Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ana Lana Muttu Carpen Chetty v. *Kana Nana Chuna Letchimanen Chetty and another, from the Supreme Court of the Island of Ceylon; delivered* 10*th May* 1882.

Present:

SIR BARNES PEACOCK.
SIR ROBERT P. COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

The circumstances out of which the suit which is the subject of this appeal arose are these.

On the 24th of May 1858 one Arachchila, by a deed of transfer, in consideration of 186 dollars and 8 fanams, equal to 14*l.* lawful money of Ceylon, sold and transferred to one Ramasami his right, title, and inheritance in and to "the "Chena Bataketiya *alias* Katukikule hena, of "eight amanas paddy sowing extent in the "whole," in the village of Kosgama *alias* Kalude Ella, in the Central Province of Ceylon. On the 15th of June 1858, by another deed of transfer, one Meddumarala and his son, Punchirala, sold and transferred to Ramasami, in consideration of 186 rix-dollars and 8 fanams, equal to 14*l.* lawful money of Ceylon, their right, title, and inheritance in and to "the Chena Bataketiya *alias* "Katukitulehena, of eight amanas paddy sowing "extent on the whole, lying and situate at Kos-"gama *alias* Kalude Ella." From the boundaries given in these deeds it appears that they related to different parts of the Chena, the one

being described as bounded on the west by a certain rock, and the other on the east. On the 18th of December 1858, by another deed of transfer, George Henry Adams, in consideration of 50*l.* lawful money of Ceylon, sold and transferred to Ramasami his "right, title, and "inheritance in and to the land Kudugalewale "*hena of* six amunas paddy sowing in extent, "situate at the village of Kalude-ela," bounded as therein described, being the Chena Kudugalehena within the said boundaries. On the 13th of August 1859, by a deed of transfer made by Kandayee, the widow of Ramasami, and one Mattusamy, administrators of the estate of Ramasami, in which it was stated that the lands which were transferred by the previous deeds had been, by virtue of letters of administration from the Kandy District Court and an order of the Court, put up for public sale, and had been purchased by one Meyappa Chetty for 107*l.* sterling of Ceylon currency, Kandayee and Mattusamy, in consideration of that sum, made over and gave charge of the said lands, and the deeds and documents relating thereto, to Meyappa Chetty. On the 9th of October 1863 Meyappa, by a mortgage bond, in consideration of 400*l.* sterling of Ceylon currency, mortgaged to Panchadcharan Chetty the above three lots of land, together with other land described as lying adjacent to them, which had been purchased by him at a public sale. It does not appear what he had paid for this land, but it is described as land called Daranagalla, with the plantations thereof situated at Kaludella. On the 31st of October 1863 Panchadcharan, in consideration of 400*l.* Ceylon currency, mortgaged to one Anamalai Chetty his $7\frac{1}{2}$ shares of 14 shares in a certain field, and also the principa sum of 400*l.* in the mortgage bond of the 9th of

October 1863. On the 3rd of February 1864 Anamalai, in consideration of 600*l.* Ceylon currency, mortgaged the aforesaid 400*l.*, and also a sum of 200*l.* due on another mortgage bond, to Nagappa Chetty and Kannappa Chetty. Both the Lower Courts were satisfied upon the evidence, and their Lordships are satisfied that Meyappa Chetty was in possession of the three lots of land in November 1870, and had been so for many years.

The Ceylon Ordinance 12 of 1840, entitled "To prevent Encroachments on Crown Lands," contains the following provisions:—

Art. 6. All forest, waste, unoccupied, and uncultivated lands shall be presumed to be the property of the Crown until the contrary be proved, and all chenas and other lands, which can only be cultivated after intervals of several years, shall, if the same be situate within the districts formerly comprised in the Candian Province (wherein no thombo registers have been heretofore established), be deemed to belong to the Crown, and not to be the property of any private person claiming the same against the Crown, except upon proof only by such person of a sannus or grant for the same, together with satisfactory evidence as to the limits and boundaries thereof, or of such customary taxes, dues, and services having been rendered within 20 years for the same, as have been rendered within such period for similar lands being the property of private proprietors in the same districts; and, in all other districts in the colony, such chena and other lands which can only be cultivated after intervals of several years, shall be deemed to be forest or waste lands within the meaning of this clause.

