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GAMPOLA PERAHERA CASE.

VOLUME I.

IN THE PRIVY COUNCIL.

APPEAL FROM THE SUPREME COURT OF THE ISLAND
OF CEYLON.

BETWEEN

WICKRAMASINGHE NAWARATNE PANDITTA WASALA ABEYKOON GANWILA HERAT
MUDIANSSELAGE TIKIRI BANDARA ELLEKEWALA, Basnayake Nilame and Trustee
of Wallahagoda Temple, Gampola, *Plaintiff-Appellant*,

AND

THE HONOURABLE THE ATTORNEY-GENERAL, Colombo, *Defendant-Respondent*.

Supreme Court, No. 245 of 1914 (Final).

RECORD OF PROCEEDINGS.

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1

PART I.

No. 1.

In the District Court of Kandy.

No. 22,466.
Class II.
Amount, Rs. 350.
Nature, Money.
Procedure, Regular.

W. N. P. W. A. G. H. M. TIKIRI BANDARA
ELLEKEWALA, Basnayake Nilame, *Plaintiff,*

Versus

THE HONOURABLE THE ATTORNEY-GENERAL,
Defendant.

Journal.

10 The 30th day of September, 1913.

Messrs. Goonewardene and Wijegoonewardene file appointment and
plaint. *Plaint accepted and summons ordered for 22nd October, 1913.*

F. R. DIAS,
District Judge.

9th October, 1913.

Summons issued with precept, returnable the 22nd day of October, 1913.

22nd October, 1913.

Mr. Liesching files defendant's proxy. *Answer on 12th November.*

F. R. DIAS,
District Judge.

20

12th November, 1913.

Answer not ready. *To stand over for 19th November.*

*Initialled, P. E. P.,
Acting District Judge.*

19th November, 1913.

To stand over for 26th November for answer.

*Initialled, P. E. P.,
Acting District Judge.*

26th November, 1913.

30 *To stand over for 3rd December for answer.*

*Initialled, P. E. P.,
Acting District Judge.*

3rd December, 1913.

Answer filed. *Issues on 10th December.* *Initialled, P. E. P.,
Acting District Judge.*

10th December, 1913.

To stand over for 17th December. *Initialled, P. E. P.,
Acting District Judge.*

RECORD.

10

*In the
District
Court of
Kandy.*

No. 1.
Journal
Entries and
Minutes
from 30th
September,
1913, to
11th March,
1915.

11

1 17th December, 1913.
 Messrs. Goonewardene and Wijegoonewardene, for plaintiff, file issues.
 To stand over for 7th January. *Initialled, P. E. P.,
 Acting District Judge.*

12 RECORD.
*In the
 District
 Court of
 Kandy.*

7th January, 1914.
 To stand over for 14th January for issues.

*Initialled, P. E. P.,
 Acting District Judge.*

No. 1.
 Journal
 Entries and
 Minutes
 from 30th
 September,
 1913, to
 11th March,
 1915—*contd.*

14th January, 1914.

10 Issues filed. Call on 21st January.

*Initialled, P. E. P.,
 Acting District Judge.*

15th January, 1914.

Mr. Liesching being away in England, Mr. Hughes files proxy from the defendant in this case.

*Initialled, P. E. P.,
 Acting District Judge.*

16th March, 1914.

Messrs. Goonewardene and Wijegoonewardene, for plaintiff, move for a summons on the Hon. the Colonial Secretary to cause to be produced the documents mentioned in this motion.

13

20

Allowed.
Acting District Judge.

Eo die.

Messrs. Goonewardene and Wijegoonewardene, for plaintiff, move for a summons on Mr. G. A. Joseph, of the Colombo Museum, to produce the documents mentioned in this motion.

Allowed.
Acting District Judge.

Eo die.

30 Messrs. Goonewardene and Wijegoonewardene file plaintiff's list of witnesses and take out three subpoenas.

Acting District Judge.

20th March, 1914.

