not spend her vacation at your house in Colombo ?

*A.* She spent her vacation at my house also.

*Q.* She was living at School Lane with one Mr. Paiva ?

*A.* No, it is not correct to say that.

*Q.* Was she not living in Joseph Lane, Bambalapitiya, with one Paiva ?

*A.* No.

*Q.* You said that you succeeded to or you took over your father's business on his death ?

*A.* Yes.

*Q.* When did your father die ?

20

*A.* I forget the year.

I am 72 years old now.

*Q.* Can you not calculate and say roughly when your father died ?

*A.* I cannot.

I was not married at the time my father died. I took over the business of my father. My father was running the Belfry Bar at the junction of 4th Cross Street and Main Street. When I took over I was running it myself with the assistance of employees.

*Q.* The success of your business depended on your regular attendance at the place of business ?

*A.* Yes. When I did that business I started a number of other stores one by one.

I had my Tea Rooms business at Norris Road. When I started running the Belfry Bar, I opened up the Victoria Tea Room near the Fort Railway Station. I was also a caterer to the Ceylon Government Railway. I lost that contract about nine years ago. From about 1956 backwards I was running that business as caterer to the Ceylon Government Railway.

No. 9  
Plaintiff's  
Evidence

Evidence of Sir  
Donatus Victoria - Cross-  
examination  
- *Continued*

<sup>10</sup> *Q.* The conduct of these businesses from time to time necessitated your continued presence in Ceylon ?

*A.* Yes. Even when I was running the refreshment room and other businesses, I used to go periodically to Manapad.

*Q.* That is in connection with the festival you spoke of at St. James Church, Manapad ?

*A.* Not only that. I started doing business also in India. I had a business in Madras, another in Bangalore, and one in Pondicherry.

The Victoria Hotel, Madras, is 17 years old.

<sup>20</sup> *Q.* You were not present on the occasion of the marriage of Louis Anthony Morais to Mary Pancras Carvalho ?

*A.* I was present.

*Q.* I thought you told yesterday that you were not present at that marriage ; you said so yesterday in your evidence ?

*A.* I may have been present at that wedding, I am not sure. If I remember right, I attended that wedding.

*Q.* As a good Catholic, as a devout Catholic, you attend Mass for the repose of the soul of the dead ?

*A.* Yes.

<sup>30</sup> *Q.* You have had this Mass held at various churches in remembrance of your father ?

*A.* Yes.

*Q.* Still you do not know the date of death of your father ?

*A.* I cannot remember.



No. 9  
Plaintiff's  
Evidence

Evidence of Sir  
Donatius Vic-  
toria - Cross-  
examination  
—Continued

*Q.* The plaintiff in this case, that is, your daughter-in-law, has not been attending Court on the dates of trial in this case ?

*A.* She was present here.

*Q.* Was she present in Court yesterday ?

*A.* Not yesterday.

On the last two dates medical certificates were sent by the defendant. One day when the defendant sent a medical certificate, the plaintiff was present in Court.

*Q.* Louis Anthony Morais was married, according to you, on the first occasion to Mary Pancras Carvalho ?

10

*A.* Yes.

*Q.* The Priests who officiated at the ceremony are not giving evidence in this case ?

*A.* No.

*Q.* They are not in Court ?

*A.* No.

*Q.* Nor any person who attended the ceremony are here in Ceylon to give evidence ?

*A.* Those who signed as witnesses to the marriage are now dead.

*Q.* Any person who attended the wedding in Church as a guest or whatever 20 it may be has not come to Court today to give evidence ?

*A.* No.

*Q.* You said that Louis Anthony Morais and Mary Pancras Carvalho were received by very many people as husband and wife ?

*A.* Yes.

*Q.* There isn't a single person, a single member of the public here today to say that they were so received by the people ?

*A.* I am also a member of the public.

*Q.* Yesterday you traced your relationship to that party saying that you are related to them in various ways ?

30

*A.* Yes.

Q. You are an interested party ?

A. They are my relations.

Q. Is there any member of the public, other than yourself, to give evidence today in this case ?

A. No.

Q. Mr. Morais father, was he doing any business in Ceylon ?

A. He was a Ship Chandler.

That is Marian Morais. His son Anthony Louis Morais did not succeed to that business.

10 Q. He did not carry on business under the name of Anthony Louis Morais & Co. After the death of the old man, the Trustees carried on the business.

Q. You said that at a certain stage the trustees surrendered possession of the property to Louis Anthony Morais ?

A. Yes.

Q. Did Louis Anthony Morais carry on any business under the name of Morais & Company ?

A. He did not carry on his father's business.

Q. Did he carry on an independent business of Ship Chandler and Stevedore under any name ?

20 A. He did some business I know.

Q. Under the name of Anthony Louis Morais & Co ?

A. Yes.

Q. Are you aware that this Louis Anthony Morais had also bought a ship ?

A. I am not aware.

After I handed over everything to Mr. Morais, what he got I do not know. He bungled the whole thing and got into debt.

30 After the marriage of Louis Anthony Morais with Pancras Carvalho, they were living at Manapad. I cannot remember for how long they were living at Manapad. I have seen them at Manapad. Just after the marriage they lived for sometime in their own ancestral house. I cannot say how long they lived there. I used to go in the month of June every year to Holy Cross Church at Manapad. Louis Anthony Morais had a festival lasting nine days, and I also had a festival for nine days immediately succeeding.

No. 9  
Plaintiff's  
Evidence

Evidence of Sir  
Donatius Vic-  
toria - Cross-  
examination  
—Continued

*Q.* During that period you had seen him there ?

*A.* I have been going to Manapad every year for the festival. After the marriage I have seen them living in their own ancestral house.

*Q.* For what period was he living there at Manapad ?

*A.* I cannot remember.

He gave me a Power of Attorney in the year 1936.

*Q.* Did he give you the Power of Attorney to enable you to conduct his affairs during his absence from Ceylon ?

*A.* Yes, to carry on his business.

*Q.* So the Power of Attorney was given by him to you because he was away 10 from Ceylon ?

*A.* No, he was in Ceylon. He used to go to Manapad also. He found that he was incapable of carrying on his affairs, and he gave me the power of attorney.

*Q.* You have produced P12 as the certificate pertaining to the birth of the plaintiff ?

*A.* Yes.

*Q.* Who gave the information regarding the birth of this child ?

*A.* I cannot say. When Francisca was born, I was not in Manapad.

It did not interest me to know about the birth of Francisca. When she 20 was born I did not expect her to be my daughter-in-law.

*Q.* About the birth of this plaintiff, could any relation of yours have given information ?

*A.* I cannot remember.

*Q.* Can you say who Sodalimuttu Thevar, the person who is alleged to have given the information about the birth of this child the plaintiff, is ?

*A.* I do not know.

I do not know Sodalimuttu Thevar.

*Q.* His residence is given as Lazarus Road ?

*A.* It is Lazoors Road. It is in Manapad.

*Q.* The name of the father is given as Louis Morais and not as Anthony Louis Morais ?

*A.* (No answer.)

*Q.* You said while engaged in business Louis Anthony Morais suffered loss ?

*A.* Yes, when he did business. I knew he was running a business. At the end of it I came to know that he was in serious trouble and got into serious debt. That was after the marriage of my sister to him.

My sister married him in 1927. When he was in difficulties he came to me.

*Q.* He told you that the properties were seized and sold ?

10 *A.* He did not say that. He told me that he was in difficulties, and that he had asked Mr. A. P. Casie Chitty to take over the properties, collect the rents and distribute among the creditors, and when it was free from debt to hand over the properties to him.

*Q.* Were these properties sold by the Fiscal ?

*A.* I am not aware.

I know that seven properties were sold at Bambalapitiya to Mr. Casie Chitty for remuneration for services rendered by him.

*Q.* Subsequent to the action, were the properties sold by the Fiscal ?

20 *A.* No. My daughter-in-law came to me and said "My father wants to sell these properties, and he is asking me for my signature" and she wanted to know whether to put her signature. I said it was left entirely to her.

*Q.* Were the properties sold by auction ?

*A.* No.

*Q.* Were they bought by Mr. Casie Chitty ?

*A.* Whether he bought it or got it free, I do not know.

My daughter-in-law had to sign that because Mr. Casie Chitty insisted on that.

30 *Q.* Since you lost the Ceylon Government Railway business, you started doing business in India ?

*A.* I am the owner of 14 shops today in Colombo.

*Q.* Once your employees went to India, you opened up certain shops in India ?

No. 9  
Plaintiff's  
Evidence

Evidence of Sir  
Donatius Vic-  
toria - Cross-  
examination  
—Continued

A. It was not for that reason. I have got four hotels in India; two in Madras, one in Bangalore and one in Pondicherry.

Q. These businesses require your presence there frequently ?

A. I go up and down and look into the affairs connected with those shops.

Q. You are mainly in Manapad ?

A. I did not go to Manapad for the last ten years.

Q. On every day you attended Court in this case you have been coming from India to Colombo ?

A. Not only for the sake of this case, but my family is here and my business is here. 10

I did not come a day or two earlier to Colombo for the purpose of this case.

Q. When did you come to Ceylon recently ?

A. I came on Thursday last to celebrate the engagement of my granddaughter; Mrs. Paiva's daughter. The engagement took place on Saturday.

Q. On the previous dates of trial in this case also, you were here ?

A. Yes.

Q. Shortly thereafter you left for India ?

A. I always go up and down. I am going back to India on the 26th. I have 20 so many matters here, and I have to come here often.

All these properties in respect of which this action is filed are situated within the Municipal limits of Colombo.

Q. All these are subject to Rent Control ?

A. One property during my time was outside Colombo.

Q. All these properties are situated within the Municipal limits of Colombo and are subject to Rent Control ?

A. Yes.

I knew the authorized rent in respect of these houses when I was managing the property. That was after the Trustees handed over the properties. That 30 was from 1936.

Q. At that time the Rent Control Act was not in force ?

A. I do not know.

Q. You are interested to see the plaintiff winning this suit ?

A. Naturally.

Q. At the cost of the defendant and to her loss ?

A. The property does not belong to the defendant.

Q. All these documents P11 to P16 have been attested by a Notary by the name of Jacob Andraes Chandramahal ?

A. Yes.

10 Q. Do you know that these documents are for the plaintiff, and was it you who got these documents for the plaintiff ?

A. Yes, I had to do it for my daughter.

Madras is about 600 miles away from Manapad. Udenkundi is three miles from Manapad. It is a Court near Manapad, and they go there for the purpose of obtaining any documents. If a party cannot go there, an officer comes and issues the documents on payment of expenses.

**Re-examined :**

Q. You told the Court that certain properties were sold by Louis Anthony Morais to Mr. Casie Chitty ?

20 A. Yes.

That is Mr. E. J. G. Casie Chitty the son of Mr. A. P. Casie Chitty.

Q. Yesterday you were questioned by Court as to whether you were present at this wedding ?

A. Yes.

Q. And you said "I am not certain, and I cannot definitely say that I was present" ?

A. Yes.

30 I produce affidavit dated 19th October, 1964, filed of record in these proceedings by the defendant in answer to interrogatories served on the defendant. I mark in evidence paragraph 7 of that affidavit, P20, and I mark as P21 interrogatory No. 9 of the interrogatories served on the defendant in this case.

No. 9  
Plaintiff's  
Evidence

Evidence of Sir  
Donatius Vic-  
toria - Cross-  
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—Continued

Evidence of Sir  
Donatius Vic-  
toria - Re-  
examination

No. 9  
Plaintiff's  
Evidence

Evidence of Sir  
Donatius Vic-  
toria - Re-  
examination  
—Continued

(Counsel refers me to paragraph 7 of the affidavit of the defendant in answer to interrogatory No. 9 and states that the defendant admits that the entire damages would amount to Rs. 1,230/- while the plaintiff's claim in this action is Rs. 2,004/-.

Mr. Ranganathan, at this stage, says that he has no further questions to ask in re-examination, but that, if need be, he may have to make an application at a later stage to refer to a document, namely, deed No. 1324 of 20th September, 1949, attested by Mr. P. M. A. Corea, and reference to which has been made in this witness' evidence in cross-examination.

This application to be made at the stage when the document is in the hands of Counsel, and it will be considered at that stage.) 10

Intld. ....  
*Additional District Judge*  
24-11-64.

Evidence of M.  
Sidambara-  
nathan - Exami-  
nation

**Mailvaganam Sidambaranathan.** affirmed 30 Record Keeper, District Court, Colombo.

(Shown a certified copy of the Probate issued in District Court Colombo Testamentary case No. 6237 dated 10th June, 1938, marked P22)

This is a certified copy of the Probate issued in the case. I have brought the record of the case No. 6237. I have got in the record the Last Will No. 1080 dated 8th September, 1917, attested by Mr. G. A. Willie, Notary Public, in respect of which that Probate has been issued. 20

(Shown a certified copy of that Last Will, marked P10A) — This is a certified copy of the Last Will that is in the record today. Of the document that is contained in the record today pages 1 and 2 are missing. I have issued an exact copy of the document that is available in the record. This is a correct copy of what is in the record.

(Shown a certified copy of the plaint filed in case No. 1420, P16, and the Joint settlement Motion P16A.) — These are certified copies of the plaint and the settlement motion as contained in the record. 30

Evidence of M.  
Sidambara-  
nathan - Cross-  
examination

**Cross-examined :**

(Shown certified copy of Last Will No. 1454 dated 4th July, 1947, proved in District Court Colombo testamentary case No. 20494/T) — This is a certified copy of the document contained in the record.

(Mr. Kanagarajah marks the certified copy of the Last Will DI, the Petition D2, Order Nisi D3, Journal entries D4, and Journal entry of the same date D4A.)

(Shown Journal entries in District Court Colombo case No. 19984, D5, and order confirming Sale, D6). These are certified copies of the documents contained in the record.

No. 9  
Plaintiff's  
Evidence

(Shown certified copies of Interlocutory Order entered in District Court Colombo Case No. 631/z, D7 and Order dated 18th December 1957 in the same case D8.) — These are certified copies of the Interlocutory Decree and the Order dated 18th December, 1957, contained in the record.

Evidence of  
M. Sidambara-  
nathan—  
Cross - examina-  
tion  
—Continued

**Re-examination** — Nil.

Sgd. ....  
*Additional District Judge*  
24-11-64.

10

**M. D. H. JAYAWARDENE** affirmed. 40 Clerk. Municipal Assessor's Branch, Municipality, Colombo.

Evidence of M.  
D. H. Jayawar-  
dene -  
Examination

I have been summoned to produce certified copies from the Assessment Registers of the Colombo Municipality in respect of these properties.

The first property bears present assessment No. 34, St. Lucia's Street. I produce this extract from the Assessment Register marked P22. The Annual Value in respect of premises No. 34, St. Lucia's Street, for 1941 is Rs. 500/-. For 1960 the Annual Value is Rs. 740/-. For 1961 the Annual Value is Rs. 740/-. For 1962 the Annual Value is Rs. 740/-. For 1963 the Annual Value is Rs. 785/-. For 1964 the Annual value is Rs. 785/-.

I do not have the Assessment Registers for 1958 and 1959.

*Q.* Can you tell me from the certified copy P22, what the original Assessment Number was of premises No. 34 St. Lucia's Street ?

*A.* The original number is shown here as 34.

The assessment number before that is not shown here. In the first column of P22 is found the name of the reputed owner Louis Anthony Morais subject to the conditions in the Last Will of Mariam Morais proved in District Court Colombo Testamentary Case No. 6237.

30 I have brought certified copies of the Assessment Register of the Colombo Municipality in respect of St. Anthony's Mawata — Nos. 10/4, 10/10, 10/12, 10/14, 10/15, 10/16, 10/17, 10/18, 10/19, 10/20, 10/21, 10/22 and 10/23. I produce it marked P23.

*Q.* What is the total annual value of that for the year 1941 ?

*A.* In 1941 it was known as Kochchikade Street, and the total annual value is Rs. 1,150/-.

The owner of the property is given in the first column as Louis Anthony Morais subject to the conditions in the Last Will of Mariam Morais proved in District Court Colombo Testamentary Case No. 6237.



No. 9  
Plaintiff's  
Evidence

—  
Evidence of M.  
D. H. Jayawar-  
dene - Exami-  
nation  
—Continued

I have also brought certified copies of the Assessment Register of the Colombo Municipality in respect of premises Nos. 12, 14, 16, 18, 20, 22, 24, 26, and 28, St. Anthony's Mawathe. These premises are assessed separately. The annual values are given under the Column "Annual Value". The respective annual values are given there, and the annual value for 1941 is given. The annual value for 1961, 1962 and 1963 have also been given. There are six sheets in this. A certified copy of the Assessment Register for the years 1941, 1960, 1961, 1962, 1963 and 1964 in respect of premises Nos. 12, 14, 16, 18, 20, 22, 24, 26 and 28, is marked P24 — 1 to 6. The reputed owner is given in 1941 as Louis Anthony Morais, subject to the conditions in the Last Will of Mariam Morais proved in District Court Colombo Testamentary Case No. 6237. In respect of the year 1960 no name has been registered as the reputed owner. In respect of the year 1961 also no name has been registered as the reputed owner. In respect of the year 1962 also no name has been registered as the reputed owner. In respect of the years 1963 and 1964 the name of Mrs. Francesca Victoria nee Morais is mentioned as the reputed owner.

I produce a certified copy of the Assessment Register of the Colombo Municipality in respect of premises No. 20, Galpotte Street, marked P25-1 to 4. There are four sheets in this. The annual value is given here for the years 1941, 1960, 1961, 1962, 1963 and 1964. The name of reputed owner is given 20 in the first column for the year 1941.

I have also with me a certified copy of the assessment register in respect of premises No. 16, Galpotte Street. This is contained in the same Assessment Sheet P25. The annual value for premises No. 16 Galpotte Street for the year 1941 is Rs. 450/-.

In the same document P25 — 1 to 4 there is the assessment in respect of premises Nos. 6/6, 6/10, 6/12, 6/13, 6/14, 6/15, 6/16, 6/17, 6/18, 6/19, 6/20, 6/21, 6/22, 6/23, 6/24, 6/25, 6/26, 6/27, 6/28, 6/29, 6/30 and 6/31 Galpotte Street. The annual value is also given here, and also the name of the reputed owner.

30

I have with me a certified copy of the Assessment Register of the Colombo Municipality in respect of premises No. 165/1, Sri Kadiresan Street, formerly known as Chekku Street. The premises numbers are 165/1, 165/2, 165/3, 165/4, 165/5, 165/6, 165/7, 165/8, 165/9, 165/9A, 165/10, 165/12, 165/14, 165/15 and 165/1/1. I produce this copy of the assessment Register marked P26-1 to 5. In P26 there are five sheets. The reputed owner's name is here, and the annual values for 1941, 1960, 1961, 1962, 1963, and 1964 are also given here.

I have brought to Court a certified copy of the Assessment Register of the Colombo Municipality in respect of premises No. 44/A Brassfounder Street, 40 and premises Nos. 44/1 to 12, which I produce marked P27 — 1 to 5. There are five sheets.

Particulars in respect of premises Nos. 42/1 to 9, 10 and 11 Brass Founder Street are given in the same document P 27.

Particulars in respect of premises Nos. 38/1 to 10 Brassfounder Street are also given in the same document P27.

I have with me a certified copy of the Assessment Register of the Colombo Municipality in respect of premises No. 44, Andival Street which I produce marked P28. There is only one sheet in this.

The particulars in respect of premises No. 157, Sri Kadiresan Street, are contained in the certified copy of the Assessment Register already marked as P26.

I have with me a certified copy of the Assessment Register of the Colombo Municipality in respect of premises in Jampettah Street bearing assessment Nos. 247, 249, 251, 253, 255, 257, 259, 261, 263/2 to 4 and 265, which I produce marked P29 — 1 to 12. There are 12 sheets in this.

The particulars in respect of premises No. 131, Jampettah Street, are also contained in the document P29.

**Cross-examined :**

(Shown P22)

*Q.* You said that the annual value in 1941 was Rs. 500/- ?

*A.* Yes.

*Q.* What is the quarterly rates ?

20 *A.* Rs. 25/-.

The quarterly rates per year is Rs. 100/-.

*Q.* Annual value Rs. 500/- plus the rates Rs. 100/- gives a total of Rs. 600/-, and the standard rent is Rs. 600/- per year ?

*A.* I do not know.

*Q.* On these figures — Rs. 500/- being the annual value and Rs. 100/- the annual rates, the standard rent is Rs. 600/- ?

*A.* I am not competent to answer anything in regard to standard rent.

(Shown P23)

At this stage it is agreed that the plaintiff's proctor will file a statement containing the relevant figures pertaining to the relevant years and dates necessary to work out the authorised rent in respect of the premises in question. After that statement is filed in Court, Mr. Kanagarajah states that he will

No. 9  
Plaintiff's  
Evidence

—  
Evidence of M.  
D. H. Jayawar-  
dene - Exami-  
nation  
—Continued

Evidence of M.  
D. H. Jayawar-  
dene - Cross-  
examination

No. 9  
Plaintiff's  
Evidence

Evidence of M.  
D. H. Jayawar-  
dene - Cross-  
examination  
—Continued

make a study of it, and, if necessary, he will make an application to have this witness re-called for further cross-examination. Subject to this, the cross-examination of this witness is over for the present.

Sgd. ....  
*Additional District Judge*  
24-11-64.

ADJOURNED FOR LUNCH.

Intld. ....  
*Additional District Judge*  
24-11-64. 10

24-11-64.

Same appearances as in the morning.

Trial resumed after Lunch.

Mr. Renganathan refers me to his earlier application to recall the witness Sir Donatius Victoria for the purpose of eliciting certain information that would be of assistance to Court contained in deed No. 1324 of 20th September 1949. Counsel states that he had given the number of this deed earlier and he now moves for permission to recall this witness. But before calling that witness Sir Donatius Victoria, he moves for permission of Court to call the representative of the Registrar of Lands to formally produce this document. 20

Mr. Kanagarajah states that this document has not been listed and therefore Court should be slow to accept or permit new documents to be brought in.

Sgd. ....  
*Additional District Judge*  
24-11-64.

Order

For the purpose of ascertaining whether it would be helpful to decide the matters in dispute in this case, I ask Counsel for plaintiff to state to me the circumstances under which he considers this document relevant and necessary 30 to produce this deed at this stage. He admits that this document has not been listed, but from the statements made by him it appears that certain inferences relating to the course of conduct of the plaintiff and her late father could be of some assistance to Court in this case.

Further Counsel for plaintiff submits that Sir Victoria has referred to this very deed in his cross- examination wherein he has stated that his daughter-in-law the plaintiff had solicited his advice as to whether she could set her signature to a document similar to this and that he had told her that it was her look-out and that she could set her signature to any document on her own responsibility.

The mere omission to mention this deed in the list of documents filed by the plaintiff cannot shut out a document, if it appears to Court that in the ends of justice such a document should be admitted. On a consideration of the various matters mentioned in this connection I find that it would be very helpful to Court if this document is admitted. I allow the document to be produced and also the application to recall the witness Sir Donatius Victoria.

No. 9  
Plaintiff's  
Evidence  
—Continued

Sgd. ....  
Additional District Judge  
24-11-64.

10 At this stage Mr. Renganathan recalls the representative of the Registrar of Lands.

Evidence of P.D.  
Dharmadasa  
Perera -  
Examination  
—Continued

**Pallege Don Dharmadasa Perera :** Recalled. affirmed.

**Examination (Continued) :**

I have with me the duplicate of deed No. 1324 of 20th September, 1949 attested by Mr. P. M. A. Corea, Notary Public. I produce it marked P 30. Mr. P. M. A. Corea, Notary is now dead. I produce a certified copy of deed No. 1324 of 20th September 1949 marked P31.

**Cross-examination :**

No questions.

20

Sgd. ....  
Additional District Judge  
24-11-64.

**Sumitra Arachchige Don Vincent :** affirmed 60 years, Clerk of Proctor Mr. R. D. Dharmaratnam, residing at Wennewatta.

Evidence of S.  
A. D. Vincent  
Examination

(Shown document marked P30)

30 This document bears my signature as an attesting witness. My signature is the second signature. I cannot remember the other witness who signed this deed. The proctor's signature also appears on this document. Francisca Victoria has also signed this document. All of us signed this document in the presence of each other. I identify the signature of Francisca Victoria on this document. She signed this document in my presence.

**Cross-examined :**

Evidence of S.  
A. D. Vincent -  
Cross-exami-  
nation

This deed was signed at Belmont Street. I cannot remember whether I know the executant. I am still a proctor's Clerk. I was not served with summons in this case to attend Court. The proctor met me and asked me whether I was Vincent. The proctor met me today about two hours ago.

(Witness points out the proctor present in court.)

No. 9  
Plaintiff's  
Evidence  
—  
Evidence of S.  
A. D. Vincent—  
Cross-exami-  
nation  
—Continued

I do not know the name of that proctor. I am a typist under Mr. Dharmaratnam. I am paid a monthly salary by him. I told him and came to attend Court.

**Re-examination :**

No questions.

Sgd. ....  
Additional District Judge  
24-11-64.

Evidence of  
Sir Donatius  
Victoria—  
-Examination  
—Continued

**Sir Donatius Victoria :** Recalled. Sworn.

**Examination Resumed :**

10

(Shown P30)

This bears my daughter-in-law's signature. She is Francisca Victoria. The first witness to this deed is A. Lewis Morais, my brother-in-law. I am familiar with the signature of my daughter-in-law. She always wrote to me. I know the signature of my brother-in-law. When I was collecting the rents for 5 or 6 years my brother-in-law used to write to me.

(Mr. Renganathan marks Madras Code, 4th Edition, Volume 2 published by the Government of India Legislative Department in relation to the Madras Registration of Birth and Deaths Act of 1899 as P31.)

Evidence of Sir  
Donatius Vic-  
toria - Cross -  
examination

**Cross-examined :**

20

I was not aware of the execution of the deed P31. Yesterday I mentioned to my lawyers the fact that there was a deed like that. I asked my lawyers to get a copy of that deed. I do not know when they applied for the copy of that deed. I do not know when they got the copy of that deed. I do not know whether it was on my application of today or yesterday that this copy of the deed was obtained. I do not know whether the representative of the Registrar of Lands is here without any summons being served on him.

**Re-examination :**

No questions.

Sgd. .... 30  
Additional District Judge  
24-11-64.

Mr. Renganathan states that a certified copy of the last will No. 1080 has not yet been issued by the Registrar of Lands and he asks for permission to mark this document as P10B and he undertakes to tender it later.

I allow the application.

Intld. ....  
Additional District Judge  
24-11-64.

At this stage Mr. Renganathan states that in order to obviate the necessity of having to lead a volume of evidence as regards the authorised rent of the premises in question, his client is prepared to accept the figures given by the defendant in the answer to the interrogatories.

No. 9  
Plaintiff's  
Evidence  
—Continued

Mr. Kanagarajah has no objection.

In view of this the need to file a statement does not arise.

Sgd. ....  
*Additional District Judge*  
24-11-64.

10 Mr. Renganathan closes his case reading in evidence, P1, P1A, P2, P2A, P3, P3A, P4, P4A, P5, P5A, P6, P6A, P7, P7A, P8, P8A, P9, P9A, P10, P10A, P10B, P11, P11A, P12, P12A, P13B, P13, P13A, P13B, P14, P14A, P14B, P15, P15A, P15B, P16, P16A, and P17 to P31.

Sgd. ....  
*Additional District Judge*  
24-11-64.

## No. 10

### DEFENDANT'S EVIDENCE

No. 10  
Defendant's  
Evidence

**Mr. Kanagarajah Calls :**

20 **Josephine Mary Aloysius Moraes :** Sworn 63 years, 23/2, Lauries Road, Bambalapitiya.

Evidence of J.  
M. A. Moraes -  
Examination

I am the defendant in this case. I am a sister of Sir Donatius Victoria the Chief witness for the plaintiff in this case. I had my earlier education at Trichinapoly in India. I was born at Manapad. After my education at Trichinapoly I was educated at the Kegalle Convent. I lost my mother some-time when I was a school girl. Then my brother Sir Victoria Donatius looked after me and my affairs. I used to spend my holidays in one of my relation's houses. That relation was one Mr. Paiva. I never spent my holidays with my brother Sir Donatius Victoria. His family was in India and living here  
30 alone. After sometime I got married. The marriage proposal was brought forward by my brother Sir Donatius Victoria. I got married to one Louis Anthony Moraes. Before I got married to Moraes I did not know his civil status in life. He said that he was a widower. I heard that he had lost his first wife. I do not know his first wife. I have never seen his first wife. I do not know whether Louis Anthony Moraes had any children by his first wife. The plaintiff Francisca is the daughter-in-law of Sir Donatius Victoria my brother. Apart from that I do not know anything else. What I heard is that she is an adopted child of my late husband. This was told to me by my late husband. Until the death of my husband Moraes he was telling me that  
40 the plaintiff was an adopted child of his. Apart from what my husband told me I personally do not know whether the plaintiff is an adopted daughter of my late husband.

No. 10  
Defendant's  
Evidence

Evidence of J.  
M. A. Moraes -  
Examination  
—Continued

After I got married I was residing in Colombo. Francisca the plaintiff never resided with me at any time anywhere after I got married. The child was brought up in one of my husband's relation's houses. My late husband told me that the child was being adopted by one of his relations, but I did not know who that relation was. Plaintiff got married to my brother's son. I do not know whether there was the normal proposal of marriage. It was after the marriage that I came to know of it. I knew that she was going to get married to my brother's son. I cannot remember when I came to know that the plaintiff was going to get married to my brother's son. I cannot remember the brothers and sisters discussing this marriage proposal. If I had been informed that my brother's son was going to get married to Francisca the plaintiff I would not have given my mind to that aspect of it. My husband was doing the business of ship chandling. He did that business under the business name of A. L. Moraes & Co. He lost by that business. For his debts certain properties of his were seized by the Fiscal and were sold. I produce Fiscal's conveyance No. 20201 of 19th July, 1951 marked D9. I also produce marked D10 Fiscal's conveyance No. 20206 dated 16th August, 1951. The lands referred to in these conveyances were bought by one Cassie Chetty. This is what I was told by my husband. Cassie Chetty got into possession of these properties about 2 or 3 years later. After that my husband repaid the money to Cassie Chetty and obtained a reconveyance of the properties. I and my late husband executed last will bearing No. 1454 dated 4th July, 1947 which has been produced in this case marked D1. By that last will each one of us nominated the survivor of us to be the heir of all the properties. My husband died on 2nd September, 1958. I say that by virtue of the will D1 I have become entitled to all these properties. This will was admitted to probate in this Court. The plaintiff in this case intervened in the testamentary case and opposed the granting of letters of administration to me. In spite of that I got the probate and the plaintiff failed in her objections.

Evidence of J.  
M. A. Moraes -  
Cross-examination

**Cross-examined :**

30

I heard my brother giving evidence.

**To Court :**

The plaintiff is not the daughter of my late husband.

**Cross-examination (Continued) :**

I was seated in Court when my brother gave evidence. He said that the plaintiff is the daughter of my late husband Lewis Anthony Moraes. My husband told me that he adopted the plaintiff as his child.

**Q.** Did you instruct your proctor that the plaintiff is an adopted daughter of your husband ?

**A.** Yes. My proctor knows about it.

40

**Q.** In any of the pleadings in this case or in any document produced have you stated that the plaintiff is an adopted daughter ?

A. My husband has not given me anything in writing to be produced to prove that she is an adopted child, but he only told me about it.

No. 10  
Defendant's  
Evidence.

Q. As far as you know she is an adopted child ?

Evidence of J.  
M. A. Moraes  
Cross-Exami-  
nation  
— Continued

A. Yes.

Q. You have never put down in any document that she is an adopted child?

A. In my last will my husband has not mentioned about a child.

(Mr.Renganathan states that he is asking this question advisedly on a perusal of all the pleadings filed in this case and he states that nowhere has any position been taken that the plaintiff is an adopted daughter of her late husband in any of the pleadings filed in this case.)

Q. Do you know whose daughter the plaintiff is ?

A. I do not know.

Q. Did you make any effort to find out whose daughter she is ?

A. I had no occasion to find out whose daughter she is.

Q. Even after the marriage of your nephew, did you make efforts to find out ?

A. I do not talk to them.

Q. Your husband told you that the plaintiff is an adopted child of his ?

A. Yes.

20 Q. All that your husband told was that she was an adopted child of his ?

A. Yes.

Q. Did you ask your husband from where this girl was and from where he got her ?

A. I did not.

Q. Did you ask your husband how he settled her in life with Sir Donatius' son ?

A. I did not.

Q. You did not speak anything about this child ? The only one thing that you knew was that she was an adopted child ?

30 A. Yes.



No. 10  
Defendant's  
Evidence

—  
Evidence of J.  
M. A. Moraes -  
Cross-Exami-  
nation  
—Continued

Q. Have you even spoken to the plaintiff ?

A. I have spoken to her.

Q. At that stage did you ask her who her father and mother were ?

A. I have not made those inquiries.

Q. Even for the purpose of this case you did not care to find out whose daughter she is ?

A. I did not make any inquiries.

Q. Nor did you try to get her birth certificate ?

A. I did not.

Q. Where were you married ?

10

A. At Malapad. In India.

Q. Who arranged your marriage ?

A. My brother.

Q. He gave you in marriage at the church ?

A. He did not accompany me to church. But he was present at my wedding.

Q. Do you know that someone has to give you away in marriage in the church ?

A. My relations accompanied me to church.

Q. Who was the person who gave you away after the marriage in the church ?

20

A. My sister gave me away.

Q. You are a Roman Catholic ?

A. Yes.

Q. Your brother is a Roman Catholic ?

A. Yes.

Q. Your husband was a Roman Catholic ?

A. Yes.

Q. It is the custom amongst Roman Catholics that on the wedding day someone has to give away the bride in marriage to the bridegroom ?

No. 10  
Defendant's  
Evidence

A. Yes.

Q. Either your father or brother or some one who stands in the position of your father has to give you away in marriage ?

—  
Evidence of J.  
M. A. Moraes -  
Cross-Exami-  
nation  
—Continued

A. Yes.

Q. You deny that your brother gave you away in marriage in the church ?

A. My brother and sister were both there at my marriage.

Q. You were married at St. James Church, Madapad in India ?

10 A. No. In St. Anthony's Church, Madapad.

Q. Your marriage was entered up in the documents that were written out in India ?

A. Yes.

Q. And that is the general custom in India amongst the Catholics ?

A. Yes.

Q. If you want a copy of the marriage certificate you have to apply to the Parish Priest ?

A. Yes.

Q. And he procures for you the marriage certificate ?

20 A. Yes.

(Shown the marriage of the witness marked P32).

Q. This is your marriage certificate ?

A. Yes.

Q. What is your age now ?

A. I am 53 years old now.

Q. You were 20 years old when you got married ?

A. No.

Q. When were you born ?

No 10  
Defendant's  
Evidence

Evidence of J.  
M. A. Moraes -  
Cross-Exami-  
nation  
—Continued

A. In the year 1912.

Q. You went to Church from your ancestral house at Rajah Street ?

A. Yes. That is my father's house and that is the house that my brother is now occupying. I also have a share of that house.

My husband also lived in the same street close to our house. In the Church of the Sacred Heart my father had a festival. That was in the month of June. The family used to go to Malapad for that festival. My father's family went for that festival, but I did not go. I attended the wedding of the plaintiff and her husband. That may be in the year 1940. It was my husband who gave away the plaintiff in marriage.

10

Q. Your husband gave away the bride ?

A. Yes.

Q. Her marriage was registered there by the priest ?

A. Yes.

Q. Was there a reception ?

A. Yes.

Q. Where was it held ?

A. I cannot remember.

Q. In whose house was it held ?

A. I think it was held in my brother's house.

20

Q. In which road was it ?

A. I cannot remember.

Q. Was the reception at Alfred's place, Colombo.

A. I cannot remember, but it may be.

Q. Were you living at Alfred place ?

A. I was living in Sea View Avenue.

Q. Did you at any time live in Alfred Place ?

A. No.

Q. Did Francisca the plaintiff stay with you at Sea View Avenue before her marriage ?

30

A. Before her wedding she was staying with her adopted father and I was also living in my house.

No 10  
Defendant's  
Evidence

Q. The house in Alfred's place was taken specially for the function of the marriage ?

—  
Evidence of J.  
M. A. Moraes -  
Cross-Exami-  
nation  
—Continued

A. My brother must have taken that house. I did not interfere in those affairs.

Q. The reception took place in a house at Alfred Place ?

A. It may be. But I cannot remember.

To Court :

10 Q. Even assuming that she was an adopted child, you as the second wife of the late Mr. Moraes would have been in charge of all her affairs such as buying her all her necessities ?

A. I joined my husband and did everything.

Q. In other making the entire house fit for a wedding ?

A. My husband initiated and did everything. In whatever he did I joined him. But I did not take any special interest or initiative in doing anything.

Q. Did you not look after her as a mother ?

20 A. Because my husband told me that she was an adopted child I looked after her as a mother.

Q. All the more reason that you yourself had no children ?

A. Yes.

Q. After getting married to your husband you looked after this child as a child of his ?

A. Yes. But my husband told me that she was an adopted child.

Q. During those periods did you ask this girl who her father and mother were ?

A. I did not.

30 Q. I heard you say that during some period the plaintiff stayed with her relations ?

A. Yes.

No. 10  
Defendant's  
Evidence

—  
Evidence of J.  
M. A. Moraes -  
Cross-exami-  
nation  
—Continued

*Q.* Who are those relations ?

*A.* My husband's relations.

*Q.* Who are they ?

*A.* Prior to the marriage for one year she stayed with me.

*Q.* From the boarding she used to come and visit you and go ?

*A.* Yes.

*Q.* For the holidays she used to spend the time with you ?

*A.* Yes.

*Q.* You two moved as mother and daughter ?

*A.* Yes. As I respected my husband I had to look after that child and 10 since he told me that she is an adopted child.

**Cross-examination (Continued) :**

My husband and my brother recieved the guests at the wedding of the plaintiff. My sister-in-law received the family guests. That is my brother's wife.

*Q.* Did you go to Trivandum for treatment ?

*A.* Yes.

*Q.* Your husband also went with you ?

*A.* Yes.

*Q.* At that time the plaintiff also went with you ?

20

*A.* No.

*Q.* She did not stay with you during the vacation at Tirivandum ?

*A.* Yes, during the vacation time my sister's children and all of them used to go and spend the holidays.

Sgd. ....  
*Additional District Judge*  
24-11-64.

Further hearing and addresses on 3rd December 1964.

Intld. .... 30  
*Additional District Judge*  
24-11-64.

Same appearances as on the last date.

3-12-64. No. 10  
Defendant's  
Evidence

Trial resumed.

Evidence of J.  
M. A. Moraes -  
Examination  
-Continued

**Josephine Mary Aloysius Moraes.** Recalled. Sworn.

(Mr. Kanagarajah now states that before further cross-examination proceeds he be permitted to mark certain documents so as to enable counsel for plaintiff to cross-examine this witness on those documents also.

Mr. Renganathan having no objection, I allow the application).

I produce Fiscal's conveyance No. 20418 of 1951 marked D11, journal  
10 entry in District Court Colombo, Land case No. 9929 as D12, Plaintiff in  
District Court Colombo Land case No. 9929, marked D13, the answer in the  
same case marked D14, Journal entry in District Court Colombo Testamentary  
Case No. 6237 as D15, the final account filed in the same case marked D16  
and the answer filed by the first defendant in case No. 1420 as D17 and the  
answer of the 2nd defendant in that case marked D18.

At this stage Mr. Kanagarajah moves to raise the following further  
issues :—

No. 8  
Issues Framed  
—Continued

(22) Does Last Will No. 1080 (P10) create only a trust ?

(23) If so, can the plaintiff maintain this action ?

20 Mr. Renganathan having no objection to these two issues, I accept the  
two issues.

Sgd. ....  
Additional District Judge  
3-12-64.

**Cross-examined :**

I was at first educated in India. I was educated in Trichinapoly at St.  
Joseph's night school. I studied Tamil in that school. I studied Tamil up to  
the 2nd standard, but I cannot now remember exactly. I can read and write  
Tamil. Thereafter I went to the Kegalle Convent. I studied Tamil in the  
30 Kegalle Convent. I cannot remember up to what standard I studied English  
in the Kegalle Convent. As far as I can remember I studied in the Kegalle  
convent up to the 4th or 5th standard. I cannot remember when I left that  
convent. I cannot read English. I can read a little English. I cannot write  
English. I can sign in English. I cannot read English very well, but I can  
read a little English. (Shown P1).

No. 10  
Defendant's  
Evidence  
—Continued

Evidence of J.  
M. A. Moraes -  
Cross-exami-  
nation  
—Continued

No. 10  
 Defendant's  
 Evidence  
 —  
 Evidence of J.  
 M. A. Moraes —  
 Cross-exami-  
 nation  
 —Continued

I produce this last will No. 1451 of my husband and myself marked D1. I signed this document in English. I signed the proxy in this case in English. Sometimes I sign in Tamil and sometimes I sign in English. (Paragraph 3 of the last will read to the witness and it is shown to her) I cannot read this paragraph fully. According to this Last Will if my husband died earlier I was to possess the properties and after my death the others were to possess them.

Q. After your death somebody else was to enjoy your properties ?

A. Yes.

Q. Who is that somebody ?

A. I have not shown who that person is. (This 4th paragraph of the Last Will is put to the witness)

Q. This last will says that if my husband died earlier you could only enjoy the profits and rents only ?

A. Yes.

Q. After your husband's death the properties would belong to you ?

A. Yes.

(Shown D2)

Q. In your petition D2 you say that by that last will you were appointed the sole heiress in paragraph 1 ?

A. Yes.

20

Q. I put it to you that it is not a true statement ?

A. It is a true statement.

Q. You also state that if your husband died intestate you would be the sole heir ?

A. Yes.

Q. I put it to you that it is not true ?

A. I say that it is true.

Q. At the time your husband died he did not leave any debts ?

A. There were debts due to two or three people.

Q. Who were those 2 or 3 people ?

30

A. He did not tell me.

*Q.* You did not pay any debts of your husband ?

*A.* I settled one person's debt.

*Q.* For how much ?

*A.* I cannot remember now.

*Q.* How much was that debt ?

*A.* I will have to refer to the books.

*Q.* Your husband owed no money to you ?

*A.* Yes.

*Q.* On what account ?

10 *A.* He mortgaged my house.

*Q.* Which house ?

*A.* My own house.

*Q.* For how much ?

*A.* For Rs. 25,000/-.

*Q.* Which is that house ?

*A.* That is the house at Bambalapitiya.

*Q.* That is the house at Lauries Road, Bambalapitiya ?

*A.* Yes.

*Q.* How did you come by that property ?

20 *A.* It was dowried to me.

*Q.* Who was the person who donated that property to you ?

*A.* It was my father's property.

*Q.* Who conveyed that property to you ?

*A.* My brother conveyed it to me.

*Q.* That is Sir Donatius Victoria ?

*A.* Yes.

No. 10  
Defendant's  
Evidence

—  
Evidence of J.  
M. A. Moraes -  
Cross-exami-  
nation  
—Continued



- Q.* He wrote it to you in the form of a dowry from your father ?
- A.* Yes.
- Q.* Do you deny that property belonged to your brother Sir Donatius Victoria ?
- A.* He took my father's property and conveyed it to me.
- Q.* Sir Donatius Victoria owned this property bearing No. 20/2 Lauries Road, Bambalapitiya ?
- A.* Yes.
- Q.* When was that ?
- A.* I cannot remember the year. 10
- Q.* That was long after you got married ?
- A.* At the time of my marriage I was not given any dowry, but subsequent to my marriage he gave it to me as dowry.
- Q.* You got married on 24th August, 1927 ?
- A.* Yes.
- Q.* You got married at Manampad in South India ?
- A.* Yes.
- Q.* How did you get on with your husband after your marriage ?
- A.* We lived happily.
- Q.* You loved him right up to the end ? 20
- A.* Yes.
- Q.* Did you feel sorry when he died ?
- A.* Yes.
- Q.* As a matter of fact if he had lived he would have celebrated his 60th birthday in 1959 ?
- A.* Yes.
- Q.* He died in September, 1958 ?
- A.* Yes.

Q. It was very unfortunate that he was taken away before he reached his 60th year ?

A. Yes.

Q. As a matter of fact you were planning to have a great celebration for his 60th birthday ?

A. No.

Q. He died before that ?

A. Yes.

Q. In 1958 when he died were you thinking of celebrating his 60th birthday ?

10 A. I did not think of any celebrations like that.

Q. You are a Catholic ?

A. Yes.

Q. Your husband was also a Roman Catholic ?

A. Yes.

Q. Is it customary amongst Roman Catholics to celebrate their birthdays ?

A. Not all Roman Catholics. But some if they want, they celebrate.

Q. Particularly the wealthy class ?

A. Yes.

Q. Do you know what a Scapular Medal is ?

20 A. Yes.

Q. On one side of it, it has the impression of the Sacred Heart and on the other side it has the impression of the Virgin Mary ?

A. Yes.

Q. What is it called ?

A. Utharaya Premai.

Q. That is generally worn on a gold chain ?

A. Yes.

Q. In 1959 where were you residing ?

No. 10  
Defendant's  
Evidence

—  
Evidence of J.  
M. A. Moraes  
Cross-exami-  
nation  
—Continued

No. 10  
Defendant's  
Evidence

—  
Evidence of J.  
M. A. Moraes -  
Cross-exami-  
nation  
—Continued

A. I was in Ceylon.

Q. At what address ?

A. No. 23/2 Lauries Road, Bambalapitiya.

Q. Your husband before he died had a business called A. L. Moraes & Co. ?

A. Yes.

Q. When he died you were very very sorry ?

A. Yes.

Q. He was your solace in life ?

A. Yes.

Q. Even after he died you continued to do what you could do for a departed 10 soul ?

A. Yes.

Q. As a matter of fact on the first anniversary of his death it is customary amongst Roman Catholics to publish a memorial ?

A. Yes.

Q. Did you carry out that yourself ?

A. Yes.

Q. You also included some prayers also in that ?

A. Yes. We published a handbook.

(Shown a hand book)

20

Q. Can you say whose photograph this is ?

A. That is my husband's photograph.

Q. That is Mr. A. L. Moraes ?

A. Yes.

Q. This is a memorial volume published on 2nd September, 1959 ?

A. Yes.

(Mr. Renganathan marks this handbook as P33.)

*Q.* This letter is signed by you ?

*A.* Yes.

*Q.* What do you say about the contents-in whose writing is the contents ?

*A.* Somebody made a draft and I copied it.

*Q.* Who was that ?

*A.* A clerk under Sir Donatius Victoria and I copied it.

*Q.* The whole of this document is in your handwriting ?

*A.* Yes. This entire letter is in my handwriting but this what I copied from a draft.

10 (Witness is asked to read this letter)

I have stated that I am writing this letter requesting my brother to grant his blessings on me on this Christmas day and asking for forgiveness for any wrongs that I have done and I have invoked the Infant Jesus' blessings on him.

(Shown letter dated 26th December, 1959 marked P36).

*Q.* This is a letter written by you ?

*A.* I copied this from a draft.

*Q.* This is in your handwriting ?

*A.* Yes.

*Q.* The signature is yours ?

20 *A.* Yes.

*Q.* This is addressed as "my beloved brother" ?

*A.* Yes.

(The letter is read to the witness).