Art. 7. It shall be lawful for any person in the possession of land, to make application in writing to the Government Agent of the province in which such land is situate, for a certificate of the Crown having no claim to such land, which application shall contain a full description of the property, together with a survey thereof made by or under the authority of the Surveyor General, and shall contain a declaration by the applicant stating the nature of his right, or the manner in which he acquired possession; and if the Government Agent shall, upon investigation, be satisfied that the Crown has no claim to such land, he shall, with the consent of the Governor, grant a certificate to that effect to such applicant, and a copy of such certificate shall be previously entered in a book to be kept in the office of the Government Agent for that purpose; and such certificate or any copy from such entry thereof, attested by the Government Agent, shall be received by any Court as a good and valid title to such land against any right, title, or

claim of the Crown thereto existing at the date of such certificate.

Art. 8. Whenever any person shall have, without any grant or title from Government, taken possession of and cultivated, planted, or otherwise improved any land belonging to Government, and shall have held uninterrupted possession thereof for not less than ten or more than thirty years, such person shall be entitled to a grant from Government for such land, on payment by him or her of half the improved value of such land, unless Government shall require the same for public purposes, or for the use of Her Majesty, her heirs or successors, when such person shall be liable only to be ejected from such land on being paid by Government the half of the improved value thereof and the full value of any buildings that may have been erected thereon.

In November 1869, in consequence probably of some action on the part of the Government, Meyappa made an application to the Government Agent in the following terms :—

"I bought Kudugala estate, 12 acres, at an auction, from the administrators of Ramasami Kankani's estate. I got all Ramasami's deeds for it. I got from this source 20 or 22 acres in all on different deeds. It was all patana but six or seven acres which Ramasami planted. I have been in possession for 10 years. I will pay 1*l.* an acre for R. 66 and S. 66, and take a title if the Agent agrees to it.

"Shina Tana Kana Nana Anamali Chetti of Kandy has my deeds; he has gone to the coast. He has no partner. I will write to him to produce deeds."

On this application the Government Agent noted that he did not believe the story about the deeds, and that Meyappa should be allowed the same terms as Messrs. Rudd.

On the 11th of January 1870 Meyappa presented the following petition to the Government Agent :—

"To H. S. O. Russell, Esquire, Government Agent,
Central Province.

"The humble petition of Meyappa Chetti, of Kandy, respectfully sheweth :—

"That your Honour's petitioner was in long possession of a piece of land at Lower Dumbara, in extent about 28 acres. It

was afterwards said to be Crown property, and petitioner called upon to pay average rate at 1*l.* per acre, which he consented to do on being allowed a month's time, but subsequently this land was surveyed and found to contain 43 acres. If the petitioner is to take the 15 acres also, the petitioner begs to be allowed two months' time, then he willingly will take up the whole land. If not, he will be contented with the 28 acres of land already promised to him on average rate. The petitioner further begs to state that he spent a large amount of money on this land, and has derived no profit owing to the barrenness of the soil. Under these circumstances the petitioner prays that your Honour will take the above circumstances into your consideration and grant petitioner's prayer.

" For which act of favour the petitioner, as in duty bound, will ever pray.

" (Signed) K. P. MEYAPPA CHETTI
(in Tamil characters).

" Candy, 11th January 1870.

	£	*s.*	*d.*
" Lot R. 66 - -	32	16	7
" Lot S. 66 - -	26	3	7
	£59	0	2

" Petitioner prays to be allowed to pay, on 11th February 1870, 30*l.*, on 11th March, 29*l.* 0*s.* 2*d.*"

Orders were made on this petition as follows :—

" Allowed.

" 11/1/70. (Signed) O. R.

" [Allowed, with interest at 9 per cent.
" 15/2/70.

" (Signed) O. R.] "

The money was not paid at the time allowed, and Meyappa presented a petition for further time. Finally, on the 6th of June 1870, he came to the Agent's office with one Superamanien Chetti, who paid 60*l.* 13*s.* 2*d.*, and took a receipt in the following terms :—" Received from S. M. Supera-
" manien Chetti, for Meyappa Chetti, the sum of
" sixty pounds thirteen shillings and twopence,
" being value and survey fees, &c., of land, lots
" R. 66 and S. 66, at Lower Dumbara, granted
" him on average rate."

The following entry appears to have been made at the office :—

"Meyappa Chetti. Lot R. 66, 24a. 2r. 6p., at 1*l.* per acre :—

	£	*s.*	*d.*
"Value of land - -	24	10	0
"Survey fee - -	6	0	0
"Headmen fee - -	1	0	0
"Colonial Secretary's fee -	0	19	7
"Stamp fees - -	0	3	0
"Registration fee - -	0	4	0
	£32	16	7

"Paid this day and placed in deposit.
"6th June 1870. (Signed) C. E.