Case partly heard and postponed for to-morrow.

14

*Initialled, P. E. P.,
 Acting District Judge.*

21st March, 1914.

Vide proceedings. Call on 24th March.

*Initialled, P. E. P.,
 Acting District Judge.*

1 23rd March, 1914.

The following requisitions are issued in payment of batta : Mr. F. W. Ebert, Rs. 25 ; Mr. W. B. Nonis, Rs. 18.

*Initialled, P. E. P.,
Acting District Judge.*

24th March, 1914.

Call on 27th March.

*Initialled, P. E. P.,
Acting District Judge.*

27th March, 1914.

10 Fix for trial on 11th May, 1914.

*Initialled, P. E. P.,
Acting District Judge.*

27th March, 1914.

Messrs. Liesching and Lee file defendant's list of witnesses.

5th May, 1914.

Messrs. Liesching and Lee take out one subpoena.

7th May, 1914.

20 Mr. Liesching, for defendant, states that he is instructed to bring to the notice of the Court that by the rules and regulations of the Colombo Museum Mr. G. A. Joseph has no power to produce the books which he has been summoned to produce, and moves that under the circumstances his attendance at the trial of this action be dispensed with.

For discussion on Monday.

*Initialled, P. E. P.,
Acting District Judge.*

11th May, 1914.

Vide proceedings. Case for to-morrow.

*Initialled, P. E. P.,
Acting District Judge.*

12th May, 1914.

Vide proceedings. Case for to-morrow.

*Initialled, P. E. P.,
Acting District Judge.*

30 13th May, 1914.

Vide proceedings. Case for to-morrow.

*Initialled, P. E. P.,
Acting District Judge.*

- 1 14th May, 1914.
Vide proceedings. Case for 15th May. *Initialled, P. E. P.,
Acting District Judge.*
- 15th May, 1914.
Vide proceedings. Case for 16th May. *Initialled, P. E. P.,
Acting District Judge.*
- 16th May, 1914.
Vide proceedings. Judgment reserved. *Initialled, P. E. P.,
Acting District Judge.*
- 10 1st June, 1914. 17
Judgment fixed for 4th June. Proctors informed.
*Initialled, P. E. P.,
Acting District Judge.*
- 4th June, 1914.
Judgment pronounced in favour of plaintiff.
*Initialled, P. E. P.,
Acting District Judge.*
- 16th June, 1914.
Mr. Hughes having left the Island, and still being absent, Mr. Liesching
20 files appointment from the defendant.
Mr. Liesching files petition of appeal from the defendant.
C. E. FERDINAND,
Secretary.
- 24th June, 1914. 18
On the motion of Mr. Liesching, for defendant, and with the consent
of Messrs. Goonewardene and Wijegoewardene, for plaintiff, it is ordered
that security for costs and notice of appeal be dispensed with.
C. A. LABROOY,
Acting District Judge.
- 30 11th March, 1915.
Case returned from the Supreme Court, the decree of this Court being
set aside, and plaintiff's action being dismissed with costs.

RECORD.

*In the
District
Court of
Kandy.*

No. 1.
Journal
Entries and
Minutes
from 30th
September,
1913, to
11th March,
1915—*contd.*

1

No. 2.

This 30th day of September, 1913.

RECORD.

19

*In the
District
Court of
Kandy.*

The Plaintiff of the Plaintiff.

No. 2.
Plaint, 30th
September,
1913.

1. The plaintiff is the Basnayake Nilame of the temple at Wallahagoda, in the District of Gampola, within the jurisdiction of this Court.

2. The said temple is a very ancient one, having been founded in the time of Sinhalese kings, over eight hundred years ago, by King Prakrama Bahu, and enjoyed from time immemorial great rights and privileges; and among other such rights and privileges the said temple enjoyed and exercised the right of holding and conducting a perahera ceremony, or procession, by which the Basnayake Nilame of the said temple, with the retainers and tenants of the said temple, had the right and privilege of marching to and from and through all the streets of the town of Gampola, including that portion of Ambagamuwa Street with which this action is concerned, with elephants, to the accompaniment of tom-toms, drums, and other musical instruments.