*Q.* Who is the person referred to in this letter ?

*A.* Sir Donatius Victoria.

*Q.* What is it that made you to shed tears of blood ?

*A.* He wrote something referring to my husband's death.

*Q.* What is this property issue ?

No. 10  
Defendant's  
Evidence

—  
Evidence of J.  
M. A. Moraes -  
Cross-exami-  
nation  
—Continued

No. 10  
Defendant's  
Evidence

—  
Evidence of J.  
M. A. Moraes—  
Cross-exami-  
nation  
—Continued

A. Somebody wrote it and I copied it.

Q. You were studying in the Kegalle Convent ?

A. Yes.

Q. One of the best convents in the island ?

A. Yes.

Q. You remember one of your teachers Lauries ?

A. Yes.

Q. You can read and write English very well ?

A. I cannot.

Q. Francisca is the plaintiff ?

10

A. Yes.

Q. Salvador is her husband ?

A. Yes.

It was somebody supporting Sir Victoria who wrote the draft and I copied it.

Q. You were enjoying the income and they had to pay the wealth tax ?

A. I copied it from a draft.

Q. The whole document is in your hand writing ?

A. This is in my hand writing, but I do not know what is stated here.

Q. You have stated here that if Francisca is not enjoying the income she 20  
need not pay the wealth tax and that if you inform the department, she  
need not pay the wealth tax ?

A. (No answer).

Q. (Question repeated)

A. This is what I copied from a draft which was written by a person who supported them.

Q. Was there a promise by them when your husband died ?

A. No.

Q. That you would be given sufficient money ?

A. No.

Q. You say here that it is for other people's luck that he died earlier ?

A. I only copied it from a draft that was written by a person who actually supported the other party.

Q. You also say in this letter that you settled debts of Rs. 25,000/- which were incurred during your husband's lifetime ?

A. I only copied this from a draft.

(Shown letter dated 12-1-60 marked P37).

10 Q. Is this written by you ?

A. Yes.

Q. This is signed by you ?

A. Yes.

Q. You say in this letter "You know brother that my handling of the properties . . . . otherwise I would be late to death with no interest whatever in life, but sorrows. May be my death would be a well come to you all and would end all the many troubles which had arisen on the worry of the properties" ?

A. I only copied it from s draft given to me.

20 Q. You were assured of a comfortable amount for your life and that was the promise made to you by Sir Donatius Victoria ?

A. I do not know the contents of this letter.

(Mr. Renganathan marks the petition filed by the plaintiff in the testamentary case as P38 in which the order D4 was made).

Q. In this petition he did not oppose probate being granted to you ?

A. Yes.

(Mr. Renganathan marks the order made by Court as P39 which is the same as D4).

Plaintiff married Salvador at St. Mary's church, Bambalapitiya ?

30 A. Yes.

(Mr. Renganatan marks the marriage certificate between the plaintiff and Salvador as P40).

No. 10  
Defendant's  
Evidence

—  
Evidence of J  
M. A. Moraes-  
Cross-exami-  
nation  
— Continued

No. 10  
Defendant's  
Evidence

—  
Evidence of J.  
M. A. Moraes -  
Re-examination

**Re-examined :**

I referred to a person who made certain drafts for me and from which I copied.

*Q.* Who is that person ?

*A.* One clerk who was working under Sir Donatius Victoria.

*Q.* What is his name ?

*A.* One Twain a Burgher Gentleman.

*Q.* Where was he employed ?

*A.* He was working under my husband earlier. Thereafter he worked under Sir Victoria. 10

*Q.* Did he come to you for any assistance or to do any work ?

*A.* He came to me to help me in the drafting of letters.

**By Court :**

*Q.* He comes there to assist you to draft letters ?

*A.* Yes.

*Q.* And you tell him what sort of a letter that you have to write ?

*A.* I never gave any directions to write.

*Q.* You give the necesasry instructions ?

*A.* Yes.

*Q.* And the facts ? 20

*A.* Sometimes he embodies things which I did not mention.

**Re-examination (Continued) :**

I have not been to India since my husband's death.

(Mr. Renganathan marks as P33A the whole page of the handbook.)

Intld. ....  
*Additional District Judge*  
3-12-64.

**P. S. P. Kalpage :** Sworn. 69 years. Proctor Supreme Court and Notary Public. Colombo.

No. 10  
Defendant's  
Evidence

Evidence of P.  
S. P. Kalpage  
Examination

I am a proctor practising for some years in Colombo. I am also a Notary Public. When a deed is being executed it is executed in three forms. One is the original, the other a protocol and a duplicate. In the case of last wills no protocol is kept but only a duplicate is kept.

(Shown P1).

This is a joint last will of Anthony Lewis Moraes and Josephine Mary Aloysius Moraes. All the parties were before me when they signed this last will. There were two witnesses. One witness was one Mrs. Fernando a relation of theirs and the other witness was R. B. de Silva. Anthony Lewis Moraes and Josephine Mary Aloysius Moraes were both known to me and the will was duly executed by me.

**Cross-examined :** No Questions.

Sgd. ....  
*Additional District Judge*  
3-12-64.

DEFENDANT'S CASE IS CLOSED READING IN EVIDENCE D1 to D18.

20

Sgd. ....  
*Additional District Judge*  
3-12-64.

MR. RENGANATHAN FURTHER READS IN EVIDENCE P33, P33A and P34 to P40.

Intld. ....  
*Additional District Judge*  
3-12-64.

Mr. Kanagarajah now moves to tender in evidence something in the nature of a book printed in English to the memory of Anthony Louis Moraes. This is being tendered after the case of the plaintiff and defendant are closed and Mr. Kanagarajah states that it was only after P33 was produced that it occurred to him to produce this book which was printed in Ceylon. He also states that he has not gone through this book at all.

Mr. Renganathan states that this book may contain in some corner some important reference to something in so far as this fact is concerned which could not be tested during the trial proceedings.

I do not wish to make any ruling at the moment. I shall consider giving a ruling on this matter at the end of the address. This book is taken custody of by Court.

40

Sgd. ....  
*Additional District Judge.*  
3-12-64



ADDRESSES TO COURT

Mr. Kanagarajah addresses Court:—

P.11 has been produced under Section 78 (6) (2) of the Marriage Registration Ordinance in proof of the marriage of Anthony Lewis Moraes to his previous wife. Cites: 56 N. L. R. Page 54 and 55. In support of P 11, P18 was produced, namely, the Indian Christian Marriage Act of 1872. Refers to Section 55 of that act. The Registrar General of Births, Deaths and Marriages is the legal custodian of that document the marriage certificate. Refers to Section 80. P11 has been certified by the Additional First Class 10 Magistrate of Tirichendu and not by the Legal custodian. He submits that P11 does not support the Plaintiff's case. No one has given evidence to say that these two persons were married and there is no proof that they were married as such. Cites Section 34 of the Civil Procedure Code relating to issues 21 (a) (b) and (c). The main cause of the plaintiff's action is that her father executed a last will and that her father died and that all the properties have devolved on her by virtue of some document.

Therefore he asks for those properties. Plaintiff has filed this action for all the lands in this case, whereas in the other case he has filed action asking for a declaration only for two lands. There is an earlier case filed in this court 20 bearing No. 9929/L. The recitals in both cases are the same. Cites Chitterly's Code of Civil Procedure page 1526, Rule 2 corresponding to Section 34 of the Civil Procedure Code and also at page 1562.

Re. the question of fidei commissum: Cites 6 N.L.R. page 344 at page 347. 47 N. L. R. Page 171. Now that the testator has made a will no party can appeal to court to interpolate anything else into that will. 1939 - 1 A. E. R. Page 579. Re cites 9 N. L. R. page 217. 54 N. L. R. page 169 at page 174. 9 N.L.R. page 219 at page 221. 14 N.L.R. page 76 at page 78. 22 N. L. R. page 77. Refers to paragraph 5 of the last will P. 10. No voluntary alienation having taken place whatever title that passed to the purchaser was good title. 30

Sgd. ....  
Additional District Judge.  
3. 12. 64.

TRIAL ADJOURNED FOR LUNCH.

Intd .....  
Additional District Judge.

Trial resumed after lunch.

Same appearances as in the morning.

Mr. Kanagarajah continues his address: On deeds D9, D10 and D11 certain persons purchased the property, and it transpired in evidence that 40 these properties were purchased thereafter by the deceased Anthony Louis

Morais. It may be contended against the defendant that D9, D10 and D11 are Fiscals' conveyances, and Anthony Louis Morais purchased thereafter from the transferees on the Fiscal's conveyances, and that there was a sort of collusion. Mr. Casie Chitty bought two properties and the third property was purchased by another.

No. 11  
Addresses to  
Court  
— *Continued*

In reply to a question by Court as to whether there is not something which says that even a sale by the Fiscal can only be effective or valid up to the interests of the person against whom it is sold, Mr. Kanagarajah says that Anthony Louis Morais could have done anything about which there was no  
10 restriction, or what had been excluded.

It was suggested that there was a sort of collusion. D5 is an action filed by the Bank of Ceylon. It cannot be suggested that these parties were in collusion with the Bank of Ceylon or they got the Bank of Ceylon to file action. Even if that be so, there is the 22 *N. L. R. Case* page 295, at page 302. One donee can transfer his share to another; they can sell it among themselves. The restriction is that they cannot sell it outside. It was held in this case that it was permissible. Likewise here, no restrictions have been made against alienation. A similar case came up in 49 *N. L. R.* 341. It is almost similar in terms. It was held in this case that the person  
20 who got it, got absolute title where a particular thing has not been restricted. In this case the fact that by an accident the defendant's husband happened to be the transferee from the purchaser at a Fiscal's sale does not in any way vitiate the transfer in favour of Anthony Louis Morais.

The next position is, it may be contended as against the defendant that, in terms of the Last Will Anthony Louis Morais was restricted from selling or dealing with it in any way after he attained the age of 35 years, and at his death the property was to devolve on his children or lawful heirs and that therefore most of the words used in this Will are superfluous and useless. Once a testator has made up his mind to put in some form of restriction in  
30 this way in a Will, you cannot omit those words and take what is favourable to you and leave the rest. 65 to 169. If Mariam Morais devised the property to A and after the death of A the property was to pass to his children, it is a pure fidei commissum. This sort of fidei commissum is archaic and forgotten and not acted upon.

*Cites Nadarajah at page 237.*

In 45 *N. L. R.* 259, where a deed of gift contained certain clauses, it was held that the deed did not create a valid fidei commissum. In the 49 *N.L.R.* case too the phraseology is the same. The difference is this: Where the testator has not made himself clear, one cannot substitute something else.  
40 Suppose the testator said "I devise the property to A subject to the condition that he shall not sell or alienate", and if he does, the property shall vest in the fidei commissary. The cause of action is at the date the alienation has taken place. You can only come to Court if alienation has been done. Then your right to sue has accrued; that is the right to sue for non-conformity of the conditions. If a testator has sought to use particular kinds of words in a Will, one cannot say he should have written something else. We have

to give effect to the words used. In this case the Court will not revert back to the original proposition, but will leave off all these little words and stick to some particular words. There is no prohibition against forced alienation. There is no prohibition in the Will, which is the subject matter of this action, against any conveyance by last will or otherwise. Cite *Voet, Vol. 36 Title 1 Page 27*. A restriction that may have been foreshadowed cannot extend those restrictions. Vide *page 1 of Nadaraja*. No one wants to die intestate; you have to make some provision.

Cites case reported in 44 *C. L. W. page 14, at page 16, Francisco vs. Swadeshi Industrial Works Ltd*: Probably this is the same case that is reported in 53 *N. L. R. 179*. There is no prohibition against donation. He also cites Justice Nagalingam's judgment reported in 51 *N. L. R. page 81*: case of donation. It was held in that case that the deed did not create a fidei commissum for three reasons.

Learned Counsel for the plaintiff referred to the Last Will D1 and said that the defendant's husband has only given her a life interest. Refers to paragraph 3 of the Last Will D1. The 4th paragraph of that Will was put to the defendant by learned Counsel for the plaintiff, and he suggested that the defendant was only entitled to enjoy the rents and profits during her lifetime.

He cites *Jarman on Wills, Vol. 2. 8th Edition, page 1454, sub-para (6)*. The Court will have to reject the fourth clause in the Will, because this has been inserted inadvertently.

Re the question that there is no fidei commission but a trust: The reason which necessitates the plaintiff coming into this case is by reason of the judgment reported in 58 *N.L.R. 494*. One has to look to the difference between the last will which forms the subject matter of this case and the will which formed the subject matter of that case. This case is very important for the case of the defendant. It was held in that case that the argument of Counsel who supported the appeal was that this phraseology constituted a trust and there was no fidei commissum. The Court held that there was no trust, but that there was a fidei commissum. The facts of the will in this case is different. (Counsel reads the judgment in 58 *N.L.R. 494*).

Re trust - cites Section 3A of the Trust Ordinance. If a trust is excluded, then Weerasooriya, J. said that certain results would follow. In that Will under reference in that case, the testator had nothing to do with the trustees. When the words 'trust' and trustees' are there, it is clear that there is a trust, although it is not called a trust deed. Refers to Clause 7 of the Last Will P10. There is not one word about "trust" in the case reported in 58 *N. L. R. case*. The testator here gifts the movable property also subject to the same condition. He deals with the immovable property and the movable property in a particular way. The trustees could have done anything they liked. There is a large set of clauses giving certain terms, some of which have given an absolute discretion to the trustees. In the instant case, the legal title is in three persons, namely, Carwallo, Corea and Mirando. A. L. Morais is getting some beneficial interests. The Trustees are there. So that definitely there is a trust created. If there was a fidei commissum proper in the last will in question normally

the trustees should have come before this Court. In order to give good title to anyone who wants to buy privately from the trustees certain property, they should have come to the Court under the provisions of the Entail & Settlement Ordinance. Journal Entry marked D15 in the Testamentary case was marked. No such steps have been taken by the trustees either in the testamentary proceedings or in any other proceedings for permission to sell the property belonging to the deceased Mariam Morais. The Final Account D16 in that case was marked to show that the trustees were having in their hands large sums of money. A series of such amounts are shown in this document. 10 D18 and D19 were marked today. Refers to deed No. 1208, P6. Deed No. 3034 is referred to in Deed P6. Paragraph 4 of P6 referred to. They have taken up the position that they were trustees. Nowhere do they say that they have come to Court in the testamentary case or other proceedings.

It is clear that there is a trust created. For a trust there must be three parties—the creator of the trust, the trustee and the beneficiary. Mariam Morais was the creator of the trust. Carwallo, Mirando and Corea were the trustees, and Anthony Lewis Morais was the beneficiary under the trust will. Re trust - Section 5 of the Trust Ordinance. A trust can be created by Last will by the author of the trust. Re creation of trust - Section 6. Refers to 20 Sections 7 and 8, 16 to 18. Section 39 deals with the power to sell trust property. The trustee has sold in this case - vide deed No. 1208 P6. Section 43 says that a trustee can reimburse all expenses incurred by him. The final account filed in this case shows that the trustees have re-imbursed themselves of the expenses incurred. Refers to Section 57. Here the beneficial interest has been mentioned. Refers to Section 58 of the Trust Ordinance. The beneficiary came to this Court and stated to Court that the Trustees were not giving him the property. Vide P16. P16 is supported by section 58. Section 61 and 63 are also to the same effect.

All the elements necessary for a trust are present in this case. Not only 30 that; all interested parties have accepted that position. Once there is a trust, can you bring in terms such as "you shall not sell &c."? That cannot be done. You cannot bring in the restrictions. If a trust is included, then the case reported in 58 N.L.R. would not apply. Mr. Justice Sansoni in this Judgment has referred to a South African case - Kent vs Mc Donald, Trustee. Mr. Kanagarajah submits that, with all due respect, this case should not have been referred to at all. In South Africa there was no Trust Ordinance at that date, i.e. in 1915. Here there is a document validly executed showing that there was a trust. It is pertinent at this stage to observe the date of our Trust Ordinance. It is 9 of 1917. It came into being shortly 40 after the decision in that case Kent vs McDonald, Trustee. This Judgment has been published in the year 1915. The Trust Ordinance decides once and for all whether fidei commissum has anything to do with trust.

Vide Section 3B of the Trust Ordinance - trust does not include a fidei commissum. Those words were not put in the Trust Ordinance for nothing. Refers to the 47 N.L.R. case, Sithy Kadija vs Hussain. The three persons who were trustees of the estate were Carwallo, Mirando and Corea, and the beneficial estate is in Anthony Lewis Morais. When the beneficiary's title gets wiped off, then the persons calling themselves fidei commissaries rights

come in. The consequences thereby are very large. In terms of a trust Anthony Lewis Morais is a beneficiary. The trustees were these three persons Mirando, Carwallo and Corea. Anthony Lewis Morais being a beneficiary under the Will cannot at the same time be a trustee. The same person cannot be occupying two positions, one as trustee and the other as beneficiary. That is unknown. A is the Creator of trust, B is the trustee and C is the beneficiary.

Re case reported in the 47 N.L.R., cites *Lee on Roman Dutch Law, 5th Edition, page 374, at page 389*. At page 389 of Lee reference is made to the South African case referred to in the 58 N.L.R. case. You cannot have a trust and a fidei Commissum at the same time. When Lee says "side by side", it means, if you want to create a trust you can do so, but if you want to burden the property then you can have a fidei commissum. Lee at page 390. Ordinance No. 9 of 1917 defines and amends the Law regarding trust.

If a question were to be asked in regard to the plaintiff Francesca, the reply would be that the old gentleman left a Last Will saying that the property should go in a particular way, and the most you can say is that Francesca is also a beneficiary coming under the category of beneficiary in succession; that she is also one of the beneficiaries like Anthony Lewis Morais.

Refers to Section 16 of the Trust Ordinance. In the case of a trust, if the property is sold against the Trustee, the beneficiary may have certain remedies against the trustee. If the property is sold by the misdeeds of a trustee, then the beneficiary will have a remedy against the trustee, but certainly not against the purchaser. The beneficiary may file action against the trustee. But the beneficiary may not succeed if he files action against a third person - a purchaser. D9, D10 and D11 were sales which were not against the trustees. It is only when a sale takes place against a trustee that the beneficiary can come and claim. If the properties are sold against the beneficiaries, what remedies are there? Here what has been sold is against the beneficiary; that is against Anthony Lewis Morais. The title is that of "beneficiary", and there is no one to complain. Beneficiary owed no duty to Francesca. When the land was sold against the trustees, if Francesca was alive or if certain rights accrued to her from the trustees Carwallo, Mirando and Corea, and if the lands were sold against them, Francesca might have intervened, but it was against Anthony Lewis Morais. All the sales were against the beneficiary and not against the trustee.

Learned Counsel for the Plaintiff might quote Section 110 (1) of the Trust Ordinance against the defendant. There is no trust after the death of the testator or of the trustees or of the beneficiary, because they were three persons who were alive at the date of P6. The Section goes further ". . . . and the minority of some person who shall be in existence at the expiration of that period and to whom, if he attains full age, the interest created is to belong." Francesca was not a minor at that date. The birth certificate shows that she was born in 1920. At the date Morais died in 1958, she was 38 years old. The second proviso to that section cannot come to the rescue, because she was not a minor at the date when all the persons ceased to exist. There is no trust in perpetuity. The trust ceases for two reasons. It is given in the Chapter

dealing with the extinction of trust. No sooner the trustees conveyed by deed 1208, P6, the trust ceased. Section 79 deals with the extinction of trust. The old man Marian Morais gave the trust, and until the boy was 35 years old he was not to get the property. When P6 was executed the trust was at an end. It may be that they might seek refuge in Sections 110(2) and (3) and ask for relief under Section 110(4), but that cannot come to their rescue. Section 110 (2) says "If owing to any trust an interest is created for the benefit of a class of persons with regard to some of whom such interest fails by reason of the provisions of this section, such interest fails as regards the whole class".  
 10 There is no failure of the Trust in this case.

No. 11  
 Addresses to  
 Court  
 --Continued

Further hearing on 8th and 9th December 1964, at 9.30 a.m. each day.

Intd. ....  
*Additional District Judge*  
 3-12-64

8th December, 1964

**TRIAL RESUMED  
 APPEARANCES AS BEFORE**

Mr. Kanagarajah continues his address: Consider the case of the last will referred to in the five cases 37 N.L.R. 70, 15 C.L.W. 115, 41 N.L.R. 225,  
 20 42 N.L.R. 80 and ending in 45 N.L.R. 265. The Privy Council Judgment is reported in 47 N.L.R. 171. The will that is referred to today is partly given in the 58 N.L.R. case. In the five cases referred to earlier, namely, 37 N.L.R. 70, 15 C.L.W. 115, 41 N.L.R. 225, 42 N.L.R. 80 and 45 N.L.R. 265, there were the words "held in trust." In the 58 N.L.R. 494, where there is the word 'trust' at all in the last will construed there, His Lordship Justice Weerasooriya said, if trust is excluded then there can be fidei commissum. That was the case of a Last Will written by a Sinhalese Notary on 12th December, 1872. Compare that will with the Last Will No. 1080 of 1917 of Mariam Morais, which forms the subject matter of this action Last Will No. 1080 was attested by Mr.  
 30 G. A. H. Wille, a member of the Burgher Community, a nominated, Member of the Old Legislative Council, just shortly after or about the time of the Trust Ordinance. It gives in clear unequivocal language the names of the trustees, the beneficiary and the objects of the Trust.

Some time after the execution of the will dated 12th December, 1872, referred to in the 47 N.L.R. 171, Walter Perera, at pages 456 to 458, Second Edition, of his Laws of Ceylon, drew the distinction between trust and fidei Commissum. His Lordship Justice Weerasooriya said in 58 N.L.R. 494, at 495 that where there is any word like 'trust' at all, if trust is excluded, then different considerations arise. At 58 N.L.R. page 500 His Lordship Sansoni  
 40 J. harked back to the South African case of Kemp's Estate v McDonald's Trustee. He said there was no local case in which it was considered. His Judgment seem to have been slightly affected by the South African Judgment. In South Africa there was no Law of Trust similar to the English Law of Trust

or the Ceylon Trust Ordinance No. 9 of 1917 at the time of the decision reported in 1915 A.D. 491. Immediately after that our Ordinance No. 9 of 1917 was enacted. His Lordship Justice Sansoni said at page 500 of 58 N.L.R., that the question of fitting the provisions of a will into the framework of a fidei commissum had not been considered earlier. In 37 N.L.R. 70 Justice Akbar went into the decision of Kemp's case at page 80 and 81.

In the three earlier cases reported in 37 N.L.R. 70, 15 C.L.W. 115 and 41 N.L.R. 225 it was held that there was a fidei commissum created by the last will dated 12th December, 1872. In the five Bench case reported in 45 N.L.R. 265, the majority decision was that there was a trust. His Lordship Justice Soertsz in the 45 N.L.R. 265 went into the question of the Last Will and said there was only a trust. In the same case His Lordship Chief Justice Howard considered the South African case of Kemp v Mc Donald, whether a fidei Commissum could be brought into the framework of a will, and held that there was a trust. The case went up to the Privy Council, and the Privy Council's finding is reported in 47 N.L.R. 171, at 175, and it set at rest once and for all the conflicting decisions in the earlier four cases in respect of the solitary word 'trust'. Holding that there was a fidei commissum, they drew pointedly the attention of jurists to the difference between fidei commissum and trust. In that case the trustees were not given power to deal with the property as in this case. Cites Nadarajah at page 232.

Refers to 34 N.L.R. 281, where the Privy Council has drawn attention to the dangers that follow in attempting to have in one instrument two systems of Law - The Roman Dutch Law and the Muslim Law. They said you cannot construe a document using two systems of law. In 47 N.L.R. at 175, trust has to be construed according to English conceptions. Nowhere is it said that while considering the question of trust one should consult the South African law or South African Judgments, or the opinions of South African Jurists or Judges. But as against that we are told by Section 2 of the Trust Ordinance, 9 of 1917 to refer to English conceptions. The former section 118 is section 2 in the new series. We are not told to go to South Africa to interpret the law of trust. That is apart from Section 3(b) of the Trust Ordinance, which states that a trust shall not include a fidei commissum. Once we accept the English Law of Trust, and that the English Law of Trust should be followed to solve any difficulties, then by reason of the English law of trusts, you cannot have restrictions against alienation as referred to in the Last Will No. 1080 of 8th September, 1917 of Mariam Morais, P10. It cannot be said that the beneficiary cannot do this and cannot do that. Jarman in his Treatise on Wills, Volume 1, 8th Edition, page 572 onwards, refers to this question and states that all the restrictions are void. In the instant case the ownership of the properties was given to the Trustees. They could sell or buy without the permission of Court. You cannot have all these conditions and these conditions cannot be put in. The conditions referred to in P10 cannot be given effect to. In a trust only the trustee is under an obligation to do certain things, and not the beneficiary. The beneficiary Anthony Louis Morais could have done anything he liked with his properties, or his properties could have been sold against him with impunity, and the transferee in either case obtained indefeasible title, and resulting from that title, the defendant has good title. The plaintiff's action should be dismissed.

Counsel submits that in the Last Will before Court, No. 1080 dated 8th September, 1917, P10, executed by Mariam Morais, there is only a trust, and there cannot be a fidei commissum. When the three trustees executed deed No. 120, P8, the trust was thereby extinguished.

No. 11  
Addresses to  
Court  
—Continued

### Mr. RANGANATHAN ADDRESSES COURT:

Refers to issue No. 21 (a) (b) and (c). Section 34 referred to. In every case there is a cause of action and there are claims for reliefs claimed for each cause of action. If B has got into wrongful possession of a property belonging to A, then it is trespass. That is the cause of action. The  
10 cause of action is the wrongful entry and the consequent denial of title. The reliefs that are claimed are damages, declaration of title and ejectment. The claims that are made in respect of that are three. What Section 34 permits is that you should claim the reliefs in the same cause of action. The cause of action in case No. 9929/L is in respect of three other lands. The cause of action in this case relates to 13 other properties. The definition of 'cause of action' is given in Section 5. (1) denial of a right (2) or infliction of an other injury. The cause of action is the denial of the right of ownership of the plaintiff in respect of the land and the wrongful possession by defendant of plaintiff's property. What is the data for the  
20 cause of action in case No. 9929/L. One is that the plaintiff is the owner of lands Nos. 1, 2 and 3. That is one fact essential to constitute a cause of action. For a cause of action you must have a right and either a denial of that right and or an infliction of injury. What is the right in case No. 9929/L? The right is the ownership of the property. The denial of that right is an infringement of the right to ownership. For every cause of action there must be a right and a denial of the right and or the infliction of an injury. The right and the infringement is the same in the other case. The causes of action set out in case No. 9929/L and 10207/L are different. Therefore Section 34 has no  
30 application, because the section provides for the making of the whole of the claims in respect of one and the same cause of action. For one cause of action you cannot claim reliefs in two different cases. The declaration of title, damages and ejectment must be claimed in the same case. Cites the case reported in 17 N.L.R. 56 - *Palaniappa vs Saminathan*, at page 60. Also 62 N.L.R. 511. In this case there were two lands, one of 3 lachams and 2 kulies and the other of 23 lachams and 16 Kulies. The 3 lachams of the lands from one allotment of 23 lachams. First an action was brought for the 2 lachams land, and that action was dismissed. Then an action was brought in respect of the 23 lachams. It was argued in the latter case that it was res judicata. There it was held that it was a different land, and the issue of res judicata failed.  
40 In the last paragraph at page 514 and at page 515 this particular point has been dealt with. Section 34 is allied to the principle of res judicata. There is nothing to prevent you from filing a separate action in the same court in respect of the same cause of action, but the Court can exercise its discretion and say that it will lay by one case and try the other, and that the findings in one case will be binding on the other as res judicata. Till the matter is adjudicated upon, you can file any number of cases in the same court or a different court which has jurisdiction.

Cites 39 N.L.R. 221 at page 224, and 33 N.L.R. 42. In regard to the instant case, the causes of action are different; there are three properties in



one and 13 in the other. The properties 1 to 10 referred to in this case originally belonged to Mariam Morais. By his Last will No. 1080, P10, clause 7, he bequeathed the properties subject to certain conditions. He bequeathed the properties to three trustees - Carwallo, Miranda and Corea. Therefore, under the Will, the bequeathed property vested in those three trustees. No further conveyance is required. The property vests directly in the three persons. But the property is not given to them absolutely. It has been given to them for the purpose of certain trusts. In clauses 1, 2, 3, and 4 provision is made for the Trustees to pay out certain moneys out of the income to certain charitable institutions and other persons. The property is not given to them 10 absolutely, but for the purpose of performing certain obligations. One such obligation on the part of the Trustees is to collect the income and pay out the income to certain parties. Sub-clause 5 of clause 7 referred to. This is the material clause. One trust obligation they had to discharge was that on Anthony Louis Morais attaining the age of 35 years, the trustees must convey the property to him subject to certain conditions. They were obliged to convey the property to Anthony Lewis Morais not absolutely, but subject to certain conditions.

Cites Section 2 of the Trust Ordinance. The property was given, and the ownership was vested in the three trustees. They had to deal with it for 20 the benefit of others. In regard to the immovable property, they had to convey it to Anthony Lewis Morais subject to certain conditions. So far as the Trust is concerned, the trustees fulfilled their obligations by executing deed No. 1208, P6, in favour of Anthony Lewis Morais. They were carrying out the obligations of the trust. They were holding it for the benefit of a third party; not for themselves.

Counsel for the defendant suggested the issue whether this Will created only a trust. The obligation of the trustees was to convey not absolutely to Anthony Lewis Morais, but subject to certain conditions. Therefore the trustees in whom the legal title was vested, conveyed that legal title to Anthony 30 Lewis Morais subject to certain conditions. (Conditions read.) The title of Anthony Lewis Morais depends on this deed 1208, P6. It was executed in his favour by the trustees in view of the trust obligation under the Last Will. Clause 7, sub-para 7 of the Last Will provided for the purchase of other properties out of the income of the trust property. In deed No. 1208, P6, they set out the fact that certain properties which belonged to Mariam Morais were sold and out of the moneys some other properties were bought. Then they conveyed the property to Anthony Lewis Morais. Refers to page 5 of P6 the habendum clause. The title conveyed to Anthony Louis Morais was subject to certain conditions. The question is whether the deed P6 constitutes 40 a fidei commissum in favour of the beneficiaries.

In Ceylon there is both trust and fidei commissum. Under the Roman Dutch law there is fidei commissum. We have the English Law of Trust and the Ceylon Trust Ordinance, 9 of 1917. We have in Ceylon both trust and fidei commissum. A person can appoint trustees over his property for the purpose of certain trust obligations. The first document, the Last Will contains two parts. The first part is to bequeath the property to the trustees subject to certain conditions, and the second part is, they conveyed the property subject to a fidei commissum. Cites 58 N.L.R. 494. There the property

was conveyed to A subject to the trust that the income shall be utilised for the benefit of certain person or persons. The person to whom the property is bequeathed does not get it absolutely. He gets it subject to certain obligations; the obligation being to collect the income, and the income is to be utilised for the benefit of the child, and when the child attains a certain age to give the property to the child. You have to determine the relationship between the person to whom the property is bequeathed and the person to whom the property has to be handed over on the happening of certain things. The three trustees are persons to whom the property was bequeathed. What is  
10 the relationship between them and Anthony Lewis Morais. They were required to hold the property, collect the income, pay certain charities and transfer the property to Anthony Lewis Morais when he reached the age of 35 years. The first is a pure and simple trust obligation. Here we have two parts of an instrument - one a trust and the other a pure and simple fidei commissum. Cites 58 N.L.R. 494 and 47 N.L.R. 171. It was argued by Counsel for the defendant that there was a trust and there was no fidei commissum. In the case of fidei commissum it was argued that the beneficiary is the owner of the property; i.e. he has full ownership of the property. The obligation that was imposed upon the three trustees, whe-  
20 ther it was fidei commissum or trust, they had discharged their obligation of the trust.

Further hearing tomorrow at 9.30 a.m.

Intd. ....  
*Additional District Judge*  
8-12-64

9-12-64.

Same appearances as on the last day.

Addresses resumed.

Mr. Renganathan continues his address: Re issues 22 and 23 : No question  
30 is raised in regard to P6. There is no question that deed No. 1208 creates a fidei commissum. The property was gifted to Louis Anthony Moraes. Even if the will P10 has a reference to a trust and a fidei commissum as perhaps it may be said that it does on the face of the document, it will not make any difference in the legal position. The fiduciary obligation and the trust obligation is one and the same, namely, that the property must be conveyed subject to fidei commissum. The fiduciary obligation is to convey the property to Louis Anthony Moraes subject to certain conditions. The trust obligation is to convey the property on the happening of an event to Louis Anthony Moraes. The defendant argued that if it was a trust created in England, then you cannot  
40 prohibit the beneficiary from alienating the property and that one cannot impose restrictions on the beneficiary. In England there is no legal concept known as fidei commissum. In England if you give a property to a person you cannot prohibit him from alienating it. Therefore in England you cannot impose any condition as the legal concept is not there. In Ceylon we can leave property to a person subject to the condition that he should not alienate it. Even if you deal with the deed P10 of the face of it as creating a trust and a fidei commissum it will not make any difference in this case. Mr. Renganathan

further submits that as far as the English Law is concerned the concept of Fidei Commissum is completely absent and is foreign to the English system of law. The passage read by Mr. Kanagarajah to the effect that what has been given to a trustee vests in him absolutely will have no application to the system of law that is applicable in Ceylon. Cites Keyton on Trust, 7th Edition, page 104. There it is stated that even in English Courts such trusts are recognized if the trust was constituted in a foreign country. In this case we are dealing with our own law and not with the English law. Fitzgerald 1904, 1 Chancery. This is the leading case on this question. This is purely an academic question as to whether the Last Will P10 creates a fidei commissum or not. Mr. Renganathan submits that the submissions made by Mr. Kanagarajah regarding this last will is to a large extent purely academical and that in deciding this matter this Court should regard itself not as an academy of law, but as a Court of Justice. Mr. Kanagarajah two cases reported in 58 New Law Reports and 47 New Law Reports. In those cases it was held that the fiduciary had a pure title but that the income was for the others. Mr Renganathan cites: 58 N.L.R. page 484.

Regarding issues 13 to 19: The argument of the defendant was that if there is a forced sale as in this case, the fidei commissum is at a stand still. In the last will No. 1080 there is a condition that Louis Anthony Moraes shall not in any wise sell alienate or encumber the property. It is on the basis of this argument that Mr. Kanagarajah made certain submissions that an explanation is to be found in the nature of the prohibitions contained in this last will in so far as forced sales are concerned. For this argument he relied on the words that "Louis Anthony Moraes shall not sell, alienate or encumber the property. But this is not the only condition in the last will, but there are two other conditions that have got to be read along with the condition that has been imposed earlier. Mr. Renganathan that under one condition every type of alienation is prohibited. The other two conditions are now referred to by Mr. Renganathan. One is "possess and enjoy the rents and profits during the term of his natural life." He was given only the right to possess and that at his death the said immovable property was to devolve on his lawful son or sons absolutely. But if there were no sons the same was to devolve on the lawful daughters. The property was given to Louis Anthony Moraes subject to the condition that on his death it shall devolve on his lawful son or sons and if there is no son or sons on his lawful daughters. The property was given to Louis Anthony Moraes and on his death the property was to devolve on his daughter in the absence of a son. That creates a fidei commissum and all the prohibitions are implied by law and the property must come to the daughter. It has been argued that it is customary for a Notary to include a prohibition against alienation. Cites 41 N.L.R. page 225 at page 232. There are two types. One is an expressed fidei commissum. Then there is the trust fidei commissum. There one gives the property prohibiting him from selling or encumbering and indicating to whom the property should go if he violates the condition of the fidei commissum. That is what is

called a tacit fidei commissum. In such a case where one or two acts of prohibition are mentioned one need not take into consideration the other types of alienations. In this last will P6 there is a simple expressed fidei commissum in which case the condition must be fulfilled. In the case of P10 and P6 there is no tacit fidei commissum.

Issues 13 and 14 would refer to the properties that Anthony Louis Moraes owned of his own, but not to these properties. There is no escape whether it is by forced alienation or by collusive transaction. 2 Ceylon Law Weekly Reporter page 314. This authority expressly says that a forced sale is invalid in so far as the fidei commissari is concerned. That is to say that the property must go to the fiduciary. Regarding the Last Will Mr. Renganathan cites 7 New Law Reports page 23 at page 28. The facts of the case are cited at page 24. Cites 23 N.L.R. at page 1 and 4. No act could be done to divest the fidei commissari of the property.

Regarding the facts of the case Mr. Renganathan states that the plaintiff has proved that Anthony Louis Moraes left no son and the defendant has not stated that Louis Anthony Moraes did not leave any son. There is a categorical admission in P23 where it is mentioned that the defendant is the widow and the plaintiff is the daughter. The handbook is sufficient proof of this fact. There is an admission of this fact by the defendant.

Refers to P34. P33 and P34 contain vital admissions regarding the question whether the plaintiff is the daughter of Anthony Louis Moraes. When there is a categorical admission by the defendant nothing more is required by way of proof. Court will not accept the evidence of the defendant that she never cared to find out who the mother of the plaintiff was. Refers to letter P36 where there is an implied admission that the property belongs to the plaintiff. There she says that she wants to be busy with these properties and that otherwise she would die. There is the evidence of Sir Donatius Victoria the father-in-law of the plaintiff and a brother of the defendant who is a close relation of both parties. The attitude of the defendant is "I will possess the properties by force and you pay the rates and taxes." To P30 Anthony Louis Moraes is an attesting witness. Mr. Renganathan refers to the birth certificate of the plaintiff. The statues of a foreign country are published by the government of that Country. In this case such a statute has been produced. There is a custodian of a marriage register and custodian of a certificate of marriage. By habit and repute it has been proved that Anthony Moraes was married to his first wife. There is no evidence to the contrary that they were husband and wife.

Mr. Kanagarajah in reply states: Plaintiff has conceded that there is a trust, but he says that still the trustees carried out the terms of the trust by executing the executor's conveyance P8. Once the plaintiff concedes that there is a trust then he must follow the terms of that Trust Ordinance. Francisca

No. 11  
Addresses to  
Court  
—Continued

was not alive either on the date of the execution of P10 or the last will P6. At the date creation of the trust P10 there was only the creator of the trust, the trustees and the beneficiary. On the date P6 was executed only the 3 trustees and beneficiary was alive, but Francisca was not alive on that day. Plaintiff gets no interest on the executor's conveyance. When Louis Anthony Moraes died in 1958 plaintiff was not a minor, but a Moajr of 38 years of age. She was born in 1920. Louis Anthony Moraes died in 1958. Therefore no title passes to Francisca and therefore she is not entitled to file this action.

(Mr. Renganathan now marks as P18, P19 and P31 Photostat copies and states that their covers indicate that they are publications by the Government of India.)

Sgd. ....  
*Additional District Judge*  
9-12-64

In regard to the handbook tendered by Mr. Kanagarajah which is something in the form of a memorial book, Mr. Renganathan states that this is an appropriate stage that a ruling be given on the production of this book.

Intd. .... 20  
*Additional District Judge*  
9-12-64

**ORDER**

I have considered this matter and I find that this book now sought to be produced by Mr. Kanagarajah cannot be admitted into this case under any of the issues raised and I therefore rule out this handbook.

Intd. ....  
*Additional District Judge*  
9-12-64

Documents to be tendered in office. Call case on 21.12.64 to fix date for Judgment.

Intd. .... 30  
*Additional District Judge*  
9-12-64

Mr. Kanagarajah, with the consent of Counsel for the plaintiff moves for permission to cite any further authorities in writing with notice to the other side if he comes across any such authorities, as a reply to the submissions made by Mr. Renganathan.

I allow his application.

Sgd. .... 40  
*Additional District Judge*  
9-12-64

**JUDGMENT OF THE DISTRICT COURT**

17th March, 1965.

**JUDGMENT**

The properties in dispute in this case are 13 in number. One Mariam Morais was the owner of the properties 1 to 10 referred to in the plaint. By his Last Will (P10) of 1917 he bequeathed these properties to his three sons-in-law, Carvalho, Miranda and Corera, describing them as the three Trustees, subject to the following conditions :—

- 10 (a) to convey the immovable properties of the aforesaid Mariam Morais unto his son, Lewis Anthony Morais on his attaining the age of 35 years on the 25th of July, 1933, subject to the conditions that the said Lewis Anthony Morais shall in no wise sell mortgage or otherwise alienate or encumber the said properties and premises whereby conveyed or any portion thereof but shall only have possess and enjoy the rents issues and profits arising and accruing therefrom during the term of his natural life and that at his death the said properties and premises shall devolve on his lawful son or sons only absolutely but
- 20 if there be no lawful son surviving him at his death then in that event the same shall devolve on his lawful daughter or daughters absolutely . . . . .
- (b) to sell and convert into money such of those immovable properties belonging to Mariam Morais as the said Trustees shall in their discretion think advisable and expedient to do so by reason of the properties not giving any reasonable rent income or return and from such proceeds of the sale to purchase other immovable properties and such properties so purchased by the application of the moneys realised by the sale shall form part of the said trust estate and be subject to the same trust as are expressed and contained in the Last
- 30 Will.

There is evidence that certain properties of Mariam Morais, which probably were not yielding an income or profits, were sold by these three Trustees, and three properties had been purchased. It is including these three properties that there are 13 lands, the subject matter of this action. In terms of this Last Will these three Trustees conveyed by deed 1208 of 1933 (P6) these premises in dispute unto the said Lewis Anthony Morais, subject to the restrictions and reservations that the said Lewis Anthony Morais shall in no wise sell Mortgage or otherwise alienate or encumber the said properties and premises thereby conveyed or any portion thereof, but shall only have

40 possess and enjoy the rents issues and profits arising and accruing therefrom during the term of his natural life and that at his death the said properties shall devolve on his lawful son or sons absolutely, but if there be no lawful sons surviving him at his death then in that event the same shall devolve on his lawful daughter or daughters.

The Plaintiff's case is that she is the only surviving child of her father, Lewis Anthony Morais; that she had a brother Maria Xavier Morais who died on 14th August, 1933, without leaving any issue; that the deed P6 executed by the three Trustees in terms of the Last Will (P10) creates a valid fidei commissum in her favour, and that inasmuch as her father had died on the 2nd of September, 1958, these properties in dispute have vested in her as from that date. She complains that this defendant, the widow of her late father — having married him as his second bed — is in wrongful and unlawful occupation of these properties. On this basis she asks for a declaration that she is entitled to these properties in question and for damages. 10

The defendant resists this claim on several grounds. Though it has not been specifically stated in the answer, the defendant in her evidence before me took up the position that this plaintiff was not the lawful daughter of her late husband, Lewis Anthony Morais, but that she was only an adopted daughter and that in any event she could not claim the benefits arising out of the deed P6 referred to earlier. While admitting that she is in possession of all these premises in question, she further maintains that in the Last Will (P10) and the deed of transfer (P6) referred to above there is no prohibition against any forced alienation or alienation in invitum; that she and her late husband executed a joint Last Will 1454 of 1947, which 20 was admitted to Probate in Case No. 20494/T of this Court, and that on this basis she has now become the sole owner of these properties in question.

Apart from this instant case, which is in respect of 13 properties, the plaintiff has also filed Case No. 9929/L of this Court in respect of three other lands against the same defendant for identical reliefs on the identical grounds that have been urged by the plaintiff in this action. It is contended on behalf of this defendant that the plaintiff having omitted to sue in respect of the lands in dispute in this case in the earlier action No. 9929/L she must be deemed to have intentionally waived or abandoned her claims touching these lands, and that, therefore, this action cannot be maintained, in view of the 30 provisions of section 34 of the Civil Procedure Code. I shall deal with this aspect of the matter now itself. The issues touching this submission is Issue 21(a), (b) and (c). Section 34 provides that every action shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but the plaintiff may relinquish any portion of his claim in order to bring the action within the jurisdiction of any Court. If the plaintiff omits to sue in respect of, or intentionally relinquishes any portion of, his claim he shall not afterwards sue in respect of the portion so omitted or relinquished. In an early case reported in 17 N. L. R. page 56 at 60 it has 40 been observed that section 34 "is directed to secure the exhaustion of the relief in respect of a cause of action and not to the inclusion in one and the same action of different causes of action even though may arise from the same transaction." In this case there are 13 different lands, and in Case No. 9929/L of this Court there are 3 lands which are the subject-matter of this action. The plaintiff is the same and the cause of action is on the basis that the plaintiff is the owner of the lands, and that the defendant has not merely denied the right of the plaintiff to each of these lands, but is in unlawful occupation of these properties, causing damage to the plaintiff. Thus it is clear that a cause of action has accrued to the plaintiff in respect of each of

these lands and that, therefore, she is entitled to sue the defendant for reliefs and remedies in respect of each of these causes of action. The mere fact that 13 lands have been included in one and 3 lands in another action does not necessarily show that the plaintiff has abandoned or relinquished her claim for relief in respect of the lands mentioned in the subsequent action, that is the instant case. I, therefore, find that the objection raised on this ground fails. I am of the view that section 34 cannot be said to apply to the circumstances under which these two actions had to be instituted by this plaintiff against this same defendant for reliefs in respect of the various properties referred to therein. Issue 21(a), (b) and (c) has, therefore, to be answered against the defendant.

It was further contended on behalf of the defendant that this Last Will (P10) created only a trust, and that, therefore, this action on the basis of a fidei commissum in favour of the plaintiff cannot be maintained. Issues 22 and 23 have been raised touching this aspect of the matter. It is, therefore, necessary to examine the relevant portion of the Will to consider these issues. The relevant portion of the Will (P10) could be split up into two parts. The properties of Mariam Morais were bequeathed to the 3 Trustees referred to above with certain obligations attaching to it, the principal obligation being that the Trustees shall hold these properties for the benefit of a third party, namely, Lewis Anthony Morais, until he attained the age of 35. Thus there can be no question that these properties were conveyed to the Trustees not absolutely, but subject to the conditions embodied therein. That it had been so intended is clear from the fact that the Trustees did faithfully carry out the obligations imposed on them and on Lewis Anthony Morais, the son of Mariam Morais, attaining the age of 35 they executed the deed 1208 (P6) in his favour. This deed was executed in pursuance of the trust obligation under the Last Will. It is this deed (P6) that had been executed by the 3 Trustees in favour of Lewis Anthony Morais that is relied on by the plaintiff as creating a fidei commissum in her favour.

Mr. Kanagarajah for Defendant submits that there is no fidei commissum, but a trust that had been created in the Last Will (P10). In fact, the three sons-in-law are referred to as Trustees and the properties are referred to as Trust property. He further submitted that if a trust is recognised in this document one cannot take it that a fidei commissum also has been created in the same instrument. He relied on the provisions of the Trust Ordinance and on certain authorities for the purposes of showing that the trust properties vest in the Trustees absolutely, and that any element of a fidei commissum cannot be brought in to such an instrument.