"Meyappa Chetti. Lot S. 66, 19a. 0r. 18p., at 1*l.* per acre :—

	£	*s.*	*d.*
"Value of land - -	19	2	3
"Survey fees - -	5	0	0
"Headmen fees - -	1	0	0
"Stamp fees - -	0	2	0
"Colonial Secretary's fee -	0	15	4
"Registration fee - -	0	4	0
	£26	3	7

"Paid this day and placed in deposit.
"6th June 1870. (Signed) C. E.

"Deed to be made out in favour of Suwana Mana Supermanian Chetti."

The last line is below the date and signature, but their Lordships infer from its terms and the absence of any entry of a further application that it was made at the same time as the rest of the entry.

The evidence of Meyappa, who was examined at the trial, was that he gave a promissory note for 70*l.* to Supermanien, and went with him to the office; he did not authorize him to get the grant in his own name, the grant was to be drawn in his (Meyappa's) name. Looking at the entry and the circumstances to be hereafter mentioned, their Lordships do not believe this, and they must differ from the Supreme Court, who said on the review that they thought, on the evidence as it

stood on the record, they must accept Meyappa's statement that Supermanien's authority was limited to getting the grant made out in his, Meyappa's, name. The District Judge thought upon the evidence that there was an arrangement between them that the grant should be made to Superamanien.

On the 7th of November 1870 the Crown, by two grants, one in consideration of 24*l.* 10*s.* and the other of 19*l.* 2*s.* 3*d.*, granted the lands to Supermanien.

The learned Judges of the Supreme Court say there was no evidence whatever that the Crown had any title to the land except the supposed admission of Meyappa, which they considered "to be of no evidential force," and appear to have thought that the grant was void. Their Lordships do not take this view of the case, and are clearly of opinion that the lands which are called in the title deeds of 1868, Chena, were subject to the Ordinance, and that the Crown had power to make the grant. And it is to be observed that Meyappa applied for a grant under Article 8 of the Ordinance, and not for a certificate under Article 7 that the Crown had no title. Being in possession he was entitled to a grant, but there was nothing in the Ordinance to prevent his assenting to its being made to another person.

On the 29th of December 1870 Superamanien sold and assigned the land comprised in both grants to Palany Appa Chetty for 165*l.* He is the brother-in-law of the Defendant, the Appellant, and had been, but was not then, his paid servant. The Defendant said that he joined him in mortgaging this and other lands to Kylasen Chetty on the same day for the purpose of paying Supermanien; that Kylasen refused to lend money on the security of that land alone, so he joined

his brother-in-law. On the 8th of June 1871 Palany Appa sold the land for 200*l.* to Mutta Carpen, the Defendant, who thereupon, according to the evidence of Rama, the ranchapaly (accountant) of Meyappa, took forcible possession of it. Meyappa said in his evidence that he went to Columbo to attend to some business, and on his return he was told that Rama, whom he had placed on the land, had been turned out by the Defendant; that he went to the Defendant, who said he had got the land from Superamanien to whom he referred him. He did not go to Superamanien, whom he said he had not seen since 1871, and who seems to have left the island before the end of that year. He gave as a reason for not going that he had not the deed, and had no money to spend on a case. He went to the coast in 1864, returned in 1868, and went again in 1872. He returned in 1874, and having, he said, found that Superamanien had taken the grant in his own name, he presented a petition to the Government Agent on the 31st of August 1874, in which he stated that he had purchased the land at a public auction, and had in 1870 been called upon to pay the appraised value of the land, with other expenses which amounted to Rs. 600 odd, which sum was paid on the 6th of June 1870, that he did not receive the Crown grant, and he prayed that the Crown grants might be issued to him.

The reply to this was not in evidence, but Meyappa stated that he was referred to an action.

The proceedings which led to the suit must now be stated. On the 13th of October 1874, a summons was issued from the District Court of Candy at the suit of Kannappa Chetty against Anamalai, returnable on the 16th, on which day it was reported that the Defendant was not to be found, and the Plaintiff Kannappa said he was dead. On

the 2nd of December 1874, an application was made to the same Court on behalf of Kannappa, that letters of administration of the estate of Anamalai might be granted to him, which was done on the 15th of February 1875. On the 23rd of that month the proctor for the Plaintiff in the suit of Kannappa against Anamalai, moved that Kannappa, the administrator, should be substituted as Defendant, which was allowed. A summons was issued on the 27th of February which was on the 1st of March reported to have been served on the Defendant, and on the 5th of March judgment was entered for Rs. 12,096 and costs. The suit was on the mortgage bond of the 3rd of February 1864. A writ of execution was issued, and the Defendant Anamalai's property, including the mortgage of the 31st of October 1863, was sold for Rs. 110, and was bought by the Plaintiff Letchimanen. With regard to these proceedings their Lordships think it has been justly observed by the Supreme Court that it is much to be regretted that anything of the kind so nearly approaching the burlesque should have been permitted by the District Court. On the 30th of July 1875 Letchimanen brought a suit against Panchadcharan on the mortgage bond of the 31st of October 1863. After proceedings by sequestration had been taken to compel the Defendant's appearance, a power of attorney to confess judgment, with an admission in writing, was filed, and Letchimanen obtained judgment for Rs. 8,000 and costs. Execution was issued, and the Defendant Panchadcharan's property, which included the mortgage bond by Meyappa of the 9th of October 1863, was sold for Rs. 1,050, and was bought by Letchimanen. Then on the 5th of June 1876 Letchimanen sued Meyappa upon that mortgage bond. He did not appear, and judgment was given against him for Rs. 8,000 and costs. A writ of execution was issued, under which the