I have had the advantage of a full and a very helpful discussion by both sides. I have considered these submissions and the authorities referred to with care. The authority reported in 58 N. L. R. page 494 appears to me to support the contention of Mr. Ranganathan that an instrument such as this where there are two parts, one imposing a trust obligation on the Trustees to carry out a certain act on the happening of a certain event, the existence of a trust obligation does not permit the Trustees to have the property absolutely, but to carry out the obligations imposed on them by the instrument. The question is whether this deed 1208 (P6) executed on the basis of the trust



obligations imposed on them by Last Will (P10) creates a valid fidei commissum, as maintained by the plaintiff. The obligation imposed by Mariam Morais on the Trustees was that he should convey the properties to his son, Lewis Anthony Morais, on his attaining the age of 35, subject to the condition that he shall not sell etc., but that on his death it shall devolve on his sons and if such sons are not available, on his daughters. This obligation the Trustees have faithfully carried out by the execution of the deed P6. The necessary prohibition is there; prohibition against alienation is there and all the necessary ingredient for a valid fidei commissum are to be found in this document.

It was submitted by Mr. Ranganathan that the concept of fidei commissum 10 is not found in the English system of Law, and that, therefore the submissions made by Mr. Kanagarajah on that basis cannot apply to the circumstances of this case. I agree.

On a consideration of the relevant passage referred to above in the Last Will (P10) it is quite clear that Mariam Morais did not give these properties to the three Trustees absolutely, but that when he gave them he imposed the obligation that it should be conveyed to his son, Lewis Anthony Morais, and the manner in which the transfer should be effected is also shown in unmistakable terms in the Last Will (P10), and it is this obligation that these Trustees have carried out by the deed P6. As I have earlier stated, this deed 20 P6 creates a valid fidei commissum and the necessary prohibitions are there, and I do not think in all these circumstances that the position taken by the defendant can succeed, even though it appears on the face of it that reference to a trust is made in the Last Will (P10). I hold that the deed P6 creates a valid fidei commissum in favour of the plaintiff.

It was further contended by Mr. Kanagarajah that even assuming that a fidei commissum may be said to exist there is no prohibition against forced sales or against donations. In this connection too the document has to be referred to see exactly the extent to which the prohibition extends. In Issue 14(a), (b) and (c) Mr. Kanagarajah had given details in regard to the cir- 30 cumstances under which all the properties in dispute were seized under a writ of execution issued in Cases No. 9528/S and 19984/M and that after these properties were exposed for sale they were put up for sale somewhere in December 1949. The successful purchaser was one Mr. Casie Chitty, and Conveyance No. 20201 of 1951 marked D9 had been executed by the Fiscal. Mr. Kanagarajah submits that this has been a sale in regard to which Lewis Anthony Morais could have had no control as it was a forced sale and it is in these circumstances, he says that inasmuch as there is no prohibition against a forced sale the deeds executed in consequence of these sales must be regarded 40 as valid.

The Last Will (P10) provides that Lewis Anthony Morais shall not in any way sell mortgage or encumber the properties. It is true that there is no reference to any forced alienation or a donation as matters that have been prohibited. In order to ascertain the extent to which the prohibition extends the provisions in the Last Will must be read completely. While prohibiting sale mortgage alienation or any other encumbrances it further provides that Lewis Anthony Morais shall only possess and enjoy the rents and profits

during the term of his natural life and that on his death it shall devolve on his sons or daughters, whoever may be surviving at the date of his death. It would be seen, therefore, that while there is a positive prohibition against alienation, there is also a clear indication that Lewis Anthony Morais shall only possess and enjoy the rents and profits during his lifetime. On a reading of these various provisions I find that there can be no doubt that the prohibition extends to all kinds of alienation including donation or forced sale. Donation has been referred to in this case for the reason that the defendant bases her claim to these lands on a Last Will executed between herself  
10 and her late husband, Lewis Anthony Morais. In regard to the question whether a forced sale can put an end to a valid fidei commissum created in respect of a land it has been laid down in an early case reported in 2 Ceylon Weekly Reports page 314 that a sale by the Fiscal against the fiduciaries of a land subject to a fidei commissum does not put an end to such fidei commissum. This appears to me to provide a complete answer to the submissions made by Mr. Kanagarajah in this connection.

The other question that remains to be considered is the question of fact as to whether the plaintiff is the only surviving child of Lewis Anthony Morais. Sir Donatius Victoria whose son is married to the plaintiff gave evidence in  
20 this case. He definitely stated in evidence that the plaintiff is the daughter of Lewis Anthony Morais, the son of the late Mariam Morais. He produced the marriage certificate between Lewis Anthony Morais and his first wife, P11. The mother of the plaintiff, according to P11, was Mary Pancras Carvallo. The certificate of birth of the plaintiff, P12, was also produced by this witness. The very persons who were married as per certificate P11 are mentioned as the father and mother of the child Maria Thommai Franciscal. He further stated that this certificate of birth refers to this plaintiff. In order to further satisfy the Court that these were the parents of the plaintiff, the certificate of birth of a male child, namely, Xavier Morais, marked P13 was produced.  
30 This child had died in infancy, but the plaintiff relies on this document to show that she had this brother who had died and that the reference to the parents is common in her certificate of birth and in the certificate of birth of her brother, Xavier Morais. This plaintiff's mother died somewhere in 1921, and thereafter Lewis Anthony Morais married the defendant in the year 1927. This defendant is a sister of Sir Donatius Victoria. I find that both by oral evidence and documentary evidence the plaintiff has established that she is the daughter of Lewis Anthony Morais, and that she is the only surviving child.

The defendant in her evidence took up the position that this plaintiff  
40 was only an adopted daughter of Lewis Anthony Morais. When questioned as to whether she ascertained from anybody as to who her father was, the defendant gave very unsatisfactory and evasive answers. I have no difficulty in accepting the evidence of Sir Donatius Victoria, and hold that the plaintiff is the only surviving lawful child of the late Lewis Anthony Morais. The Book published in remembrance of the late Lewis Anthony Morais marked P33 finds references made to this defendant as the widow, and the plaintiff as the only daughter who lost her affectionate father. These references further support my finding that this plaintiff is the sole surviving heir of the late Lewis Anthony Morais. All objections raised touching the validity of

this fidei commissum have failed, and I find that the plaintiff is entitled to succeed.

The issues are answered as follows:-

- Issue No. 1. Was Mariam Morais the owner of the land described in the schedule to the plaint upon the deeds set out in paras 2, 14, 24, 34, 46, 55, 65, 75, 85 and 95 of the plaint?
- Answer: Yes.
- Issue No. 2. Did the said Mariam Morais die leaving a last will bearing No. 1080 of 8th September, 1917?
- Answer: Yes. 10
- Issue No. 3. Did the said Mariam Morais by the said Last Will bequeath all the rest and residue of his properties including the properties described in schedules A to J of the plaint to the three trustees referred to in the said last will upon the trusts and subject to the conditions set out therein?
- Answer: Yes.
- Issue No. 4. Was the said last will admitted to Probate in D.C. Colombo Testamentary Case No. 6237?
- Answer: Yes.
- Issue No. 5. Did the executor and/or Trustee appointed under and in terms of the said last will No. 1080 purchase in exercise of the powers vested under the said last will and become the owners of the properties described in the schedule K, L and M of the plaint upon the deeds, set out in paragraphs 107, 117, and 127 of the plaint?
- Answer: Yes.
- Issue No. 6. Did the said executors and/or Trustees convey on deed No. 1208 of 21st September, 1933, the lands and premises described in schedules A to M of the plaint to Louis Anthony Morais, subject to the terms and conditions contained therein? 30
- Answer: Yes.
- Issue No. 7. Was the said Lewis Anthony Morais as the fiduciary under and in terms of the said last will and/or in terms of the said deed No. 1208 and his predecessors in title in possession of the said lands and premises described in schedules A to M of the plaint undisturbedly and uninterruptedly by a title adverse to and independent of the defendant and others?
- Answer: Yes.

Issue No. 8. Was the plaintiff the only surviving child of the said Lewis Anthony Morais at the time of his death on 2nd September, 1958?

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Answer: Yes.

Issue No. 9. Did the said lands and premises described in schedules A to M of the plaint vest in the plaintiff on the death of Lewis Anthony Morais on 2nd September, 1958?

Answer: Yes.

Issue No. 10. If all or some of the above issues are answered in the affirmative, is the plaintiff entitled to the lands described in schedules A to M of the plaint?

Answer: Yes.

Issue No. 11. Is the defendant in wrongful and unlawful possession of the said premises from 2nd September, 1958?

Answer: Yes.

Issue No. 12. What sum is due to the plaintiff from the defendant as accrued damages from 1st June, 1960 up to 30th April, 1963 and as continuing damages thereafter?

Answer: Plaintiff is entitled to as accrued damages from 1-6-1960 up to 30.4.1963 and as continuing damages thereafter at the rate given by the defendant in answer to the interrogatories (paragraph 7) as found in the affidavit of the defendant dated 19-10-1964 and filed of record in this case.

Issue No. 13. Is there any prohibition in the will of Mariam Morais against forced alienation or alienation in invitum?

Answer: Yes; against all kinds of alienation.

Issue No. 14. (a) Were all the properties referred to in the schedule to the plaint seized under writ of execution issued in D. C. Colombo Case Nos. 9528/S and 19984/M by the Fiscal Western Province?

Answer: Yes.

No. 14. (b) Were the said properties exposed to public sale on 1st December, 1949 and 7th December, 1949 by the Fiscal, Western Province?

Answer: Yes.

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No. 14. (c) Were all the said properties put up for sale on 1st December, 1949 and 7th December 1949, by the Fiscal, Western Province ?

Answer : Yes.

No. 14. (d) <sup>The</sup> Were said properties purchased by Emmanuel Joseph Gaspar Casie Chitty ?

Answer : Yes.

No. 14. (e) Were Conveyances Nos. 20201 of 19th July, 1951, and 20206 of 16th August, 1951 made by the Fiscal, Western Province in favour of Emmanuel Joseph Gaspar Casie Chitty ?

Answer : Yes.

Issue No. 15. If so, can the plaintiff maintain this action.

Answer : Yes, as such forced sales by the Fiscal do not put an end to the fidei commissum.

Issue No. 16. Did the late Anthony Morais and the defendant execute their joint Last Will No. 1454 of 4th July, 1947 in respect of their properties ?

Answer : Yes.

Issue No. 17. Was the said Last Will admitted to Probate in testamentary proceedings No. 20494/T of this Court ?

Answer : Yes.

Issue No. 18. If so, is the defendant the sole owner of the properties referred to in the schedule to the plaint ?

Answer: No. In view of the finding that the plaintiff has become vested with these properties on the death of her father, late Lewis Anthony Morais.

Issue No. 19.(a) Is there any prohibition in the said last will of Mariam Morais No. 1080 against the disposal of his properties by a last will by Lewis Anthony Morais ?

30

Answer: Yes. All kinds of alienations are prohibited.

Issue No. 19.(b) If not, can the plaintiff maintain this action ?

Answer: Does not arise.

Issue No. 20. Has the Plaintiff instituted proceedings No. 9929/L of this Court for the recovery of certain properties mentioned therein on the basis of the last will of Mariam Morais?

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Answer: Yes.

Issue No. 21.(a) Has the plaintiff omitted to sue in District Court, Colom- (Recast at page 7) bo No. 9929/L in respect of all the lands mentioned in the schedule to the plaint in this case?

Answer: No. Not within the meaning of Section 34 Civil Procedure Code.

10 Issue No. 21(b). Has the plaintiff in District Court Colombo No. 9929/L intentionally relinquished her claim in respect of the lands described in the schedule to the plaint?

Answer: No.

Issue No. 21(c). If (a) and/or (b) is answered in the affirmative, can the plaintiff maintain this action?

Answer: Does not arise.

Issue No. 22. Does Last Will No. 1080 (P10) create only a trust? (see page 56)

Answer: No.

20 Issue No. 23. If so, can the plaintiff maintain this action?

Answer: Does not arise.

Enter judgment for plaintiff declaring her entitled to the lands and premises described in Schedules A to M of the plaint for ejection against the defendant, and for damages and continuing damages as earlier indicated in the judgment. The plaintiff is further entitled to costs of this action.

(Sgd.) S. THAMBYDURAI.  
*Additional District Judge.*  
Colombo  
17th March, 1965.

30 Judgment delivered in open Court.

(Sgd.) S. THAMBYDURAI.  
*Additional District Judge.*  
17th March, 1965.

**DECREE OF THE DISTRICT COURT****D E C R E E**

In the District Court of Colombo

Mrs. Francesca Victoria nee Morais of 267/2, Galle  
Road, Bambalapitiya, Colombo.*Plaintiff.**Vs.*

No. 10207/L.

Josephine Mary Aloysia Morais of No. 23/2, Lauries 10  
Road, Bambalapitiya, Colombo.*Defendant.*

This action coming on for final disposal before S. Thambydurai, Esquire, Additional District Judge of Colombo on the 23rd day of November 1964, 24th day of November, 1964, 3rd day of December, 1964, 8th day of December 1964 and on the 9th day of December, 1964 in the presence of Mr. Adv. Renganathan with Mr. Adv. Cooray instructed by Mr. D. N. Thurairajah, Proctor on the part of the plaintiff and of Mr. S. Kanagarajah, Proctor on the part of the Defendant and the Judgment having been delivered on the 17th day of March, 1965;

20

It is ordered and decreed that the plaintiff be and she is hereby declared entitled to the lands and premises described in the Schedules A to M hereto.

It is further ordered and decreed that the defendant be ejected from the said lands and premises described in the Schedules A to M hereto and the Plaintiff be placed in quiet possession thereof.

It is further ordered and decreed that the defendant do pay to the plaintiff accrued damages from 1. 6. 1960 up to 30. 4. 1963 and also continuing damages thereafter untill the plaintiff is placed in possession of the said lands and premises at the following rates, to wit:—

- |   |                      |    |
|---|----------------------|----|
| (a) Premises No.34, St. Lucia's Street,<br>Colombo .. .. .  | Rs. 43.30 per month  | 30 |
| (b) Premises Nos. 10/4-25, 12, 14, 16, 18, 20,<br>22, 24, 26, and 28 St. Anthony's Mawata,<br>Colombo .. .. . | Rs. 261.33 per month |    |
| (c) Premises, No. 20 Galpotte Street, Colombo   | Rs. 37.60 per month  |    |
| (d) Premises No. 16, Galpotte Street, Colombo   | Rs. 34.00 per month  |    |
| (e) Premises No. 6/6, Galpotte Street, Colombo  | Rs. 156.06 per month |    |

	(f) Premises Nos. 165/1 & 167, Chekku Street, Colombo etc. .. .. .	Rs. 138.97 per month
	(g) Premises No. 42, Brassfounder Street, Colombo etc., .. .. .	Rs. 28.00 per month
	(h) Premises No. 44/1 Brassfounder Street, Colombo etc., .. .. .	Rs. 28.00 per month
	(i) Premises No. 38/1 Brassfounder street, Colombo, etc... .. .	Rs. 28.00 per month
	(j) Premises No. 44, Andival Street, Colombo	Rs. 35.50 per month
10	(k) Premises No. 157 Chekku Street, Colombo	Rs. 49.46 per month
	(l) Premises Nos. 245 to 263/3, Jampettah Street, Colombo .. .. .	Rs. 123.79 per month
	(m) Premises No. 131, Jampettah Street, Colombo, etc. .. .. .	Rs. 271.65 per month

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It is lastly ordered and decreed that the defendant do pay the plaintiff her costs of this action as taxed by an officer of this Court.

**The Schedule "A" above referred to:—**

All that part of a garden with the buildings standing thereon formerly bearing assessment No. 11 presently bearing assessment No. 34, situated at 20 St. Lucia's Street, Kotahena within the Municipality of Colombo and bounded on the North by the road on the East by the property belonging to Salohamy on the South by the garden of Siriwardene Lama Ettena and on the West by the portion belonging to Francisco Appu containing in extent Fourteen Thirty seven one hundredth square perches (AO.RO.P14, 37/100) according to the Figure of Survey thereof dated the 6th day of July, 1869 and made by C. C. Smith Surveyor.

**The Schedule "B" above referred to:—**

All that allotment of land or three adjoining portions of a garden with the buildings standing thereon formerly bearing assessment Nos. 88 and 89 30 subsequently bearing assessment Nos. 10, (4-23) 12, 14, 16, 18, 20, 22, 24, 26 and 28) situate and lying at Kochchikadde within the Municipality of Colombo aforesaid bounded on the North by a house and ground of Ponnambalam Mudaliyar on the East and South by St. Thomas Church Yard and on the West by Sea Street containing in extent Twenty nine square perches and thirty four one hundredth of a square perch (AO. RO. P29, 34/100) which said premises are according to the survey and description thereof (No. 76 dated 14th January, 1913 made by James W. Amerasekera Licensed Surveyor and Leveller), described as follows to wit:—

An allotment of land with the buildings thereon formerly bearing assess- 40 ment Nos. 88 and 89 subsequently bearing assessment Nos. 10 (4-23) 12, 14, 16, 18, 20, 22, 24, 26 and 28 and presently bearing assessment Nos. 10/4,



10/10, 10/12A, 10/14, 10/15, 10/16, 10/17, 10/18, 10/19, 10/20, 10/21, 10/22, 10/23, 12, 14, 16, 18, 20, 22, 24, 26 and 28 situated at Kochchikadde Street (now known as St. Anthony's Mawatta) within the Municipality of Colombo aforesaid bounded on the North by premises belonging to Ponnambalam Mudliyar now the Satharam (Hindu Temple) on the East and South by St. Thomas Church premises and on the West by Kochchikadde Street containing in extent Thirty three square perches and sixty four one hundredths of a square perch (AO. RO. P33, 64/100).

#### The Schedule "C" above referred to

All that house and ground formerly bearing assessment No. 49, presently 10 bearing assessment No. 20, situated at Galpotte Street within the Municipality of Colombo aforesaid bounded on the North by premises bearing assessment No. 48, belonging to M. H. M. Sulaiman on the East by premises bearing assessment No. 53 formerly belonging to the Estate of C. G. Perera subsequently belonging to the estate of the late Mariam Morais and bequeathed to Lewis Anthony Morais on the South by premises bearing assessment No. 50, formerly belonging to the estate of C. G. Perera subsequently belonging to the Estate of the late Mariam Morais and bequeathed to the said Lewis Anthony Morais and on the West by Galpotte Street containing in extent Fourteen square perches (AO. RO.P14) according to the Survey and description thereof 20 No. 303 dated 21st June 1914 made by James W. Amerasekera, Licensed Surveyor and Leveller and which aforesaid premises No. 49 is a divided and defined portion of and from all that property and premises bearing assessment Nos. 49, 50, 51, 52 and 53 and situated at Galpotte Street in Kotahena Ward No. 5 within the Municipality of Colombo aforesaid and bounded on the North by premises bearing assessment No. 48 belonging to M.H.M. Sulaiman on the East by land belonging to George de Silva Mohandiram on the South by land acquired by the Crown and on the West by Galpotte Street containing in extent Two roods and twenty four perches and ninety eight one hundredth of a perch (AO.R2. P24, 98/100). 30

#### The Schedule "D" above referred to

All that house and ground formerly bearing assessment No. 50 presently bearing assessment No. 16 situated at Galpotte Street within the Municipality of Colombo aforesaid bounded on the North by premises bearing assessment No. 49 formerly belonging to the estate of C. G. Perera subsequently belonging to the estate of the late Mariam Morais and bequeathed to Lewis Anthony Morais on the East by premises bearing assessment No. 53 formerly belonging to the estate of C.G. Perera subsequently belonging to the estate of the late Mariam Morais and bequeathed to the said Lewis Anthony Morais on the South by premises No. 51 formerly belonging to the estate of C.G. Perera subsequently 40 belonging to the estate of the late Mariam Morais and bequeathed to Soosai Ammal Morais and bequeathed to Soosai Ammal Morais wife of Stephen Corera and on the West by Galpotte Street containing in extent Eleven square perches and fifty two one hundredths of a square perch (A0.R.0 P11, 52/100) according to the survey and description thereof No. 304 dated 27th June 1914 made by James W. Amerasekera Licensed Surveyor and Leveller and which aforesaid premises No. 50 is a divided and defined portion of and from all that

property and premises bearing Assessment Nos. 49, 50, 51, 52, and 53 situated at Galpotte Street in Kotahena Ward No. 5 within the Municipality of Colombo aforesaid and bounded on the North by premises bearing assessment No. 48 belonging to M. H. M. Sulaiman on the East by land belonging to George de Silva Mohandiram on the South by land acquired by the Crown and on the West by Galpotte Street containing in extent Two Roods, Twenty four perches and Ninety eight one hundredths of a Perch (AO. R2. P24, 98/100).

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#### The Schedule "E" above referred to

All that house and ground formerly bearing assessment No. 53 subsequently bearing assessment Nos. 2 and 6 (6, 10, 12, 14, 20, 22 16 - 19, 23 - 34, 26, 29/31) and presently bearing assessment Nos. 6/6, 6/10, 6/12, 6/13, 6/14, 6/15, 6/16, 6/17, 6/18, 6/19, 6/20, 6/21, 6/22, 6/23, 6/24, 6/25, 6/26, 6/29, 6/30 and 6/31 situated at Galpotte Street within the Municipality of Colombo aforesaid bounded on the North by premises bearing assessment No. 48 belonging to M. H. M. Sulaiman on the East by land belonging to George de Silva Mudaliyar on the South by land acquired by the Crown and on the West by premises bearing assessment Nos. 49, 50, 51, and 52 formerly belonging to the estate of C. G. Perera subsequently belonging to the Estate of the late Mariam Morais and bequeathed to Lewis Anthony Morais, Soosai Ammal Morais and Mary Ammal Morais respectively containing in extent including the passage One Rood Sixteen Perches and one, one hundredths of a perch (AO. R1. P16, 1/100) according to the survey and description thereof No. 425 dated 7th September 1915 made by James W. Ameresekera Licensed Surveyor and Leveller and which said premises No. 53 is a divided and a defined portion of an and from all that property and premises bearing assessment Nos. 49, 50, 51, 52 and 53 and situated at Galpotte Street in Kotahena Ward No. 5 within the Municipality of Colombo aforesaid and bounded on the North by premises bearing assessment No. 48 belonging to M. H. M. Sulaiman on the East by land belonging to George de Silva Muhandiram on the South by land acquired by Crown and on the West by the Galpotte Street containing in extent two Roods, Twenty four Perches and Ninety eight One hundredths of a perch (AO. R2. P24, 98/100).

#### The Schedule "F" above referred to

All that allotment of land with the buildings thereon formerly bearing assessment No. 48 subsequently bearing assessment Nos. 165 (1-16) and presently bearing assessment Nos. 165/1, 165/2, 165/3, 165/4, 165/7, 165/8, 165/9, 165/10, 165/12A, 165/14, 165/15, 165/1/1 and 167 situated at Chekku Street (Now known as Sri Kathiresan Street) within the Municipality of Colombo aforesaid bounded on the North by premises bearing assessment No. 49 of P. Ramanathan Esquire K. C. on the East by the pavement along Chekku Street on the South by premises bearing assessment No. 47 belonging to the estate of Ramalingam Shroff and on the West by premises bearing assessment No. 147 Sea Street of Ananda K. Coomaraswamy Esquire containing in extent Twenty two square Perches and seventy five one hundredths of a perch (AO. RO. P22, 75/100) according to the Survey Plan thereof No. 862 dated the 6th October 1910 made by H. G. Dias Licensed Surveyor and Leveller.

### The Schedule “G” above referred to

All that house and ground formerly bearing assessment No. 43, subsequently bearing assessment No. 44 and presently bearing assessment Nos. 44A, 44/1, 44/2, 44/3, 44/4, 44/5, 44/7, 44/8, 44/9, 44/11 and 44/12 situated at Brassfounder Street within the Municipality of Colombo aforesaid bounded on the North by the property of Pedro Soosai Sithambarapulle on the East by property of Tambe on the South by the property of Jeronis Morais and on the West by the Brassfounder Street containing in extent Fourteen Sixty six upon hundredths square perches (AO. RO. P14,66/100) according to the Figure of Survey thereof dated 21st December, 1852 made by C. A. Siegartz, Land 10 Surveyor.

### The Schedule “H” above referred to

All that house and ground situated at Brassfounder Street aforesaid bearing assessment No. 44 subsequently bearing assessment No. 42 (2-11) and presently bearing assessment Nos. 42, 42/2, 42/3, 42/4, 42/5, 42/6, 42/7, 42/9, 42/10 and 42/11 and bounded on the North by the house formerly of Armuhettipulle thereafter of V. Ponnasamy subsequently premises No. 43 belonging to Kasie Visvanatha Kurukul Thiyagarajah Kurukul on the East by the garden of Peduru Silva Domingo Silva and Madachi Silva subsequently said to belong to S.K. Maharajah on the South by the house of Christobo Silva, Pedro 20 Pulle now premises No. 45 belonging to Casie Visvanatha Kurukul Thiyagarajah Kurukul and on the West by the Brassfounder Street, containing in extent Seven and one fifth square perches (AO. RO. P7, 1/5) according to the Figure of Survey thereof dated 7th May 1804 authenticated by G. Schneider Surveyor General but subsequently found to contain in extent Eight three fourth Perches according to the Plan thereof No. 3427 dated 18th March, 1914 made by G. P. Weeraratne Surveyor.

### The Schedule “I” above referred to:—

All that house and ground formerly bearing assessment No. 45 subsequently bearing assessment Nos. 38 (1-10) and presently bearing assessment 30 Nos. 38/1, 38/2, 38/3, 38/4, 38/6, 38/7, 38/8, 38/9, and 38/10 situated at Brassfounder Street within the Municipality of Colombo aforesaid and comprising the following parcels of land which adjoin each other and now form one property to wit:

- (a) All that land and buildings thereon situated at Brassfounder Street aforesaid bounded on the North by the house of Philip Fernando Abraham Pulle on the East by the garden of Peduru Silva Domingo Silva and Mathachi Silva on the South by the house of Anthony Silva and on the West by Brassfounder Street containing in extent Six square perches and Seventy Seven One hundredths of a square 40 perch according to the Survey dated 20th April 1904 authenticated by the Land Surveyor General.
- (b) All that portion of land situated towards the East of Brassfounder Street aforesaid bounded on the North by the other portion of this land belonging to Jaromius Morayes Pulle on the East by the garden

of Ramasamy Moodeley Coomarappa Moodeley on the South by the garden of Juan Silva Peduru Pulle and on the West by the garden of Christobo Silva Pedro Pulle containing in extent according to the Plan dated 19th July 1858 by J. R. Zybrangsz Four square Perches and fifty upon hundred of a perch (AO. RO. P4, 50/100) which said two parcels of land are according to Plan No. 3427 of 18th March 1914 made by G. P. Weeraratne, Licensed Surveyor bounded on the North by the premises No. 44 on the East by the property of Tambo by the garden of Pedro Silva, Domingo Silva and Madatchi Silva which latter subsequently belongs to S. R. Maharajah on the South by the garden of Juan Silva Peduru Pulle and by the house of Anthony Silva now bearing assessment No. 46 and on the West by Brassfounder Street and containing in extent Fourteen Perches (AO. RO. P 14.)

**The Schedule “J” above referred to:—**

All that allotment of land with the buildings thereon bearing assessment No. 3 presently bearing assessment No. 44 situated at Andival Street within the Municipality of Colombo aforesaid comprising the premises described in Title Plan No. 19824 of the 20th February 1821 authenticated by G. Schneider Surveyor General and premises described in Title Plan No. 55961 of the 31st December 1861 authenticated by Charles Sim Esquire, Surveyor General bounded as follows:— on the North by Andival Street on the East by the Property of the Estate of the Late K. Sinniah Pulle bearing assessment No. 2 on the South by the property of the estate of the late J. A. Perera Muhandiram bearing assessment No. 25 Wolfendhal Street and on the West by the property of the estate of the late S. T. Muthiaya bearing assessment No. 4 containing in extent Five and forty four hundredths of a square Perch (AO. RO. P5, 44/100).

**The Schedule “K” above referred to:—**

All that allotment of land with the buildings standing thereon formerly bearing assessment No. 47 and Ward No. 388 presently bearing assessment No. 157 situated at Chekku Street (now known as Sri Kathirasan Street) in Pettah within the Municipality of Colombo aforesaid bounded on the North East by the Property belonging to Kurugal bearing assessment No. 48 on the South East by Chekku Street on the South West by the property belonging to Mrs. T. Sanmugam bearing assessment No. 46 and on the North West by the Property belonging to F. X. Pereira bearing assessment No. 150 Sea Street containing in extent Nineteen and ninety five hundredths perches (AO. RO. P.19. 95/100) according to the Figure of Survey thereof No. 335 dated 18th May 1916 made by S. Saba Ratnam Registered licensed Surveyor.

**The Schedule “L” above referred to:—**

All that allotment of land with the buildings trees and plantations thereon situated in the reservation for Jampettah Street extension within the Municipality of Colombo aforesaid bearing assessment Nos. 238/54, to 239/59 subsequently bearing assessment Nos. 245, 247, 249, 251, 253, 255, 257, 259, 261,

263 (1-3) 265, 267, 269, 271, and 275 and presently bearing assessment Nos. 245, 247, 249, 251, 253, 255, 257, 259, 261, 263/2, 263/3, 263/4, and 265 Jampettah Street bounded on the North by the Property of G. Morais bearing Assessment No. 229-237/5 on the East by the Property of Mrs. George De Silva bearing assessment No. 2707 B-G/1 B-G on the South by road reservation (Jampettah Street) containing in extent Twenty three Perches and Eighty Five hundredths of a Perch (AO. RO. P23. 85) according to Plan No. 216 dated the 20th August 1924 under the hand of J. M. Blizzard Esquire Municipal Engineer.

**The Schedule "M" above referred to:—**

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All that allotment of land with the buildings trees and plantations thereon formerly bearing assessment Nos. 131, 131(20-24) 131 (61-63) 131 (64) 131 (62 and 65) 131 (66-81) and 131 (82-87) and presently bearing Assessment Nos. 131, 131/30, 131/35, 131/37, 131/41, 131/42, 131/43, 131/44, 131/45, 131/46, 131/47, 131/48, 131/49, 131/50, 131/51, 131/52, 131/57, 131/58, 131/61, 131/61A, 131/62, 131/62A, 131/64, 131/65A, 131/65B, 131/65C, 131/65D, 131/65E, 131/66, 131/67, 131/68, 131/69, 131/70, 131/71, 131/72, 131/73, 131/74, 131/75, 131/76, 131/78, 131/79, 131/80, 131/81, 131/82, 131/83, 131/84, 131/85, 131/86 and 131/87 situated at Jampettah Street within the Municipality of Colombo aforesaid comprising of the following parcels of land which adjoin 20 each other and which from their situation as respects each other can be included in one survey and forming one property to witt.

- (a) All that allotment of land marked letter "A" with the buildings trees and plantations thereon bearing the following assessment Nos. Viz:—31A, 32/24 1-14, 33/24 15-19, 34/24 20-24, 35/24 25-28, 36/24 29, 37/24 30-30A, 38/24 31-33, 39/24 32, 40/24 34-40, 40A/24 32A situated at Jampettah Street within the Municipality and District of Colombo Western Province formerly bearing assessment Nos. 24, 25, 26, 27, 28, 29, 30, 31, 32 and 34 being a divided portion of all that allotment of land formerly bearing Nos. 24, 25, 26, 27, 28, 29, 30, 31, 32 and Nos. 34, 35 and 36 situated at Jampettah Street aforesaid which said allotment of land marked letter "A" is bounded on the North by the field of J. H. Jorhard, formerly of Mr. M. Ondatjie on the East by the field of Francis Nonis Candappa formerly of P. F. Pauloo Pulle and by the premises bearing assessment No. 41, 42, and 43 of the heirs of the late Mr. John Molho Asarappa formerly the property of Peduru Peiris Asarappa on the South by the premises bearing assessment Nos. 37 and 38 of Ravanna Moona Chenna Sinna Kannu premises bearing assessment No. 39 of Peter Benedict Anandappa and by the premises bearing assessment 40 No. 40 of Anthony Rodrigo and by the other part of this property marked letter B bearing assessment Nos. 35 and 36 and by Jampettah Street and on the West by the premises bearing assessment Nos. 23 and 23 A of Mr. J. H. Jorhard formerly the property of Mr. M. Ondatjie containing in extent one acre two roods and five and thirty seven one hundredths square perches (A1. R2. P5 37/100) according to the Survey No. 777 dated 2nd September 1909 made by W. Z. G. Rajapakse Licensed Surveyor.

(b) All that allotment of land marked letter "B" bearing assessment Nos. 35 and 36 being a divided portion of all that allotment of land bearing assessment Nos. 24, 25, 26, 27, 28, 29, 30, 31, 32 and Nos. 34, 35 and 36 Jampettah Street within the Municipality of Colombo aforesaid bounded on the North and West and the other part of this property marked letter "A" bearing assessment Nos. 24, 25, 26, 27, 28, 29, 30, 31, 32 and 34 East by the premises bearing Nos. 37 and 38 of Ravanna Muna Chena Sinna Cannu formerly the property of Anthony Rodrigo and South by Jampettah Street containing in extent Twenty four Perches and forty four hundredths of a Perch (AO. RO. P24.44) according to the survey Plan No. 777A dated the 2nd September 1909 made by W. Z. G. Rajapakse, Licensed Surveyor.

No. 13  
Decree of the  
District Court-  
17-3-65  
—Continued

10

Given under my hand on this the 17th day of March 1965.

Signed. ....  
Additional District Judge.  
26.3.65.

Drawn by me.  
Sgd. D. N. Thurairajah  
20 Proctor for Plaintiff.

**No. 14**

**PETITION OF APPEAL TO THE SUPREME COURT  
IN THE DISTRICT COURT OF COLOMBO**

No. 14  
Petition of  
Appeal of the  
Supreme Court  
17-3-65

MRS. FRANCISCA VICTORIA NEE MORAIS of 267/2 Galle Road, Bambalapitiya, Colombo.  
*Plaintiff.*

*Vs.*

No. 10207/Land.

JOSEPHINE MARY ALOYSIA MORAIS of 23/2 Lauries Road, Bambalapitiya, Colombo.  
*Defendant.*

30

And in the matter of an appeal by the defendant abovenamed.

MRS. JOSEPHINE MARY ALOYSIA MORAIS OF 23/2 Lauries Road, Bambalapitiya, Colombo.  
*Defendant-Appellant.*

S. C. 167/1965(F)

*Vs.*

MRS. FRANCISCA VICTORIA NEE MORAIS of 267/2 Galle Road, Bambalapitiya, Colombo.  
*Plaintiff-Respondent.*

No. 14  
 Petition of  
 Appeal to the  
 Supreme Court—  
 17-3-65  
 —Continued

**To :**

**HIS LORDSHIP THE CHIEF JUSTICE AND THE OTHER  
 JUDGES OF THE SUPREME COURT OF THE ISLAND  
 OF CEYLON.**

This 17th day of March 1965.

The Petition of Appeal of the Defendant-Appellant abovenamed appearing by Mr. S. Kanagarajah her proctor is as follows :—

(1) The Plaintiff-respondent instituted the above action against the defendant-appellant, for a declaration that she is entitled to certain allotments of land buildings and premises situated in Colombo and described in the schedule to the Plaint, for an order of ejectment against the defendant-Appellant, and for the recovery of damages and costs of suit, on the ground that one Mariam Morais of Colombo had by his Last Will No. 1080 dated 8th September 1917 attested by G. A. Wille devised the said lands buildings and premises to his son Lewis Anthony Morais subject to certain restrictions, that on the death of Lewis Anthony Morais without a male issue, these properties devolved on her the plaintiff-respondent as his only female issue that the defendant-appellant as the widow of Lewis Anthony Morais was not entitled to the lands or any part thereof and that she was in wrongful possession of same. 20

(2) The defendant filed answer claiming the said properties under the Joint Last Will No. 1454 dated 4th July 1947 attested by P. S. P. Kalpage Notary Public executed by her and her husband Lewis Anthony Morais. The case was thereupon set down for trial.

(3) The case was tried on the issues framed in this case and judgment which was reserved was delivered this day in favour of the plaintiff-respondent.

(4) Being aggrieved with the said judgment this defendant-appellant begs to appeal therefrom on the following amongst other grounds that may be urged at the hearing of the appeal.

(a) the said judgment is contrary to law and is not supported by facts. 30

(b) there is no evidence that could be accepted by a Court of law, that the plaintiff-respondent is the female issue by a lawfully wedded person. The documents namely the marriage and birth certificates tendered in that behalf are not in accordance with the statutes cited for that purpose, and therefore do not support plaintiff's contention.

(c) the Last Will of the late Mariam Morais has not restricted or restrained the seizure and sale of his properties by a judgment-creditor, and therefore by the seizure and sale of the same by judgment-creditor of Lewis Anthony Morais, good title passed to the purchaser at the sale.

(d) It is respectfully submitted that the Last Will No. 1080 dated 8th September 1917 created a trust and that position was conceded by the learned Counsel for the plaintiff-respondent; but his contention was that in an instrument of trust the conditions and restrictions necessary to constitute a fidei-commissum can be embodied.

No. 14  
Petition of  
Appeal to the  
Supreme Court  
17-3-65  
—Continued

(e) It is urged by the defendant appellant (i) that the relative decisions of the Courts of South Africa cannot be accepted in the Ceylon Courts for the reason that there is no enactment in Africa corresponding to the Trust Ordinance of Ceylon (Chapter 87 page 337 Legislative Enactments of Ceylon),  
10 (ii) that according to Act No. 9 of 1917 which was passed in Ceylon shortly after the decisions in Africa a trust does not include a fidei-commissum,  
(iii) their Lordships of the Privy Council have in their decisions in similar matters shown the difference between a trust and a fidei-commissum.

(f) If the restrictions or conditions requisite to constitute a fidei-commissum are permitted to be embodied in an instrument of trust, then these contravene the provisions of Section 110 of the Trust Ordinance relating to perpetuities and are of no avail.

(g) By virtue of that section no trust shall operate after the death of Anthony Louis Morais after 2nd September 1958, the plaintiff not being  
20 a minor at that date.

(h) When the Trust Ordinance makes provision for a case under reference there is no need for reference to the principles of equity for the time being in force in the High Court of Justice in England by virtue of Section 2 of the Trust Ordinance.

(i) Lewis Anthony Morais and this defendant-appellant (his wife) had executed their Joint Last Will No. 1454 dated 4th July 1947 whereby either of them nominated and appointed the survivor of them the sole heir. Lewis Anthony Morais died on 2nd September 1958 and the Joint Last Will was admitted to probate whereby this defendant became entitled to the said  
30 properties.

Wherefore this defendant-appellant prays :—

(a) that Your Lordships' Court be graciously pleased to set aside the judgment of the learned District Judge and to dismiss plaintiff's action.

(b) to direct that Judgment be entered in favour of this defendant-appellant in respect of the said lands.

(c) for costs of Your Lordships' Court and of the Court below.

(d) and for such further or other relief in the premises as to Your Lordships' Court shall seem meet.

Sgd. S. KANAGARAJAH  
*Proctor for Defendant-Appellant*



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**No. 15**

**AFFIDAVIT OF PROCTOR J. X. LEO FERNANDO**

6-4-65

Not printed.

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**No. 16**

**AFFIDAVIT OF R. A. DE S. MOONESINGHE  
AND D. S. JAYAMANNE**

7-4-65

Not printed.

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**No. 17**

10

**STATEMENT OF OBJECTIONS OF THE DEFENDANT TO  
THE APPLICATION OF THE PLAINTIFF FOR WRIT OF  
EXECUTION**

7-4-65

Not printed.

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**No. 18**

**PROCEEDINGS BEFORE THE DISTRICT COURT**

29-7-65

Not printed.

**JUDGMENT OF THE SUPREME COURT**

*Before* :— SIRIMANE, J. and DE KRETZER, J.

*Counsel* :— C. THIAGALINGAM, Q.C., with V. ARULAMBALAM and T. JOTHILINGAM for the Defendant-Appellant.

H. V. PERERA, Q.C., with H. W. JAYAWARDENE, Q.C., C. RANGANATHAN, Q.C., and H. E. COORAY for the Plaintiff-Respondent.

*Argued on* :— June, 20, 21, 22 and 27, 1968.

10 *Decided on* :— 11th. July, 1968.

SIRIMANE, J.

By his Last Will dated 8.9.1917 one Marianu Morais appointed his three sons-in-law Carvalho, Miranda and Corera as “executors and trustees” under his will. After making certain dispositions, he devised and bequeathed the rest and residue of his estate to the three persons named above as trustees, with certain directions which they were enjoined to carry out. For the purposes of this case, it is only necessary to note that these persons were directed to convey the immovable property belonging to the “trust estate” to the testator’s son Lewis Anthony on his reaching the age of thirty five years subject to the condition that he should not sell, mortgage, alienate or encumber those properties and that on his death those properties should devolve on his son or sons, and if there were none such on his daughter or daughters.

The will also empowered the trustees to sell such immovable properties which did not yield a fair income and to buy other properties with the proceeds of such sales.

This action relates to thirteen lands ten of which belonged to the testator at the time of his death, and three of which had been purchased by the trustees in accordance with the terms of the will as set out above.

By deed P6 of 21.9.1933 the trustees conveyed these lands to Lewis Anthony subject to the conditions stipulated in the Last Will.

Lewis Anthony first married Mary Carvalho who died leaving two children, the plaintiff and one Xavier who also died without issue. After the death of his first wife, Lewis Anthony married the defendant. He had no children by her and died on 2.9.1958 leaving the plaintiff as his only child.

In this action, the plaintiff claims a declaration of title to the thirteen lands, damages and ejectment of the defendant who is in possession.

The defendant claims the lands by virtue of a joint last will executed by her and her husband by which they left their properties to the survivor.

without title to possess derived from the owner.” “The cause of action” in an action for declaration of title to a piece of land flows from the right of *ownership of that particular piece of land*. It consists of the denial of the title of the owner to that land, and his being prevented from possessing that land. The two acts together constitute the wrong for which redress may be sought. In respect of each different land, therefore, there is a separate cause of action.

The *rei vindicatio* action, as known to our law, must be brought against the person in possession. Maasdrop says (Volume 11, 5th Edition) at page 101, “The fact that the property in question was in the possession of the defendant 10 at the time when the cause of action accrued is of the very essence of the action, and it is therefore necessary for the plaintiff to allege such possession in his declaration and to establish it by evidence. . . . .” Unlike in India, the mere denial of the basis on which the plaintiff claims title does not give rise to a cause of action unless the plaintiff is also kept out of possession,—and, the act of keeping the plaintiff out of possession is different in the case of different lands. Section 34 enacts that the plaintiff must make his whole claim in respect of a cause of action, e.g. where a defendant denying his title, keeps the plaintiff out of possession of a whole land, if the plaintiff chooses to sue in respect 20 of only part of that land, he cannot sue the same defendant again for the balance. Or, again, if the plaintiff fails to claim the damages suffered in consequence of the defendant’s trespass, he cannot claim those damages later.

There is, however, no objection to the plaintiff uniting in one action several different causes of action against the same defendant in accordance with section 36 of our Code, as has been done in the present case. But the cause of action, as stated earlier in respect of each land is different.

I do not think that the explanation to section 207 supports the inference (as submitted by Counsel for the defendant) that the cause of action in relation to different lands claimed on one title is the same. That section enacts that a 30 decree passed by Court is final between the parties to it. Such a decree would, of course, be based on a judgement which decides the matters put in issue between the parties at the trial. The explanation goes on to say that every right of property (to take an example) which could have been put in issue between the parties to the action, whether put in issue or not also becomes a *res judicata* on the passing of the decree provided those rights could have been put in issue *upon the cause of action* for which the action was brought. The whole contention for the plaintiff (which in my opinion is correct) is that his rights to land A (for example) cannot be put in issue upon a cause of action which has 40 accrued to him in respect of land B.

This contention must not be confused with the undoubtedly correct proposition, that once an issue (e.g. that of heirship to a particular person) has been decided, then the decision *on that issue* is *res judicata* in respect of every different cause of action where the same issue arises between the same parties.

It was on this principle that the case of *Dingiri Menika vs. Punchi Mahattaya* (13 N.L.R. 59) was decided. In that case the plaintiff claimed a number of lands by paternal inheritance. In an earlier case she had claimed one land

on the same title against the same defendant. It was decided there (on the strength of a decisory oath) that as she had married in deega she was not entitled to inherit from her father. That decree was, therefore, *res judicata* on the question whether the plaintiff is entitled to inherit from her father or not, and the decision in that case, with respect, was correct. It is true that in the course of that judgment one of the learned judges remarked that for the purpose of determining whether or not two causes of action are the same one has to look at the media on which the plaintiff asks for judgment. If by this remark it is meant that there is but a single cause of action against the same  
10 disputant in respect of different lands claimed from the same source, I must with great respect disagree.

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Judgment of the  
Supreme Court-  
11-7-68  
—Continued

The other case, *Samitchi vs. Peiris* (16 N.L.R. 257) relied on by the appellant was decided on the same principle. The learned judges were there dealing with the question of *res judicata* and the effect of section 207 on a consent order. Their minds were not directed to the meaning of “cause of action” in relation to a land.

The filing of the earlier case for three different lands does not, in my opinion, constitute a bar to the present action.

The second argument urged was that the Last Will did not create a *fidei*  
20 *commisum*, and the plaintiff could, therefore, claim no rights.

One must not lose sight of the fact that when construing a last will the primary duty of the court is to give effect to the testator’s intention. On reading the Will it is abundantly clear that the testator desired that these properties should pass to his son Lewis Anthony when the latter reached the age of 35 years, and that after his death they should devolve on his child or children. This fact is not seriously denied, but it was urged for the defendant that though the intention was clear, yet the testator had failed to achieve what he intended.

It was submitted that if the Will only created a Trust with the three executors as trustees, then Lewis Anthony would get the properties absolutely,  
30 and that his title was in no way fettered. In other words, that the prohibition against alienation in deed P 6 was ineffective. It was argued that the trustees (who derived no benefit from the lands) should not be looked upon as fiduciaries—that such a construction would lead to the recognition of a “*fidei commisum purum*,” which is now looked upon only as a historical curiosity. But I see no necessity for such an approach when construing the terms of the Will. Indeed that is not, - and never was - any part of the plaintiff’s case.

Keeping in mind again that the paramount duty of a Court is to give effect to the testator’s intention, we have to ask ourselves the question whether that intention has been clearly expressed, and if so, whether there is any legal  
40 impediment in the way of giving effect to it.

As Counsel for the plaintiff pointed out, in order to achieve what he desired, the testator created a Trust with the executors as trustees, and his son Lewis Anthony as the beneficiary. When the deed P6 was executed by the trustees in favour of Lewis Antony, *the Trust was at an end*. The testator had

directed, however, that the transfer to Lewis Anthony should be subject to certain conditions. There are no limitations placed on the directions which the author of a Trust may give his trustees and the trustees are bound to carry out those directions.

It is true that these directions are such that when given effect to they create what we call a “fidei commisum” with Lewis Anthony as fiduciary. Is there then, any rule of law which compels us to say “We refuse to give effect to the testator’s clear intention?” I can see none; and I can see no objection to a testator in order to give effect to his wishes creating a trust and directing that the beneficiary, when he becomes the owner, should take the 10 properties subject to a fidei commisum in accordance with his directions.

I think that the learned District Judge was right in his decision on both the points discussed above. His findings on questions of fact were not canvassed before us.

The appeal is dismissed with costs.

(Sgd.) A. L. S. SIRIMANE  
*Puisne Justice.*

DE KRETZER, J.

The facts relevant to this order are fully set out in the judgment of my brother Sirimane with whom I agree. 20

In regard to the bar imposed by the provisions of section 34 of the Civil Procedure Code, I am of the view that the words “he shall not afterwards sue in respect of that portion” found in Section 34 (2) refer to the filing of a second action after a first one has been concluded. It is only after a first action is concluded that a Plaintiff gets fixed to a position in regard to the claim in that action, which is irretrievable, for up to that time any error or omission in setting out the whole of the claim on the cause of action can be rectified - e. g. by amending the plaint.

It appears to me that there is a pointer to the correctness of this view in Section 34 itself, for section 34 (2) runs on as follows:—“..... 30 a person entitled to more than one remedy in respect of the same cause may sue for all his remedies but if he omits (except with the leave of Court obtained before the hearing) to sue for any of such remedies *he shall not afterwards sue* for the remedy so omitted.”

It will be noted that the bar operates only *after the hearing* of the first case for until that point of time the plaintiff can omit with the leave of court any particular remedy he wishes to leave out.

For these reasons also then it appears to me that it is not open to the Defendant-Appellant to claim that Suit No. 9929 L instituted earlier (15.7.62) but still pending, is a bar to Suit No. 10207 L instituted later (13.5.63) but taken 40 up first for trial after Counsel on both sides had been heard, before the Trial

Judge exercised his discretion as to which of the two cases, both of which had been set down for trial on that day, should be taken up. In those submissions, the submission that No. 9929 L was pleaded as a bar to the other case and that therefore it was expedient that it should be taken up did not play a part. It also appears to be not without significance that there is not a single case in our reports in which the claim in a case not yet tried has been held to provide the suit in bar of the claim in the case which is being tried; and that in the reported cases the provisions of Section 34 have so often been considered together with the provisions of Section 207.

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—Continued

10 In regard to the question whether the cause of action in L 9929 is the same as in L 10207 as Defendant claims, or different as Plaintiff claims, it is well to consider what a rei vindicatio action is, for both these cases in which the Plaintiff seeks:

1. A declaration of title to the lands and premises described in the schedule to the Plaint. (on the footing that the Plaintiff is the daughter and the fidei commissary successor of Lewis Anthony Morais.)
  2. The ejectment of the Defendant (who is the widow of Lewis Anthony Morais and who has been, according to the Plaintiff, in wrongful and unlawful possession of these lands from 2.9.58 on which day Lewis Anthony Morais died.)
  3. Accrued and continuing damages.
- are actions known to our law as rei vindicatio actions.

“Reclame or rei vindicatio” says Van Der Linden (1.7.3.) “lies for the owner of anything movable or immovable, corporeal or incorporeal, against the possessor or any person who has mala fide divested him of the possession to deliver it up to the owner. . . .”, while Voet says (6.1.2) “This action arises from the right of dominium. By it we claim specific recovery of property belonging to us but possessed by someone else.” The fact that Plaintiff never had possession of the property is no bar to this action nor is it a bar that the Plaintiff’s vendor had no possession. In a rei vindicatio action a Plaintiff has to prove title to the land in dispute as a means to an end for it is manifest that if he is not entitled to dominium, his action to regain or obtain possession of the property must fail; but success in proving a contested title in a rei vindicatio action unless Plaintiff can also succeed in proving ouster by the Defendant can at best obtain for Plaintiff a decree merely declaratory of the Plaintiff’s title to the property claimed as against the Defendant.

“Dominium or ownership” says Lee at Page 126 of his Treatise on Roman Dutch Law, “is the relation protected by law in which a man stands to a thing which he may:

- (a) Possess
- (b) Use and enjoy
- (c) Alienate

The right to possess implies the right to Vindicate—i.e. to recover possession from a person who possesses without title to possess derived from the owner.” It will thus be seen that the cause of action in a rei vindicatio action

is the trespass which has resulted in Plaintiff being kept out of property of which he is the owner, and which may have caused him consequential loss.

Mr. Thiagalingam has submitted that the test approved of by Woodrenton J. in the case of Dingiri Menika Vs Punchi Menika reported in 13 N.L.R. at page 61 should be applied in determining whether or not two causes of action are the same, viz. we have to look not to the mere form in which the action is brought but to the grounds of the plaint and the media on which Plaintiff asks for judgment. He says that it will then be seen that the true cause of action is the denial that the Plaintiff is the daughter and the fiduciary heir of Lewis Anthony Morais, and that Plaintiff had no right to bring separate actions in regard to each land but should have included, in terms of Section 34 all of them as representing the whole of her claim in one action based on the one cause of action - that is the denial of her title. 10

It appears to me, when I apply the test suggested and examine the grounds of the plaints and the media on which the Plaintiff asks for judgment in the two cases No. 9929L and No. 10207 L, that the wrong that the Plaintiff wants redressed is, that from the date of Lewis Anthony Morais' death she is being wrongfully kept out of the possessions of the lands set out in the schedules to the plaints, of which she is owner on the title-which she is aware is disputed - which she has set out in the plaint. Her title will then be an issue, the answer to which can be vital if she is to succeed in her action, but one must not confuse matters which would form an issue in an action with the cause of action. Findings in the case that she is the daughter of Lewis Anthony Morais and his fiduciary heir will be findings on issues in the case and will certainly be res adjudicata between the parties in other cases between them where those matters are in issue, but such findings will not result ipso facto in it being possible for her to get an order that she should be restored to possession of the land of which she claims the dominium on that title for that would turn on whether she can prove the alleged ouster by the Defendant. Proving ouster by the Defendant in respect of one land would not result in Plaintiff being able to claim that ouster is proved in respect of every other land in dispute between them claimed on the same title or that the damages consequential on each ouster have been proved. The cause of action in respect of each land is similar, viz. the trespass, but not the same. Section 34 has application only where the cause of action is the same. 20 30

Mr. Thiagalingam relied strongly on the case reported in A.I.R. 1949 P.C. at Page 78 but it appears to me that the facts that in our Code we have a definition of a cause of action while India has not defined it at all, that in India there are mutation proceedings - which is something foreign to our law - that our rules for joinder of defendants differ from those in India and that in India apparently the incidents of what we know as a rei vindicatio action are different are sufficient to show that the decision in that case turns on matters and principles which have no application in Ceylon. 40

In regard to the will P10 it seems to me that Mariam Morais in this will has created a perfectly valid trust and that there is no need to strain to show that it was in fact a fidei commisum in which the executor trustees were fiduciaries, which was something Mr. Thiagalingam wrongly anticipated Mr. H.V. Perera would attempt to do to bring the matter into line with the case reported

in 58 N.L.R. at page 494. Mr. Perera submitted instead that the will did create a trust and that when the trustees in terms of Paragraph 6 of the will transferred all the trust property by deed P6 to Lewis Anthony Morais when he attained the age of 35 years they had faithfully carried out the directions of the creator of the trust and the trust was at an end. I have considered anxiously whether there is any objection in Law to the trustees carrying out the directions of Mariam Morais burdening the property which they conveyed to Lewis Anthony Morais with what is known to us as a fidei commisum conditionale. It appears to me that the true test to apply is to consider whether the beneficiary of the trust held the property as owner and it appears to me that he did, for by P6 the ownership of these properties vested in Lewis Anthony Morais who became entitled to possess them, use and enjoy them, and to alienate his right title and interest in them, and the fact that he enjoyed these incidents of ownership only during his life time due to a condition imposed by the testator that on his death the property vested in his daughter made no difference to the position that with the execution of P6 his ownership of the property were quite independent of the trust which then ceased to operate. In these circumstances, I am of the view that the provisions of the will are unimpeachable.

The other matter mentioned in appeal was that in as much as there was no prohibition against forced sales the deeds executed in consequence of those sales must be regarded as valid. As the learned trial Judge (Mr. Thambydorai) points out in his very lucid judgment there is a clear indication in the will that Lewis Anthony Morais should only possess and enjoy during his life time and that there could be no doubt that the prohibition against alienation included alienation by donation or by forced sale. In the case reported in two Ceylon Weekly Reports at Page 314 it has been held that a sale by Fiscal against the fiduciaries of a land subject to fidei commisum does not put an end to the fidei commisum and that appears to me to conclude the matter.

For these reasons I dismiss with costs the appeal of the Defendant.

(Sgd.) O. L. DE KRETZER.  
*Puisne Justice.*

No. 20

Decree of the Supreme Court

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.

MRS. FRANCESCA VICTORIA NEE MORAIS  
of 267/2, Galle Road, Bambalapitiya,  
Colombo.

*Vs.*

*Plaintiff*



No. 20  
Decree of the  
Supreme Court-  
11-7-68  
—Continued

JOSEPHINE MARY ALOYSIA MORAIS of  
No. 23/2, Lauries Road, Bambalapitiya,  
Colombo.

*Defendant.*

Action No. 10207/L. District Court of Colombo.

JOSEPHINE MARY ALOYSIA MORAIS of  
No. 23/2, Lauries Road, Bambalapitiya,  
Colombo.

*Defendant-Appellant*

against

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MRS. FRANCESCA VICTORIA NEE MORAIS of  
267/2, Galle Road, Bambalapitiya,  
Colombo.

*Plaintiff-Respondent*

This case coming on for hearing and determination on the 20th, 21st, 22nd and 27th June, 1968, 11th July, 1968, upon an appeal preferred by the Defendant-Appellant before the Hon. Albert Lionel Stanley Sirimane, Puisne Justice and the Hon. Oswald Leslie de Kretser, Puisne Justice of this Court, in the presence of Counsel for the Defendant-Appellant and the Plaintiff-Respondent.

It is considered and adjudged that this appeal be and the same is hereby dismissed.

It is ordered and decreed that the Defendant-Appellant do pay to the Plaintiff-Respondent the taxed costs of this appeal. (Vide copy of judgment attached.)

Witness the Honourable Hugh Norman Gregory Fernando, Chief Justice at Colombo, the 13th day of July, in the year One thousand Nine hundred and Sixty Eight and of Our Reign the Seventeenth.

(Seal)

(Sgd.) C. E. W. DE ALWIS,  
*Deputy Registrar, Supreme Court.*

No. 21  
Application for  
Conditional  
Leave to appeal  
to the Privy  
Council—  
25-7-68

No. 21

30

**APPLICATION FOR CONDITIONAL LEAVE TO APPEAL  
TO THE PRIVY COUNCIL**

**IN THE SUPREME COURT OF THE ISLAND OF CEYLON**

In the matter of an application under Rules 2,8 and 9 of the Schedule to the Privy Council Appeals Ordinance Chapter 100 of the Legislative Enactments of Ceylon for conditional leave to appeal to Her Majesty in Council and stay of execution.

**JUDGMENT OF THE SUPREME COURT GRANTING  
CONDITIONAL LEAVE TO APPEAL TO THE PRIVY  
COUNCIL**

No. 24  
Judgment of the  
Supreme Court  
granting Condi-  
tional Leave to  
appeal to the  
Privy Council—  
28-11-68

In the matter of an application under Rules 2, 8 and 9 of the schedule to the Privy Council Appeals Ordinance Chapter 100 of the Legislative Enactments of Ceylon for conditional leave to appeal to Her Majesty in Council and stay of execution.

10

JOSEPHINE MARY ALOYSIA MORAIS —

*Defendant-Appellant*  
*Petitioner*

Vs.

MRS. FRANCESCA VICTORIA NEE MORAIS —

*Plaintiff-Respondent*  
*Respondent*

PRESENT : de Kretser, J. and Wijayatilake J.

COUNSEL : C.Thiagalingam, Q.C., with V. Arulambalam for the  
Petitioner.

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Walter Jayawardene, Q.C., with H. E. P. Cooray and  
N. Tiruchelvam for the Respondent.

ARGUED ON : 23rd November 1968.

DECIDED ON : 28th November 1968.

**De Kretser, J.**

The only contest in this matter is whether there should be stay of execution of the decree pending the final adjudication of the matter in dispute by Her Majesty in Council. We are of the view that execution should be stayed until Her Majesty in Council finally adjudicates on the matter in dispute, in regard to which we allow the application for conditional leave to appeal.

30 In regard to the stay of execution we are impressed by the fact that the parties had come to a very reasonable settlement in regard to the stay of execution pending the decision of the appeal in the Supreme Court of Ceylon. The petitioner would like that arrangement to continue but the respondent objects and pleads that the respondent should not be placed in jeopardy in regard to the recovery of more money than she is already in danger of losing for the petitioner is admittedly not a woman of means. We appreciate this submission of Counsel for the respondent, and we decide to order the stay of execution only on condition that the defendant (1) deposits to the credit of the case D. C. Colombo 10207/L a sum of Rs. 1235/60 monthly on or before the 10th  
40 of each month commencing from the 10th of January 1969 until the determination of the appeal to Her Majesty in Council. (2) Pays all rates and taxes as they fall due during this period.

No. 24  
Judgment of the  
Supreme Court  
granting Condi-  
tional Leave to  
appeal to the  
Privy Council-  
28-11-68  
—Continued

The plaintiff will be entitled to issue writs of execution of the decree with notice to defendant if there is default in the deposit of monthly payment or in the payment of rates and taxes as they fall due.

I agree.

Sgd. O. L. DE KRETZER  
*Puisne Justice*

Sgd. S. R. WIJAYATILAKE  
*Puisne Justice*

## No. 25

No. 25  
Minute of Order  
granting Condi-  
tional Leave to  
appeal to the  
Privy Council-  
28-11-68

### MINUTE OF ORDER GRANTING CONDITIONAL LEAVE TO APPEAL TO THE PRIVY COUNCIL

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#### 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.

JOSEPHINE MARY ALOYSIA MORAIS of No. 23/2,  
Lauries Road, Bambalapitiya, Colombo.

S. C. Application

No. 379 of 1968

(Conditional Leave)

S. C. 167/(F) 65

D. C. Colombo case

No. 10207/L.

*Defendant-Appellant* 20

*Vs. Petitioner.*

MRS. FRANCESCA VICTORIA NEE MORAIS of  
No. 267/2, Galle Road, Bambalapitiya, Colombo.  
*Plaintiff-Respondent.*

The application of Josephine Mary Aloysia Morais of No. 23/2, Lauries Road, Bambalapitiya, Colombo 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 11th day of July 1968 in S. C. 167 (F)/65-D. C. Colombo case No. 10207/L, having been listed for hearing and determination before the Honourable Oswald Leslie de Kretser, Puisne Justice and the Honourable Samarappilimudalige Ratnapala Wijayatilake, Puisne Justice, in the presence of C. Thiagalingam Esquire, Q.C. with V. Arulambalam Esquire, Advocates for the Defendant-Appellant-Petitioner and Walter Jayawardene Esquire, Q.C. with H. E. P. Cooray Esquire, and N. Tiruchelvam Esquire, Advocates for the Plaintiff-Respondent, order has been made by Their Lordships on the 28th day of November, 1968 allowing the aforementioned application for Conditional Leave to appeal to Her Majesty the Queen in Council.

40

It has also been ordered that the execution of the decree be stayed pending the final adjudication of the matter in dispute by Her Majesty in Council only on condition that the defendant (1) deposits to the credit of the case D. C. Colombo 10207/L a sum of Rs. 1235/60 monthly on or before the 10th day

of each month commencing from the 10th of January 1969 until the determination of the appeal to Her Majesty in Council, and (2) pays all rates and taxes as they fall due during this period.

The plaintiff will be entitled to issue writs of execution of the decree with notice to defendant if there is default in the deposit of monthly payment or in the payment of rates and taxes as they fall due.

Sgd. N. NAVARATNAM  
*Registrar of the Supreme Court.*

No. 25  
Minute of Order  
granting Conditional  
Leave to appeal to the  
Privy Council-  
28-11-68  
—Continued

No. 26

10

**APPLICATION FOR FINAL LEAVE TO  
APPEAL TO THE PRIVY COUNCIL**

No. 26  
Application for  
Final Leave to  
appeal to the  
Privy Council-  
24-12-68

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application under the rules of the Schedule to the Privy Council Appeals Ordinance Chapter 100 of the Legislative Enactments of Ceylon for Final Leave to appeal to Her Majesty in Council.

JOSEPHINE MARY ALOYSIA MORAIS of 23/2, Lauries Road, Bambalapitiya, Colombo.

*Defendant-Appellant.*

20

S. C. 167/65,  
No. 10207/L.  
D. C. Colombo  
S. C. Application  
379 of 1968.  
(Conditional Leave).

*Vs.*

MRS. FRANCESCA VICTORIA NEE MORAIS of 267/2, Galle Road, Bambalapitiya, Colombo.

*Plaintiff-Respondent*

30 On this 24th December 1968.

**To :**

The Lordships The Honourable The Chief Justice and The Other Honourable Judges of the Supreme Court of the Island of Ceylon.

The Petition of the defendant-appellant abovenamed appearing by Mr. S. Kanagarajah her proctor states as follows :

1. The defendant-appellant is the defendant and the respondent is the plaintiff-respondent in the above case.

2. The defendant-appellant on the 28th day of November 1968 obtained conditional leave from this Honourable Court to appeal to Her Majesty in Council against the judgment of this Court pronounced on the 11th of July 1968.

3. The appellant has in compliance with the conditions on which such leave is granted has deposited in the Treasury in cash a sum of Rupees Three

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No. 26  
Application for  
Final Leave to  
appeal to the  
Privy Council-  
24-12-68  
-Continued

thousand (Rs. 3000/-) as security for plaintiff-respondent's costs and a further sum of Rs. 300/- as charges, and has complied with the conditions.

Whereas the defendant-appellant prays that Your Lordships Court be pleased :—

- (a) to make order granting the defendant-appellant final leave to appeal against the said judgment of this Court dated the 11th day of July 1968 to Her Majesty the Queen in Council.
- (b) for costs and,
- (c) for such other and further relief as to this Court shall seem meet.

Sgd. S. KANAGARAJAH 10  
*Proctor for Defendant-Appellant.*

No. 27  
Minute of Order  
granting Final  
Leave to appeal  
to the Privy  
Council  
8-3-69

No. 27

**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.

S. C. Application  
No. 718/68  
(Final Leave)

JOSEPHINE MARY ALOYSIA MORAIS of No. 23/2, Lauries Road, Bambalapitiya, Colombo.

*Defendant-Appellant  
Petitioner*

S. C. Application  
No. 379 of 1968  
(Conditional Leave)

*Vs.*

S. C. 167(F)'65  
D. C. Colombo Case  
No. 10207/L.

MRS. FRANCESCA VICTORIA NEE MORAIS of No. 267/2, Galle Road, Bambalapitiya, Colombo.

*Plaintiff-Respondent.*

The application of Josephine Mary Aloysia Morais of No. 23/2, Lauries Road, Bambalapitiya, Colombo 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 11th day of July 1968 in S. C. 167/(F)'65—D.C. Colombo Case No. 10207/L, having been listed for hearing and determination before the Honourable George Terrence Samerawickrame, Q.C. Puisne Justice, and the Honourable Christopher Gregory Weeramantry, Puisne Justice, in the presence of V. Arulambalam Esquire, Advocate for the Defendant-Appellant-Petitioner, and there being no appearance for the Plaintiff-Respondent, order has been made by Their Lordships on the 8th day of March, 1969 allowing the aforementioned application for Final Leave to Appeal to Her Majesty the Queen in Council.

Sgd. N. NAVARATNAM  
*Registrar of the Supreme Court.*

**PART—II**  
**EXHIBITS**



P 10 (a)

**LAST WILL OF MARIANU MORAIS (NO. 1080) ATTESTED  
BY G. A. H. WILLE, NOTARY PUBLIC**

P 10(a)  
Last Will of  
Marianu Morais  
(No. 1080)  
attested by  
G. A. H. Wille,  
Notary Public  
8-9-17

Application No. D 8002/9-12-64.

No. 1080

**THIS IS THE LAST WILL AND TESTAMENT** of me Marianu Morais of Brassfounder Street, Colombo in the Island of Ceylon.

1. I hereby cancel and revoke all wills codicils and other testamentary writings heretofore made or executed by me and declare this to be my Last Will and Testament.

2. I hereby nominate constitute and appoint my three sons-in-law Maria Joseph Cawacho of Manapad in Trechundoor Talug Tinnevelly District, South India and of Ragalla Halgran Oya in the District of Uda Pusselawa in the Island of Ceylon Bernard Miranda of Manapad aforesaid and of Maskeliya in the said Island and Stephen Corera of Manapad aforesaid and of Colombo in the said Island-Executors and Trustees of this my Last Will.

3. I give devise and bequeath unto my eldest daughter Simprose Ammal Morais wife of the said Maria Joseph Cawacho.

- 20 (1) All that house and ground bearing assessment No. 54 situated at Jampettah street, Colombo aforesaid.
- (2) the Puchai property situated at the village Manapad in Trichandoor Talug Tinnevelly District South India aforesaid bearing old survey No. 1 — 693A 1/a1. Resurvey No. 177 in extent two acres twelve cents.
- (3) the Puchai property situated at the village Manapad aforesaid bearing old survey No. 4. 693 a1/a Resurvey No. 177 in extent four acres twelve cents and
- 30 (4) One undivided third (1/3) part of share or the Nanchai Property situated at Sruaikuntram in Sruaikuntram Talug Tinnevelly District aforesaid bearing old survey No. 710a in extent one acre forty three cents subject to the following reservations restrictions and conditions to wit that the said Simbrose Ammal Morais shall not in anywise be entitled to sell mortgage or otherwise alienate or encumber the said several properties and premises or any of them or any portion thereof but shall only have possess and enjoy the rents issues and profits arising and accruing therefrom during the term of her natural life and that at her death the said premises shall devolve on her children in equal shares absolutely the lawful issue of a deceased child taking the share of his
- 40 her or their parent would have become entitled if living provided



P 10(a)  
 Last Will of  
 Marianu Morais  
 (No. 1080)  
 attested by  
 G. A. H. Wille,  
 Notary Public—  
 8-9-17  
 —Continued

however that if the said Simbrose Ammal Morais shall have no issue or other descendants surviving at her death their and in that event the said premises shall devolve on the heirs of the said Simbrose Ammal Morais Absolutely.

4. I give devise and bequeath unto my second daughter Maria Ammal Morais, wife of the said Bernard Miranda:—

- (1) All that house and ground bearing assesment No. 52 situate at Galpotta Street Colombo aforesaid.
- (2) An undivided half part or share of the Puchai property situated at the village Manapad in Trechandoor Talug Tinnevelly District, 10 South India aforesaid bearing old Survey No. 693 a1/A/1B. Resurvey No. 198 in extent ten acres fifty nine cents and.
- (3) Part or share of the Nanchai property situated at Sruaikuntram in Sruaikuntram Talug Tinnevelly District aforesaid bearing old survey No. 710 A in extent one acre forty three cents subject to the following reservations restrictions and conditions to wit :— That the said Marie Ammal Morais shall not in anywise be entitled to sell, mortgage or otherwise Alienate or encumber the said several properties and premises or any of them or any portion thereof but shall only have possess and enjoy the rents issues and profits arising 20 and accruing therefrom during the term of her natural life and that at her death the said premises shall devolve on her children in equal shares absolutely the lawful issue of a deceased child taking the share to which his her or their parent would have become entitled if living Provided however that if the said Marie Ammal Morais shall leave no issue or other descendants surviving at her death then and in that event the said premises shall devolve on the heirs of the said Marie Ammal Morais absolutely.

5. I give devise and bequeath unto my youngest daughter Soosai Ammal Morais wife of the said Stephen Corera :— 30

- (1) All that house and ground bearing assessment No. 51 situate at Galpotta street, Colombo aforesaid.
- (2) An undivided half part or share of Puchai property situated at the village Manapad in Trechandoor Talug Tinnevelly District, South India aforesaid bearing old Survey No. 693 A1/A2 Resurvey No. 178 in extent nine acres sixty five cents and.
- (3) One undivided third  $\frac{1}{3}$  part or share of the Nanchai property situated at Trivaikuntram in Trivaikuntram Talug Tinnevelly district aforesaid bearing old survey No. 710A in extent one acre forty three cents subject to the following reservations restrictions 40 and conditions to wit : that the said Soosai Ammal Morais shall not in anywise be entitled to sell, mortgage or otherwise alienate or encumber the said several properties and premises or any of them

or any portion thereof but shall only have possess and enjoy the rents issues and profits arising and accruing therefrom during the term of her natural life and that at her death the said premises shall devolve on her children in equal shares absolutely the lawful issue of a deceased child taking the share to which his her or other parent would have become entitled if living provided however that if the said Soosai Ammal Morais shall leave no issue or other descendants surviving at her death then and in that event the said premises shall devolve on the heirs of the said Soosai Ammal Morais absolutely.

P 10(a)  
Last Will of  
Marianu Morais  
(No. 1080)  
attested by  
G. A. H. Wille,  
Notary Public-  
8-9-17  
—Continued

10 6. I give devise and bequeath to the Parish Priest of the Church of St. James at Manapad in the District of Tinnevely South India aforesaid all that house and ground bearing assessment No. 97 Chekku Street Colombo aforesaid subject however to the conditions that the said parish priest shall from and out of the rents and profits of the said house and ground hold a requiam High Mass for the eternal repose of my soul once in each and every month in perpetuity.

7. Subject to the payment of my debts and funeral and Testamentary expenses I give devise and bequeath all the rest and residue of my real and immovable personal and movable property estate and effects or whatsoever kind and wheresoever situate whether in possession expectancy reversion remainder or otherwise unto my trustees the said Maria Joseph Cavacho Bernard Miranda and Stephen Corera upon the following trusts.

- (1) Upon trust to pay out of the movable property or income of my trust estate to the parish priest of St. James Church Manapad in the District of Tinnevely in Southern India the sum of Rupees One Thousand Five hundred ( Rs. 1500/-) to be utilised for the purpose of helping those who are unable for the want of funds to enter the seminary to obtain religious orders.
- 30 (2) Upon trust to pay out of the movable property or income of my trust estate to the Parish Priest of St. Lucias' Cathedral Kotahena, Colombo aforesaid the sum of Rupees One thousand (Rs. 1000/-) to be utilised for the purpose of helping those who are unable for the want of funds to enter the seminary to obtain religious orders.

3. Upon trust to pay out monthly out of the income of my trust estate to the Parish Priest of St. James Church Manapad aforesaid for a period of ten years from the date of my death :

- (a) for five low masses for the repose of all souls in purgatory
- (b) for five low masses for the repose of the souls of my father and mother
- (c) for five low masses for the repose of the souls of my late wife
- 40 (d) for five low masses for the repose of the souls of all members of my family who are now dead and who may hereafter die within the aforesaid period of ten years and
- (e) for five low masses for the repose of my soul.

P 10(a)  
 Last Will of  
 Marianu Morais  
 (No. 1080)  
 attested by  
 G. A. H. Wille,  
 Notary Public—  
 8-9-17  
 —Continued

4. Upon trust to pay out of the Income of my trust estate the sum of Rupees Twenty five (Rs. 25/-) per mensem to my son Lewis Anthony Morais until his marriage and thereafter a sum of Rupees Fifty (Rs. 50/-) per mensem together with a further sum of Rupees Twenty five (Rs. 25/-) per mensem for each surviving child of my said son until my said son shall attain the age of Thirty five years on the 25th day of July 1933.

5. Upon Trust to convey the immovable property belonging to my trust estate to my said son Lewis Anthony Morais on his attaining the age of Thirty five years on the 25th day of July 1933 subject to the following reser-  
 vations restrictions and conditions that is to say that the said Lewis Anthony 10  
 Morais shall in no wise sell mortgage or otherwise alienate or encumber the  
 immovable property belonging to my said Trust Estate or any portion thereof  
 but shall only have possess and enjoy the rents issues and profits arising  
 and accruing therefrom during the term of his natural life and that at his  
 death the said immovable property shall devolve on his lawful son or sons  
 only (if more than one in equal shares) absolutely but if there be no lawful son  
 surviving him at his death then and in that event the same shall devolve on  
 his lawful daughter or daughters (if more than one, in equal shares) absolutely  
 the lawful issue of a deceased son or daughter taking the share to which his  
 her or their parent would have become entitled if living. But in the event of the 20  
 said Lewis Anthony Morais dying without leaving any lawful issue or other  
 descendants surviving him then and in that event the said immovable property  
 shall devolve absolutely on the heirs of the said Lewis Anthony Morais Provided  
 however that in the event of my said son Lewis Anthony Morais dying before  
 attaining the age of thirty five years I direct my trustees to convey the immov-  
 able property belonging to my trust estate to the lawful son or sons only (if more  
 than one, in equal shares) of my said son Lewis Anthony Morais absolutely  
 upon his or their attaining the age of twenty one years and in the meantime to  
 administer the trust estate in their absolute discretion but if there be no lawful  
 son or sons surviving him then to the daughter or daughters (if more than 30  
 one, in equal shares) of my said son Lewis Anthony Morais absolutely upon her  
 or their attaining the age of twenty one years or marrying whichever event first  
 occurs and in the meantime to administer the said trust estate in their absolute  
 discretion the lawful issue of a deceased son or daughter taking the share to  
 which his or her or their parent would have become entitled if living and in the  
 event of my said son Lewis Anthony Morais leaving no lawful issue or other  
 descendants surviving to the lawful heirs of the said Lewis Anthony Morais  
 absolutely.

6. Upon trust to convey and transfer over all the movable property  
 belonging to my said trust including the unexpended income of the said trust to 40  
 my son the said Lewis Anthony Morais on his attaining the age of twenty five  
 years or in the event of my said son dying before attaining the age of thirty five  
 years to convey and transfer the same to the lawful son or sons (if more than  
 one in equal shares) of the said Lewis Anthony Morais upon his or their attain-  
 ing the age of twenty one years and in the meantime to hold and administer  
 the same in their absolute discretion or in the event of their being no lawful  
 son or sons surviving him then to the daughter or daughters (if more than one  
 in equal shares) of the said Lewis Anthony Morais absolutely upon her or  
 their attaining the age of twenty one years or marrying whichever event

first occurs and in the meantime to hold and administer the same in their absolute discretion the lawful issue of a deceased son or daughter taking the share to which his her or their parent would have become entitled if living and in the event of my said son Lewis Anthony Morais leaving no lawful issue or other descendants surviving then to the lawful heirs of the said Lewis Anthony Morais absolutely.

P 10(a)  
Last Will of  
Marianu Morais  
(No. 1080)  
attested by  
G. A. H. Wille,  
Notary Public—  
8-9-17  
—Continued

7. Upon trust to sell and convert into money such of the said immovable properties belonging to my trust estate as my said trustees shall in their absolute discretion think advisable or expedient to sell by reason of the said properties  
10 not giving a fair or reasonable rent income or return therefrom and from the proceeds sale thereof to purchase other immovable property or properties and any such immovable property or properties purchased as aforesaid shall form part of my trust estate and be subject to the same trusts as are herein expressed and contained.

8. I empower and direct my said trustees to employ agents for the purpose of collecting and receiving all the rents profits and income of my said trust estate.

9. And I direct that my said trustees shall keep regular accounts of all rents income profits and other monies received by them and of all moneys  
20 expended by them and deposit the balance in one of the Banks in Colombo and to apply such balance from time to time as my said trustees shall think fit in the purchase of immovable property and any property so purchased shall form part of my trust estate and be subject to the same trusts as are herein expressed and contained.

10. And I further direct that my said trustees shall be entitled at all times during the continuance of this trust to put up buildings and effect improvements to all or any of the properties belonging to my said trust estate under the powers contained in clauses 7 and 9 aforesaid.

11. I empower and direct my trustees to defray out of the said trust  
30 estate all expenses attendant upon the sickness of my son the said Lewis Anthony Morais, his wife and children at their absolute discretion.

12. If any of my said children Simbrose Ammal Morais, Marie Ammal Morais and Soosai Ammal Morais shall predecease me the property devised and bequeathed to such child shall devolve on the child or children if more than one in equal shares of such deceased child absolutely by if there be no child or children or remoter descendants of such deceased child surviving at my death then and in that event the said property so devised and bequeathed shall be equally divided between my surviving children absolutely.

13. I empower the trustees or trustee for the time being to give receipts  
40 for all moneys and effects to be paid or delivered to such trustees or trustee by virtue of my will and declare that such receipts shall exonerate the persons taking the same from liability to see the application or disposition of the moneys and effects therein mentioned.

P 10(a)  
Last Will of  
Marianu Morais  
(No. 1080)  
attested by  
G. A. H. Wille,  
Notary Public—  
8-9-17  
—Continued

14. I declare that if my trustees the said Maria Joseph Carwacho Bernard Miranda and Stephen Corera or any of them shall die in my life time or if they or any of them or any person or persons to be appointed under this clause shall after my death die or be unwilling or incompetent to execute the trust of my Will or desire or retire from the office I direct the competent trustees or trustee for the time being if any whether retiring from the office of trustee or not if none for the proving executors or executor for the time being of the last surviving trustee to substitute immediately by any writing under their or his hands or hand any fit person or persons in whom alone or as the case may be jointly with the surviving or containing trustees or trustee 10 my trust estate shall vest or be property vested so that the number of trustees shall not be reduced below three for any considerable period and I exempt every Trustee of my will from liability for losses occurring without his own wilful default and authorise him to retain and allow to his co-trustees or trustee all expenses incidental to the Trusteeship and I hereby direct that the opinion of the majority of the trustees shall prevail in any question in which there is any difference of opinion amongst them relating to the administration of the trust.

15. I hereby direct that my executors and trustees the said Maria Joseph Charles Bernard Miranda and Stephen Corera shall not be entitled to any 20 commission or remuneration for carrying out the provisions of this my will.

IN WITNESS WHEREOF I, the said Mariam Morais have set my hand to this my Last Will and Testament at Colombo aforesaid on this eighth day of September One thousand Nine hundred and Seventeen.

Signed and declared by the said Mariam Morais the within-named Testator as and for his Last Will and Testament in the presence of us present at the same time who in his presence and at his request and in the presence of each other hereunto subscribed our names as witnesses :

This is the signature of

Sgd. (In Tamil)

M. MORAIS

30

Sgd. G. A. H. WILLIE  
Notary Public

Sgd. W. DENIS DE VOS.

Sgd. P. K. W. PERERA.

I, George Alfred Henry Wille of Colombo in the Island of Ceylon Notary Public do hereby certify and attest that the foregoing Last Will and Testament having been read over and explained by me to the within named Testator Marianu Morais in the presence of the subscribing witnesses Walter Denis de Vos of Wellewatte Colombo and Panapiti Kankanamalage Wilson Perera of 40 Grandpass Colombo aforesaid all of whom are known to me the same was signed by the said Marianu Morais (in Tamil Characters) 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 on the Eighth day of September One Thousand Nine hundred and Seventeen at Colombo aforesaid.

I further certify and attest that in the foregoing Last Will and Testament in line 10 of page 1 the figure 2 was an alteration from the figure 3 in line 14 of page 3 the word Trisaikumtam was written on erasure in line 32 of page 5 the word estate was written on erasure and in line 9 of page 8 the caret was written on erasure and in the same line and page the words provided however that were interpolated before the same was read over and explained as aforesaid.

P 10(a)  
Last Will of  
Marianu Morais  
(No. 1080)  
attested by  
G. A. H. Wille,  
Notary Public-  
8-9-17  
—Continued

Date of Attestation }  
8th September 1917. }

Which I attest.

Sgd. G. A. H. WILLE  
*Notary Public*

10

(Seal)

**P 22**

**PROBATE IN DISTRICT COURT, COLOMBO,  
CASE NO. 6237/T**

Value of Assests Rs. 252,183.01.  
Stamp duty Rs. 7,566/-

P 22  
Probate in  
District Court,  
Colombo, Case  
No. 6237/T-  
10-6-18

**PROBATE**

IN THE DISTRICT COURT OF COLOMBO.

20 Testamentary }  
Jurisdiction } No. 6237.

In the matter of the Last Will and Testament of Marianu Morais deceased of Colombo in the Island of Ceylon.

30 Be it known to all Men that on the 19th day of April 1918, the Last Will and Testament of Marianu Morais of Colombo in the Island of Ceylon deceased a copy of which is hereunto annexed was exhibited, read and proved before this Court and administration of all the property and estate rights and credits of the deceased was and it is hereby committed to (1) Maria Joseph Carvalho of Manapad in Trichadoor Taluq Tinnevelly District, South India and of Ragalla Halgran Oya in the District of Uda Pussellawa in the Island of Ceylon (2) Bernard Miranda of Manapad aforesaid and of Maskeliya in the said Island and (3) Stephen Corera of Manapad aforesaid and of Colombo in the said Island the Executor in the said Last Will and Testament named; the said Maria Joseph Carvalho, Bernard Miranda and Stephen Corera being first sworn faithfully to execute the said Will by paying the debts and legacies of the deceased Testator as far as the property will extend and the law will bind, and also to exhibit into this Court a true full and perfect Inventory of the said property on or before the 29th day of August 1918 and to file a true and just account of their executorship on or before the 28th day of November 1918.

P 22  
 Probate in  
 District Court,  
 Colombo, Case  
 No. 6237/T-  
 10-6-18  
 —Continued

Given under my hand and the Seal of the Court on this 10th day of June 1918.

Sgd. Illegibly.  
*Additional District Judge.*

True copy of Probate filed of record in District Court, Colombo Case No. 6237/T.

Sgd. ....  
*Asst. Secretary*  
 District Court, Colombo.

P 32  
 Registration of  
 Marriage of  
 Anthony Louis  
 Morais and  
 Josephine Mary  
 Aloysius—  
 24-8-27

P 32

10

**REGISTRATION OF MARRIAGE OF ANTHONY  
 LOUIS MORAIS AND JOSEPHINE MARY ALOYSIUS**  
**EXTRACT FROM THE REGISTER OF NATIVE CHRISTIAN  
 MARRIAGES SOLEMNIZED**

at St. James's Manapad,	Tuticorin Diocese.	
When married :	24-8-1927 (One thousand nine hundred and twenty seven.)	
Where married.	MANAPAD.	
Name of Parties.	Bridegroom : Antony Louis Morais.	20
	Bride : Josephine Mary Aloysius.	
Age.	Bridegroom. 29. Bride. 20.	
Condition.	Widow; Spinster.	
Caste.	Paravan.	
Residence at the time of marriage.	Manapad.	
Father's Name & Surname :	Bridegroom's — Marian Morais Bride's — Joseph Salvadore Victoria	
By banns.	Banns.	30
Can impediments dispensed.	Nil.	

Witnesses.

N. M. Villavarayen : T. D. Dias.

Minister who performed  
the ceremony —

A. M. J. Miranda, S. J.

Manapad.  
11-8-1963

P 32  
Registration of  
Marriage of  
Anthony Louis  
Morais and  
Josephine Mary  
Aloysius—  
24-8-27  
—Continued

Sgd. L. MIRANDA.  
Catholic Priest.

Sgd. Certified true extract.  
L. MIRANDA.

True copy.

10

Sgd. ....  
Addl. First Class Magistrate,  
Tirunelveli.  
22-8-63.

Sgd. JACOB A. CHAKRAMAKAL  
Notary Public,  
Madras.  
Sept. 2, 1963.

**P 32(a)**

**NOTARY'S CERTIFICATE ATTACHED TO P 32**

20

P 32(a)  
Notary's Certi-  
ficate attached  
to P 32  
2-9-63

To All To Whom These Presents Shall Come Greetings.

I, Jacob Andrews Chakramakal, M. A. & B. L. (University of Madras,  
an Advocate of the Supreme Court of India and a Notary Public appointed  
under the Notaries Act (Central Act LIII of 1952), Government of India,  
having my Chambers at No. 5, Thambu Chetty Street, George Town Madras  
1, India, do hereby certify that the attached document is a marriage Certi-  
ficate regarding the marriage between Antony Louis Morais and Josephine  
Mary Aloysius of St. James' Manapad in the Tirunelveli District, India on the  
24th of August 1927 and I certify that the said Certificate is in the form in  
30 which marriage certificates are issued in India and is duly certified by the  
person having the legal custody of the document and the original is a public  
document under the Law of India and I further certify that the same is duly  
certified as a true copy by the Additional First Class Magistrate of Tirunelveli,  
India under his official seal on 22-8-1963.

Dated at Madras this 2nd day of September 1963.

Sgd. JACOB A. CHAKRAMAKAL  
Notary Public  
Madras.



P 6(a)  
Deed No. 1208,  
attested by  
P. M. de S.  
Seneviratne,  
Notary Public-  
21-9-33

**P 6(a)**

**DEED NO. 1208 ATTESTED BY  
P. M. DE S. SENEVIRATNE, NOTARY PUBLIC**

Application. No. D829/11-2-64.

**PRIOR REGISTRATION :** A 69/119, 130/321, 111/342, 130/322, 323; 126/55;  
130/324; 123/292; 120/353; 123/293, 291;

95/107, 108, 113; 125/242; 165/160  
166/215; 159/108; 161/153 and 204/120.

**No. 1208**

TO ALL TO WHOM THESE PRESENTS SHALL COME Maria 10  
Joseph Carvalho of Manapad in Trechundoor Taluq Tinnevely District,  
South India and of Ragalle Halgran Oya in the District of Uda Pessellewa in  
the Island of Ceylon, Bernard Miranda of Manapad aforesaid and of Trinco-  
malee in the said Island and Stephen Corera of Manapad aforesaid and of  
Colombo in the said Island as Trustees of the Last Will and Testament of  
Marianu Morais late of Colombo aforesaid decesased (hereinafter sometimes  
called and referred to as the said Trustees).

**SEND GREETING :—**

WHEREAS the said Marianu Morais was under and by virtue of the  
several Deeds in the Schedules A and B herein mentioned seized and possessed 20  
of or otherwise well and sufficiently entitled to the several properties and  
premises in the said Schedule A and B hereto fully described.

AND WHEREAS the said Marianu Morais departed this life at Colombo  
aforesaid on the Third day of February One thousand Nine hundred and  
Eighteen leaving a Last Will and Testament No. 1080 dated the 8th day of  
September 1917 attested by G. A. H. Wille of Colombo aforesaid Notary  
Public whereby he gave devised and bequeathed to the said Maria Joseph  
Carvalho, Bernard Miranda and Stephen Corera who were the Trustees in  
the said Last Will and Testament named all the rest and residue of the real  
and immovable property (including the several properties and premises in 30  
the said Schedules A and B hereto fully described and of the personal and  
movable property estate and effects of whatever kind and wheresoever situate  
whether in possession expectancy reversion remainder or otherwise unto his  
said Trustees upon the Trusts and subject to the directions provisions in the  
said Last Will set forth and contained, viz: inter alia :—

1. Upon Trust to convey the immovable property belonging to his Trust  
Estate to his son Lewis Anthony Morais on his attaining the age of thirty five  
years on the twenty fifth day of July One thousand Nine hundred and Thirty  
three subject to the following reservations, restrictions and conditions that is  
to say that the said Lewis Anthony Morais shall in no wise sell, mortgage or 40  
otherwise alienate or encumber the immovable property belonging to his said

Trust Estate or any portion thereof but shall only have possession and enjoy the rents issues and profits arising and accruing therefrom during the term of his natural life and that at his death the said immovable property shall devolve on his lawful son or sons only (if more than one in equal shares) absolutely but if there be no lawful son surviving him at his death then and in that event the same shall devolve on his lawful daughter or daughters (if more than one in equal shares) absolutely the lawful issue of a deceased son or daughter taking the share to which his her or their parent would have become entitled if living; But in the event of the said Lewis Anthony Morais dying without leaving  
 10 any lawful issue or other descendants surviving him then and in that event the said immovable property shall devolve absolutely on the heirs of the said Lewis Anthony Morais Provided however that in the event of his said son Lewis Anthony Morais dying before attaining the age of Thirty five years the said Trustees shall convey the immovable property belonging to his Trust Estate to the lawful son or sons only (if more than one in equal shares) of his said son Lewis Anthony Morais absolutely upon his or their attaining the age of twenty one years and in the meantime shall administer the said Trust Estate in their absolute discretion but if there be no lawful son or sons surviving him then to the daughter or daughters (if more than one in equal  
 20 shares) of his said son Lewis Anthony Morais absolutely upon her or their attaining the age of twenty one years or marrying whichever event first occur and in the meantime shall administer the said Trust Estate in their absolute discretion the lawful issue of a deceased son or daughter taking the share to which his her or their parent would have become entitled if living and in the event of his said son Lewis Anthony Morais leaving no lawful issue or other descendents surviving to the lawful heirs of the said Lewis Anthony Morais absolutely.

2. Upon Trust to sell and convert into money such of the said immovable properties belonging to his Trust Estate as his said Trustees shall in their  
 30 absolute discretion think advisable or expedient to sell by reason of the said properties not giving a fair or reasonable rent income or return therefrom and from the proceeds sale thereof to purchase other immovable property or properties and any such immovable property or properties purchased as aforesaid shall form part of his Trust Estate and be subject to the same trusts as are herein expressed and contained.

3. That the said Trustees shall keep regular accounts of all rents income profits and other moneys received by them and of all money expended by them and deposit the balance in one of the Banks in Colombo and to apply  
 40 such balance from time to time as his said Trustees shall think fit in the purchase of immovable property and any property so purchased shall form part of his Trust Estate and be subject to the same trusts hereinbefore contained.

4. That the said Trustees shall be entitled at all times during the continuance of this Trust to put up buildings and effect improvements to all or any of the properties belonging to the said Trust Estate whether purchased by him or by the said Trustees.

AND WHEREAS the said Maria Joseph Carwalho, Bernard Miranda and Stephen Corera who were the Executors in the said Last Will and Testament named duly proved the said Testament in the District Court of Colombo

P 6(a)  
 Deed No. 1208  
 attested by  
 P. M. de S.  
 Seneviratne,  
 Notary Public-  
 21-9-33  
 —Continued

P 6(a)  
Deed No. 1208,  
attested by  
P. M. de S.  
Seneviratne,  
Notary Public—  
21-9-33  
—Continued

in Testamentary Action No. 6237 of the said Court and on the 10th day of June 1918 obtained Probate thereof.

AND WHEREAS the said Maria Joseph Carwalho, Bernard Miranda and Stephen Corera as such Executors duly administered the estate of the said Marianu Morais by paying all Testamentary expenses debts charges legacies and other payments directed by the said Last Will and Testament to be paid by them filed their Final Account on the 12th day of December 1918 and by Deed No. 3034 dated the twenty first day of October One Thousand nine hundred and eighteen attested by W. A. S. de Vos of Colombo, Notary Public conveyed the said several properties and premises in the Schedules A 10 and B hereto fully described to themselves as Trustees of the said Last Will and Testament upon the Trusts and subject to the directions and provisions in the said Last Will and Testament of the said Marianu Morais contained and hereinbefore recited.

AND WHEREAS the said Trustees in the exercise of the powers vested in them in that behalf as hereinbefore stated sold the said several properties and premises in the schedule B hereto fully described and duly credited the proceeds of sale to the Trust Fund of the said Estate.

AND WHEREAS the said Trustees also in the exercise of the powers vested in them in that behalf as hereinbefore stated purchased with the money 20 lying to the credit of the Trust Fund of the said Estate the several properties and premises in the Schedule C hereto fully described and became seized of and held the said properties and premises upon the same Trust and subject to the directions and provisions in the said Last Will and Testament of the said Marianu Morais set forth and contained.

AND WHEREAS the said Trustees in the further exercise of the powers in them vested in that behalf as hereinbefore stated out of the proceeds of the said Trust Fund from time to time put up certain buildings of the premises in the said Schedule C hereto secondly and fifthly and in the said Schedule A hereto ninthly and tenthly fully described and effected certain improve- 30 ments to the said several premises in the said Schedules A and C hereto fully described.