land which had since 1871 been in the possession of Muttu Carpen the Defendant in the suit under appeal was seized and advertised for sale, and he having claimed the same and given security the sale was stayed.

On the 5th of September 1876, Letchimanen brought the suit under appeal against Muttu Carpen, and after stating in his libel the several mortgages of the 9th and 31st of October 1863, and the 3rd of February 1864, and the several suits by the proceedings in which he had become entitled, he prayed that the land might be declared the property of Meyappa Chetti, and as such liable to be sold in satisfaction of his judgment against him. The Defendant answered that Superamanien was the proprietor by purchase from the Crown upon the grants, and being possessed thereof sold to Palianiappa, who sold to the Defendant; and that since his purchase he had been in possession, and had expended large sums of money in the permanent improvement of the lands, and in the erection of buildings thereon. The other defences are not now material. To this the Plaintiff replied that the land did not and never did belong to Superamanien, but that he fraudulently obtained grants thereof from the Crown, and thereafter transferred the same to Paliniappa (a relative, and paid servant of the Defendant), who transferred the same to the Defendant; that the transfers were false and fictitious, and the consideration therein stated much less than the land was really worth. Some time after this reply was filed, Meyappa intervened in the suit, and filed a libel, stating that about the year 1870 the Crown claimed the lands, when he declared his title, and consented to pay half the improved value of the lands, and to take from the Crown a grant thereof; that not having the means to pay the amount claimed by the Crown, and being about to proceed to the coast of India, he desired

Superamanian to pay for the lands, but Supramanian fraudulently, after the payment, obtained the grant from the Government in his own name, and he prayed that he might be declared entitled to the land.

The deed of sale from Superamanien to Palany Appa was dated the 29th of December 1870, and purported to be made in consideration of 165*l*. The conveyance from Palany Appa to Muttu Carpen was dated the 18th of June 1871, the consideration stated being 200*l*.

It has been already noticed that the Defendant's allegation that he had possession from the time of his purchase to the commencement of the suit under appeal was proved, and his own evidence, which was not contradicted, was that the land was worth 200*l*. when he purchased, and he had expended 1,600*l*. upon it. This evidence of the value at the time of his purchase is supported by the fact that the Government, which was entitled by the Ordinance to half the improved value of the land, and which Meyappa said, in his libel, he consented to pay, valued the two lots at 24*l*. 10*s*. and 19*l*. 2*s*. 3*d*.

There was no evidence that Superamanien obtained the grants fraudulently. On the contrary, as their Lordships have already intimated, the evidence, in their opinion, proves that Meyappa assented to the grants being made to Supramanien. It does not appear what the arrangement between them was. There was no evidence from Superamanien, as he could not be found. The money was paid to the Government on the 6th of June 1870, and the sale to Paliniappa was on the 29th of December 1870. Meyappa said the promissory note, which included six months' interest, had not been paid, and that he offered the money in January 1871, and Superamanien refused, saying, "Let the principal then come," which is not

intelligible. Possibly the agreement was that if the note was not paid when it fell due Supramanien was to be at liberty to sell the land and repay himself. But it was not necessary for the Defendant to prove this. He is a purchaser for value from the grantee of the Crown by a grant made with Meyappa's assent, and it was incumbent on the Plaintiff and the intervenient Meyappa to show that the latter had a title as against him.

Their Lordships are of opinion that they have entirely failed to do this, and that the decree of the Supreme Court, whereby it is decreed that the property in dispute is the property of the intervenient, and as such is liable to be sold in satisfaction of the Plaintiff's judgment in the District Court should be reversed, and their Lordships will humbly advise Her Majesty to reverse that decree, and to make a decree dismissing the appeal to the Supreme Court with costs, and affirming the decree of the District Court by which the claims of the Plaintiff and the intervenient were dismissed, and the Respondents will pay the costs of this appeal.