AND WHEREAS the said Lewis Anthony Morais attained the age of thirty five years on the twenty fifth day of July One thousand nine hundred and thirty Three.

AND WHEREAS it is deemed expedient that the said Trustees should execute These Presents for the purposes of conveying the said several properties and premises in the Schedules A and C hereto fully described to and vesting the same in the said Lewis Anthony Morais subject however to the reservations restrictions and conditions in the said Last Will and Testament 40 of the said Marianu Morais and hereinbefore recited.

NOW KNOW YE AND THESE PRESENTS WITNESS that the said Maria Joseph Carwalho, Bernard Miranda and Stephen Corera as Trustees as aforesaid in consideration of the premises do and each of them doth hereby

grant, convey, assign, transfer and set over unto the said Lewis Anthony Morais all those the several properties and premises in the Schedules A and C hereto fully described together with all rights privileges easements servitudes and appurtenances whatsoever to the said several properties and premises belonging or used or enjoyed therewith or reputed or known as part and parcel thereof and all the estate right title interest property claim and demand whatsoever of the said Marianu Morais deceased and of them and each of them the said Maria Joseph Carvalho, Bernard Miranda and Stephen Corera as Trustees as aforesaid in to out of or upon the same.

P 6(a)  
Deed No. 1208,  
attested by  
P. M. de S.  
Seneviratne,  
Notary Public-  
21-9-33  
—Continued

10 TO HAVE AND TO HOLD THE SAID several properties and premises hereby conveyed unto the said Lewis Anthony Morais, subject to the following reservations and restrictions that is to say that the said Lewis Anthony Morais shall in no wise sell Mortgage or otherwise alienate or encumber the said properties and premises hereby conveyed or any portion thereof but shall only have possess and enjoy the rents issues and profits arising and accruing therefrom during the term of his natural life and that at his death the said properties and premises shall devolve on his lawful son or sons only (if more than one in equal shares) absolutely but if there be no lawful son surviving him at his death then and in that event the same shall devolve on his lawful  
20 daughter or daughters (if more than one in equal shares) absolutely the lawful issue of a deceased son or daughter taking the share to which his, her or their parent would have become entitled to if living but in the event of the said Lewis Anthony Morais dying without leaving any lawful issue or other descendants surviving him then and in that event the said property and premises hereby conveyed shall devolve absolutely on the heirs of the said Lewis Anthony Morais.

AND THE SAID Trustees Covenant and declare with and to the said Lewis Anthony Morais that the said Trustees have not made done or committed or been party or privy to any act deed matter or things whereby the said  
30 properties and premises hereby conveyed or any part thereof are is can or may be impeached or encumbered in title charge estate or otherwise however and that the said Trustees shall and will at all times hereafter at the request and cost and charges of the said Lewis Anthony Morais do and execute or cause to be done and executed all such further and other acts deeds matters assurances and things which may be necessary expedient for the better or more effectually assuring the said premises or any part thereof unto the said Lewis Anthony Morais as may be resonably required.

IN WITNESS WHEREOF the said Maria Joseph Carvalho, Bernard Miranda and Stephen Corera as Trustees as aforesaid do set their respective  
40 hands hereunto and to two others of the same tenor and date at Colombo on the days and dates hereinafter mentioned.

#### THE SCHEDULE "A" ABOVE REFERRED TO:

1. All that piece of ground with the buildings standing thereon bearing assessment No. 50 presently bearing assessment No. G. 20 (1—12) and lying at Brassfounder Street within the Municipality and District of Colombo Western Province bounded on the North by the property of the late Janchy

P 6(a)  
Deed No. 1208,  
attested by  
P. M. de S.  
Seneviratne  
Notary Public-  
21-9-33  
—Continued

Pulle Modliyar on the East by the property of Dassenayake Modliyar on the South by the property of Franciscoe Rodrigo Senapady now the property of Mr. S. T. Muttiah and on the West by Brassfounder Street containing in extent eleven and seventy seven one hundredths of a Square Perch (AO. RO. P11, 77/100) which said premises were held and possessed by the said Marianu Morais under and by virtue of Deed No. 1941 dated the 4th day of October 1900 attested by J. J. de Fry of Colombo Notary Public.

2. All that part of a garden with the buildings standing thereon bearing assessment No. 11 presently bearing assessment No. 34 situated at St. Lucias Street Kotahena within the Municipality of Colombo aforesaid bounded on the North by the Road on the East by the property belonging to Salohamy on the South by the garden of Siriwardene Lama Ettena and on the West by the Portion belonging to Francisco Appu containing in extent Fourteen thirty seven one hundredth square Perches (AO. RO. P14 37/100) according to the Figure of Survey thereof dated the 6th day of July 1869 and made by C. C. Smith Surveyor whose said premises were held and possessed by the said Marianu Morais under and by virtue of Deed No. 2019 dated the 1st day of March 1901 attested by the said J. J. de Fry, Notary Public.

3. All that allotment of land or three adjoining portions of a garden with the buildings standing thereon bearing assessment Nos. 88 and 89 (presently bearing assessment Nos. 10 (4—23) 12, 14, 16, 18, 20, 22, 24, 26 and 28) situate and lying at Kochikadde within the Municipality of Colombo aforesaid bounded on the North by a house and ground of Ponnambalam Mudliyar on the East and South by St. Thomas Church Yard and on the West by Sea Street containing in extent twenty nine square perches and Thirty Four one hundredth of a Square Perch (AO. RO. P29, 34/100) which said premises are according to the survey and description thereof No. 76 dated 14th January 1913 made by James W. Amerasekera Licensed Surveyor and Leveller described as follows to wit :— An allotment of land with the buildings thereon bearing assessment Nos. 88 and 89 (presently bearing assessment Nos. 10, (4-23) 12, 14, 16, 18, 20, 22, 24, 26 and 28) situated at Kochikadde Street within the Municipality of Colombo aforesaid bounded on the North by premises belonging to Ponnambalam Modliyar now the Satharam (Hindu Temple) on the East and South by St. Thomas Church premises and on the West by Kochikadde Street containing in extent thirty three square perches and sixty four one hundredth of a Square Perch (AO. RO. P33, 64/100) which said premises were held and possessed by the said Marianu Morais under and by virtue of Deed bearing No. 68 dated the 8th day of May 1913 attested by E. S. Gratiaen of Colombo Notary Public.

4. All that house and ground bearing assessment No. 49 (presently bearing assessment No. 20 situated at Galpotta Street within the Municipality of Colombo aforesaid bounded on the North by premises bearing assessment No. 48 belonging to M. H. M. Sulaiman on the East by premises bearing assessment No. 53 formerly belonging to the estate of C. G. Perera now belonging to the Estate of the late Marianu Morais and bequeathed to Lewis Anthony Morais on the South by premises bearing assessment No. 50 formerly belonging to the Estate of C. G. Perera now belonging to the Estate of the late Marianu Morais and bequeathed to the said Lewis Anthony Morais and

on the West by Galpotta Street containing in extent Fourteen Square Perches (AO. RO. P.14) according to the Survey and discription thereof No. 303 dated 21st June 1914 made by James W. Amerasekera Licensed Surveyor and Leveller and which aforesaid premises No. 49 is a divided and defined portion of and from all that property and premises bearing assessment Nos. 49, 50, 51, 52, and 53 and situated at Galpotta Street in Kotahena Ward No. 5 within the Municipality of Colombo aforesaid and bounded on the North by premises bearing assessment No. 48 belonging to M. H. M. Sulaiman on the East by land belonging to George de Silva Mohandiram on the South by land  
 10 acquired by the Crown and on the West by Galpotta Street containing in extent Two Roods and Twenty four Perches and ninety eight one hundredth of a Perch (AO. R2. P24, 98/100) which said premises were held and possessed by the said Marianu Morais under and by virtue of Deed No. 708 dated the 5th day of November 1915 attested by W. E. V. de Roy of Colombo, Notary Public.

P 6(a)  
 Deed No. 1208,  
 attested by  
 P. M. de S.  
 Seneviratne,  
 Notary Public-  
 21-9-33  
 —Continued

5. All that house and ground bearing assessment No. 50 presently bearing assessment No. 16 situated at Galpotta Street within the Municipality of Colombo aforesaid bounded on the North by premises bearing assessment No. 49 formerly belonging to the estate of C. G. Perera now belonging to the  
 20 estate of the late Marianu Morais and bequeathed to Lewis Anthony Morais on the East by premises bearing assessment No. 53 formerly belonging to the Estate of C. G. Perera now belonging to the estate of the late Marianu Morais and bequeathed to the said Lewis Anthony Morais on the South by premises bearing assessment No. 51 formerly belonging to the estate of C. G. Perera now belonging to the Estate of the late Marianu Morais and bequeathed to Soosai Ammal Morais wife of Stephen Corera and on the west by Galpotta Street containing in extent Eleven Square Perches and fifty two one hundredths of a Square Perch (AO. RO. P11, 52/100) according to the survey and discription thereof No. 304 dated 27th June 1914 made by James W. Amerasekera Licenced Surveyor and Leveller and which aforesaid premises No. 50 is  
 30 a divided and defined portion of and from all that property and premises bearing assessment Nos. 49, 50, 51 52 and 53 and situated at Galpotta Street in Kotahena Ward No. 5 within the Municipality of Colombo aforesaid and bounded on the North by premises bearing assessment No. 48 belonging to M. H. M. Sulaiman on the East by land belonging to George de Silva Mohandiram on the South by land acquired by the Crown and on the West by Galpotta Street containing in extent Two Roods, Twenty Four Perches and ninety eight one hundredths of a Perch (AO. R2. P24, 98/100) which said premises are held and possessed by the said Marianu Morais under and by  
 40 virtue of Deed No. 708 dated the 5th day of November 1915 attested by W. E. V. de Roy of Colombo Notary Public.

6. All that house and ground bearing assessment No. 53 presently bearing Nos. 2, 6 (6, 10, 12—14, 20—22, 16—19, 23—24, 26, 29/31) situated at Galpotta Street within the Municipality of Colombo aforesaid bounded on the North by premises bearing assessment No. 48 belonging to M. H. M. Sulaiman on the East by land belonging to Geroge de Silva Mudeliyar on the South by land acquired by the Crown and on the West by premises bearing assessment Nos. 49, 50, 51 and 52 formerly belonging to the estate of C. G. Perera now belonging to the estate of the late Marianu Morais and bequeathed

P 6(a)  
Deed No. 1208,  
attested by  
P. M. de S.  
Seneviratne,  
Notary Public  
21-9-33  
—Continued

of Lewis Anthony Morais, Soosai Ammal Morais and Mary Ammal Morais respectively containing in extent including the passage One Rood, Sixteen Perches and one, one hundredths of a Perch (AO. R1. P16, 1/100) according to the Survey and description thereof No. 425 dated 7th September 1915 made by James W. Amerasekera Licensed Surveyor and Leveller and which aforesaid premises No. 53 is a divided and a defined portion of and from all that property and premises bearing assessment Nos. 49, 50, 51, 52 and 53 and situated at Galpotta Street in Kotahena Ward No. 5 within the Municipality of Colombo aforesaid and bounded on the North by premises bearing assessment No. 48 belonging to M. H. M. Sulaiman on the East by land belonging to George De Silva Muhandiram on the South by land acquired by the Crown and on the West by the Galpotta street containing in extent Two Roods, Twenty four Perches and ninety eight one hundredths of a Perch (AO. R2. P24,98/100) which said premises were held and possessed by the said Marianu Morais under and by virtue of Deed No. 708 dated the 5th day of November 1915 attested by W. E. V. De Roy of Colombo, Notary Public.

7. All that allotment of land with the buildings thereon bearing assessment No. 48 presently bearing assessment No. 165 (1—16) situated at Chekku Street within the Municipality of Colombo aforesaid bounded on the North by premises bearing assessment No. 49 of P. Ramanathan Esquire K. C. on the East by the pavement along Chekku Street on the South by premises bearing assessment No. 47 belonging to the estate of Ramalingam Shroff and on the West by premises bearing assessment No. 147 Sea Street of Ananda K. Coomaraswamy Esquire containing in extent Twenty two square perches and Seventy five One hundredths of a Perch (AO. RO. P22, 75/100) according to the Survey Plan thereof No. 862 dated the 6th October 1910 made by H. G. Dias Licensed Surveyor and Leveller which said premises were held and possessed by the said Marianu Morais under and by virtue of Deed No. 857 dated the 22nd day of August 1916 attested by G. A. H. Wille of Colombo Notary Public.

8. All that house and ground bearing assessment No. 43 presently bearing assessment No. 44 situated at Brassfounder Street within the Municipality of Colombo aforesaid bounded on the North by the property of Pedro Soose Sithambalapulle on the East by the property of Tambo on the South by the property of Jeronis Morais and on the West by the Brassfounder Street containing in extent Fourteen Sixty six upon hundredths Square Perches (AO. RO. P14, 66/100) according to the figure of Survey thereof dated 21st December 1852 made by C. A. Siegarts Land Surveyor which said premises were held and possessed by the said Marianu Morais Under and by virtue of Deed No. 857 dated the 22nd day of August 1916 attested by G. A. H. Wille of Colombo Notary Public.

9. All that house and ground situated at Brassfounder Street aforesaid bearing assessment No. 44 presently bearing assessment No. 42 (2—11) and bounded on the North by the house formerly of Armuhettipulle thereafter of V. Ponnasamy now premises No. 43 belonging to Casie Visvanatha Kurukul Thiyagarajah Kurukkal on the East by the garden of Peduru, Silva Domingo Silva and Madachi Silva now said to belong to S. K. Maharajah on the South by the house of Christobo Silva, Pedro Pulle now premises No. 45

belonging to Kasia Visvanatha Kurukkul Thiyagarajah Kurukkul and on the West by the Brassfounder Street containing in extent seven and one fifths square perches (AO. RO. P7, 1/5) according to the Figure of Survey thereof dated 7th May 1804 authenticated by G. Schneider Surveyor General but now found to contain in extent eighth three fourth perches according to the land thereof No. 3427 dated 18th March 1914 made by G. P. Weeraratne Surveyor which said premises were held and possessed by the said Marianu Morais under and by virtue of deed No. 857 dated the 22nd day of August 1916 attested by G. A. H. Wille of Colombo Notary Public.

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10 10. All that house and ground bearing assessment No. 45 presently No. 38 (1-10) situated at Brassfounder Street within the Municipality of Colombo aforesaid and comprising the following parcels of land which adjoin each other and now form one property to wit :—

(A) All that land and buildings thereon situated at Brassfounder Street aforesaid bounded on the North by the house of Philip Fernando Abraham Pulle on the East by the garden of Peduru Silva, Domingo Silva and Mathachi Silva on the South by the house of Anthony Silva and on the West by Brassfounder Street containing in extent Six Square Perches and Seventy seven one hundredths of a Square Perch according to the survey dated 20th April 1904  
20 authenticated by the Land Surveyor General.

(B) All that portion of land situated towards the East of Brassfounder Street aforesaid bounded on the North by the Other portion of this land belonging to Jaromius Morayus Pulle on the East by the garden of Ramasamy Moodeley Coomarappa Moodeley on the South by the garden of Juan Silva Peduru Pulle and on the West by the Garden of Christobo Silva Pedro Pulle containing in extent according to the Plan dated 19th July 1858 by J. R. Zybrangs Four Square Perches and fifty upon hundred of a Perch (AO. RO. P4, 50/100) which said two parcels of land are according to the Plan No. 3427  
30 of 18th March 1914 made by G. P. Weeraratne Licensed Surveyor bounded on the North by the premises No. 44 on the East by the property of Tambo by the garden of Pedro Silva, Domingo Silva and Madachi Silva which latter now belongs to S. R. Maharajah on the South by the garden of Juan Silva Pedru Pulle and by the house of Anthony Silva now bearing assessment No. 46 and on the West by Brassfounder Street and contains in extent Fourteen Perches (AO. RO. P14) which said premises were held and possessed by the said Marianu Morais under and by virtue of Deed No. 857 dated the 22nd day of August 1916 attested by G. A. H. Wille of Colombo, Notary Public.

11. All that allotment of land with the buildings thereon bearing assessment No. 3 presently bearing assessment No. 44 situated at Andival Street  
40 within the Municipality of Colombo aforesaid comprising the premises described in title Plan No. 19824 of the 20th February 1821 authenticated by G. Schneider Surveyor General premises described in Title Plan No. 55961 of the 31st December 1861 authenticated by Charles Sim Esquire Surveyor General bounded as follows :— On the North by Andival Street, on the East by the property of the estate of the late K. Sinniah Pulle bearing assessment No. 2 on the South by the property of the Estate of the late J. A. Perera Muhandiram bearing assessment No. 25 Wolfendhal Street and on the West



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by the property of the estate of the late S. T. Muthiaya bearing assessment No. 4 containing in extent five and forty four hundredths of a Square Perch (AO. RO. P5, 44/100 which said premises were held and possessed by the said Marianu Morais under and by virtue of Deed No. 857 dated the 22nd day of August 1915 attested by G. A. H. Wille of Colombo Notary Public.

#### THE SCHEDULE B ABOVE REFERRED TO

1. All that allotment of land with the buildings standing thereon bearing assessment No. 12 situated at St. John's Street within the Municipality of Colombo aforesaid and bounded on the North by Block bearing assessment No. 13 on the East by Blocks bearing assessment Nos. 21 and 22 Sea Street 10 on the South by the block bearing assessment No. 11 and on the West by the Varendah and St. John's Street and containing in extent One Nine one hundredth Perches (AO. RO. P1, 9/100) according to the Figure of Survey dated the 12th day of February 1908 and made by J. W. Amarasekera of Colombo Licensed Surveyor and Leveller which said premises are according to a more recent Plan thereof described as follows to wit :— An allotment of land with the buildings thereon bearing assessment No. 12 situated at St. John's Road in Pettah Ward within the Municipality of Colombo aforesaid and bounded on the North by premises bearing assessment No. 13 belonging to S. Morais on the East by premises bearing assessment Nos. 15 and 16 belong- 20 ing to A. D. R. A. Adicappa Chetty on the South by premises bearing assessment No. 11 belonging to M. Muller and Mr. E. Wolf and on the West by St. John's Road containing in extent One Perch and sixteen one hundredths of a Perch (AO. RO. P1, 16/100) according to the figure of Survey dated the 30th day of December 1917 made by A. R. Savundranayagam Special Licensed Surveyor and Leveller which said premises were held and possessed by the said Marianu Morais under and by virtue of the Certificate of Title issued in Partition Action No. 25134 of the District Court of Colombo, dated the 30th day of July 1910.

2. All that allotment of land with the buildings standing thereon bearing 30 assessment No. 13 situated at St. John's Street within the Municipality of Colombo aforesaid and bounded on the North by block bearing assessment No. 14 on the East by Blocks bearing assessment Nos. 21 and 22 Sea Street on the South by Block bearing assessment No. 12 and on the West by Varendah and St. John's Street and containing in extent One, Eighth One hundredth Perches (AO. RO. P1, 8/100) according to the Figure of Survey thereof dated the 12th day of February 1908 and made by G. W. Amerasekera of Colombo Licensed Surveyor and Leveller which said premises are according to a more recent plan thereof described as follows to wit :— An allotment of land with the buildings thereon bearing assessment No. 13 situated at St. 40 John's Road in Pettah Ward within the Municipality of Colombo aforesaid and bounded on the North by premises bearing assessment No. 14 belonging to the heirs of O. L. M. A. L. Marikar Alim on the East by premises bearing assessment Nos. 15 and 16 belonging to A. V. R. A. Adicappa Chetty on the South by premises bearing assessment No. 12 belonging to S. Morais and on the West by St. John's Road containing in extent One Perch and sixteen one hundredths of a Perch (AO. RO. P1 16/100) according to the Figure of Survey thereof dated the 30th day of December 1917 and made by A. R.

Suvandranayagem Special Licensed Surveyor and Leveller which said premises were held and possessed by the said Marianu Morais under and by virtue of the Certificate of Title dated the 30th day of July 1910 issued in Partition Action No. 25134 of the District Court of Colombo.

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Deed No. 1208,  
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3. All that allotment of land with the buildings standing thereon bearing assessment No. 18 situated at St. John's Street within the Municipality of Colombo aforesaid and bounded on the North by Block bearing assessment No. 19 on the East by Blocks bearing assessments No. 21 and 22 Sea Street on the South by Block bearing assessment No. 17 and on the West by the Varendah  
10 and St. John's Road containing in extent One Fourteen One Hundredth Perches (AO. RO. P1, 14/100) according to the Figure of Survey thereof dated the 12th day of February 1908 and made by J. W. Amarasekera of Colombo Licensed Surveyor and Leveller which said premises are according to a more recent Plan thereof described as follows to wit :—

An allotment of land with the building thereon bearing assessment No. 18 situated at St. John's Road in Pettah Ward within the Municipality of Colombo aforesaid and bounded on the North by premises bearing assessment No. 19 belonging to the heirs of O. L. M. A. L. Marikar Alim on the East by premises bearing assessment Nos. 15 and 16 belonging to A. V. R. A.  
20 Adicappa Chetty on the South by premises bearing assessment No. 17 belonging to H. J. Brohier and F. J. Brohier and on the West by St. John's Road containing in extent One Perch and Sixteen One hundredths of a Perch according to the Figure of Survey-thereof dated the 30th day of December 1917 made by A. R. Savaranayagem Special Licensed Surveyor and Leveller which said premises were held and possessed by the said Marianu Morais under and by virtue of the Certificate of Title dated the 30th day of July 1910 issued in Partition Action No. 25134 of the District Court of Colombo.

#### THE SCHEDULE C ABOVE REFERRED TO

1. All that allotment of land with the buildings standing thereon bearing  
30 assessment No. 47 and Ward No. 388 presently bearing assessment No. 157 situated at Chekku Street in Pettah within the Municipality of Colombo aforesaid bounded on the North East by the property belonging to Kurugal bearing assessment No. 48 on the South East by Chekku Street on the South West by the property belonging to Mrs. T. Sanmugam bearing assessment No. 46 and on the North West by the property belonging to F. X. Pereira bearing assessment No. 150 Sea Street containing in extent Nineteen and ninety five hundredths Perches (AO. RO. P19, 95/100) according to the Figure of Survey thereof No. 335 dated 18th May 1916 made by S. Sabaratnam Registered Licensed Surveyor, which said premises have been held and Posses-  
40 sed by the said Trustees under and by virtue of Deed No. 658 dated the 13th day of June 1921 attested by Leslie Mack of Colombo Notary Public.

2. All that allotment of land with the buildings thereon bearing assessment Nos. 219, 223, 225, 227 (1—3) 231, 233 and 239 situated in Jampettah Street within the Municipality of Colombo aforesaid bounded on the North by properties of Abdul Majeed and others and H. S. Perera, S. Kandasamy, SR. R. M. S. Chetty and A. P. Casie Chitty bearing assessment Nos. 162/39,

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161/38, 158/36, 158A/37 and 160/37 to 37A and 183/2 and 182/1 Galpotta Street on the East by Galpotta Street on the South by a Road reservation (Jampettah Street) and on the West by Road Reservation (Shoemakers Lane) containing in extent One Rood Seven Perches and ninety five hundredths of a Perch (AO. R1. P7. 95) according to Plan No. 217 dated 20th August 1924 under the hand of J. M. Blizzard Municipal Engineer which said premises have been held and possessed by the said Trustees under a Municipal Conveyance dated 3rd December 1924 under the hand of H. E. Newnham Esquire, Chairman Municipal Council, Colombo.

3. All that allotment of land with the buildings, trees and plantations thereon situated in the reservation at Jampettah Street extension within the Municipality of Colombo aforesaid bearing assessment Nos. 238/54 to 239/59 presently bearing assessment Nos. 245, 247, 249, 251, 253, 255, 257, 259, 261, 263 (1—3) 265, 267, 269, 271, 275 Jampettah Street bounded on the North by the property of G. Morais bearing assessment No. 229—237/53 on the East by the property of Mrs. George de Silva bearing assessment No. 2707 B—G/1 B—G on the South by Road Reservation (Jampettah Street) and on the West by Road reservation (Galpotta Street) containing in extent twenty three Perches and eighty five hundredths of a Perch (AO. RO. P23. 85) according to Plan No. 216 dated the 20th August 1924 under the hand of J. M. Blizzard Esquire Municipal Engineer which said premises have been held and possessed by the said Trustees under and by virtue of Deed No. 932 dated the 28th day of September 1929 attested by P. M. de S. Seneviratne of Colombo, Notary Public.

4. All that allotment of land with the buildings, trees and plantations thereon presently bearing assessment Nos. 131, 131(20—24) 131(61—63) 131(64) 131(62 and 65) 131 (66—81) and 131(82—87) situated at Jampettah Street within the Municipality of Colombo aforesaid comprising of the following parcels of land which adjoin each other and which from their situation as respects each other can be included in one Survey and forming one property to wit :—

(A) All that allotment of land marked Letter “A” with the buildings, trees and plantations thereon bearing the following assessment Nos. Viz:— 31A—32/24(1—14), 33/24(15—19), 34/24(20—24), 35/24(25—28), 36/24 (29), 37/24(30—30A), 38/24(31—33), 39/24(32), 40/24 (34—40), 40A/24(32A) situated at Jampettah Street within the Municipality and District of Colombo Western Province formerly bearing assessment Nos. 24, 25, 26, 27, 28, 29, 30, 31, 32, and 34 being a divided portion of all that allotment of land formerly bearing Nos. 24, 25, 26, 27, 28, 29, 30, 31, 32 and Nos. 34, 35 and 36 situated at Jampettah Street aforesaid which said allotment of land marked letter “A” is bounded on the North by the field of J. H. Jerhard formerly of Mr. M. Ondatje on the East by the field of Francis Nonis Candappa formerly of R. F. Pauloe Pulle and by the premises bearing assessment Nos. 41, 42 and 43 of the heirs of the late Mr. John Melho Asarappa formerly the property of Peduru Peiris Asarappa on the South by the premises bearing assessment Nos. 37 and 38 of Ravanna Moona Chena Sinna Kannu Premises bearing assessment No. 39 of Peter Benedict Anandappa and by the premises bearing assessment No. 40 of Anthony Rodrigo and by the other part of this property

marked Letter "B" bearing assessment Nos. 35 and 36 and by Jampettah Street and on the West by the premises bearing assessment Nos. 23 and 23A of Mr. J. H. Jerhard formerly the property of Mr. M. Ondatjie containing in extent One Acre Two Roods and five and thirty seven one hundredths Square Perches (A1. R2. P5, 37/100) according to the Survey No. 777 dated 2nd September 1909 made By W. Z. G. Rajapakse Licensed Surveyor which said premises have been held and possessed by the said Trustees under and by virtue of Deed No. 570 dated the 21st day of November 1923 attested by P. M. de S. Seneviratne of Colombo Notary Public.

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10 (B.) All that allotment of land marked letter 'B' bearing assessment Nos. 35 and 36 being a divided portion of all that allotment of land bearing assessment Nos. 24, 25, 26, 27, 28, 29, 30, 31, 32 and Nos. 34, 35 and 36 Jampettah Street within the Municipality of Colombo aforesaid bounded on the North and West by the other part of this property marked letter "A" bearing assessment Nos. 24, 25, 26, 27, 28, 29, 30, 31, 32 and 34 East by the premises bearing Nos. 37 and 38 of Ravanna Mona Chena Sinna Cannu formerly the property of Anthony Rodrigo and South by Jampettah Street containing in extent twenty four Perches and forty four hundredths of a Perch (AO. RO. P24. 44) according to the Survey plan No. 777A dated the 2nd September 20 1909 made by W.Z.G. Rajapakse Licensed Surveyor which said premises have been held and possessed by the said Trustees under and by virtue of Deed No. 600 dated the 1st March 1924 attested by P. M. de S. Seneviratne of Colombo, Notary Public.

5. All that Lot marked A of the defined portion of the allotment of land called Guaniawatte bearing assessment No. 22 Castle Lane and No. 37 19th Lane which said Lot marked A presently bears assessment Nos. 22, 24, 26 and 28 Castle Lane and 33, 35 and 37 19th Lane Bambalapitiya is situated at Bambalapitiya within the Municipality of Colombo aforesaid and is bounded on the North by the 19th Lane and the Lot B of this property on the East by 30 the Lot B of this property the property bearing assessment No. 27 and another portion of this property bearing assessment No. 22 now sold out on the South by the Castle Lane and on the West by Railway Line containing in extent Three Roods and Perches Thirty two decimal naught nine only (AO. R3. P32.09) as per Plan No. 3409 dated the 6th January 1931 made by J. H. W. Smith Licensed Surveyor which said premises have been held and possessed by the said Trustees under and by virtue of Deed No. 1031 dated the 21st day of January 1931 attested by P. M. de S. Seneviratne of Colombo, Notary Public.

40 Signed by the said Maria Joseph Carwalho and by the said Bernard Miranda at Colombo on this 6th day of September 1933 in our presence.

Sgd. J. R. MIRANDA  
Sgd. R. D. S. SENEVIRATNE  
Sgd. P. M. DE S. SENEVIRATNE  
Notary Public

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Deed No. 1208,  
attested by  
P. M. de S.  
Seneviratne,  
Notary Public-  
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Signed by the said Stephen Corera }  
at Colombo on this 21st day of Septem- }  
ber 1933 in our presence.

Sgd. W. H. KROVENBERG  
Sgd. A. L. NEYDORFF

Sgd. P. M. DE S. SENEVIRATNE  
*Notary Public*

I, Paul Melius de Silva Seneviratne of Colombo, Notary Public do hereby certify and attest that the foregoing instrument having been duly read over and explained by me to the therein named Maria Joesph Carvalho and Bernard 10 Miranda in the presence of Joseph Raphiel Miranda of Jampettah Street and Robert de Silva Seneviratne of Wasala Road both of Colombo the subscribing witnesses thereto all of whom are known to me the same was signed by the said Maria Joesph Carvalho by the said Bernard Miranda by the said witnesses and by me the said Notary in the presence of one another all being present together at the same time at Colombo on this sixth day of September One Thousand Nine hundred and thirty three.

I further certify and attest that in the Original of the said instrument in lines 6 of page 1 and 4 of page 10 the word "and" in line 16 of page 2 the letters "lawful" and in line 3 of page 18 the word "land" in lines 26 and 27 of 20 page 7 and in line 3 of page 8 the figures 6, 10, 12A were respectively struck off in line 3 of page 2 of the word "and" in line 7 of page 3 the letter "c" in descendants" in line 13 of page 5 the word "restriction" in line 4 of page 10 the figure "2" were respectively interpolated in line 13 of page 18 the words from "bearing" to "premises" were interlineated in the duplicate thereof in line 16 of page 3 the word "that" in line 18 of page 4 the words from "secondly" to "tenthly" in line 15 of page 10 the words from "presently" to "44" in line 23 of page 17 the word "is" were respectively interpolated in line 13 of page 9 the figures "2, 6" were typed over erasure in line 5 of page 12 the words from "Premises" to "General" were interlineated in line 7 of page 15 the word 30 "present" in line 24 of page 16 the words from "formerly" to "Rodrigo" in lines 5, 15 and 16 of page 7 the figure 6, 10, 12A were respectively struck off, in line 31 of page 15 "8" was written over "7" before the same was read over and explained as aforesaid that the Original of this instrument bears a stamp of One Rupee and the duplicate two stamps of the value of Rs. 25/- which were supplied by me.

Date of Attestation 6th September 1933 }

Sgd. P. M. DE S. SENEVIRATNE  
*Notary Public*

I, Paul Melius de Silva Seneviratne of Colombo, Notary Public do hereby 40 certify and attest that the foregoing instrument having been duly read over and explained by me to the therein named Stephen Corera in the presence of William Hugo Kronenberg of Wall Street and Abel Lawrence Neydroff of Silversmith Street both of Colombo the subscribing witnesses thereto all of

whom are known to me the same was signed by the said Stephen Corera by the said witnesses and by me the said Notary in the presence of one another all being present together at the same time at Colombo on this twenty first day of September One thousand nine hundred and thirty three.

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Deed No. 1208,  
attested by  
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Seneviratne,  
Notary Public-  
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Date of attestation 21st September 1933 }

Sgd. P. M. DE S. SENEVIRATNE  
*Notary Public*

**P16**

**PLAINT IN DISTRICT COURT COLOMBO,  
CASE NO. 1420/M**

**IN THE DISTRICT COURT OF COLOMBO**

L. ANTHONY MORAIS of Bambalapitiya in  
Colombo.

*Plaintiff.*

No. 1420  
Class : VI.  
Amount: Rs. 316113/47.  
Nature: Money.  
Procedure : Regular.

*Vs.*

1. Stephen Corera of 16 Wasala Road in Colombo.
2. M. J. Carwalho of St. Catherine Estate in Dolosbage.
3. J. B. Miranda of Trincomalie.

*Defendants.*

The 10th day of July 1934.

The plaint of the plaintiff above named appearing by Sabapathy Soma-sunderam his Proctor states as follows :—

1. The plaintiff and the 1st defendant reside at Colombo within the local limits of the jurisdiction of this court.

**For a first cause of Action**

2. By his last will No. 1080 dated 8th September 1917 Marianu Morais appointed the defendants the Executors and Trustees of the said Last Will and devised and bequeathed all the rest and residue of his property immovable and movable of whatsoever kind unto the said Trustees upon inter alia the following trusts :—

(a) to convey the said immovable property to his son the plaintiff on his attaining the age of 35 years on the 25th July 1933 subject to certain restrictions.

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 District Court,  
 Colombo,  
 Case No.  
 1420/M—  
 10-7-34  
 —Continued

(b) to convey and transfer over all the said movable property including the unexpended income of the said trust to his son the plaintiff on his attaining the age of 35 Years.

3. By the will the said Marianu Morais directed the said Trustees to keep regular accounts of all rents incomes profits and other monies received by them and all monies expended by them and to deposit the balance in one of the Banks in Colombo and apply such balance as the Trustees think fit in the purchase of immovable property which said property was to be held on the said trust.

4. The said Marianu Morais died on or about 3rd February 1918 and the said Will was proved by the defendants in Testamentary Case No. 6237 of the District Court of Colombo and Probate was issued to the defendants in or about June 1918.

5. The rest and residue of the movable and immovable property of the said Marianu Morais was situate in Colombo aforesaid and the defendants accepted the Trusts created by the said Will and took possession or charge of the said property at Colombo aforesaid.

6. On or about the 25th July 1933 the plaintiff attained the age of 35 years.

7. By deed No. 1208 dated 21st September 1933 and attested by P. M. de S. Seneviratne of Colombo, Notary Public the defendants at Colombo aforesaid conveyed certain immovable properties to the plaintiff.

8. The defendants at Colombo aforesaid received the rents income and profits of the said trust property which property is specified in the schedule marked A and annexed to and pleaded as part of the plaint.

9. The plaintiff estimates that a sum of Rs. 447,621/45 was received by the defendants as rents profits and income of the said properties during the period February 1918 to July 1933 besides two sums of Rs. 65,250/- and Rs. 47,000/- realized by them by the sale of two of the trust properties making the total amount accountable by the defendants Rs. 559,871/45. 30

10. The defendants according to the books of accounts delivered to plaintiff purchased properties and put up buildings at a cost of Rs. 143,757/78 lent out moneys to the extent of Rs. 109,334/75 to various persons, spent Rs. 151,803/45 on payment of rates and effecting repairs etcetera on the trust properties and expended a sum of Rs. 14,000/- on a Testamentary case in India all aggregating Rs. 418,895/98 leaving a balance sum of Rs. 140,975/47 unaccounted for which sum the defendants were bound to pay to the plaintiff at Colombo aforesaid.

11. A cause of action has accrued to the plaintiff to sue for and recover from the defendants the sum of Rs. 140,975/47. 40

12. There is now due and owing to the plaintiff from the defendants jointly and severally the said sum of Rs. 140,975/47.

**For a second cause of action**

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 Plaint in  
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 Colombo,  
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13. The plaintiff states that the books of account delivered to the plaintiff by the defendants do not give the receipts and income for the period 3rd February 1918 to the 6th May 1920 and for the period 3rd February 1918 to 10th March 1927 and that no particulars are available for the items of Rs. 151,803/45 and Rs. 14,000/- referred to in paragraph 10 above.

14. The plaintiff states that the defendants had to pay as rates and taxes on the trust properties only the sum of Rs. 45,510/75 and the plaintiff estimates the amounts that might reasonably have been spent on repairs to the trust properties for the entire period at Rs. 15,000/-. The defendants have failed to tender to plaintiff any vouchers for the moneys alleged to have been spent on repairs.

15. (a) The defendants acted against the express terms of the Trust in lending out the sum of Rs. 109,334/75.

(b) the defendants had no authority to spend the said sum of Rs. 14,000/- in India on a Testamentary case or otherwise.

16. The plaintiff states that the defendants are liable to pay plaintiff the following sums namely:

(1) a sum of Rs. 51,803/45 being excess amount charged on the item of rates and repairs.

(2) the sum of Rs. 109,334/75 alleged by the defendants to have been lent by them, and

(3) The sum of Rs. 14,000/- which the defendants say was spent in India on account of Testamentary expenses all aggregating Rs. 175,138/20.

17. A cause of action has accrued to the plaintiff to sue for and recover from the defendants the said sum of Rs. 175,138/20.

**Alternatively**

18. The defendants in or about the month of September 1933 executed the said Deed No. 1208 conveying the trust properties to the plaintiff and delivered certain books of account which do not contain the full accounts of the income received or the expenditure incurred during the entire period and which shewed that a sum of Rs. 109,334/75 had been lent by the defendants to various persons.

19(a) The Defendants committed a breach of the trust at Colombo aforesaid by lending the said sum of Rs. 109,334/75 in the manner stated therein.

(b) the plaintiff has suffered a loss of Rs. 109,334/75 by reason of the defendants' said lending and the defendants have failed to pay the said sum of Rs. 175,138/20 and are liable to pay the said sums to the plaintiff.



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 Case No.  
 1420/M—  
 10-7-34  
 —Continued

20(a) The books of account delivered to the plaintiff by the defendants do not contain a correct statement of the actual income received or the actual expenditure incurred during the said period.

(b) The sum properly received as income or properly receivable as income during the said period amounts to Rs. 559,871/45 and the sum properly incurred as expenditure during the said period amounts to Rs. 353,092/53. The Defendants have failed to pay the balance sum of Rs. 206,778/92 at Colombo aforesaid to the plaintiff.

21. A cause of action has accrued to the plaintiff to sue the defendants for the recovery of the said sums of Rs. 109,334/75 and Rs. 206,778/92 aggregating Rs. 316,113/67, which sum the defendants have failed and neglected to pay though thereto requested. 10

22. There is now due and owing to the plaintiff from the defendants jointly and severally the said sum of Rs. 316,113/37 which sum or any part thereof the defendants have failed and neglected to pay though thereto requested.

Wherefore the plaintiff prays :—

(a) for judgment against the defendants jointly and severally for the said sum of Rs. 316,113/67 with interest thereon at 9 per cent per annum from the date hereof till payment in full, 20

(b) that the defendants be directed to render a true and full account of their Trusteeship during the full period namely February 1918 to July 1933.

(c) for costs of this action and

(d) for such other and further relief as to this court shall seem meet.

Sgd. S. SOMASUNDERAM  
*Proctor for Plaintiff.*

Perused and settled by

Sgd. A. R. H. CANAKERATNE Esq.  
*Advocate.*

**The Schedule above referred to**

30

- (1) Premises No. G 20 (1—12) Brassfounder Street, Colombo.
- (2) Premises No. 34 St. Lucia Street Kotahena, Colombo.
- (3) Premises No. 88, 89 Kochchikade in Colombo.
- (4) Premises No. 20 Galpotta Street in Colombo.
- (5) Premises No. 16 Galpotta Street in Colombo.

- (6) 2, 6 Galpotta Street in Colombo.
- (7) 165 (1—16) Chekku Street, Colombo.
- (8) 44 Brassfounder Street, Colombo.
- (9) 42 (2—11) Brassfounder Street, Colombo.
- (10) 38 (1—10) Brassfounder Street, Colombo.
- (11) 44 Andival Street, Colombo.
- (12) 12 St. John's Road, Colombo.
- (13) 13, St. John's Road, Colombo.
- (14) 18, St. John's Road in Colombo.
- 10 (15) 157, Chekku Street in Colombo.
- (16) 219, 223, 225, 227, 231, 233, and 239 Jampettah St., Colombo.
- (17) 238/54 to 239/59 Jampettah Street, Colombo.
- (18) Premises No. 131 Jampettah St., Colombo.
- (19) No. 22 Castle Lane and 37, 19th Lane, Bambalapitiya in Colombo.

Sgd. S. SOMASUNDARAM  
*Proctor for Plaintiff.*

**D17**

**ANSWER OF THE 1ST DEFENDANT IN  
DISTRICT COURT COLOMBO, CASE NO. 1420/M.**

20 **IN THE DISTRICT COURT OF COLOMBO**

L. ANTHONY MORAIS of Bambalapitiya  
in Colombo.

*Plaintiff.*

Case No. 1420/M.

*Vs.*

1. STEPHEN CORERA of Eastlyn, 59,  
Wasala Road, Colombo.
2. M. J. CARWALHO of St. Catherine  
Estate in Dolosbage.
3. J. B. MIRANDA of Trincomalie.  
*Defendants.*

30

P 16  
Plaint in  
District Court,  
Colombo,  
Case No.  
1420/M—  
10-7-34  
—Continued

D 17  
Answer of the  
1st Defendant in  
District Court,  
Colombo,  
Case No.  
1420/M—  
14-11-34

D 17  
 Answer of the  
 1st Defendant in  
 District Court,  
 Colombo,  
 Case No.  
 1420/M—  
 14-11-34  
 —Continued

This 14th day of November 1934.

The Answer of the 1st defendant abovenamed appearing by John Alfred Perera and his assistant John Johnson Weinman, his Proctor states as follows:-

1. This defendant says that the instrument of trust upon which the action is based exempts every trustee thereunder from liability for losses occurring without his own wilful default and there is no averment that the losses alleged by the plaintiff are attributable to the wilful default of this defendant. This defendant further says that the said losses if any are not attributable to the wilful default of this defendant. As a matter of law this defendant says that in the absence of such an averment as aforesaid 10 the plaintiff cannot have and maintain this action.

2. This defendant admits the averment in the 1st, 2nd, 3rd, 4th, and 5th paragraphs of the plaint contained, save and except the averments in the 5th paragraph of the plaint contained that he accepted the trusts created by the said Last Will and took possession or charge of the property in the said 5th paragraph of the plaint referred to, which said averments this defendant specially denies.

3. By way of further answer this defendant says that he did not act in the trusts contained in the said instrument of trust but that the execution of the same was shortly after the death of Marianu Morais with the privity and 20 approbation of the plaintiff who was then of full age committed to the 2nd defendant to be executed by him as if he were the sole trustee. The 2nd defendant assumed charge of the trust estate as the sole trustee and administered and continued to administer the same as sole trustee till the 25th July 1933 when the Plaintiff attained the age of 35 years. During the said period the 2nd defendant had the sole control and management of the properties belonging to the trust estate and received invested and otherwise disposed of the rents, profits and income thereof. In the investments and other disposal of such rents, profits and income and of the trust funds the 2nd defendant acted 30 on his own responsibility and in his absolute discretion and without consultation with this defendant. The plaintiff who was of full age at the time concurred in assented to and acquiesced in the said management of the trust estate by the 2nd defendant as sole trustee. The plaintiff was fully aware of the manner in which the trust estate was managed by the 2nd defendant as sole trustee as aforesaid and of the investment and other disposal of the income and trust funds. The plaintiff had access to the account books kept by the 2nd defendant and had otherwise every opportunity of acquainting 40 himself with the details of the management by the 2nd defendant of the trust estate and funds and of the investment and disposal of the income and trust funds. This defendant says that in the circumstances he incurred no liability for any loss in respect of the execution of the said trusts and that the plaintiff's concurrence in assent to and acquiescence in the administration of the trust estate, property, income and funds by the 2nd defendant as sole trustee as aforesaid operated as a waiver by him of his rights against this defendant in respect of any breach of trust and as a discharge of the liability of this defendant for any breach of trust and estops the plaintiff from claiming any relief from this defendant in respect of any breach of trust.

4. In the alternative this defendant says that he acted honestly and reasonably in the circumstances and ought to be relieved wholly from personal liability in respect of any loss sustained by the plaintiff.

5. This defendant says that if any liability for a breach of trust is established against him he is entitled in his action to an order of indemnity against the 2nd defendant.

6. This defendant admits the averments in the 6th and 7th paragraphs of the plaint contained.

7. Answering to the 8th paragraph of the plaint this defendant denies 10 that he received the rents, income and profits of the trust property.

8. Answering to the 9th paragraph of the plaint this defendant denies that Rs. 447,621/45 is a correct estimate of the rents income and profits of the trust property during the period between February 1918 and July 1933.

9. Further answering to the said 9th paragraph this defendant says that only one property belonging to the trust estate was sold to wit : the property at St. John's Road, Colombo and the same realised a sum of Rs. 47,000/-. This defendant denies that he is liable to account to the plaintiff for the sum of Rs. 559,871/45 or any sum at all.

10. Answering to the 10th paragraph of the plaint this defendant denies 20 that he delivered any account books to the plaintiff. This defendant obtained from the plaintiff's proctor copies of account books delivered by the 2nd defendant to the plaintiff. This defendant says that the figures appearing in the said account books are incorrectly set forth in the said paragraph. The value of properties purchased and of the buildings erected appears in the said account books as Rs. 249,127/16 and not Rs. 143,757/78. The amount of moneys lent appears as Rs. 105,257/- and not Rs. 109,334/75. The amount spent in the payment of rates and repairs appears as Rs. 74,888/37. In the absence of details of the items grouped under the category of "et cetera" it is not possible for this defendant to state what the account books show in 30 spect of such expenditure. This defendant admits that a sum of Rs. 14,000/- appears in the said books under the heading India account. This defendant believes that this sum of Rs. 14,000/- represents the value of certain lands in India purchased by the 2nd defendant for the plaintiff. This defendant denies that he is bound to pay to the plaintiff a sum of Rs. 140,975/47 or any sum at all.

11. This defendant denies all and singular the averments in the 11th and 12th paragraphs of the plaint contained.

12. Answering to the 13th paragraph of the plaint this defendant denies 40 that he delivered any account books to the plaintiff. This defendant denies all and singular the other averments in the said paragraphs.

13. Answering to the 14th paragraph of the plaint as amended this defendant says that a sum of Rs. 55,666/72 was paid in rates and a sum of Rs. 19,221/65 expended in repairs.

D 17  
Answer of the  
1st Defendant in  
District Court,  
Colombo,  
Case No.  
1420/M—  
14-11-34  
—Continued

D 17  
 Answer of the  
 1st Defendant in  
 District Court,  
 Colombo,  
 Case No.  
 1420/M—  
 14-11-34  
 —Continued

14. Answering to paragraph 15(a) of the plaint this defendant denies that he lent a sum of Rs. 109,334/75 or any sum at all.

15. Answering to paragraph 15(b) of the plaint this defendant denies that he spent the sum of Rs. 14,000/- or any sum at all.

16. Answering to the 16th and 17th paragraphs of the plaint this defendant denies all and singular the averments therein contained and especially that he is liable to pay to the plaintiff a sum of Rs. 175,138/20 or any sum at all.

17. Answering to the 18th Paragraph of the plaint this defendant while admitting the execution by him of Deed No. 1208 denies that he delivered any account books to the plaintiff or that he lent a sum of Rs. 109,334/75 or any 10 sum at all.

18. This defendant denies all and singular the averments in paragraphs 19(a) and 19(b) contained and that he is liable to pay to the plaintiff a sum of Rs. 175,138/20 or any sum at all.

19. Answering to paragraph 20(a) of the plaint this defendant denies that he delivered any account books to the plaintiff.

20. Answering to paragraph 20(b) of the plaint this defendant denies that the sum of Rs. 559,871/45 is the sum properly received or receivable as income during the period in question and that Rs. 353,092/53 is the sum properly incurred as expenditure during the said period. This defendant denies that 20 he is liable to pay to the plaintiff the sum of Rs. 206,778/92 or any sum at all.

21. This defendant denies all and singular the averments in the 21st and 22nd paragraphs of the plaint contained and that he is liable to pay to the plaintiff the sum of Rs. 316,113/37 or any sum at all.

Wherefore this defendant prays.

(a) that the plaintiff's action be dismissed.

(b) for costs.

(c) that order be made relieving this defendant from personal liability in respect of the plaintiff's claim.

(d) that in the event of a decree being entered in favour of the plaintiff 30 against this defendant the 2nd defendant be ordered to pay to this defendant such sum or sums as this defendant may be obliged or compelled to pay to the plaintiff on account of such decree.

(e) for such other and further relief as to this court shall seem meet.

Sgd. J. A. PERERA.  
*Proctor*  
*for the 1st Defendant.*

**D18****ANSWER OF THE 2ND & 3RD DEFENDANTS IN  
DISTRICT COURT, COLOMBO, CASE NO. 1420/M.****IN THE DISTRICT COURT OF COLOMBO**

D 18  
Answer of the  
2nd & 3rd  
Defendants  
in District  
Court,  
Colombo,  
Case No.  
1420/M—  
14-11-34

L. ANTHONY MORAIS of Bambalapitiya  
*Plaintiff.*

Case No. 1420/M.

*Vs.*

10

1. STEPHEN CORERA of Wasala Road,  
Colombo.

2. M. J. Carwalho of "St. Catherine"  
Estate, Dolosbage.

3. J. B. MIRANDA of Trincomalee.  
*Defendant.*

On this 12th/14th day of October/November 1934.

The answer of the second and third defendants abovenamed appearing by Paul Melius de Silva Seneviratne their Proctor state as follows :

1. These defendants admit the averments contained in paragraphs 1, 2, 3, 4, 5, 6, 7, and 8 of the *Plaint* but deny the allegations contained in paragraphs 11, 12, 15, 16, 17, 19, 20, 21 and 22 thereof.

2. Answering to paragraph 9 of the *Plaint* these defendants state — (I) that during the period of Trusteeship the Defendants recovered as set out more particularly in the Schedule hereto annexed marked "A" and pleaded as part of this answer :—

(a) By way of Income

	Rs.
i. On account of Rents .. .. .	291,706.05
ii. On account of interest on loans .. .. .	113,885.50
iii. On Miscellaneous account .. .. .	3,414.91
	<hr/>
30 All aggregating to .. .. .	Rs. 409,006.46
 (b) By Sale of premises bearing assessment Nos. 12, 13, and 18 St. John's Road. .. .. .	 47,000.00
(c) By Cash debts received and other movables including value of shares owned by deceased .. .. .	97,391.56

P 16(a)  
 Joint Motion  
 of Settlement  
 filed in  
 District Court,  
 Colombo,  
 Case No.  
 1420/M  
 21-9-36  
 —Continued

10. If the 2nd defendant shall pay to the plaintiff on or before the 10th October 1936 any sum in excess of 19,625/-, he shall be entitled to a decree in his favour in this action against the 1st defendant for any such sum paid to the plaintiff in excess of the sum of Rs. 19,625/- with legal interest thereon from the date of such payment till payment in full.

11. Save as aforesaid the defendants inter se shall have no claim against each other in respect of the administration of the said Trust Estate.

We move that the above settlement be filed of record and decree entered in terms thereof in so far as it relates to this action on the 11th October 1936.

Colombo 21st September 1936.

10

Sgd. S. SOMASUNDERAM  
*Proctor for Plaintiff.*

We consent.  
 Sgd. A. L. MORAIS.  
*Plaintiff.*

Sgd. S. PERERA.  
*1st Defendant.*

Sgd. M. J. CARVALHO.  
*2nd Defendant.*

Sgd. J. A. PERERA 20  
*Proctor for 1st defendant.*

Sgd. P. M. DE SENEVIRATNE  
*Proctor  
 for 2nd and 3rd Defendants.*







D1

**LAST WILL NO. 1454 ATTESTED BY  
P. S. P. KALPAGE, NOTARY PUBLIC**

D 1  
Last Will  
No. 1454  
attested by  
P. S. P. Kalpage,  
Notary Public-  
4-7-47

**No. 1454**

THIS IS THE LAST WILL AND TESTAMENT of ANTHONY LOUIS MORAIS and JOSEPHINE MARY ALOYSIA MORAIS nee VICTORIA husband and wife, both of No. 2, Sea View Avenue, Colpetty in Colombo.

We, hereby revoke all LAST WILL and Testament and writings of a Testamentary nature if any heretofore made by us specially Last Will  
10 No. 950 dated 7th day of July 1944 and attested by the Notary attesting these Presents and declare this to be our LAST WILL and TESTAMENT.

We the said ANTHONY LOUIS MORAIS and JOSEPHINE MARY ALOYSIA MORAIS nee VICTORIA do hereby nominate and appoint the Surveyor of us to be the heir and heiress of the First dying of us and entitled to all the property movable and immovable including business, shares, of Business, Jewellery, furniture, insurance policies, cash in Bank and Securities, cash in hand and of whatsoever nature or description whatsoever lying or situate both in INDIA and CEYLON which shall or may be left by such dying whether the same shall be in possession reversion remainder or expectancy.

20 IT IS OUR WILL AND DESIRE that in the event of the prior death of ANTHONY LOUIS MORAIS the said JOSEPHINE MARY ALOYSIA MORAIS nee VICTORIA will be entitled to enjoy the rents profits income of the immovable property during her life time.

We do hereby nominate and appoint the survivor of us the said EXECUTOR and EXECUTRIX of our joint LAST WILL.

IN WITNESS WHEREOF WE THE SAID ANTHONY LOUIS MORAIS and JOSEPHINE MARY ALOYSIA MORAIS nee VICTORIA

THESE presents set our hands at Hultsdorf in Colombo on this Fourth day of July one Thousand Nine Hundred and forty seven (1947)

30 Signed and declared by the above-named Testator as their joint Last Will and Testament in the presence of us who at their request and in such joint presence subscribed our names thereto as attesting witnesses and we do hereby declare that we are well acquainted with the Executants and know their proper names, occupation and residences.

Sgd. Illegible

Sgd. JOSEPHINE MARY  
ALOYSIA MORAIS.

1. Sgd. (Mrs.) J. F. A. FERNANDO.

40 2. Sgd. . . . B. D. SILVA.

Sgd. P. S. P. KALPAGE.  
*Notary Public*

D 1  
Last Will  
No. 1454  
attested by  
P. S. P. Kalpage,  
Notary Public—  
4-7-47  
—Continued

I, PHILIP SEPTIMUS PERERA KALPAGE of Colombo in the Island of Ceylon, Notary Public do hereby certify and attest that the foregoing instrument having been duly read over and explained by me the said Notary to the said Anthony Louis Morais and Josephine Mary Aloysia Morais Nee Victoria who have signed as "A. Louis Morais" and "Josephine Mary Aloysia Morais" who are known to me in the presence of Josephine Roseline Carvalho wife of Joseph Francis Anthony Fernando of Colpetty and Ramukadange Benedict Dominic Silva of Pilapitiya, Kelaniya, who has signed as "(Mrs.) J. F. A. Fernando" and "R. B. D. Silva" respectively the subscribing witnesses thereto both of whom are also known to me the same was signed by the said Testators 10 and by the said witnesses and also by me the said Notary in my presence and in the presence of one another all being present at the same time at Hultsdorf in Colombo on this Fourth day of July One Thousand Nine Hundred and Forty Seven (1947).

And I further certify and attest that in the Original on page 2 line 10 word "July" was typed over erasure before the said instrument was read over and explained by me as aforesaid.

Date of attestation  
4th July 1947.

WHICH I ATTEST. 20  
Sgd. P. S. P. KALPAGE.  
Notary Public.

(S E A L)

True copy of Last Will filed of record in District Court Colombo, Case No. 20494/T.

Sgd. ....  
Assistant Secretary.  
7-9-63.

District Court,  
Colombo.

30

D 5  
Journal Entries  
in District  
Court,  
Colombo,  
Case No.  
19984/M

D 5

JOURNAL ENTRIES IN DISTRICT COURT,  
COLOMBO, CASE NO. 19984/M

IN THE DISTRICT COURT OF COLOMBO

No. 19984/M.  
Class :V  
Nature : Money  
Amount : Rs. 10,262/13  
Procedure : Regular

Bank of Ceylon. 40  
Vs. Plaintiff.

- 1. ANTHONY LOUIS MORAIS of No. 2, Sea View Avenue, Colpetty.
- 2. JOSEPH FRANCIS ANTHONY FERNANDO of No. 157, Chekku Street, Colombo.

D 5  
Journal Entries  
in District  
Court,  
Colombo,  
Case No.  
19984/M  
—Continued

.....  
.....

(27) 25-1-50

Proctor for purchaser tenders stamps of the value of Rs. 5/10 and moves  
10 that the sale be confirmed.

I confirm sale of 1 & 3 to 9 lands held on 7-11-49.

Intld. Illegibly.  
*District Judge.*

(32) 17-2-50.  
Case Called.

Mr. Kanagarajah says that the balance money was deposited by his  
client the purchaser on 6-12-50 as per Fiscal's receipt. Fiscal appears to have  
deposited at the Kachcheri on the 7-12-50.

Mr. Kanagarajah says that his client deposited the money in time.

20 He moves that the sale be confirmed.

**Order**

Notice need not issue on Plaintiff and Defendant. Sale is confirmed.

Intld. ....  
*District Judge.*

**D6**

**ORDER CONFIRMING SALE OF LAND IN  
DISTRICT COURT, COLOMBO, CASE NO. 19984/M**

**ORDER CONFIRMING SALE OF LAND**

No. 19984/M.

30

**In the District Court of Colombo.**

Bank of Ceylon.

*Plaintiff.*

*Vs.*

D 6  
Order Confir-  
ming Sale of  
Land in District  
Court,  
Colombo,  
Case No.  
19984/M  
25-1-50  
17-2-50

D 6  
Order Confirming Sale of Land in District Court, Colombo, Case No. 19984/M 25-1-50 17-2-50  
—Continued

1. ANTHONY LOUIS MORAIS of No. 2, Sea View Avenue, Colpetty.
2. JOSEPH FRANCIS ANTHONY FERNANDO of No. 157 Chekku Street, Colombo.

*Defendants.*

WHEREAS the undermentioned properties were on the 7th day of November 1949 sold by the Fiscal of the Western Province in execution of the Decree in the above-named action and whereas thirty days have elapsed since the receipt of the said Fiscal's report of the said sale. It is ordered that the said sale be and the same is hereby confirmed.

Sgd. S. J. C. SCHOKMAN  
*District Judge.*

25th day of January, 1950.

#### SCHEDULE

The right title and interest of the 1st Defendant in the following property, viz:—

1. All that house and ground bearing assessment No. 49, presently bearing assessment No. 20, situated at Galpotta Street, within the Municipality of Colombo in the District of Colombo, Western Province, bounded on the North by premises bearing assessment No. 48, belonging to M. H. M. Sulaiman on the east by premises bearing assessment No. 53, formerly belonging to the Estate of the late Marianu Morais, and bequeathed to Louis Anthony Morais, on the south by premises bearing assessment No. 50, formerly belonging to the Estate of C. G. Perera, now belonging to the Estate of the late Marianu Pulle, and bequeathed to the said Lewis Anthony Morais, and on the West by Galpotta Street, containing in extent 14 perches according to the Survey and description thereof No. 303 dated June 21, 1914, made by James W. Amerasekera, Licensed Surveyor and Leveller, and which aforesaid premises No. 49 is a divided and defined portion of and from all that property and premises bearing assessment Nos. 49, 50, 51, 52 and 53, and situated at Galpotta Street in Kotahena Ward No. 5 within the Municipality of Colombo aforesaid and bounded on the North by premises bearing assessment No. 48 belonging to M. H. M. Sulaiman, on the East by land belonging to George de Silva Muhandiram on the South by land acquired by the Crown and on the West by Galpotta Street, containing in extent 2 roods 24, 98/100 perches, which said premises were held and possessed by the said Marianu Morais under and by virtue of deed No. 708 dated November, 5, 1915, attested by W. E. V. de Roy of Colombo, Notary Public.

**Name of Purchaser :—** EMMANUEL JOSEPH GASPER CASIE CHITTY of 55, Mayfield Road, Kotahena. 40

**Amount realised :—** Rs. 2,200/-.

3. All that house and ground bearing assessment No. 53 presently bearing assessment Nos. 2, 6, (6, 10, 12-14, 20-22, 16-19, 23-14, 26, 29/31), situated at Galpotta Street within the Municipality of Colombo aforesaid bounded on the North by premises bearing assessment No. 48 belonging to M. H. M. Sulaiman, on the east by the land belonging to George de Silva Mudaliyar on the South by land acquired by the Crown and on the West by premises bearing assessment Nos. 49, 50, 51, and 52 formerly belonging to the estate of C. G. Perera now belonging to the estate of the late Marianu Morais and bequeathed to Lewis Anthony Morais, Soosai Ammal Morais and Mary Ammal Morais respectively containing in extent including the passage 1 rood 16, 1/100 perches according to the survey and description thereof No. 425 dated September, 7, 1915, made by James W. Amerasekera Licensed Surveyor and Leveller, and which said premises No. 53 is a divided and defined portion of land from all that property and premises bearing assessment Nos. 49, 50, 51, 52 and 53 and situated at Galpotta Street in Kotahena Ward No. 5 within the Municipality of Colombo aforesaid, and bounded on the north by premises bearing assessment No. 48 belonging to M. H. M. Sulaiman on the east by the land belonging to George de Silva Muhandiram on the South by land acquired by the Crown and on the West by Galpotta Street containing in extent 2 roods 24, 98/100 perches which said premises were held and possessed by the said Marianu Morais under and by virtue of Deed No. 708 dated November 5, 1915 attested by W. E. V. de Roy of Colombo, Notary Public.

**Name of Purchaser :—** EMMANUEL JOSEPH GASPER CASIE CHITTY of 55, Mayfield Road, Kotahena.

**Amount realised :—** Rs. 2,000/-.

4. All that allotment of land with the buildings thereon bearing assessment No. 48 presently bearing assessment No. 165 (1—16) situated at Chekku Street within the Municipality of Colombo aforesaid bounded on the North by premises bearing assessment No. 49 of P. Ramanathan Esq., K. C. on the East by the pavement along the Chekku Street, on the South by premises bearing assessment No. 47, belonging to the estate of Ramalingam Shroff and on the West by premises bearing assessment No. 147, Sea Street of Ananda K. Coomarasamy Esqr. containing in extent 22,75/100 perches according to the survey plan thereof No. 862 dated October 6, 1910, made by H. G. Dias Licensed Surveyor and Leveller which said premises were held and possessed by the said Marianu Morais under and by virtue of Deed No. 857 dated August 22, 1916 attested by G. A. H. Wille of Colombo, Notary Public.

**Name of Purchaser :—** EMMANUEL JOSEPH GASPER CASIE CHITTY of 55, Mayfield Road, Kotahena.

**Amount realised :—** Rs. 750/-.

5. All that allotment of land with the building standing thereon bearing assessment No. 47 and Ward No. 388 presently bearing assessment No. 157 situated at Chekku Street in Pettah, within the Municipality of Colombo aforesaid bounded on the North - East by property belonging to Kurugal bearing

D 6  
Order Confirming Sale of Land in District Court, Colombo, Case No. 19984/M 25-1-50 17-2-50  
—Continued

D 6  
Order Confirming Sale of Land in District Court, Colombo, Case No. 19984/M 25-1-50 17-2-50  
—Continued

assessment No. 48 on the East by Chekku Street on the South - West by the property belonging to Mrs. T. Sanmugam bearing assessment No. 46 and on the North-West by the property belonging to F. X. Pereira bearing assessment No. 150 Sea Street containing in extent 19,95/100 perches according to the figure of survey thereof No. 335 dated May 18, 1916 made by S. Sabaratnam Registered Licensed Surveyor which said premises have been held and possessed by the said trustees under and by virtue of deed No. 658 dated June 13, 1921 attested by Leslie Mack of Colombo Notary Public.

**Name of Purchaser :—** EMMANUEL JOSEPH GASPER CASIE CHITTY of 55, Mayfield Road, Kotahena. 10

**Amount realised :—** Rs. 500/-.

6. All that house and ground bearing assessment No. 43 (presently bearing assessment No. 44) situated at Brassfounder Street, within the Municipality of Colombo aforesaid bounded on the North by the property of Pedro Soose Sithambalam Pulle on the East by the property of Tambo on the South by the property of Jeremias Morais and on the West by the Brassfounder Street, containing in extent 14, 66/100 perches according to the figure of Survey thereof dated December 21, 1852 made by C. A. Seigerts, Land Surveyor, which said premises were held and possessed by the said Marianu Morais under and by virtue of deed No. 857 dated August 22, 1916, attested by G. A. H. Wille of 20 Colombo Notary Public.

**Name of Purchaser :—** EMMANUEL JOSEPH GASPAR CASIE CHITTY of 55, Mayfield Road, Kotahena.

**Amount realised :—** Rs. 400/-.

7. All that house and ground situated at Brassfounder Street aforesaid bearing assessment No. 44, presently bearing assessment No. 42 (2—11) and bounded on the North by the house formerly of Armuhettipulle, thereafter of V. Ponnasamy, now premises No. 43 belonging to Casie Visvanathan Kurukkal Thiagarajah Kurukkal on the East by the garden of Pedru Silva Domingo Silva and Madachi Silva now said to belong to S. K. Maharajah on 30 the South by the house of Christobo Silva Pedro Pulle now premises No. 45 belonging to Casie Visvanathan Kurukkal Thiagarajah Kurukkal and on the West by the Brassfounder Street, containing in extent, 7, 1/5 perches according to the figure of survey thereof dated May 7, 1804 authenticated by G. Schneider Surveyor General but now found to contain in extent 8, 3/4 perches according to the plan thereof No. 3427 dated March 18, 1914 made by G. P. Weeraratne, Surveyor, which said premises were held and possessed by the said Marianu Morais under and by virtue of deed No. 857 dated August 22, 1916, attested by G. A. H. Wille of Colombo Notary Public.

**Name of Purchaser :—** EMMANUEL JOSEPH GASPAR CASIE CHITTY aforesaid. 40

**Amount realised :—** Rs. 350/-.

8. All that house and ground bearing assessment No. 45 presently No. 38 (1—10) situated at Brassfounder Street within the Municipality of Colombo

aforesaid, and comprising the following parcels of land which adjoin each other and form one property, to wit :—

D 6  
Order Confirming Sale of Land in District Court, Colombo, Case No. 19984/M 25-1-50 17-2-50  
—Continued

(a) All that land and premises thereon situated at Brassfounder Street aforesaid, bounded on the North by the house of Philip Fernando Abraham Pulle, on the East by the garden of Peduru Silva Domingo Silva and Mattachi Silva, on the South by the house of Anthony Silva, and on the West by Brassfounder Street, containing in extent 6,77/100 perches according to the survey dated April 20, 1904 authenticated by the land Surveyor-General.

(b) All that portion of land situated towards the East of Brassfounder Street aforesaid bounded on the North the other portion of this land belonging to Jeromias Morayus Pulle on the East by the garden of Ramasamy Moodeley Kumarappa Moodeley on the South by the garden of Juan Silva Peduru Silva and on the west by the garden of Christobo Silva Peduru Pulle containing in extent according to the plan dated July 19, 1858 by J. R. Zybrangaz, 4, 50/100 perches, which said two parcels of land are according to the Plan No. 3427 of March 18, 1914 made by C. P. Weeraratne, Licensed Surveyor bounded on the North by the premises No. 44 on the East by the property of Tambo by the garden of Pedro Silva Domingo Silva land Madachi Silva, which latter now belongs to S. R. Maharajah on the South by the garden of Juan Pedru Pulle and by the house of Anthony Silva now bearing assessment No. 46, and on the West by Brassfounder street, and containing in extent 14 perches, which said premises were held and possessed by the said Marianu Morais under and by virtue of deed No. 857 dated August 22, 1916 attested by G. A. H. Wille of Colombo, Notary Public.

**Name of Purchaser :—** Emmanuel Joseph Gaspar Casie Chitty aforesaid.

**Amount realised :** Rs. 300/-.

9. All that allotment of land with the buildings thereon bearing assessment No. 5 presently bearing assessment No. 44, Andival Street within the Municipality of Colombo aforesaid, comprising (the premises described in the Title Plan No. 19824 of February 20, 1821 authenticated by G. Schneider, Surveyor General, premises described in Title Plan No. 55961 of December 31, 1861 authenticated by Charles Sim, Esqr., Surveyor General bounded as follows :— on the North by Andival Street on the East by the property of the estate of the late K. Sinniah Pulle bearing assessment No. 2, on the South by the property of the estate of the late K. A. Perera Muhandiram bearing assessment No. 25 Wolfendhal Street and on the West by the property of the late S. T. Muttiah bearing assessment No. 4, containing in extent 5, 44/100 perches, which said premises were held and possessed by the said Marianu Morais under and by virtue of deed No. 857 dated August 22, 1915 attested by G. A. H. Wille of Colombo Notary Public.

**Name of Purchaser :—** Emmanuel Joseph Gaspar Casie Chitty aforesaid.

**Amount realised :—** Rs. 300/-.



D 6  
Order Confirming Sale of Land in District Court, Colombo, Case No. 19984/M 25-1-50 17-2-50  
—Continued

**ORDER CONFIRMING SALE OF LAND**  
**IN THE DISTRICT COURT OF COLOMBO**

Bank of Ceylon.

*Plaintiff.*

No. 19984/M.

*Vs.*

1. ANTHONY LOUIS MORAIS of No. 2, Sea View Avenue, Collpety and another.

*Defendants.*

WHEREAS the undermentioned property was on the 7th day of November, 1949 sold by the Fiscal of the Western Province in execution of the decree in the abovenamed action : and whereas thirty days have elapsed since the receipt of the said Fiscal's report of the said sale and no application has been made to set aside the same:—

It is ordered that the said sale be and the same is hereby confirmed.

**SCHEDULE**

All that house and ground bearing assessment No. 50 presently bearing assessment No. 16 situate at Galpotta Street within the Municipality of Colombo aforesaid; bounded on the North by premises bearing assessment No. 49, formerly belonging to the estate of C. G. Perera now belonging to the estate of the late Marianu Morais, and bequeathed to Lewis Anthony Morais, on the East by premises bearing assessment No. 53 formerly belonging to the estate of C. G. Perera, now belonging to the estate of the late Marianu Morais, and bequeathed to the late Anthony Louis Morais, on the South by premises bearing assessment No. 51 formerly belonging to the estate of C. G. Perera, now belonging to the estate of the late Marianu Morais, and bequeathed to Soosai Ammal Morais, wife of Stephen Corera, and on the West by Galpotta Street; containing in extent 11, 52/100 perches, according to the survey and description thereof No. 304 dated June 27, 1914 made by James W. Amarasakera, Licensed surveyor and Leveller, and which aforesaid premises No. 50 is a divided and defined portion of and from all that property and premises bearing assessment Nos. 49, 50, 51, 52 and 53 and situated at Galpotta Street in Kotahena Ward No. 5 within the Municipality of Colombo aforesaid, and bounded on the North by premises bearing assessment No. 48 belonging to M. H. M. Sulaiman, on the East by land belonging to George de Silva, Muhandiram, on the South by land acquired by the Crown and on the West by Galpotta Street; containing in extent Two roods 24, 98/100 perches which said premises are held and possessed by the said Marianu morais under and by virtue of deed No. 708 dated November 5, 1915, attested by W. E. V. de Rooy of Colombo, Notary Public.

**Name of Purchaser :—** Panadura Acharige Paulis Keerthiratna of Jampettah Street, Colombo.

**Amount realised :** Rs. 2,550/-

Sgd. Illegibly.  
District Judge.

D 6  
Order Confirming Sale of Land in District Court, Colombo, Case No. 19984/M 25-1-50 17-2-50  
—Continued

The 17th day of February 1950.

True copy of Journal entries (27) and (32) and order confirming the sales dated 25. 1. 1950 and 17. 2. 1950.

10

Sgd. ....  
Assistant Secretary  
District Court, Colombo

### D11

#### FISCAL'S CONVEYANCE NO. 20148/1950

D 11  
Fiscal's Conveyance No. 20148/1950 28-4-50

**Office Copy**

No. 20148/1950.

#### FISCAL'S CONVEYANCE TO PURCHASER AFTER CONFIRMATION OF SALE BY COURT

To All to Whom These Presents Shall Come.

#### GREETING

20 WHEREAS BY VIRTUE OF A WRIT OF EXECUTION issued from the District Court of Colombo in Action 19984/M bearing date the 21/25th day of October, 1948 directed to the Fiscal of the Western Province whereby he was directed to levy and make of the houses, lands, goods, debts, and credits of Anthony Louis Morais of No. 2, Sea View Avenue, Colpetty the 1st Defendant in the said case by seizure and if necessary by sale thereof the sum of Rupees Ten thousand Two hundred and Sixty two and Cents Thirteen (Rs. 10262/13) together with interest thereon at 6% per annum from 1st April 1948 till date of decree and thereafter on the aggregate amount of the decree at the rate of 5% per annum till date of payment in full and costs of this action.

30 AND WHEREAS the Deputy Fiscal of the said District of Colombo, Western province did cause to be seized and taken the property hereinafter described in the Schedule hereto, which, after due notice was exposed to public sale on the Seventh day of November 1949 at the premises by Mr. A. H. H. de Silva Fiscal's Auctioneer acting under the Authority of the said Deputy Fiscal and sold to Panadura Acharige Paulis Keerthiratne of Jampettah Street, Colombo hereinafter called the purchaser as the highest bidder at the said sale for the sum of Rupees Two thousand Five hundred and Fifty (Rs. 2550/-).

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Fiscal's  
Conveyance  
No. 20148/1950  
28-4-50  
—Continued

AND WHEREAS the said purchaser has duly paid to the said Deputy Fiscal the whole of the said purchase money and thus become entitled to all the right, title and interest of the said Anthony Louis Morais the 1st defendant in the said property described in the schedule hereto.

AND WHEREAS the said Court by an order dated the seventeenth day of February, 1950 copy of which is annexed to the original hereof has duly confirmed the said sale.

NOW THESE PRESENTS WITNESS that Tilliambalam Thiaga Rajah Esquire the said Deputy Fiscal of the said District of Colombo, Western Province in consideration of the said sum of Rupees Two thousand five hundred and fifty (Rs. 2550/-) so paid by the said purchaser as aforesaid the receipt whereof the said Deputy Fiscal doth hereby acknowledge hath sold and assigned and by these presents doth sell and assign unto the said purchaser, his heirs, executors, administrations and assigns all the right, title and interest of the said Anthony Louis Morais the 1st Defendant, in the said property described in the Schedule hereto.

TO HAVE AND TO HOLD the said premises with their and every of their appurtenances, to him the said purchaser his heirs, executors administrators, and assigns, for ever.

IN WITNESS WHEREOF the said Deputy Fiscal hath hereunto subscribed his name at Colombo this 28th day of April, 1950. Stamps to the value of Rs. 47/- have been affixed to the duplicate and a stamp to the value of Re. 1/- has been affixed to the Original hereof.

Witnesses :

(1) Sgd. Illegibly.

(2) Sgd. Illegibly.

Sgd. T. THIAGA RAJAH  
*Deputy Fiscal, Colombo.*

#### SCHEDULE REFERRED TO

All that house and ground bearing assessment No. 50 presently bearing assessment No. 16 situated at Galpotta Street, within the Municipality of Colombo in the District of Colombo, Western Province bounded on the North by premises bearing assessment No. 49, formerly belonging to the estate of C. G. Perera now belonging to the Estate of the late Marianu Morais, and bequeathed to Lewis Anthony Morais, on the East by premises bearing assessment No. 53 formerly belonging to the estate of C. G. Perera now belonging to the Estate of the late Marianu Morais and bequeathed to the said Lewis Anthony Morais, on the south by premises bearing assessment No. 51 formerly belonging to the estate of C. G. Perera, now belonging to the estate of the late Marianu Morais, and bequeathed to Soosai Ammal Morais, wife of Stephen Corera, and on the West by Galpotta Street; containing in extent 11, 52/100 perches, according to the survey and description thereof No. 304 dated June

27, 1914, made by James W. Amerasekera, Licensed Surveyor and Leveller, and which aforesaid premises No. 50 is a divided and defined portion of and from all that property and premises bearing assessment Nos. 49, 50, 51, 52 and 53 and situated at Galpotta Street in Kotahena Ward No. 5 within the Municipality of Colombo aforesaid; and bounded on the North by premises bearing assessment No. 48 belonging to M. H. M. Sulaiman, on the East by land belonging to George de Silva, Muhandiram, on the South by land acquired by the Crown, and on the West by Galpotta Street; containing to extent two roods 24, 98/100 perches which said premises are held and possessed by the said  
 10 Marianu Morais under and by virtue of deed No. 708 dated November 5, 1915 attested by W. E. V. de Roy of Colombo, Notary Public which said premises have recently been surveyed and described as being bounded on the North by the property of L. A. Moraes bearing Assessment No. 20 formerly No. 49, East by the property of L. A. Moraes bearing assessment No. 53 formerly, South by the property of Soosai Ammal Moraes bearing assessment No. 12 formerly 51, and West by Galpotta Street, containing in extent within these boundaries eleven decimal three four perches (AO. RO. P11. 34) according to the Survey Plan No. 1326 dated 16th March, 1950 made by W. A. L. de Silva, Fiscal's Licensed Surveyor marked "A"  
 20 and annexed to the Original hereof.

D 11  
 Fiscal's  
 Conveyance  
 No. 20148/1950  
 28-4-50  
 —Continued

Witnesses.

- (1) Sgd. Illegibly.
- (2) Sgd. Illegibly.

Sgd. T. THIAGA RAJAH  
*Deputy Fiscal, Colombo.*

True copy of Conveyance No. 20148/1950 —

Sgd. ....

*for Fiscal. W. P.*  
*Colombo, November 28, 1964*

30

**D10**

**FISCAL'S CONVEYANCE NO. 20206/1951**

No. 20206/1951.

D 10  
 Fiscal's Con-  
 veyance No.  
 20206/1951  
 16-8-51

**FISCAL'S CONVEYANCE TO PURCHASER AFTER  
 CONFIRMATION OF SALE BY COURT**

**TO ALL TO WHOM THESE PRESENTS SHALL COME :**

**GREETING**

**WHEREAS** by virtue of Writ of execution issued from the District Court of Colombo in action number 19984/M bearing date the 21/25th day of October, 1948, directed to the Deputy Fiscal of the Western Province, whereby

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Fiscal's Con-  
veyance No.  
20206/1951  
16-8-51  
—Continued

he was directed to levy and make of the houses, lands, goods, debts and credits of Anthony Louis Morais of No. 2, Sea view Avenue, Colpetty, Colombo, the 1st defendant in the said Case by seizure and if necessary by sale thereof the sum of Rupees Ten Thousand Two Hundred and Sixty two and Cents Thirteen (Rs. 10,262/13) together with interest thereon at 6 per centum per annum from April 1, 1948 till date of decree (i.e. September 27, 1948) and thereafter on the aggregate amount of the decree at the rate of 5 per centum per annum till date of payment in full and costs of this action.

And whereas the Deputy Fiscal of the said District did cause to be seized and taken the property hereinafter described in the Schedule hereto which, 10 after due notice, was exposed to public sale on the 7th day of November 1949, at the respective premises by A. H. H. de Silva, Fiscal's Auctioneer, acting under the authority of the said Deputy Fiscal and sold to Emmanuel Joseph Gaspar Casie Chitty of No. 55, Mayfield Road, Kotahena herein-after called the purchaser, as the highest bidder at the said sale for the sum of Rupees 2,200/-; Rs. 2000/-; Rs. 750/-; Rs. 500/-; Rs. 400/-; Rs. 350/-; Rs. 300/- and Rs. 300/- respectively aggregating the sum of Rupees Six Thousand and Eight Hundred.

And whereas the said purchaser has duly paid to the said Deputy Fiscal the whole of the said purchase money, and thus become entitled to all the 20 right, title, and interest of the said 1st defendant in the said property.

And whereas the said Court by an order dated the 25th day of January, 1950, copy of which is hereunto annexed, has duly confirmed the said sale.

Now these presents witness that Abraham Mootatamby Selvaratnam, Esquire, Deputy Fiscal of the said District, in consideration of the said sum of Rupees Six Thousand eight hundred (Rs. 6800/-) so paid by the said purchaser as aforesaid, the receipt whereof the said Deputy Fiscal doth hereby acknowledge, hath sold and assigned, and by these presents doth sell and assign, unto the said purchaser, his heirs, executors, administrators, and assigns, all the right, title and interest of the said 1st defendant in the said 30 property, described in the Schedule hereto.

To have and to hold the said premises with their and every of their appurtenances, to him the said purchaser his heirs, executors, administrators, and assigns, for ever.

In witness whereof the said Deputy Fiscal hath hereunto subscribed his name at Colombo this sixteenth day of August 1951.

Stamps to the value of (Rs. 118/-) Rupees One hundred and Eighteen have been affixed to the duplicate hereof and a stamp to the value of Re. 1/- has been affixed to the original.

Witnesses.

1. Sgd. Illegibly.
2. Sgd. Illegibly.

40

Sgd. A. M. SELVARATNAM.  
Deputy Fiscal, Colombo.

## SCHEDULE REFERRED TO

D 10  
Fiscal's Con-  
veyance No.  
20206/1951  
16-8-51  
— *Continued*

The right title and interest of the 1st defendant in the following property,  
viz:—

1. All that house and ground bearing assessment No. 49, presently bearing assessment No. 20 situated at Galpotta Street within the Municipality of Colombo, in the District of Colombo, Western Province; bounded on the North by premises bearing assessment No. 48, belonging to M. H. M. Sulaiman, on the East by premises bearing assessment No. 53, formerly belonging to the estate of the late Marianu Morais, and bequeathed to Louis Anthony Morais,  
10 on the South by premises bearing assessment No. 50, formerly belonging to the estate of C. G. Perera, now belonging to the estate of the late Marianu Pulle, and bequeathed to the said Lewis Anthony Morais, and on the West by Galpotta Street; containing in extent 14 perches according to the survey and description thereof No. 303 dated June 21, 1914, made by James W. Amerasekera, Licensed Surveyor and Leveller, and which aforesaid premises No. 49 is a divided and defined portion of and from all that property and premises bearing assessment Nos. 49, 50, 51, 52 and 53, and situated at Galpotta Street in Kotahena Ward No. 5, within the Municipality of Colombo aforesaid; and bounded on the North by premises bearing assess-  
20 ment No. 48, belonging to M. H. M. Sulaiman, on the East by land belonging to George de Silva, Muhandiram, on the South by land acquired by the Crown, and on the West by Galpotta Street; containing in extent 2 roods 24, 98/100 perches, which said premises were held and possessed by the said Marianu Morais under and by virtue of deed No. 708 dated November 5, 1915, attested by W. E. V. de Roy of Colombo, Notary Public, which said premises have been recently surveyed and described as being bounded on the North by premises No. 22, East by premises No. 6 & c., South by premises No. 16 and West by Galpotta Street containing in extent within these boundaries fourteen and quarter perches (AO. RO. P14.25) according to Survey Plan No. 1414 dated  
30 27th October, 1950 made by W. A. L. de Silva Fiscal's Licensed Surveyor marked "A" and annexed to the original hereof.

3. All that house and ground bearing assessment No. 53, presently bearing assessment Nos. 2, 6 (6, 10, 12 — 14, 20 — 22, 16 — 19, 23 — 14, 26, 29/31), situated at Galpotta Street, within the Municipality of Colombo aforesaid; bounded on the North by premises bearing assessment No. 48, belonging to M. H. M. Sulaiman, on the East by land belonging to George de Silva, Mudaliyar, on the South by land acquired by the Crown, and on the West by premises bearing assessment Nos. 49, 50, 51, and 52 formerly belong-  
40 ing to the estate of C. G. Perera, now belonging to the estate of the late Marianu Morais, and bequeathed to Lewis Anthony Morais, Soosai Ammal Morais and Mary Ammal Morais, respectively containing in extent, including the passage 1 rood 16, 1/100 perches, according to the survey and description thereof No. 425 dated September 7, 1915 made by James W. Amerasekera, Licensed Surveyor and Leveller, and which premises No. 53 is a divided and defined portion of land from all that property and premises bearing assessment Nos. 49, 50, 51, 52 and 53 and situated at Galpotta Street in Kotahena, Ward No. 5, within the Municipality of Colombo aforesaid; and bounded on the North by premises bearing assessment No. 48 belonging to M. H. M. Sulaiman, on the East by land belonging to George de Silva, Muhandiram, on the South

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Fiscal's Con-  
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—Continued

by land acquired by the Crown and on the West by Galpotta Street containing in extent 2 roods 24, 98/100 perches, which said premises were held and possessed by the said Marianu Morais under and by virtue of Deed No. 708 dated November 5, 1915 attested by W. E. V. de Roy of Colombo, Notary Public; which said premises have recently been surveyed and described as being bounded on the North by premises Nos. 12 and 22, East by premises No. 279 South by premises No. 245 &c. and West by Galpotta Street and premises No. 12, 16 and 20 containing in extent within these boundaries one rood and sixteen perches (AO. R1. P16) according to the survey Plan No. 1412 dated 17th October, 1950 made by W. A. L. De Silva Fiscal's Licensed Surveyor<sup>10</sup> marked "B" and annexed to the original hereof.

4. All that allotment of land with the buildings thereon bearing assessment No. 48 presently bearing assessment No. 165 (1—16) situated at Chekku Street, within the Municipality of Colombo aforesaid, bounded on the North by premises bearing assessment No. 49 of P. Ramanathan, Esquire K. C., on the East by the pavement along the Chekku Street, on the South by premises bearing assessment No. 47, belonging to the Estate of Ramalingam, Shroff, and on the West by premises bearing assessment No. 147 Sea Street, of Ananda K. Coomarasamy, Esquire; containing in extent 22, 75/100 perches, according to the survey plan thereof No. 862 dated October 6, 1910, made by H. G. Dias,<sup>20</sup> Licensed Surveyor and Leveller, which said premises were held and possessed by the said Marianu Morais under and by Virtue of deed No. 857 dated August 22, 1916 attested by G. A. H. Wille of Colombo, Notary Public, which said premises have recently been surveyed and described as being bounded on the North by premises No. belonging to late P. Ramanathan, Esquire, East by Chekku Street, South by premises bearing assessment No. 157 and West by premises bearing assessment No. 147 (Sea Street) containing in extent within these boundaries Twenty Two and Seventy Five Hundredth Perches (AO. RO. P22.75) according to the survey Plan No. 1432 dated 16th November, 1950 made by W. A. L. de Silva, Fiscal's Licensed Surveyor marked "C" and<sup>30</sup> annexed to the original hereof.

5. All the allotment of the land with buildings standing thereon bearing assessment No. 47 and Ward No. 388 presently bearing assessment No. 157 situated at Chekku Street in Pettah within the Municipality of Colombo aforesaid; bounded on the North-East by the property belonging to Kurugal bearing assessment No. 48, on the South-East by Chekku Street, on the South-West by property belonging to Mrs. T. Sanmugam, bearing assessment No. 46, and on the North-West by the property belonging to F. X. Pereira, bearing assessment No. 150, Sea Street, containing in extent 19, 95/100 perches, according to the figure of survey thereof No. 335 dated May 18, 1916 made by<sup>40</sup> S. Sabaratnam, Registered Licensed Surveyor, which said premises have been held and possessed by the said trustees under and by virtue of Deed No. 658 dated June 13, 1921, attested by Leslie Mack of Colombo Notary Public, which said premises have recently been surveyed and described as being bounded on the North by premises bearing assessment No. 165, East by Chekku Street, South by open land and West by premises bearing assessment No. 150, (Sea Street) containing in extent within these boundaries nineteen and ninety five hundredth perches (AO. RO. P19.95) according to the Survey Plan No. 1433 dated 16th November 1950 made by W. A. L de Silva, Fiscal's Licensed Surveyor marked "D" and annexed to the Original hereof.<sup>50</sup>

6. All that house and ground bearing assessment No. 43, (presently bearing assessment No. 44), situated at Brassfounder Street, within the Municipality of Colombo aforesaid; bounded on the North by the property of Pedro Soose Sithambalam Pulle, on the East by the property of Tambo, on the South by the property of Jeromias Morais and on the West by the Brassfounder Street containing in extent 14, 66/100 perches according to the figure of survey thereof dated December 21, 1852, made by C. A. Siegartz Land Surveyor, which said premises were held and possessed by the said Marianu Morais under and by virtue of deed No. 857 dated August 22, 1916 attested by G. A. H. Willie, of Colombo Notary Public, which said premises have recently been surveyed and described as being bounded on the North by the property of Pedro Soose Sithambalam Pulle, East by the property of Tambo, South by premises No. 42 and West by Brassfounder Street containing in extent within these boundaries Fourteen and Forty Six hundredth perches (A0. R0. P14.46) according to the Survey Plan No. 1423 dated 9th November, 1950 made by W. A. L. de Silva, Fiscal's Licensed Surveyor marked "E" and annexed to the original hereof.

7. All that house and ground situated at Brassfounder Street aforesaid, bearing assessment No. 44 presently bearing assessment No. 42 (2—11) and bounded on the North by the house formerly of Armuhettipulle, thereafter of V. Ponnasamy, now premises no. 43, belonging to Casie Visvanathan Kurukkal Thiagarajah Kurukkal, on the East by the garden of Peduru Silva, Domingo Silva and Madachi Silva, now said to belong to S. K. Maharajah, on the South by the house of Christobo Silva Pedro Pulle, now premises No. 45 belonging to Casie Visvanathan Kurukkal Thiagarajah Kurukkal, and on the West by the Brassfounder Street; containing in extent 7, 1/5 perches, according to the figure of survey thereof dated May 7, 1804 authenticated by G. Schneider, Surveyor General, but now found to contain in extent 8, 3/4 perches according to the plan thereof No. 3427 dated March 18, 1914, made by G. P. Weeraratne, Surveyor, which said premises were held and possessed by the said Marianu Morais Under and by virtue of deed No. 857 dated August, 22, 1916 attested by G. A. H. Willie of Colombo, Notary Public which said premises have recently been surveyed and described as being bounded on the North by premises No. 44 East by the garden of S. A. Maharajah, South by premises No. 38 and West by Brassfounder Street containing in extent within these boundaries Eleven and eighty seven hundredth perches (A0. R0. P11.87) according to Survey Plan No. 1424 dated 9th November 1950 made by W. A. L. de Silva, Fiscal's Licensed Surveyor marked "F" and annexed to the original hereof.

8. All that house and ground bearing assessment No. 45, presently No. 38 (1—10), situated at Brassfounder Street within the Municipality of Colombo aforesaid and comprising the following parcels of land which adjoin each other and form one property, to wit :—

(a) all that land and premises thereon situated at Brassfounder Street aforesaid; bounded on the North by the house of Phillip Fernando Abraham



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--Continued

Pulle, on the East by the garden of Peduru Silva Domingo Silva and Mattachi Silva, on the South by the house of Anthony Silva and on the West by Brassfounder Street, containing in extent 6, 77/100 perches, according to the survey dated April 20, 1904 authenticated by the land Surveyor General;

(b) all that portion of land situated towards the East of Brassfounder Street aforesaid; bounded on the North by the other portion of this land belonging to Jeromias Morayus Pulle, on the East by the Garden of Ramasamy Moodeley Kumarappa Moodeley, on the South by the garden of Juan Silva Peduru Silva, and on the West by the garden of Christobo Silva Peduru Pulle; containing in extent, according to the plan dated July 19, 1858<sup>10</sup> by J. R. Zybrangsz, 4, 50/100 perches which said two parcels of land are according to the Plan No. 3427 of March 18, 1914 made by G. P. Weeraratne, Licensed Surveyor, bounded on the North by the premises No. 44, on the East by the property of Tambo by the garden of Pedro Silva Domingo Silva, and Madachi Silva which latter now belongs to S. R. Maharajah, on the South by garden of Juan Peduru Pulle, and by the house of Anthony Silva, now bearing assessment No. 46, and on the West by Brassfounder Street; and containing in extent 14 perches, which said premises were held and possessed by the said Marianu Morais under and by virtue of deed No. 857 dated August 22, 1916, attested by G. A. H. Wille of Colombo Notary Public which<sup>20</sup> said premises have recently been surveyed and described as being bounded on the North by premises No. 42, East by the garden of S. R. Maharajah, South by premises No. 34 and West by Brassfounder Street containing within these boundaries Eleven and eighty hundredth perches only (A0. R0. P11.8) according to the Survey Plan No. 1422 dated 9th November 1950 made by W. A. L de Silva, Fiscal's Licensed Surveyor marked "G" and annexed to the original hereof.

9. All that allotment of land with the buildings thereon bearing assessment No. 44, Andival Street, within the Municipality of Colombo aforesaid, comprising (the premises described in the Title Plan No. 19824 of February<sup>30</sup> 20, 1821 authenticated by G. Schneider, Surveyor General), premises described in Title Plan No. 55961 of December 31, 1861, authenticated by Charles Sim, Esqr., Surveyor General, bounded as follows: on the North by Andival Street, on the East by the property of the estate of the late K. Sinniah Pulle, bearing assessment No. 2, on the South by the property of the estate of the late K. A. Perera, Mohandiram, bearing assessment No. 25, Wolfendhal Street, and on the West by the property of the late S. T. Muttiah, bearing assessment No. 4, containing in extent 5,44/100 perches, which said premises were held and possessed by the said Marianu Morais under and by virtue of deed No. 857 dated August 22, 1915, attested by G. A. H. Wille of Colombo,<sup>40</sup> Notary Public, which said premises have recently been surveyed and described as being bounded on the North by Andival Street, East by premises No. 46 of Abdul Cader Dhawood Bai, South by the property of the estate of late K. A. Perera Muhandiram, and on the West by premises No. 42 of M. Natharasam Chettiyar containing in extent within these boundaries Five and forty

hundredth perches (A0. R0. P05.4) according to the Survey Plan No. 1406 dated 12th October 1950 made by W. A. L. de Silva, Fiscal's Licensed Surveyor marked "H" and annexed to the original hereof.

D 10  
Fiscal's Con-  
veyance No.  
20206, 1951  
16-8-51  
-Continued

Sgd. A. M. SELVARATNAM  
Deputy Fiscal, Colombo.

Witnesses :

1. Sgd. Illegibly.
2. Sgd. Illegibly.

True copy.

10

Sgd. ....  
for Fiscal, Western Province

Fiscal's Office,  
Colombo,  
September, 3, 1963.

## D 9

### FISCAL'S CONVEYANCE NO. 20201/1951

D 9  
Fiscal's Con-  
veyance No.  
20201 1951  
19-7-51

No. 20201/1951.

### Copy

### Fiscal's Conveyance to Purchaser after Confirmation of sale by Court.

20

TO ALL TO WHOM THESE PRESENTS SHALL COME

### GREETING.

Whereas by virtue of Writ of Execution issued from the District Court of Colombo in action No. 9528/S bearing date the 21st day of October 1948 directed to the Deputy Fiscal of the Western Province, whereby he was directed to levy and make of the houses, lands, goods, debts and credits of A. L. Morais of 157, Chekku Street, Colombo, the defendant in the said case by seizure and if necessary by sale thereof the sum of Rupees Fifteen Thousand (Rs. 15,000/-) together with interest thereon at the rate of 5 percentum per annum from 23rd July 1948 till payment in full.

30

AND WHEREAS the Deputy Fiscal of the said District of Colombo Western Province, did cause to be seized and taken the property hereinafter described in the Schedule hereto, which after due notice, was exposed to public sale on the 1st day of December, 1949, at the respective premises by A. H. H. de Silva, Fiscal's Auctioneer acting under the authority of the said Deputy Fiscal and sold to Emmanuel Joseph Gaspar Casie Chitty of No. 55, Mayfield Road, Kotahena, hereinafter called the purchaser, as the highest bidder at the said sale, for the sum of Rupees 300/-; Rs. 2000/-; Rs. 2500/-; Rs. 4500/-; Rs. 2000/-; Rs. 1500/- and Rs. 7000/- respectively aggregating the sum of Rupees Nineteen Thousand Eight Hundred (Rs. 19,800/-).

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—Continued

AND WHEREAS the said purchaser has duly paid to the said Deputy Fiscal the whole of the said purchase money, and thus become entitled to all the right, title, and interest of the said defendant in the said property.

AND WHEREAS the said Court by an order dated the 25th day of January, 1950 copy of which is hereunto annexed, has duly confirmed the said sale.

NOW THESE PRESENTS WITNESS that Abraham Mootatamby Selvaratnam, Esquire, Deputy Fiscal of the said District, in consideration of the said sum of Rupees Nineteen Thousand Eight Hundred (Rs. 19,800/-) so paid by the said purchaser as aforesaid, the receipt whereof the said Deputy Fiscal doth hereby acknowledge, hath sold and assigned, and by these presents doth sell and assign, unto the said purchaser, his heirs, executors, administrators, and assigns, all the right, title and interest of the said defendant in the said property, described in the Schedule hereto.

TO HAVE AND TO HOLD the said premises, with their and every of their appurtenances, to him the said purchaser his heirs, executors, administrators and assigns, for ever.

IN WITNESS WHEREOF the said Deputy Fiscal hath hereunto subscribed his name at Colombo this nineteenth day of July, 1951.

Stamps to the value of Rs. 325/- have been affixed to the duplicate and a stamp to the value of Re. 1/- has been affixed to the original hereof.

Sgd. A. M. SELVARATNAM  
Deputy Fiscal, Colombo.

Witnesses:

1. Sgd. Illegibly.
2. Sgd. Illegibly.

**Schedule referred to :**

The right, title and interest of the defendant in the following property, viz:—

1. All that part of a garden with the building standing thereon bearing assessment No. 11, presently bearing assessment No. 34, situated at St. Lucia's Street, Kotahena, within the Municipality of Colombo, in the District of Colombo, Western Province; bounded on the North by the road, on the East by the property belonging to Salohamy, on the South by the garden of Siriwardene Lama Ettana and on the West by the portion belonging to Francisco Appu; containing in extent 14, 37/100 perches according to figure of survey thereof dated July 6, 1869, and made by G. C. Smith, Surveyor, which said premises were held and possessed by Marianu Morais under and by virtue of deed No. 2019 dated March 1, 1901, attested by J. J. de Fry, Notary Public, which said premises have recently been surveyed and described as

being bounded on the North by St. Lucia's Street, East by the property of Salohamy (assessment No. 36) South by the garden of Siriwardene Lama Ettana and on the West by the property of Francisco Appu containing in extent within these boundaries 12, 50/100 perches (A0. R0. P12, 50/100) according to the Survey Plan No. 1430 dated 16th November, 1950 made by W. A. L. de Silva, Fiscal's Licensed Surveyor marked "A" and annexed to the original hereof.

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5. All that allotment of land within the buildings thereon bearing assessment Nos. 219, 223, 225, 227 (1—3), 231, 233, and 239 situated at Jampettah Street, within the Municipality of Colombo aforesaid; bounded on the North by the properties of Abdul Majeed and others and H. S. Perera, S. Kandasamy, S. R. R. N. S. Chetty and A. P. Cassie Chitty bearing assessment Nos. 162/89, 161/38, 158/36, 158A/37 and 160/37 to 37 A and 183/2 and 182/1, Galpotte Street, on the East by Galpotte Street, on the South by Road reservation (Jampettah Street), and on the West by road reservation (Shoe Makers Lane); containing in extent 1 rood, 7, 95/100 perches according to plan No. 217 dated August, 20, 1924 under the hand of J. M. Blizzard, Municipal Engineer, which said premises have been held and possessed by the said trustees under a Municipal Conveyance dated December 3, 1924, under the hand of H. E. Newnham Esquire, Chairman Municipal Council, Colombo, which said premises have recently been surveyed and described as being bounded on the North by premises No. 10 &c. (Shoe Road) premises No. 5 &c. (Galpotte Street), East by Galpotte Street, South by Jampettah Street, and West by Shoe Road and premises No. 10 &c., (Shoe Road containing in extent within these boundaries 1 rood and 7 perches (A0. R1. P7.) according to the Survey Plan No. 1413 dated 26th October 1950 made by W. A. L. de Silva, Fiscal's Licensed Surveyor and marked "B" and annexed to the original hereof.

6. All that allotment of land with the buildings, trees and plantations thereon, situated in the reservation at Jampettah Street extensions within the Municipality of Colombo aforesaid, bearing assessment Nos. 238/54 to 239/59, presently bearing assessment Nos. 245, 247, 249, 251, 253, 255, 257, 259, 261, 263 (1—3), 265, 267, 269, 271, and 275 Jampettah Street bounded on the North by the property of G. Morais bearing assessment No. 229-237/53, on the East by the property of Mrs. George de Silva bearing assessment No. 2707 B-G/1 B-G on the South by road reservation (Jampettah Street) and on the West by road reservation (Galpotte Street) containing in extent Twenty Three perches and eighty five hundredth of a perch (A0. R0. P23 85/100) according to Plan No. 216 dated the 20th August 1924 under the hand of J. M. Blizzard Esquire, Municipal Engineer which said premises have been held and possessed by the said Trustees under and by virtue of deed No. 932 dated the 28th day of September 1929 attested by P. M. de S. Seneviratne of Colombo, Notary Public, which said premises have recently been surveyed and described as being bounded on the North by premises No. 6 &c. East by premises No. 279, South by Jampettah Street and West by Galpotte Street containing in extent within these boundaries twenty six and quarter perches

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(A0. R0. P26.25) according to Survey Plan No. 1411 dated 17th October 1950 made by W. A. L. de Silva, Fiscal's Licensed Surveyor marked 'C' and annexed to the original hereof.

7. All that allotment of land with the buildings, trees, and plantations thereon, presently bearing assessment Nos. 131, 131 (20—24), 131 (61—63), 131 (64), 131 (62 & 65), 131 (66—81) and 131 (82—87) situated at Jampettah Street, within the Municipality of Colombo aforesaid, comprising the following parcels of land which adjoin each other and which form their situation as respects each other can be included in one survey and forming one property, to wit, (a) all that allotment of land marked letter A with the buildings, trees, and plantations thereon bearing the following assessment Nos. viz:— 31A, 32/24 (1—14), 33/24 (15—19), 24/24 (2—24), 35/24 (25—28), 36/24 (29), 37/24 (30/30A), 38/24 (31—33), 39/24 (32), 40/24, (34/40), 40A/24 (32A), situated at Jampettah Street, within the Municipality and District of Colombo, Western Province, formerly bearing assessment Nos. 24, 25, 26, 27, 28, 29, 30, 31, 32 and 34 being a divided portion of all that allotment of land, formerly bearing assessment Nos. 24, 25, 26, 27, 28, 29, 30, 31, 32 and Nos. 34, 35 and 36, situated at Jampettah Street aforesaid: which said allotment of land marked letter A is bounded on the North by the field of J. H. Jerhard, formerly of Mr. M. Ondatjie, East by the field of Francis Nonis Candappa, formerly of P. F. Paulu Pulle, and by the premises bearing assessment Nos. 41, 42 and 43 of the heirs of the late Mr. John Melho Asarappa, formerly by the property of Peduru Peris Asarappa, on the South by the premises bearing assessment Nos. 37 and 38 of Rawanna Moona Chena Sinna Kannu, premises bearing assessment No. 39 of Peter Benedict Anandappa, and by the premises bearing assessment No. 40 of Anthony Rodrigo, and by the other part of this property marked letter B bearing assessment Nos. 35 and 36, and by Jampettah Street and on the West by the premises bearing assessment Nos. 23 and 23A of Mr. J. H. Jerhard, formerly by the property of M. Ondatjie; containing in extent 1 acre 2 roods 5, 37/100 perches according to the survey No. 777 dated September 2, 1906 made by W. Z. G. Rajapakse, Licensed Surveyor, which said premises have been held and possessed by the said Trustee under and by virtue of Deed No. 570 dated November 21, 1923, attested by P. M. de S. Seneviratne of Colombo, Notary Public.

(b) All that allotment of land marked letter B bearing assessment Nos. 35 and 36, being a divided portion of all that allotment of land bearing assessment Nos. 24, 25, 26, 27, 28, 29, 30, 32 and 34, 35 and 36, Jampettah Street within the Municipality of Colombo aforesaid; bounded on the North and West by the other part of this property marked letter A bearing assessment Nos. 24, 25, 26, 27, 28, 29, 30, 31, 32 and 34, East by the premises bearing assessment Nos. 37 and 38 of Rawanna Moona Chena Sinna Kannu, formerly the property of Anthony Rodrigo, South by Jampettah Street; containing in extent 24, 44/100 perches according to the Survey Plan No. 777A dated September 2, 1909 made by W. Z. G. Rajapakse, Licensed Surveyor, which said premises have been held and possessed by the said Trustees under and by virtue of Deed No. 600 dated March 1, 1924 attested by T. M. D. S. Seneviratne

of Colombo, Notary Public, which said premises have recently been surveyed and described as being bounded on the North by the property of J. H. Jerhard, East by the properties of Francis Nonis Candappa, R. A. Asarappa and premises No. 133, South by Jampettah Street and on the West by premises No. 129 containing in extent within these boundaries 1 acre 2 roods and 38 perches (A1. R2. P38) according to the Survey Plan No. 1415 dated 27th October, 1951 made by W. A. L. de Silva, Fiscal's Licensed Surveyor marked "B" and annexed to the original hereof.

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8. All allotment of land of 3 adjoining portions of a garden with the  
10 buildings standing thereon bearing assessment Nos. 88 and 89 (presently  
bearing assessment Nos. 10 (4—23) 12, 14, 16, 18, 20, 22, 24, 26 and 28) situated  
and lying at Kochchikade within the Municipality of Colombo aforesaid;  
bounded on the North by a house and ground of Ponnambalam Mudaliyar,  
on the East and South by St. Thomas Church Yard, and on the West by Sea  
Street; containing in extent 29, 34/100 perches which said premises are accord-  
ing to survey and description thereof No. 76 dated January 4, 1913, made  
by James W. Amarasekera, Licensed Surveyor and Leveller, described as  
follows, to wit: an allotment of land with the buildings thereon bearing assess-  
ment Nos. 88 and 89 (presently bearing assessment Nos. 10 (4—23), 12, 14,  
20 16, 18, 20, 22, 24, 26 and 28), situated at Kochchikade Street within the  
Municipality of Colombo aforesaid; and bounded on the North by premises  
belonging to Ponnambalam Mudaliyar now Satharam (Hindu Temple), on  
the East and South by St. Thomas Church premises, and on the West by Koch-  
chikade Street containing in extent 33, 64/100 perches, which said premises were  
held and possessed by the said Marianu Morais under and by virtue of Deed  
No. 68 dated May 8, 1913 attested by E. G. Gratiaen of Colombo, Notary Public,  
which said premises have recently been surveyed and described as being bounded  
on the North by Satharam (Hindu Temple), East by St. Thomas Church  
premises, South by St. Thomas Church premises and on the West by Kochchi-  
30 kade Road containing in extent thirty one and quarter perches (A0. R0. P31.25)  
according to the Survey Plan No. 1421 dated 8th November 1950 made by  
W. A. L. de Silva, Fiscal's Licensed Surveyor marked "E" and annexed to the  
Original hereof.

11. All that piece of ground with buildings standing thereon bearing  
assessment No. 50, presently No. G 20 (1—12) and lying at Brassfounder  
Street, within the Municipality of Colombo aforesaid; bounded on the North  
by the property of the late Janchy Pulle Mudaliyar, on the East by the property  
of Dassanayake Mudaliyar, on the South by the property of Franciscoe  
Rodrigo Senapady, now the property of S. T. Muttiah and on the West by  
40 Brassfounder Street containing in extent 11, 77/100 perches, which said pre-  
mises were held and possessed by the said Marianu Morais under and by  
virture of deed No. 1941 dated October 4, 1900 attested by J. J. De Fry of  
Colombo, Notary Public which said premises have recently been surveyed  
and described as being bounded on the North by the property of the late

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Janchy Pulle Mudaliyar (premises No. 24), East by the property of Dassanayaka Mudaliyar, South by the property of S. T. Mutthiah (premises No. 16) and on the West by Brassfounder Street containing in extent 11, 78/100 perches (A0. R0. P11.78) according to the Survey Plan No. 1431 dated 16th November 1950 made by W. A. L. de Silva, Fiscal's Licensed Surveyor marked "F" and annexed to the original hereof.

16. All that lot marked A of the defined portion of the allotment of land called Guaniawatta bearing assessment No. 22 Castle Lane, and No. 37 19th Lane which said lot Marked A, presently bears assessment Nos. 22, 24, 26 and 28 Castle Lane and 33, 35 and 37, 19th Lane, Bambalapitiya, is situated <sup>10</sup> at Bambalapitiya, within the Municipality of Colombo aforesaid and is bounded on the North by the 19th Lane and the Lot B of this property, bearing assessment No. 27 and another portion of this property bearing assessment No. 22, now sold out, on the South by the Castle Lane and on the West by the Railway Line; containing in extent 3 roods 32.09 perches as per plan No. 3409 dated January 6, 1931 made by J. H. W. Smith, Licensed Surveyor which said premises have been held and possessed by the said trustees under and by virtue of Deed No. 1031 dated January 21, 1931 attested by P. M. de S. Seneviratne of Colombo, Notary Public which said premises now bears assessment Nos. 30, 32, 34 and 36 Castle Lane and Nos. 39, 41 and 43 <sup>20</sup> Sagara Road, Bambalapitiya, which said premises have recently been surveyed and described as being bounded on the North by Sagara Road and a portion of the same land bearing assessment No. 37, East by a portion of the same land bearing assessment Nos. 37 and 28, South by Castle Lane and on West by railway reservation containing in extent 3 roods and 25 perches (A0. R3. P25.) according to Survey Plan No. 1434 dated 17th November 1950 made By W. A. L. de Silva, Fiscal's Licensed Surveyor marked "G" and annexed to the original hereof.

Sgd. A. M. SELVARATNAM.  
*Deputy Fiscal, Colombo. 30*

Witnesses :

1. Sgd. Illegibly.
2. Sgd. Illegibly.

True copy of Fiscal's Conveyance No. 20201 of 1951 issued on the 19th day of July 1951.

Sgd. ....  
*for Fiscal, Western Province*

Fiscal's Office,  
Colombo,  
September 7, 1963.

**INTERLOCUTORY ORDER ENTERED IN DISTRICT COURT,  
COLOMBO, CASE NO. 631/Z.**

D 7  
Interlocutory  
Order Entered  
in District Court,  
Colombo,  
Case No. 631/Z-  
12-8-57

**INTERLOCUTORY ORDER**

**IN THE DISTRICT COURT OF COLOMBO**

E. J. C. CASIE CHITTY of No. 232, 4th Cross  
Street, Colombo.

*Plaintiff.*

No. 631/Z.

*Vs.*

10

V. M. LOURDU FERNANDO and 10 others of  
No. 157, Chekku Street, Colombo.

*Defendants.*

In the matter of an application under Section  
325, 326 and 327 of the Civil Procedure Code.

**BETWEEN**

E. J. C. CASIE CHITTY of No. 232, 4th Cross  
Street, Colombo.

*Plaintiff - Petitioner.*

*Vs.*

20

1. V. M. LOURDU FERNANDO of No. 157,  
Chekku Street, Colombo.

2. S. SANGARAPILLAI,

3. P. S. ARUMUGAM,

4. T. KADIRESUPULLAI, all of 157/1, Chekku  
Street, Colombo.

5. S. SIVADANAPILLAI,

6. S. PAKKIAM,

7. S. SUNDARAM,

8. S. KANDI,

30

9. S. LAKSAMI,

10. S. RAJARATNAM,



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12-8-57  
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11. S. SARASWATHIE, all of 157/2, Chekku Street, Colombo.
12. S. MUTTU THEVAR,
13. S. SUNDARA THEVAR,
14. S. SEVENI THEVAR,
15. M. ARIYA THEVAR, all of 157/3, Chekku Street, Colombo.
16. S. PONNASAMY,
17. P. PARAWATHY,
18. P. AMARAWATHIE, 10
19. P. SOMASUNDARAM,
20. P. SUBRAMANIAM,
21. P. SEDARAMAN, all of 157/4, Chekku Street, Colombo.
22. R. PERIYASAMY NADAR,
23. R. RAJAMANY NADAR,
24. R. JEBAGANI AMMAL, all of 157/5, Chekku Street, Colombo.
25. PETER KAGU,
26. DON BOSKO, both of 157/6, Chekku 20 Street, Colombo.
27. P. ANNAMALAI NADAR,
28. PORAMU,
29. VEL Aidan,
30. RAMASAMY, all of 157/7, Chekku Street, Colombo.
31. A. ARUMUGAM NADAR,
32. A. KANAPATHY NADAR,
33. A. KANGIAH NADAR, all of 157/8, Chekku Street, Colombo. 30

34. M. SOKKALINGAM PILLAI,
35. LECHCHAMI,
36. C. MUTTUSAMY, all of 157/9, Chekku Street, Colombo.
37. L. FERNANDO.
38. CUMILIS FERNANDO, both of 157/10, Chekku Street, Colombo.
39. S. KUTTIAAPPA.
40. SITI UMMA,
41. M. PATHUMMA,
42. KAMSU HAMEED,
43. SUBURUVAN, all of 157/11, Chekku Street, Colombo.
44. S. SUBRAMANIAM,
45. V. RAMMAL,
46. S. SOMASUNDARAM, all of 157/12, Chekku Street, Colombo.
47. K. PERIAIYAH,
48. V. PUNCHAVARANAM,
49. R. VALLIAMMAH,
50. P. THIAGARAJAH, all of 157/13, Chekku Street, Colombo.
51. M. UMMA,
52. KATISA UMMA,
53. NAGURU AMMA, all of 157/14, Chekku Street, Colombo.
54. V. SIVADAM PILLAI,
55. S. KARUPPAI,
56. V. KALIAMMA,

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Interlocutory  
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57. V. KOTTAMMAL,
58. S. VAIRAVAN,
59. S. CHANDRA,
60. S. ARUMUGAM,
61. C. S. SIVADANAM,
62. R. MANIKKAM,
63. S. RAMU, all of 157/15, Chekku Street,  
Colombo.
64. K. KANAPADI PULLE
65. K. GNANARATNAM, 10
66. SUMITRARATNAM, all of 157/19, Chekku  
Street, Colombo.

*Respondents*

Whereas the plaintiff-Petitioner filed this action against the 1st defendant and nine others for the cancellation of the lease and ejectment in respect of premises No. 157, Chekku Street, Colombo but the action was withdrawn against the said nine other defendants.

2. And Whereas the learned District Judge entered judgment on the 25th day of June 1957 in favour of the Plaintiff-Petitioner against the 1st Respondent as prayed for by the plaintiff. 20

3. And Whereas on 19th July 1957, the plaintiff took out writ of possession to cause the plaintiff to have possession of the house and premises by ejecting the 1st respondent or any other person or persons occupying the same on the 1st defendant's behalf.

4. Whereas on or about 20th July 1957 the Fiscal went to deliver possession of the said property by virtue of the writ of possession but the Fiscal was unable to execute the above writ of possession as the 2nd to 66th Respondents at the instigation of the 1st Respondent resisted and obstructed the Fiscal from handing over possession of the said premises in terms of the judgment of this Court. 30

5. And Whereas constructive possession was thereafter was given to the petitioner by the Fiscal under Section 324 of the Civil Procedure Code.

6. And Whereas the 2nd to 66th Respondents are bound by the Decree of Ejectment entered in this case by the Court and the said respondents have no right whatsoever to be in the said premises and they are in unlawful occupation of the said premises as against the Plaintiff-Petitioner.

7. And Whereas the 2nd to 66th Respondents abovenamed who have resisted and obstructed the said Fiscal have no claim to be in possession of the said property whether on their own account or on account of any other person having title and the alleged claim to be in possession of the said property is frivolous and vexatious under the provisions of the Civil Procedure Code and the Plaintiff-Petitioner is entitled to the order of possession against the said respondents.

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Interlocutory  
Order Entered  
in District Court,  
Colombo,  
Case No. 631/Z  
12-8-57  
--Continued

8. And Whereas on the 12th day of August 1957, the plaintiff-petitioner by a petition supported by an affidavit of the plaintiff's agent that the 2nd to 66th respondents abovenamed resisted and obstructed the Fiscal from having over possession of the said premises No. 157, Chekku Street, Colombo in terms of the Judgment of this Court prayed that the said Respondents abovenamed be dealt with under section 326 and 327 of the Civil Procedure Code and that the plaintiff-petitioner be placed in possession of the said premises No. 157, Chekku Street, Colombo.

This matter coming on for disposal before M. I. M. Kariapper Esquire District Judge of Colombo on the 12th day of August 1957 after reading the petition of the Plaintiff-Petitioner and the affidavit of the Plaintiff's agent.

It is ordered and decreed that the 20th day of September 1957 be and the same is hereby appointed for determination of the matter in the said Petition contained and the said respondents be heard in opposition to the prayer in the said Petition if they appear on the said day before this Court.

This 12th day of August 1957.

Drawn by me.

Sgd. J. B. EDIRIMANASINGHE  
*Proctor for Plaintiff.*

Sgd. M. I. M. KARIAPPER,  
*Additional District Judge.*

The date for showing cause is extended to the 25th day of October 1957.

Sgd. W. THALGODAPITIYA,  
*District Judge.*

The 20th day of September 1957.

The date for showing cause is extended to the 18th day of October 1957.

Sgd. W. THALGODAPITIYA,  
*District Judge.*

The 10th day of October 1957.

The date for showing cause is extended to the 8th day of November 1957.

Sgd. W. THALGODAPITIYA,  
*District Judge.*

The 18th day of October 1957.

**ORDER IN DISTRICT COURT, COLOMBO**

**CASE NO. 631/Z**

**D. C. 631/Z.**

18-12-57.

MR. A. M. CHARAVANAMUTTU instructed  
for *Plaintiff-Petitioner*.

MR. ARULANANDAM instructed for 2nd  
*Respondent*.

MR. SOMASUNDARAM instructed for 5, 6, 16, 17, 25, 34, 37, 51, 52, 54 and 55 *Respondents*.

MR. CHELLAPPAH instructed for 39, 40, 41, 44, 45, 46, 47 and 48 *Respondents*.

Of consent, Interlocutory order to be made absolute against the respondents who are represented by counsel today. It is agreed that the respondents represented by Counsel can continue in occupation of the portions occupied by them at present, provided the 2nd respondent pays a sum of Rs. 200/- a month as damages on or before the 15th day of each month commencing from 15th January 1958. If so paid, writ of ejectment not to be executed till 31st December 1958. In default of any one payment, writ of ejectment to issue as 20 against all respondents.

Mr. Chellappah wishes it to be recorded that the 39th, 44th, and 47th respondents will each pay a sum of Rs. 20/- a month to the 2nd respondent as damages to the 2nd respondent who is under the liability to pay the damages to the plaintiff. He states that these sums would be paid on behalf of all the respondents represented by Mr. Pathmanathan. It is agreed that these payments do not affect the plaintiff, who is entitled to look for payment to the 2nd respondent only.

Respondents agree not to introduce any new sub tenants to the premises. Plaintiff agrees, in the event of any portion being vacated thereafter, not to 30 rent out any such portion until 31st December 1958.

Interlocutory order is also made absolute against all respondents on whom the order has been served but who are not represented by Proctor or counsel today, as all of them are absent.

Sgd. V. SIVA SUPRAMANIAM,  
*Additional District Judge.*  
18-12-57.

**PETITION OF JOSEPHINE MARY ALOYSIA MORAIS NEE  
VICTORIA FILED IN DISTRICT COURT, COLOMBO,  
CASE NO. 20494/T.**

D 2  
Petition of  
Josephine Mary  
Aloysia Morais,  
nee Victoria filed  
in District Court,  
Colombo, Case  
No. 20494/T-  
19-6-62

**IN THE DISTRICT COURT OF COLOMBO**

In the matter of the Last Will and Testa-  
ment of Anthony Louis Morais of No. 2,  
Sea View Avenue, Colpetty, Colombo.

(Deceased)

10 And in the matter of the Civil Procedure  
Code Chapter XXXVIII of 1880.

No. 20494/T  
Testamentary  
Jurisdiction.  
Value. Rs. 187,661/75.

JOSEPHINE MARY ALOYSIA MORAIS *Nee*  
VICTORIA — widow of the late ANTHONY LOUIS  
MORAIS of No. 23/2, Lauries Road, Bambala-  
pitiya, Colombo.

20 *Petitioner.*

This 19th day of June, 1962.

The petition of the petitioner abovenamed appearing by Mr. S. Kanaga-  
rajah her Proctor states as follows:—

1. The abovenamed Anthony Louis Morais died at 23/2, Lauries Road,  
Bambalapitiya, Colombo in the Island of Ceylon within the jurisdiction of  
this Court on 2nd September 1958, having made and duly executed his Last  
Will and Testament No. 1454 dated 4th July 1947 attested by P. S. P.  
Kalpage of Colombo aforesaid Notary Public, whereby he appointed the  
petitioner abovenamed the executrix of his Last Will and sole heiress. Had  
30 he died intestate, she would be the intestate heir. The original of the said  
Last Will and Testament is filed herewith marked "A". The certificate of  
death is also filed herewith marked "B".

2. The property estate and effects in Ceylon to which the said deceased  
was entitled at the date of his death so far as the petitioner has been able  
to ascertain consists of :

**Movables :**

			Rs. Cts.
(a)	Amount lying in the Bank of Ceylon	..	329.00
(b)	Amount due on Insurance Policy No. 206187	..	2582.75

D 2  
Petition of  
Josephine Mary  
Aloysia Morais  
nee Victoria filed  
in District Court,  
Colombo, Case  
No. 20494/T-  
19-6-62  
—Continued

**Immovables :**

	Rs. Cts.
(a) Premises No. G. 20 (1—12), Brassfounder Street, Colombo of the value of .. .. .	10,000.00
(b) Premises No. 20, Galpotte Street, Colombo. ..	7,000.00
(c) Premises Nos. 2, 6 etc., Galpotte Street, Colombo. ..	20,000.00
(d) Premises No. 165 (1—16) & 167, Chekku Street, Colombo. .. .. .	20,000.00
(e) Premises No. 157, Chekku Street, Colombo. ..	10,000.00
(f) Premises No. 44, Brassfounder Street, Colombo. ..	10,000.00 10
(g) Premises No. 38 (1—10), Brassfounder Street, Colombo.	10,000.00
(h) Premises No. 42 (2—11), Brassfounder Street, Colombo.	10,000.00
(i) Premises No. 44, Andival Street, Colombo. ..	10,000.00
(j) Premises No. 34, Lucias Street, Colombo. .. ..	6,000.00
(k) Premises Nos. 219, 223, 225, 227 (1—3), 231, 233, and 239, Jampettah Street, Colombo. ..	30,000.00
(l) Premises Nos. 245, 247, 249, 251, 253 to 263, Jampettah Street, Colombo. ..	10,000.00
(m) Premises No. 131 etc., Jampettah Street, Colombo. ..	25,000.00
(n) Premises Nos. 10, 12 to 28, Kochchikade, Colombo. ..	25,000.00 20
(o) Premises No. 16, Galpotte Street, Colombo. ..	5,000.00
(p) Premises Nos. 3 and 4, Main Street, Ruwanwella. ..	10,000.00
	220,911.75
Less Funeral expenses. .. .. .	1,500.00
Less Amount to creditors. .. .. .	6,750.00
Less amount due to me the executrix. .. .. .	25,000.00
	187,661.75

3. The petitioner claims as executrix named in the said will of the said deceased and apprehends no opposition to her application for a grant of probate in her favour.

30

Wherefore the petitioner prays :—

(a) for an order declaring the Last Will and testament of the said Anthony Louis Morais deceased, proved that the petitioner is the executrix named therein and that as such probate thereof be issued to her accordingly,

(b) and for such further or other relief in the premises as to this Court shall seem meet.

Sgd. S. KANAGARAJAH.  
Proctor for Petitioner.

**ORDER NISI IN DISTRICT COURT, COLOMBO,  
CASE NO. 20494/T**

D 3  
Order Nisi  
in District Court,  
Colombo,  
Case No.  
20494/T—  
21-6-62

**ORDER NISI DECLARING WILL PROVED &c.**

**IN THE DISTRICT COURT OF COLOMBO**

JOSEPHINE MARY ALOYSIA MORAIS *Nee*  
VICTORIA of No. 23/2, Lauries Road, Bam-  
balapitiya, Colombo.

*Petitioner.*

10 Testamentary }  
Jurisdiction } No. 20494.

In the matter of the Estate of the late Anthony  
Louis Morais deceased of No. 2, Sea View  
Avenue, Colpetty, Colombo.

This matter coming on for disposal before V. T. Pandita Gunawardene,  
Esquire, Additional District Judge, Colombo on the 21st day of June, 1962  
in the presence of Mr. S. Kanagarajah, proctor on the part of the petitioner  
and the affidavit of the abovementioned petitioner dated 19th June, 1962  
20 having been read :—

It is ordered that the Will of Anthony Louis Morais deceased dated 4th  
day of July, 1947 and numbered 1454 be and the same is hereby declared  
proved unless any person or persons interested shall on or before the 6th  
day of September, 1962 show sufficient cause to the satisfaction of this Court  
to the contrary.

It is further ordered that the said Josephine Mary Aloysia Morais *Nee*  
Victoria is the Executrix named in the said Will and that she is entitled to  
have Probate of the same issued to her accordingly, unless any person or  
persons interested shall on or before the 6th day of September, 1962 show  
30 sufficient cause to the satisfaction of this Court to the contrary.

This 21st day of June, 1962.

Sgd. P. A. DE S. SENARATNE.  
*Additional District Judge.*



P 38  
 Petition of Mrs.  
 Francisca  
 Victoria  
*nee* Morais  
 (Intervient-  
 Petitioner) in  
 District Court,  
 Colombo, Case  
 No. 20494/T—  
 6-9-62

P 38

**PETITION OF MRS. FRANCISCA VICTORIA *NEE* MORAIS  
 (INTERVENIENT-PETITIONER), IN CASE NO. 20494/T**

IN THE DISTRICT COURT OF COLOMBO

In the matter of the Last Will and Testament  
 of Anthony Louis Moraes of No. 2, Sea View Avenue, Colpetty, Colombo.

(Deceased)

And in the matter of the Civil Procedure  
 Code Chapter XXXVIII of 1889.

No. 20494.  
 Testamentary,  
 Jurisdiction  
 Value. 187661/75.

10

JOSEPHINE MARY ALOYSIA MORIAS *Nee*  
 VICTORIA — widow of the late ANTHONY  
 LOUIS MORAIS of No. 23/2, Lauries Road,  
 Bambalapitiya, Colombo.

*Petitioner.*

MRS. FRANCISCA VICTORIA *Nee* MORAIS of  
 267/2, Galle Road, Bambalapitiya, Colombo. 20

*Intervient—Petitioner.*

This 6th day of September, 1962.

The Petition of the Intervient-Petitioner abovenamed appearing by  
 Milroy Fonseka her Proctor states as follows :—

1. The Intervient abovenamed is the lawful daughter of Anthony  
 Louis Moraes the deceased abovenamed by his first wife the late, Pancras  
 Carvallo.

2. The Intervient admits the averments in the Petitioner's petition  
 dated the 19th June 1962 that the deceased abovenamed died on the 2nd  
 September, 1958 leaving the Last Will and Testament referred to above but <sup>30</sup>  
 denies that had he died intestate the Petitioner would be the intestate heir.  
 The Intervient states that had the deceased died intestate the heirs would  
 have been the Petitioner and the Intervient. The Petitioner has wrongly  
 failed and neglected to disclose the Intervient as an intestate heir or to  
 make her Respondent.

3. With reference to paragraph 2 of the petition, the Intervient states  
 that the immoveable properties set out in paragraph 2 thereof do not form part  
 of the estate of the deceased but belong to the Intervient. The Intervient

became owner of the said properties upon the death of Anthony Louis Morais the father of the deceased abovenamed bearing No. 1080 dated the 8th September, 1917 and attested by G. A. H. Wille Notary Public and admitted to properties in testamentary proceedings No. 6237 of this Court and Deed No. 1208 dated the 21st September 1933 and attested by P. N. Seneviratne, Notary Public.

P 38  
Petition of Mrs.  
Francisca  
Victoria  
*nee* Morais  
(Intervient-  
Petitioner) in  
District Court,  
Colombo, Case  
No. 20494/T—  
6-9-62  
—Continued

4. The Petitioner without any manner of right or title thereto has been in wrongful and unlawful occupation of the said immoveable properties belonging to the Intervient since the date of the death of the said Anthony  
10 Louis Morais and has made this belated application for probate of the said Last Will for the purpose of lending colour and support to the wrongful possession.

5. The Intervient does not object to the grant of probate to the Petitioner as the Intervient does not dispute the validity of the said Last Will as properties other than the immoveable properties referred to above have been disclosed as belonging to the estate of the deceased. The Intervient states that she has already filed action No. 9929/L in the District Court of Colombo to vindicate title to properties referred to as item A and K of the petition and reserves her right to make an application in these proceedings  
20 to have the immoveable properties referred to in paragraph 2 of the petition excluded from the proceedings and or to institute separate actions to vindicate title to the other immoveable properties other than items A and K referred to in paragraph 2 of the petition.

6. The Intervient denies the correctness of the averment in paragraph 2 of the Petition relating to the debts of the deceased and the valuation of this immovable properties set out.

7. The Administrator in these proceedings of the said immoveable property belonging to the Intervient as belonging to the estate of the deceased would cause great loss and prejudice to the Intervient.

30 Wherefore the Petitioner prays :—

- (a) that probate be granted to the Petitioner without prejudice to the Intervient's right set out above.
- (b) for costs.
- (c) for such other and further relief as to this Court shall seem meet.

Sgd. M. FONSEKA,  
*Proctor for  
Petitioner—Intervient.*

Settled by  
C. RENGANATHAN.

## D 4 &amp; D 4A

**JOURNAL ENTRIES IN DISTRICT COURT,  
COLOMBO, CASE NO. 20494/T.**

(SAME AS P39)

(D 4)

## IN THE DISTRICT COURT OF COLOMBO

In the matter of the Last Will and Testament  
of Anthony Louis Morais of No. 2, Sea  
View Avenue, Colpetty, Colombo.

(Deceased)

10

Testamentary  
Jurisdiction  
No. 20494.

And in the matter of the Civil Procedure  
Code Chapter XXXVIII of 1889.

JOSEPHINE MARY ALOYSIA MORAIS *Nee*  
VICTORIA — widow of the late ANTHONY LOUIS  
MORAIS of No. 23/2, Lauries Road, Bambala-  
pitiya, Colombo.

*Petitioner.* 20

\* \* \* \* \*

(6)

6-9-62. (1) Proof of Publications — filed.

(2) No respondents to this application. Enter Order Absolute.

(3) Await Certificate for 21-3-63.

Sgd. V. T. PANDITA GUNAWARDENE,  
*Additional District Judge.*

(D 4A)

(7)

10-9-62. Proctor for Intervenant-Petitioner Mr. H. J. H. M. Fonseka,  
Proctor S. C. files his appointment together with petition and 30  
affidavit and for the reasons stated therein moves that the Intervenant  
be added as an added Intervenant-Respondent as per motion.  
Proctor for Petitioner received notice.

1. File.
2. Mention on 22-11-62.
3. Call Case on 22-11-62.

D 4 & D 4A  
Journal Entries  
in District Court,  
Colombo, Case  
No. 20494/T-  
-Continued

Intld. V.T.P.  
*Additional District Judge.*

(8)  
22-11-62. Case called Vide Journal Entry (7)  
Vide proceedings (8)  
Call 21/3.

10

Intld. V.T.P.  
*Additional District Judge.*

22-11-62

Mr. Arulanandam instructed for Petitioner.

Mr. Fonseka who appears for the person who seeks to intervene states he has no objection to probate being issued to the Petitioner subject to the rights of his client. As an intestate heir he states the party intervening can intervene and be made a party respondent.

In answer to me, he states he cannot point to any provision of law by which he can be made a party to the action.

20 I also see no provision under which he can be made a party to these proceedings. If it is said that the Interveniend has rights to these properties on his own, it is left for him to have recourse to his legal remedies.

Application to make the Interveniend a party to the action is dismissed.

Call on 21-3-63.

Sgd. V. T. PANDITA GUNAWARDENA,  
*Additional District Judge.*  
22-11-62.

D 12

**JOURNAL ENTRIES IN DISTRICT COURT, COLOMBO,  
CASE NO. 9929/L.**

D 12  
Journal Entries  
in District Court,  
Colombo, Case  
No. 9929/L—

30

IN THE DISTRICT COURT OF COLOMBO.

No. 9929/L.  
Class : II  
Amount : Rs. 136, 875/— and Damages.  
Nature : Land.  
Procedure : Regular.

MRS. FRANCISCA VICTORIA *Nee* MORAIS.  
*Plaintiff.*  
*Vs.*

JOSEPHINE MARY ALOYSIUS MORAIS  
*Defendant.*

JOURNAL

(1)

The 23rd/25th day of July, 1962.

Mr. H. J. H. M. Fonseka, Proctor files appointment (a) and  
Plaint, (b). Supply deficient Stamps and move. 10

Sgd. S. R. WIJAYATILLAKE,  
*Additional District Judge.*  
20-7-1962.

(2)

3/4-8-62. With reference to the order of Court dated 30-7-62 Proctor for  
Plaintiff tenders stamps to the value of Rs. 18/- being deficiency  
and moves for Summons on the Defendant. Plaint accepted and  
Summons ordered for 17-9-62.

Sgd. PERCY A. SENARATNE,  
*Additional District Judge.* 20  
9-8-62.

(3)

16-8-62.

Summons on Defendant issued.

Sgd. Illegibly.

(4)

17-9-62.

Mr. Milroy Fonseka for Plaintiff. Summons served on Defendant  
on being pointed out. His proxy filed by Mr. S. Kanagarajah.

Answer on 29-10-62. 30

(5)

29-10-62.

Mr. S. Kanagarajah for Defendant. Answer due on 17-12-62.

Sgd. Illegible.

(6)

17-12-62. Vide Journal Entry (5)  
Answer due — filed.  
Trial on 24.5.63.

Sgd. Illegible.

(7)  
18/20-5-63.

Proctor for plaintiff with notice to Proctor for Defendant files Plaintiff's lists of witnesses and documents and moves for Summons.

1. File.
2. No time to cite witnesses.

Sgd. Illegibly.  
*Additional District Judge.*  
20-5-63.

10 (8)  
24-5-63.

Mr. Milroy Fonseka for Plaintiff.  
Mr. S. Kanagarajah for Defendant.  
Vide Journal Entry (6) Trial.  
Defendant reported ill.  
Vide Medical report. Proctor for defendant moves for date.

Mr. A. N. Weeramantry with Mr. Advocate H. V. E. Cooray for Defendant — consents on terms to a date.

20 Of consent, Trial on 11-9-63. Defendant to pay Plaintiff Rs. 420/- as costs.

Sgd. Illegibly.

(9)  
27-8-63.

Mr. S. Kanagarajah for Defendant files list of witnesses with notice to Proctor for Defendant, and moves for Summons. Proctor for Defendant objects with regard to witnesses No. 3, 4, and 7 as the particulars are insufficient.

Cite witnesses subject to any objection.

30

Sgd. N. M. J. RAJENDRAM.  
*Additional District Judge.*  
27-8-63.

(10)  
30-8-1963.

2 Subponeas issued by Defendant.

Sgd. Illegible.

(11)  
9-9-63.

Proctor for Plaintiff with notice to Proctor for Defendant moves to file additional list of documents and witnesses and moves for

D 12  
Journal Entries  
in District Court,  
Colombo, Case  
No. 9929/L -  
—Continued

Summons. He states that he will have the Summons served by Special Process server.

1. File.
2. Issue Summons.

Sgd. N. M. J. RAJENDRAM,  
*Additional District Judge.*  
9-9-63.

(12)  
9-9-1963.

6 Subpoenas issued by Plaintiff.

10

Sgd. Illegible.

(13)  
11-9-63.

Mr. Milroy Fonseka for Plaintiff.  
Mr. S. Kanagarajah for Defendant.  
Vide Journal Entry (8).

Mr. Renganathan with Mr. Weeramantry for Defendant.  
Trial 27/2-64.

Sgd. N. M. J. RAJENDRAM,  
11-9-63.

20

(14)  
17/18-2-64.

Proctor for Plaintiff moves to file additional list of witnesses and documents. Proctor for Defendant objects.

File.

Sgd. N. M. J. RAJENDRAM,  
*Additional District Judge.*  
18-2-64.

(15)  
20-9-1964.

6 Subpoenas issued by plaintiff.

30

Sgd. Illegible.

(16)  
22/25-2-64.

Reference Summons served on the Municipal Engineer, he requests that the party may be requested to sepecificy the premises number and the name of street and the particular documents required and to obtain certified copies of same.

Proctor for Plaintiff for steps.

*Additional District Judge.* 40  
25-2-64.

(17)  
27-2-64.Mr. Milroy Fonseka for Plaintiff.  
S. Kanagarajah for Defendant.  
Vide Journal Entry (13).Trial  
Vide proceedings.  
Trial 19/7/64, specially fixed.

Sgd. N. M. J. RAJENDRAM,

10 (17a)

Proceedings filed.

Sgd. Illegibly.

3-3-64.

(18)  
17/18-6-64.Proctor for Plaintiff tenders Interrogatories for examination of  
the Defendant and moves to order that the same be issued through  
Court for service on Defendant's Proctor.

Furnish deficiency and move.

20

Sgd. S. THAMBY DURAI,  
*Additional District Judge.*  
18-6-64.

Stamp deficiency due.

(19)  
19-6-64.Proctor for Plaintiff tenders stamps for Rs. 40/- being deficiency  
due and moves that his application at 17-6-62 (Journal Entry 18)  
be granted.

30

1. Cancel stamps and take into account.
2. Application at (18) allowed. Issue interrogatories to be  
served on Defendant's Proctor.
3. Answer to interrogatories to be by affidavit to be filed within  
10 days of service thereof.

Sgd. S. THAMBY DURAI  
*Additional District Judge.*  
19-6-64.(20)  
23-6-1964.

Interrogatories issued on Proctor for Defendant.



D 13  
 Plaintiff of the  
 Plaintiff in  
 District Court,  
 Colombo, Case  
 No. 9929/L—  
 15-7-62  
 —Continued

### For a First Cause of Action

2. Under and by virtue of Deed No. 1941 dated the 4th October 1900 and attested by J. J. de Fry Notary Public of Colombo one Mariam Morais deceased was the owner of the lands and premises bearing assessment No. 50 and presently bearing assessment No. G. 20 (1—12) Brassfounder Street in Colombo which said land and premises is more fully described in the Schedule "A" hereto.

3. The said Mariam Morias was the owner of moveable and other immoveable property.

4. The said Mariam Morais died on the 3rd day of February 1918 10 leaving a Last Will executed by him bearing No. 1080 dated the 8th day of September 1917 and attested by G. A. Wille Notary Public by which the said Mariam Morais appointed and constituted Maria Joseph Carvalho, Bernard Miranda and Stephen Corera the Executors and Trustees of his said Last Will.

5. The said Last Will was admitted to probate in testamentary proceedings No. 6237 of this Court and Probate was issued to the said Executors.

6. By the said Last Will the Testator Mariam Morais having made certain specific bequests of moveable and immoveable property devised and bequeathed all the rest and residue of his real and immoveable; personal 20 movable property estate effects whether in possession expectancy reversion or remainder or otherwise including the property described in Schedule "A" hereto unto the said Three Trustees upon inter alia the following trusts namely,

(a) to convey the immoveable property belonging to the said Trust Estate which included the land and premises described in Schedule "A" hereto unto his son Lewis Anthony Morias on his attaining the age of Thirty Five years on twenty-fifth day of July, One thousand Nine hundred and Thirty three, subject to the conditions that is to say "that the said Lewis Anthony Morais shall in no wise sell mortgage or otherwise alienate or encumber the said properties and premises hereby conveyed or any portion thereof 30 but shall only have possess and enjoy the rents issues and profits arising and accruing therefrom during the term of his natural life and that at his death the said properties and premises shall devolve on his lawful son or sons only (if more than one, in equal shares) absolutely but if there be no lawful son surviving him at his death then and in that event the same shall devolve on his lawful daughter or daughters (if more than one, in equal shares) absolutely the lawful issues of a deceased son or daughter taking the share to which his, her or their parent would have become entitled to if living."

(b) Upon Trust to sell and convert into money such of the said immoveable properties belongs to this Trust Estate as his said Trustees shall in the 40 absolute discretion think advisable or expedient to sell by reason of the said properties not giving a fair or reasonable rent income or return therefrom and from the proceeds of the sale thereof to purchase other immoveable property

or properties and any such immoveable property or properties purchased as aforesaid shall form part of this Trust Estate and be subject to the same Trust as are herein expressed and contained.

D 13  
Plaint of the  
Plaintiff in  
District Court,  
Colombo, Case  
No. 9929/L—  
15-7-62  
—Continued

7. In terms of the said Last Will and Testament No. 1080 and in the exercise of the powers conferred on them thereby the said Three Trustees Maria Joseph Carwalho, Bernard Miranda and Stephen Corera by Deed No. 1208 dated the 21st September 1933 and attested by P. M. Seneviratne Notary Public granted conveyed and assigned transferred and set over unto the said Lewis Anthony Morais inter alia the land and premises described in the  
10 Schedule "S" hereto subject to the following reservations and restrictions that is to say that the said Lewis Anthony Morias shall in no wise sell mortgage or otherwise alienate or encumber the said properties and premises hereby conveyed or any portion thereof but shall only have possess and enjoy the rents issues and profits arising and accruing therefrom during the term of his natural life and that at his death the said properties and premises shall devolve on his lawful son or sons only (if more than one, in equal shares) absolutely but if there be no lawful son surviving him at his death then and in that event the same shall devolve on his lawful daughter (if more than one, in  
20 equal shares) absolutely the lawful issue of a deceased son or daughter taking the share to which his, her or their parent would have become entitled to if living.

8. The said Lewis Anthony Morais had two children a daughter the Plaintiff and a son Maria Xavier Morais who died on the 14th August 1933 without leaving any issue. The said Lewis Anthony Morais died on the 2nd day of September 1958 leaving an only surviving child the Plaintiff.

9. Upon the death of the said Lewis Anthony Morias the Plaintiff abovenamed became the owner of the land and premises described in Schedule "A" hereto.

10. Since the date of the death of the said Lewis Anthony Morais the  
30 Defendant abovenamed who is widow has been in wrongful and unlawful possession of the said land and premises without any manner of right or title and has been disputing the Plaintiff's title thereto.

11. By reason of the wrongful and unlawful possession of the said lands and premises the Plaintiff has sustained damages at Rs. 180/- per month aggregating to Rs. 8,340/- and is continuing to sustain damages at the said rate.

12. A cause of action has therefore accrued to the Plaintiff to sue the Defendant (a) for a declaration of title to the said land premises more fully described in the Schedule "A" hereto, (b) for ejectment of the Defendant from the said premises more fully described in Schedule "A" hereto, (c) for the  
40 recovery of the sum of Rs. 8,340/- from the 2nd day of September 1958 to date hereof and for the recovery of continuing damages at Rs. 180/- per month from date hereof till date of delivery of the said land and premises more fully described in Schedule "A" hereto to the Plaintiff.

D. 13  
 Plaintiff of the  
 District Court,  
 Colombo, Case  
 No. 9929/L--  
 15-7-62  
 --Continued

### WHEREFORE THE PLAINTIFF PRAYS

(a) that the Plaintiff be declared entitled to the said land and premises described in the Schedule "A" and Schedule "B" to the plaint.

(b) that the Defendant be ejected from the land and premises described in the schedules to the plaint and that delivery of possession of same be given to the Plaintiff.

(c) for the recovery of Rs. 26,875/- as accrued damages from the 2nd day of September 1958 to date hereof and continuing damages at Rs.580/- per month till delivery of possession of the said land and premises more fully described in the said Schedule to the Plaintiff with interest in the aggregate amount of the decree at 5 per centum per annum commencing from the date of the decree to date of payment in full.

(d) for costs and

(e) for such other and further relief as to this Court shall seem meet.

Sgd. Illegible.  
*Proctor for Plaintiff.*

### THE SCHEDULE REFERRED TO "A" ABOVE

All that piece of ground with the buildings standing thereon bearing assessment No. 50 presently bearing assessment No. G 20 (1—12) and lying at Brassfounder Street within the Municipality and District of Colombo Western Province bounded on North by the property of the late Janchy Pulle Mudliyar, on the East by the property of the Dassanayake Mudaliyar, on the South by the property of Francisco Rodrigo Senapathy and on the West by Brassfounder Street containing in extent Eleven and Seventy seven One hundredths of a Perch (A0. R0. P11.70).

### THE SCHEDULE REFERRED TO "B" ABOVE

All that allotment of land with the buildings thereon bearing assessment No. 219, 223, 225, 227 (1—3), 231, 233 and 239 situated in Jampettah Street within the Municipality of Colombo bounded on the North by the properties of Abdul Majeed and others and H. S. Perera, S. Kandasamy, S. R. M. S. Chetty and A. P. Casie Chitty bearing assessment No. 162/39, 161/38, 158/37 and 160/37 and 37A and 183/2 and 182/1 Galpotte Street, on the East by Galpotte Street, on the South by road reservation (Jampettah Street) and on the West by Road Reservation (Shoe Makers Lane) containing in extent One Rood Seven Perches and Ninety Five Hundredth of a Perch (A0. R1. P7.95) according to Plan No. 217 dated 20th August 1924 under the hand of J. M. Blizzard Municipal Engineer.

Sgd. Illegible.  
*Proctor for Plaintiff.*

Settled by :

Sgd. Illegible.

Sgd. Illegible.

*Advocates.*

## D 14

ANSWER OF THE DEFENDANT IN DISTRICT  
COURT, COLOMBO, CASE NO. 9929/L.

IN THE DISTRICT COURT OF COLOMBO

MRS. FRANCISCA VICTORIA *Nee* MORAIS of  
267/2, Galle Road, Bambalapitiya, Colombo.  
*Plaintiff.*

No. 9929/L.

*Vs.*

10

JOSEPHINE MARY ALOYSIA MORAIS of 23/2,  
Lauries Road, Bambalapitiya, Colombo.  
*Defendant.*

This 17th day of December 1962.

The answer of the Defendant abovenamed appearing by Mr. S. Kanagajah her Proctor is as follows :—

1. Answering paragraph 1 of the plaint, this Defendant admits that she resides, and that the lands and premises described in the schedule to the plaint are situated, within the jurisdiction of this Court. This Defendant denies that any cause of action has accrued to the Plaintiff to sue this Defendant.

20 2. This Defendant denies all and singular the remaining averments in the plaint save and except those as are hereinafter expressly admitted.

3. By way of answer this Defendant states (a) that the properties referred to in the Schedule to the plaint were seized and sold by the Fiscal Western Province under writs of execution issued in several cases against the late Lewis Anthony Morais.

(b) that the recitals from the documents referred to in the plaint contain no prohibition against alienation in invitum.

(c) that the said Lewis Anthony Morais and this Defendant (his wife) executed their joint Last Will and Testament No. 1454 dated 4th July 1947  
30 attested by P. S. P. Kalpage of Colombo aforesaid Notary Public whereby either of them nominated and appointed the survivor of them the sole heir.

(d) that the said Lewis Anthony Morais died on 2nd September 1958 and the said joint last will and testament was admitted to probate in Testamentary proceedings No. 29494/T of this Court.

(e) This Defendant is the sole owner of the properties described in the Schedule to the plaint and is in possession as she lawfully might.

Wherefore this Defendant prays that Plaintiff's action may be dismissed.

(b) for costs of suit and for such further or other relief in the premises as to this Court shall seem meet.

40

Sgd. Illegible.  
*Proctor for Defendant.*

D 14  
Answer of the  
Defendant in  
District Court,  
Colombo, Case  
No. 9929/L—  
17-12-62

No. 1  
Journal  
Entries—  
13. 5. 63 to  
7. 4. 69  
—Continued

Stamps for Rs. 306/ affixed to Secretary's certificate and cancelled.  
Stamps for Rs. 518/- for Supreme Court Decree cancelled and kept in safe.

Intld. ....  
17-3-65.

(30)

17/18-3-65

Proctor for Plaintiff files a writ application and moves for execution decree by issue of writ.

1. Petition of appeal filed.
2. Issue notice on Proctor for Defendant for 31-3-65.

10

Sgd. ....  
*Additional District Judge*  
18-3-65.

(31)

18-3-65

Notice of tendering security tendered and issued to Fiscal Western Province for service on the plaintiff-respondent's proctor.

Precept returnable  
29-3-65.

Intld. .... 20

(32)

20-3-65

Proctor for Defendant tenders stamps to the value of Rs. 107/60 being deficiency due.  
Cancel stamps and take into account.

Sgd. ....  
*Additional District Judge*  
24-3-65.

(33)

20-3-65

Proctor for Defendant-Appellant files application for typewritten copies and moves Court for a Paying in Voucher for Rs. 100/-. File.

30

Intld. ....  
*Additional District Judge*  
24-3-65.

(34)  
24-3-65  
Mr. S. Kanagarajah for Defendant-Appellant.

1. Notice of Security served on Proctor for Plaintiff — Absent accept security.  
Issue Deposit Note.  
Precept Bond.  
Issue Notice of appeal for 19-5-65.

10

Sgd. ....  
*Additional District Judge*

(35)  
26-3-65  
Proctor for Plaintiff tenders a draft decree and moves that the same be entered of record.  
Decree entered.

Intld. ....  
*Additional District Judge*  
26-3-65.

(36)  
20 29-3-65  
Proctor for Plaintiff *vide* order at Journal Entry 30. He moves court to allow his application for execution of decree as stated in the motion and affidavit.

Support.

Sgd. ....  
*Additional District Judge*  
29-3-65.

(37)  
31-3-65  
Mr.S. Kanagarajah for Defendant-Appellant.  
30 Mr. D. N. Thurairajah for Plaintiff-Respondent.

1. Notice of security served on Proctor for Plaintiff-*Vide* Journal Entry (29). Both Proctors present. Security in 600/- is accepted — Issue paying voucher — Precept Bond and Issue notice of Appeal for 19-5-65.
2. Deficiency of stamps for Rs. 107/60 due on documents of defendant. *Vide* Journal Entry (28).  
Being tendered in office.  
Re Journal Entry (36) Mr. Weeramantri instructed for Plaintiff moves to have notice on appellant's Proctor.  
Mr. Kanagarajah is present. He is the Proctor for Appellant.  
40 He takes notice of application. *Vide* Journal Entry (36)  
copy of notice and affidavit tendered to Mr. Kanagarajah in open Court.  
Objection if any 7-4-65.

Intld. ....

25. The Plaintiff reiterates the averments in paragraphs 3, 4 and 5 of the Plaintiff.

26. By the said Last Will the Testator Mariam Morais having made certain specific bequests devised and bequeathed all the rest and residue of his real immoveable personal and moveable properties, estate and effects whether in possession expectancy reversion or remainder or otherwise including the property described in the Schedule "C" hereto unto the said three Trustees upon inter alia the following trusts namely:—

- (a) To convey the immoveable properties belonging to the said Trust Estate which included the land and premises described in the Schedule "C" hereto unto his son Lewis Anthony Morais on his attaining the age of thirty five years on the twentyfifth day of July One thousand nine hundred and thirty three subject to the conditions that is to say "that the said Lewis Anthony Morais shall in no wise sell, mortgage or otherwise alienate or encumber the said properties and premises hereby conveyed or any portion thereof but shall only have possess and enjoy the rents issues and profits arising and accruing therefrom during the term of his natural life and that at his death the said properties and premises shall devolve on his lawful son or sons only (if more than one in equal shares) absolutely but if there be no lawful son surviving him at his death then and in that event the same shall devolve on his lawful daughter or daughters (if more than one in equal shares) absolutely the lawful issue of a deceased son or daughter taking the share to which his, her or their parent would have become entitled to if living."
- (b) Upon trust to sell and convert into money such of the said immoveable properties belonging to the said Trust Estate as the said Trustees shall in their absolute discretion think advisable or expedient to sell by reason of the said properties not giving a fair or reasonable rent income or return therefrom and from the proceeds of the sale thereof to purchase other immoveable property or properties and any such immoveable property or properties purchased as aforesaid shall form part of the said Trust Estate and be subject to the same trust as are expressed and contained in the said Last Will.

27. In terms of the said Last Will and in the exercise of the powers conferred on them thereby the said three Trustees Maria Joseph Carvalho, Bernard Miranda and Stephen Corera by the said Deed No. 1208 granted conveyed assigned transferred and set over unto the said Lewis Anthony Morais inter alia the land and premises described in the Schedule "C" hereto subject to the following reservations and restrictions that is to say "that the said Lewis Anthony Morais shall in no wise sell, mortgage or otherwise alienate or encumber the said properties and premises hereby conveyed or any portion thereof but shall only have possess and enjoy the rents issues and profits arising and accruing therefrom during the term of his natural life and that at his death the said properties and premises shall devolve on his lawful son or sons only (if more than one in equal shares) absolutely but if there be no lawful son surviving him at his death then and in that event the same shall devolve on his

lawful daughter or daughters (if more than one in equal shares) absolutely the lawful issue of a deceased son or daughter taking the share to which his, her or their parent would have become entitled if living.”

No. 2  
Plaint of  
the Plaintiff-  
13-5-63  
-Continued

28. The plaintiff reiterates the averments in paragraph 8 of the Plaintiff.

29. Lewis Anthony Morais as fiduciary under and in terms of the said Last Will and or under the said Deed No. 1208 and his predecessors in title have been in undisturbed and uninterrupted possession of the land and premises more fully described in the Schedule “C” hereto for a period of over 10 years by a title adverse to and independent of that of the defendant and the Plaintiff<sup>10</sup> as the fideicommissary successor in title is entitled to and claims the benefit of section 3 of the Prescription Ordinance.

30. Upon the death of the said Lewis Anthony Morais the Plaintiff abovenamed became the owner of the land and premises described in the Schedule “C” hereto.

31. Since the date of the death of the said Lewis Anthony Morais, the Defendant abovenamed, who is his widow, has been in wrongful and unlawful possession of the said land and premises without any manner of right or title and has been disputing the plaintiff’s title thereto.

32. By reason of the said wrongful and unlawful possession of the said<sup>20</sup> land and premises, the Plaintiff has sustained damages at Rs 68.53 per month aggregating to Rs. 3,837/68 and is continuing to sustain damages at the said rate. However in regard to agreed damages, the Plaintiff limits her claim to Rs. 2,398/55 being damages sustained by her for the period from 1st June 1960 to 30th April 1963.

33. A cause of action has therefore accrued to the Plaintiff to sue the Defendant (a) for a declaration of title to the said land and premises more fully described in the Schedule “C” hereto (b) for the ejectment of the Defendant therefrom (c) for the recovery of the sum of Rs. 2,398.55 being accrued damages from the 1st June 1960 to 30th April 1963 and for the recovery of continuing<sup>30</sup> damages at Rs. 68.53 per month from 1st May 1963 to the date of delivery of the said land and premises more fully described in the Schedule “C” hereto unto the Plaintiff.

#### **FOR A FOURTH CAUSE OF ACTION**

34. Under and by virtue of the said Deed No. 708 the said Mariam Morais was the owner of the land and premises presently bearing assessment No. 16 situated at Galpotte Street in Colombo which said land and premises are more fully described in the Schedule “D” hereto.

35. The Plaintiff reiterates the averments in paragraphs 3, 4 and 5 of the Plaintiff.

<sup>40</sup> 36. By the said last Will, the Testator Mariam Morais having made certain specific bequests devised and bequeathed all the rest and residue



114. A cause of action has therefore accrued to the Plaintiff to sue the Defendant (a) for a declaration of title to the said land and premises more fully described in the Schedule "K" hereto (b) for the ejection of the Defendant therefrom (c) for the recovery of the sum of Rs. 4,526.55 being accrued damages from 1st June 1960 to 30th April 1963 and for the recovery of Continuing damages at Rs. 129.33 per month from 1st May 1963 to the date of delivery of the said land and premises described in the Schedule "K" hereto unto the Plaintiff.

No. 2  
Plaint of  
the Plaintiff-  
13-5-63  
—Continued

#### FOR A TWELFTH CAUSE OF ACTION

10 115. The Plaintiff reiterates the averments contained in paragraphs 3, 4 and 5 of the Plaint:

116. By the said Last Will the Testator Mariam Morais having made certain specific bequests of moveable and immoveable properties devised and bequeathed all the rest and residue of his real immoveable personal and moveable properties estate and effects whether in possession expectancy reversion or remainder or otherwise unto the said three Trustees upon inter alia the following trusts namely

20 (a) to convey the immoveable properties belonging to the said Trust Estate unto his son Lewis Anthony Morais on his attaining the age of thirtyfive years on the 25th day of July 1933 subject to the condition that is to say "that the said Lewis Anthony Morais shall in no wise sell, mortgage or otherwise alienate or encumber the said properties and premises hereby conveyed or any portion thereof but shall only have possess and enjoy the rents, issues and profits arising and accruing therefrom during the term of his natural life and that at his death the said properties and premises shall devolve on his lawful son or sons only (if more than one in equal shares) absolutely but if there be no lawful son surviving him at his death then and in that event the same shall devolve on his lawful daughter or daughters (if more than one in equal shares) absolutely the lawful issue of a deceased son or daughter taking the share to which his, her or their parents would have become entitled to if living," and

30 (b) Upon trust to sell and convert into money such of the said immoveable properties belonging to the said Trust Estate as the said Trustees in their absolute discretion shall think advisable or expedient to sell by reason or the said properties not giving a fair or reasonable rent income or return therefrom and from the proceeds of the sale thereof to purchase other immoveable property or properties and any such immoveable property or properties purchased as aforesaid shall form part of the said Trust Estate and be subject to the same trusts as are expressed or contained in the said Last Will.

40

117. In terms of the said Last Will and in exercise of the powers conferred on them thereby the said three Trustees Maria Joseph Carvalho, Bernard Miranda and Stephen Corera purchased inter alia with the moneys lying to the credit of the Trust Fund of the Estate of Mariam Morais under Deed

No. 932 dated the 28th day of September 1929 and attested by P. M. de S. Seneviratne Notary Public of Colombo the lands and premises presently bearing assessment Nos. 245, 247, 249, 251, 253, 255, 257, 259, 261, 263/2, 263/3, 263/4 and 265 situated at Jampettah Street, Colombo and more fully described in the Schedule "L" hereto.

118. In terms of the said Last Will and in the exercise of the powers conferred on them thereby the said three Trustees Maria Joseph Carvalho, Bernard Miranda and Stephen Corera by the said Deed No. 1208 granted conveyed assigned transferred and set over unto the said Lewis Anthony Morais inter alia the lands and premises described in the Schedule "L" hereto subject to the following reservations and restrictions that is to say "that the said Lewis Anthony Morais shall in no wise sell mortgage or otherwise alienate or encumber the said properties and premises hereby conveyed or any portion thereof but shall only have possess and enjoy the rents issues and profits arising and accruing therefrom during the term of his natural life and that at his death the said properties and premises shall devolve on his lawful son or sons only (if more than one in equal shares) absolutely but if there be no lawful son surviving him at his death then and in that event the same shall devolve on his lawful daughter or daughters (if more than one in equal shares) absolutely the lawful issue of a deceased son or daughter taking the share at which his, her or their parents would have become entitled to if living."

119. The Plaintiff reiterates the averments in paragraph 8 of the Plaintiff.

120. Lewis Anthony Morais as fiduciary under and in terms of the said Last Will and or under the said Deed No. 1208 and his predecessors in title have been in undisturbed and uninterrupted possession of the lands and premises more fully described in the Schedule "L" hereto for a period over 10 years by a title adverse to and independent of that of the Defendant and that plaintiff as the fideicommissary successor in title is entitled to and claims benefit of section 3 of the Prescription Ordinance.

121. Upon the death of the said Lewis Anthony Morais the Plaintiff abovenamed became the owner of the lands and premises described in the Schedule "L" hereto.

122. The plaintiff avers that since the date of the death of the said Lewis Anthony Morais the Defendant abovenamed who is his widow has been in wrongful and unlawful possession of the said lands and premises without any manner of right or title and has been disputing the Plaintiff's title thereto.

123. By reason of the said wrongful and unlawful possession of the said lands and premises more fully described in the Schedule "L" hereto the Plaintiff has sustained damages at Rs. 177.09 a month aggregating to Rs. 9,917.04 and is continuing to sustain damages at the same rate. However in regard to accrued damages the Plaintiff limits her claim to Rs. 6,198.15 being damages sustained by her for the period from 1st June 1960 to 30th April 1963.

124. A cause of action has therefore accrued to the Plaintiff to sue the defendant (a) for a declaration of title to the said lands and premises more fully described in the Schedule "L" hereto (b) for the ejectment of the Defen-

(Witness is asked to read what is there in Tamil just above the address.)

A. It reads as "The only daughter who is in mourning as a result of the death of her beloved father."

(Mr. Renganathan marks this sentence as P33A.)

No. 10  
Defendant's  
Evidence  
—  
Evidence of J.  
M. A. Moraes-  
Cross-exami-  
nation  
—Continued

**By Court :**

Q. Francisca Victoria ? Who is that ?

A. She is the plaintiff in this case.

**Cross-Examination (Continued) :**

Q. Your husband left certain properties in India ?

<sup>10</sup> A. Yes.

Q. The joint last will refers to some properties in India ?

A. Yes.

Q. After your husband died what did you do with those properties ?

A. I am enjoying the rents and profits of those properties.

Q. From here ?

A. Yes.

Q. You have always been resident in Colombo ?

A. I have an agent in India.

Q. Who is that agent ?

<sup>20</sup> A. Germain Victoria.

Q. Is she related ?

A. Distantly related to me.

Q. How did you address her ?

A. I address her as "Mathani".

Q. What is the meaning of "Mathani" ?

A. All the members of my family call her Mathani and I also call her as such.

No. 10  
Defendant's  
Evidence

Evidence of J.  
M. A. Moraes -  
Cross-exami-  
nation  
—Continued

(Shown letter dated 19th July, 1939 marked p34)

Q. This is a letter written by you ?

(Witness reads the letter)

A. I cannot remember.

(Witness is asked to look at the writing in this letter again).

A. This letter is not in my hand writing.

Q. Look at the signature. Is that your Singature?

(Witness again reads the letter).

A. Yes.

Q. Now tell us is this your letter ?

10

A. I cannot remember having written this letter.

**By Court :**

Q. Was this letter written by you or not ?

(Witness reads the letter but does not answer the question).

**Cross-examination (Continued) :**

(The contents of the letter is put to the witness.)

Q. What is Maduthumes ?

A. A chief person of a temple.

Q. Your husband was the chief person in the village ?

A. Yes.

20

Q. Is this your letter ?

A. Yes.

Q. When you said earlier that you cannot say whether it was your letter, that was by a mistake ?

A. It was only after reading the letter that I remembered about it.

(Shown letter dated 23rd December, 1963 marked P35).

No. 19  
Judgment of the  
Supreme Court-  
11-7-68  
—Continued

The learned District Judge gave judgment for the plaintiff and the defendant has appealed.

The appeal was pressed on two grounds, firstly, that the present action was barred as the Plaintiff had filed a prior action (which has not yet been concluded) for three other lands on the same title; and secondly, that the Last Will has failed to create a fidei commisum under which the plaintiff could make a claim.

In regard to the first of these grounds - the argument was based on the provisions of section 34 of the Civil Procedure Code. The relevant part of that section reads as follows:—

10

- “(1) every action shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action: but a plaintiff may relinquish any portion of his claim in order to bring the action within the jurisdiction of any Court.
- (2) If a plaintiff omits to sue in respect of, or intentionally relinquishes any portion of his claim he shall not afterwards sue in respect of the portion so omitted or relinquished. A person entitled to more than one remedy in respect of the same cause of action may sue for all or any of his remedies; but if he omits (except with the leave of the Court obtained before the hearing) to sue for any of such remedies, 20 he shall not afterwards sue for the remedy so omitted.”

Admittedly the plaintiff had filed District Court Colombo 9929/L some months before this action, against the defendant claiming three other lands on the same title. The cases had come up for trial together, and that case had been laid by until this case is decided.

The argument for the appellant on this point was based mainly on the decision in the Indian Case of M. Khalil Khan and others vs. Mahbub Ali Mian and others (1949 A.I.R. Privy Council 78). The facts in that case were briefly as follows: One R.B., a Mohammedian lady died leaving two properties referred to as the Shajahanpur property and the Oudh property. There were 30 three sets of persons who claimed to be her heirs, who may be referred to as K, M and A. In mutation proceedings (unknown to our law) the Oudh property was registered in the name of A for the purposes of those proceedings. Such registration does not affect title but apparently enables the person registered to possess the property. M then filed suit No. 5 against K and A in respect of that property. K also filed suit No. 8 in respect of the same property against M and A. Both suits were heard together and K's claim to be the heir was upheld. K then filed another suit against M in respect of Shajahanpur property. It was held by the Privy Council that the second suit was barred by Order 2, Rule 2 of the Indian Code, as this property was not included by K 40 in suit 8 referred to above. Order 2, Rule 2, is identical with section 34 of our Civil Procedure Code except for the word “suit” being used in India for the word “action.” This decision undoubtedly supports the contention of the defendant.

But it has to be observed that the Indian Code is different from ours in certain respects. For instance, actions such as suit 5 and suit 8 referred to above could not have been filed under our law, for there would be a misjoinder of defendants and causes of action, unless it could be shown that the defendants were acting in concert to keep the plaintiffs out of possession - which is not the case in these two suits as the different sets of defendants were claiming against each other. The terms of order 1, rule 3, of the Indian Code (to which I shall presently refer) are wide enough to maintain such actions. Under section 14 of our Code all persons may be joined as defendants against  
10 whom the right to any relief is alleged to exist in respect of *the same cause of action*. Our Courts have consistently held that when a plaintiff claims a declaration of title to a land on one title, and alleges that the defendants, deny his title, are in possession of separate and defined portions of that land - it would be a misjoinder of defendants and causes of action to institute one action, unless it can be shown that the defendants were acting in concert to deprive the plaintiff of possession of the entire land (see, for example, *Lowe vs. Fernando*, 16 N.L.R. 398). Further, in regard to actions for declaration of title, under section 35 of our Code no other cause of action can be joined except claims in  
20 respect of mesne profits or arrears of rent, damages for breach of contract under which the property is held, or *consequential on the trespass which constitutes the cause of action* or claims by a mortgagee to enforce remedies under the mortgage. It is perhaps significant that in the corresponding section of the Indian Code the words "damages consequential on the trespass which constitutes the cause of action" have been omitted.

Order 1, Rule 3 of the Indian Code is in the following terms: "All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist whether jointly, severally or in the alternative, where, if separate  
30 suits were brought against such persons any common question of law or fact would arise." It was against this background that Their Lordships, in the Indian case had to examine the meaning of the term "cause of action" (in order 2, rule 2) which, they pointed out was not defined. Having stated that the cause of action means every fact which will be necessary for the plaintiff to prove if traversed in order to support his right to the judgment, they said at page 86, "having regard to the conduct of the parties Their Lordships take the view that the course of dealing by the parties in respect of both properties was the same and the denial of the plaintiff's title to the Oudh property and the possession of the Shajahanpur property by the defendants  
40 obtained as a result of that denial *formed part of the same transaction*." Our Code defines "cause of action" as "the wrong for the prevention or redress of which an action may be brought, and includes the denial of a right, the refusal to fulfil an obligation, the neglect to perform a duty and the infliction of an affirmative injury."

The "cause of action" in a suit for declaration of title to land flows from the right of ownership. This right applies to a particular *thing*. Lee (Roman Dutch Law, 5th Edition) says at page 121, "Dominion or ownership is the relation protected by law in which a man stands to a thing which he may; (a) possess (b) use and enjoy, (c) alienate. The right to possess implies the right to vindicate, that is to recover possession from a person who possesses

JOSEPHINE MARY ALOYSIA MORAIS of No. 23/2, Lauries Road, Bambalapitiya, Colombo.

*Defendant-Appellant-Petitioner.*

*Vs.*

No. 21  
Application for  
Conditional  
Leave to appeal  
to the Privy  
Council -  
25-7-68  
—Continued

S. C. 167/'65  
No. 10207/L.  
D. C. Colombo

MRS. FRANCESCA VICTORIA NEE MORAIS of No. 267/2,  
Galle Road, Bambalapitiya, Colombo.

S. C. Application  
No. 379/68

*Plaintiff-Respondent.*

10 (Conditional Leave)

On this 25th day of July 1968

To :

Their Lordships The Honourable The Chief Justice and the Other Honourable Judges of the Supreme Court of the Island of Ceylon.

The petition of the defendant-appellant-petitioner abovenamed appearing by Mr. S. Kanagarajah her proctor states as follows :—

1. The defendant-appellant-petitioner is the defendant-appellant and the respondent is the plaintiff-respondent in the above case.

20 2. Being dissatisfied with the judgment pronounced on the 11th day of July 1968 by Your Lordships Court in the above appeal, the defendant-appellant-petitioner is desirous of appealing therefrom to Her Majesty in Council.

3. The said judgment of Your Lordships' Court is a final judgment involving directly or indirectly some claim or question to or respecting property consisting of thirteen lands in the City of Colombo amounting to or of the value of Rs. 5000/- or upwards.

30 4. The defendant-appellant-petitioner has within fourteen days from the date of the said judgment given to the plaintiff-respondent abovenamed the following notice of her intended application for leave to appeal to Her Majesty in Council.

“ Take notice that I the defendant shall apply to the Honourable Supreme Court for leave to appeal to the Privy Council against the judgment order or decision entered by it on 11th July 1968 in D. C. Colombo 10207/L-S.C. 167/'65 (F) on the grounds specified under rule 1(A) of the Privy Council Appeals. ”

Sgd. JOSEPHINE MARY ALOYSIA MORAIS.

5. The aforesaid notice of the defendant-appellant-petitioner's intended application for leave to appeal to Her Majesty in Council was sent to the plaintiff-respondent to the address abovementioned under certificate of

No. 21  
Application for  
Conditional  
Leave to appeal  
to the Privy  
Council-  
25-7-68  
—Continued

posting, registered post, and by telegram on 14th July 1968. Notice was also given to the plaintiff-respondent's proctor by letter dated 15th July 1968. The said letters, and the telegram have not been returned to the defendant-appellant-petitioner by the post office on ground of non delivery.

6. Irreparable loss and damage will be caused to her if the plaintiff-respondent is permitted to take out writs of ejectment and execution pending the appeal to Her Majesty in Council and real substantial justice requires that pending such appeal to Her Majesty in Council execution should be stayed. The defendant-appellant-petitioner has regularly deposited in the District Court of Colombo monthly the sum Rs. 800/- on an application to 10 stay writs pending appeal to Your Lordships' Court.

Wherefore the defendant-appellant-petitioner prays that Your Lordships' Court be pleased :—

- (a) to make order granting the defendant-appellant-petitioner leave to appeal to Her Majesty in Council from the said judgment of Your Lordships' Court dated 11th July 1968.
- (b) that the execution of decree be stayed pending the final adjudication of the matter in dispute by Her Majesty in Council.
- (c) for costs and,
- (d) for such other and further relief as to this Court shall seem meet. 20

Sgd. S. KANAGARAJAH  
*Proctor for defendant-appellant-petitioner.*

No. 22

**PETITION OF THE DEFENDANT FOR STAY OF  
EXECUTION OF DECREE**

25-7-68

Not printed.

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No. 23

**AFFIDAVIT OF THE DEFENDANT**

25-7-68

Not printed.

30



D 18  
 Answer of the  
 2nd & 3rd  
 Defendants  
 in District  
 Court,  
 Colombo,  
 Case No.  
 1420/M—  
 14-11-34  
 —Continued

(II) That the Total amount accountable by the defendant is a sum of Rs. 553,398.02.

(III) That the Defendants have sold no property of the Trust Estate other than the St. John's Road property above referred to.

3. Answering to paragraph 10 of the plaint these defendants state as set out more particularly in the Schedule "A" annexed hereto and pleaded as part of this answer that the defendants

	Rs.
(a) Purchased properties to the value of .. ..	128,209.00
To Wit :	
(i) No. 47 Chekku Street for .. ..	15,525.00 <sup>10</sup>
(ii) Nos. 131, 131 20-24, 131 61-87 Jampettah Street. .. ..	56,000.00
(iii) Nos. 238/54 and 239/59 Jampettah Street for .. ..	21,584.00
(iv) Nos. 219, 223, 225, 227, 231, 233 and 239 Jampettah Street for .. ..	9,100.00
(v) Nos. 22 Castle Lane and No. 37-19th Lane Bambalapitiya for ..	26,000.00
(b) Erected new buildings at a cost of .. ..	120,918.16
To Wit :	
(i) On 219-239 Jampettah Street .. ..	44,429.02 <sup>20</sup>
(ii) On 44 and 45 Brassfounder Street .. ..	12,260.38
(iii) On 22 Castle Lane and 37 — 19th Lane Bambalapitiya .. ..	64,228.76
(c) Effected improvements and laid drainage to buildings at a cost of .. ..	16,957.88
(d) Paid rates and taxes amounting to .. ..	55,666.72
(e) Spent on account of repairs and whitewashing ..	19,221.65
(f) Advanced for the purchase of immovable property in India .. ..	14,000.00 <sup>30</sup>
(g) Lent out on interest .. ..	105,275.00
(h) Paid to the Plaintiff and spent on account of Plaintiff's daughter .. ..	35,611.91

	(i)	Paid on account of Indian Testamentary expenses	..	..	..	2,080.00
	(j)	Paid on account of Ceylon Testamentary expenses and legal and Notarial expenses	..	..	..	14,613.04
	(k)	Paid on account of funeral expenses and on erecting a monument	..	..	..	8,146.07
	(l)	Paid Income Tax	..	..	..	2,119.80
	(m)	Paid salaries of servants and sundries	..	..	..	10,472.60
10	(n)	Refunding house rent advances, arrears of house rent and bad debts amounted to	..	..	..	6,753.25
	(o)	Paid legacies	..	..	..	2,500.00
	(p)	Value of Sovereigns and shares	..	..	..	3,650.00
	(q)	Accounted to Plaintiff for amount in Bank	..	..	..	6,202.94
	(r)	Transferred to India A/c.	..	..	..	1,000.00
	(s)	That all money aggregating to Rs. 553,398.02 have been fully accounted for.				

(t) That details of all the said figures have been furnished to plaintiff.

4. Answering to paragraphs 13 and 18 of the Plaint these defendants state that all accounts for the entire period have been furnished to the Plaintiff.

20 5. Answering to Paragraph 14 of the Plaint these defendants state that the rates and repairs are fully set out in clause 3 hereof.

6. By way of further answer these defendants state that full accounts for the entire period were kept by the defendants.

7. Still further answering these defendants state :

(a) That the deceased lent out moneys on interest, which was one of the principal sources of his income.

(b) That the defendants knowing well the wishes of the deceased in that behalf continued money-lending in good faith and for the benefit of the Estate.

30 (c) That the loans now outstanding were made with the knowledge and acquiescence of the Plaintiff after he became a major and that he is estopped from questioning the legality or regularity in making the said loans.

8. Without prejudice to the pleas set out hereinbefore these defendants state :

D 18  
 Answer of the  
 2nd & 3rd  
 Defendants  
 in District  
 Court,  
 Colombo,  
 Case No.  
 1420/M—  
 14-11-34  
 —Continued

(a) That should there be any matter which amounts to a breach of trust the defendants acted honestly and reasonably and that they should be excused for any such breach and for omitting to obtain the directions of Court.

(b) That the defendants are entitled to set off a sum of Rs. 113,885.50 earned by way of interest against any loss alleged to have been sustained by Plaintiff.

Wherefore these defendants pray that Plaintiff's action be dismissed with costs and for such other and further relief in the premises as to this Court shall seem meet.

Sgd. P. M. DE S. SENEVIRATNE 10  
*Proctor for Second and Third Defendant.*

Settled by  
 Sgd. C. NAGALINGAM.  
*Advocate.*

True copies of plaint, answer of 1st defendant and answer of the 2nd and 3rd defendants filed of record in D. C. Colombo, Case No. 1420/M.

Sgd. ....  
*Asst. Secretary.*

District Court,  
 Colombo,  
 December, 2, 1964.

20

**P16(a)**

**JOINT MOTION OF SETTLEMENT FILED IN  
 DISTRICT COURT, COLOMBO, CASE NO. 1420/M**

**IN THE DISTRICT COURT OF COLOMBO.**

A. L. MORAIS of Colombo.  
*Plaintiff.*

Case No. 1420/M.

*Vs.*

- 1. STEPHEN CORERA. 30
- 2. M. J. CARVALHO.
- 3. B. MIRANDA.

*Defendants.*

The parties having settled this action and actions instituted by the plaintiff in India and all other disputes and differences between them in manner following to wit :—

- 1. That the 1st and 2nd defendants shall pay to the plaintiff a sum of Rs. 45,000/- on or before the 10th October 1936 and in part payment thereof the plaintiff shall be entitled to the sum of Rs. 5,700/- deposited in Court.

P 16(a)  
 Joint Motion  
 of Settlement  
 filed in  
 District Court,  
 Colombo,  
 Case No.  
 1420/M—  
 21-9-36

2. That the defendants shall at the costs of the plaintiff execute a transfer in favour of the plaintiff of all the properties in India belonging to the Trust Estate.

3. That the 2nd defendant shall at the cost of the plaintiff execute a transfer in favour of the plaintiff of the 2nd defendant's half share of the property in extent about 18 acres planted with coconuts in Keela Tiruchendur and the palmyrah garden in extent about seven acres called Narampulithattu.

4. On payment of the money referred to in clause 1, and on the execution of the transfers referred to in clauses 2 and 3 hereof all the actions instituted in India by the plaintiff against the defendants or any of them shall be dismissed each party bearing his own costs especially O. S. No. 15 of 1935 of the court of Subordinate Judge of Tuticorin. The plaintiff states he has filed only one action against the defendants in India.

5. That the parties shall have no claim against each other in respect of the administration by the defendants of the estate of the late Marianu Morais as Trustee appointed by the Last Will of the said Marianu Morais either in Ceylon or in India.

6. The 1st and 2nd defendants shall be entitled in equal shares to all sums of money due from creditors to the Trust Estate including the sums of money due on mortgage Bond No. 1114 dated 8th February 1932 and attested by P. M. de Seneviratne of Colombo, Notary Public and on the Promissory note granted by M. M. Rehamjee. The plaintiff and the defendants as Trustees shall at the cost and expense of the 1st and 2nd defendants assign without recourse all such sums of money and the securities therefor to the 1st and 2nd defendants personally in equal share/shares and shall further make do and execute at such cost and expense as aforesaid all such other and further acts deeds, matters and things as the 1st and 2nd defendants may require them to make do and execute to enable them to recover for their personal benefit in equal share the sums of money aforesaid. The plaintiff's obligation will be discharged if he signs the assignments when required to do so.

7. If the 1st and 2nd defendants shall pay to the plaintiff on or before the 10th October 1936 the said sum of Rs. 39,250/- that is the said sum of Rs. 45,000/- less the said sum of Rs. 5,750/- this action shall be dismissed as against the defendants each party bearing his own costs.

8. If the 1st and 2nd defendants shall fail to pay to the plaintiff on or before the 10th October 1936 the said sum of Rs. 39,250/- judgment shall be entered against all the defendants for the sum of Rs. 50,000/- and costs of execution if any less any sum drawn from court by or paid to plaintiff by the 1st and 2nd defendants each party bearing his own costs.

9. If the 1st defendant shall pay to the plaintiff on or before the 10th October 1936 any sum in excess of Rs. 19,625/-, he shall be entitled to a decree in his favour in this action against the 2nd defendant for any such sum paid to the plaintiff in excess of the sum of 19,625/- with legal interest thereon from the date of such payment till payment in full.



D 12  
Journal Entries  
in District Court,  
Colombo, Case  
No. 9929/L—  
—Continued

(21)  
25/26-6-64.

Proctor for Plaintiff with notice to Proctor for Defendant files additional list of witnesses and documents and moves for Summons for reasons stated.

1. File.
2. Issue Summons.

Sgd. A. E. R. COREA,  
*Additional District Judge.* 10  
29-6-64.

(22)  
1-7-1964.

7 Subponeas issued by plaintiff.

(23)  
4-7-64.

Proctor for Defendant tenders an answer to the interrogatories by an affidavit for Defendant.  
Mention on 9-7-64.

Sgd. S. THAMBY DURAI,  
*Additional District Judge.* 20  
7-7-64.

Stamp deficiency.

(24)  
9-7-64.

Mr. Milroy Fonseka for Plaintiff.  
Mr. S. Kanagarajah for Defendants.  
Vide Journal Entry (17).  
Trial  
Vide proceedings.  
Trial refixed specially for 23-11-64. 30

Sgd. S. THAMBY DURAI,  
*Additional District Judge.*

Proceedings filed.

Sgd. Illegible.  
14-7-64.

(25)  
13/17-11-64.

Proctor for Plaintiff moves for execution of decree by issue of writ against the Defendant.  
Notice Defendant for 16-12-64. 40

Sgd. S. THAMBY DURAI,  
*Additional District Judge.*  
17-11-64.

(26)  
23-11-64.

Mr. Milroy Fonseka for Plaintiff.  
Mr. S. Kanagarajah for Defendant.  
Vide Journal Entry (24) Trial.

D 12  
Journal Entries  
in District Court,  
Colombo, Case  
No. 9929/L.—  
—Continued

Call tomorrow 24-11-64 with connected case 10207/L.

Sgd. S. THAMBY DURAI,  
*Additional District Judge.*

(27)  
10 24-11-64.

Vide Journal Entry (26)  
Case called with connected case No. 10207/L.  
Call 3-12-64.

Sgd. S. THAMBY DURAI,  
*Additional District Judge.*

(28)  
25-11-64.

Proctor for Plaintiff moves to file the Defendant's additional list  
of documents with consent of the Proctor for Defendant.

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## D 13

**PLAINT OF THE PLAINTIFF IN DISTRICT  
COURT, COLOMBO, CASE NO. 9929/L.**

**IN THE DISTRICT COURT OF COLOMBO**

MRS. FRANCISCA VICTORIA *Nee* MORAIS of  
267/2, Galle Road, Bambalapitiya, Colombo.  
*Plaintiff.*

No. 9929/L.

*Vs.*

JOSEPHINE MARY ALOYSIA MORAIS of 23/2,  
Lauries Road, Bambalapitiya, Colombo.  
*Defendant.*

30

On this 15th day of July 1962.

The plaintiff of the Plaintiff abovenamed appearing by H. J. H. Milroy  
Fonseka, her Proctor states as follows:—

1. The Defendant resides, the land and premises which form the subject  
matter of this action is situated and the cause of action hereinafter set out has  
arisen in Colombo within the jurisdiction of this Court.

D 13  
Plaint of the  
Plaintiff in  
District Court,  
Colombo, Case  
No. 9929/L.—  
15-7-62

D 13  
 Plaintiff of the  
 Plaintiff in  
 District Court,  
 Colombo, Case  
 No. 9929/L—  
 15-7-62  
 —Continued

### For a Second Cause of Action

13. The Plaintiff reiterates the averments in paragraph 3 of the plaint.
14. The Plaintiff reiterates the averments in paragraph 4 of the plaint.
15. The Plaintiff reiterates the averments in paragraph 5 of the plaint.

16. By the said Last Will the Testator Mariam Morais having made certain specific bequests of moveable and immoveable properties devised and bequeathed all the rest and residue of his real and immoveable personal moveable property estate effects whether in possession expectancy reversion or remainder or otherwise including the property described in Schedule "A" hereto unto the said Three Trustees upon inter alia the following Trusts namely 10  
 (a) to convey the immoveable property belonging to the Trusts Estate which included the land and premises described in the Schedule "A" hereto unto his son Lewis Anthony Morais on his attaining the age of Thirty Five years on the 25th day of July 1933 subject to the condition that is to say "or that the said Lewis Anthony Morias shall in no way lease sell mortgage or otherwise alienate or encumber the said properties and premises hereby conveyed or any portion thereof but shall only have possess and enjoy the rents, income and profits arising and accruing therefrom during the term of his natural life and that at his death the said properties and premises shall devolve on his lawful son or sons only (if more than one, in equal shares) absolutely but if 20  
 there be no lawful son surviving him at his death then and in that event the same shall devolve on his lawful daughter or daughters (if more than one, in equal shares) absolutely the lawful issue of a deceased son or daughter taking the share to which his her or their parents would have become entitled to if living."

(b) Upon Trust to sell and convert into moneys such of the said immoveable properties belonging to his Trust Estate as his said Trustees in their absolute discretion shall think advisable or expedient to sell by reason of the said properties not giving a fair or reasonable rent income or return therefrom and from the proceeds of the sale thereof to purchase other immovable pro- 30  
 perty or properties purchased as aforesaid shall form part of his Trust Estate and be subject to the same Trust.

17. In terms of the said Last Will and Testament No. 1080 and in the exercise of the powers conferred on them thereby the said Three Trustees Maria Joseph Carevallyo, Bernard Mirando and Stephen Corera purchased inter-alia with the money lying to the credit of the Trust Fund of the Estate of Mariam Morais under Municipal Conveyance dated 3rd December 1924 given under the hands of H. F. Newham Esquire, Chairman, Municipal Council, Colombo the lands and premises bearing assessment Nos. 219, 223, 225, 227 (1—3), 231, 233, and 239 Jampettah Street in Colombo which said 40  
 lands and premises are more fully described in the Schedule "B" hereto.

18. In terms of the same Last Will and Testament No. 1080 and in the exercise of the Powers conferred on them thereby the said Three Trustees Maria Joseph Carevallyo, Bernard Mirando and Stephen Corera by Deed No.



1208 dated the 21st September 1933 attested by P. M. Seneviratne Notary Public granted conveyed and assigned transferred and set over into the said Lewis Anthony Morais inter alia the land and premises described in the Schedule "B" hereto subject to the following reservations and restrictions that is to say "that the said Lewis Anthony Morais shall in no wise sell mortgage or otherwise alienate or encumber the said properties and premises hereby conveyed or any portion thereof but shall only have possess and enjoy the rents issues and profits arising and accruing therefrom during the term of his natural life and that at his death the said properties and premises shall  
 10 devolve on his lawful son or sons only (if more than one, in equal shares) absolutely but if there be no lawful son surviving him at his death then and in that event the same shall devolve on his lawful daughter or daughters (if more than one, in equal shares) absolutely the lawful issue of a deceased son or daughter taking the share to which his her or their parents would have become entitled to if living".

19. The Plaintiff reiterates the averments in paragraph 8 of the plaint.

20. Upon the death of the said Lewis Anthony Morais the Plaintiff abovenamed became the Owner of the land and premises described in Schedule "B" hereto.

20 21. The Plaintiff avers that since the date of the death of the said Lewis Anthony Morais the Defendant abovenamed who is his widow has been in wrongful and unlawful possession of the said land and premises without any manner of right or title and has been disputing the Plaintiff's title thereto.

22. By reason of the wrongful and unlawful possession of the said land and premises more fully described in Schedule "B" hereto the Plaintiff has sustained damages at Rs. 400/- a month aggregating to Rs. 18,535/- and is continuing to sustain damages at the same rate.

23. A cause of action has therefore accrued to the Plaintiff to sue the Defendant.

30 (a) for a declaration of title to the said land and premises more fully described in Schedule "B" hereto.

(b) for the ejectment of the Defendant from the said land and premises more fully described in Schedule "B" hereto.

(c) for the recovery of the sum of Rs. 18,535/- from the 2nd September 1958 to date hereof and for the recovery of continuing damages at Rs. 400/- per month from date hereof till date of delivery of the said land and premises described in Schedule "B" hereto.

24. The Plaintiff avers that the value of the subject matter of this action aggregates to Rs. 136,875/-.

41 01 20

No.....

Supreme Court of Ceylon,  
No. 167 (Final) of 1965.

District Court of Colombo,  
Case No. 10207/L

*In Her Majesty's Privy Council  
on an Appeal from  
The Supreme Court of Ceylon*

BETWEEN

JOSEPHINE MARY ALOYSIA MORAIS No. 23/2, of  
Lauries Road, Bambalapitiya, Colombo.....

(Defendant - Appellant)

*Appellant*

AND

MRS. FRANCESCA VICTORIA NEE MORAIS of No. 267/2,  
Galle Road, Bambalapitiya, Colombo.....

(Plaintiff - Respondent)

*Respondent*

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**RECORD  
OF PROCEEDINGS**

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