3. These rights and privileges aforesaid were acknowledged, recognized, and confirmed to the said temple when all the inhabitants of the Kingdom of Kandy were by the Crown, on the cession of the said Kingdom to the British Government under the Kandyan Convention of 1815, confirmed in and allowed to enjoy the rights and privileges which they had enjoyed under the Kandyan Government. These rights were, after the Kandyan Provinces came under the British Government, enjoyed and exercised by the said temple through its various Basnayake Nilames, and are necessary for its proper dignity and prestige, and for the proper conducting and carrying out the ceremonies to be performed by the said temple; and the said temple has acquired a right by prescription to the performance of the said rights and ceremonies, and to the enjoyment of the aforesaid rights and privileges.

4. The plaintiff complains that the Government Agent of the Central Province, on 27th August, 1912, wrongfully and in breach of the said Kandyan Convention and Agreement, and of the rights and privileges enjoyed by the said temple, refused to allow the plaintiff permission to proceed in procession through that portion of Ambagamuwa Street within hundred yards of either side of the Muhammadan mosque in the town of Gampola, to the accompaniment of tom-toms, drums, and other musical instruments, and still refuses to do so, though thereto often requested, to the loss and damage of the plaintiff of twenty-five rupees.

5. The plaintiff values the right claimed at ten thousand rupees.

6. Notice of action was given to defendant in terms of Section 461 of the Civil Procedure Code.

Wherefore the plaintiff prays that he, as Basnayake Nilame of the Wallahagoda temple, may be declared entitled to the right and privilege claimed by him, together with damages twenty-five rupees already incurred, and twenty-five rupees as further damages per year until the said privilege and right is granted.

1 The plaintiff also prays for his costs, and for such further and other relief as to this Court shall seem meet.

GOONEWARDENE AND WIJEGOONEWARDENE,
Proctors for Plaintiff.

Settled by—
C. A. LABROOY, *Advocate.*

RECORD.
—
In the District Court of Kandy.
—
No. 2.
Plaint, 30th September, 1913—*contd.*

No. 3.

This 29th day of November, 1913.

No. 3.
Answer of Defendant, 29th Nov., 1913.

The Answer of the Defendant.

- 10 1. As matters of law the defendant states :—
- (i.) That the Plaintiff discloses no cause of action against the defendant.
 - (ii.) That even if the Government Agent of the Central Province was guilty of any wrongful act, which the defendant denies, the defendant is not liable to be sued in respect thereof.
 - (iii.) That the right claimed is not one which is known to or recognized by law.
 - (iv.) That the plaintiff is not vested with the said right, and cannot maintain any action in respect thereof.
 - (v.) That assuming such a right to exist, the present action is not maintainable against the defendant.

20 2. Answering to the merits, the defendant denies the truth of the allegations contained in the 1st and 2nd paragraphs of the Plaintiff.

3. The defendant denies the various allegations contained in the 3rd paragraph of the Plaintiff, and that the plaintiff has suffered loss or damage to the extent of twenty-five rupees, or any loss or damage whatsoever. 23

30 4. Further answering to the Plaintiff, the defendant states that all assemblies and processions in the public roads, streets, and thoroughfares of the town of Gampola are governed by the provisions of Section 69 of the Police Ordinance, No. 16 of 1865, and Section 64 of the Local Boards Ordinance, No. 13 of 1898, and that the right, if any, of any person to hold and conduct the perahera ceremony of procession, and to beat tom-toms in the streets of Gampola, is subject to such provisions, however ancient that right may be ; and that the licenses referred to in the Government Agent's letter of the 27th August, 1912, were the licenses referred to in the said Ordinances.

40 5. That for many years past it has been thought necessary that music and the beating of tom-toms in all processions passing the Muhammadan mosque situated in Ambagamuwa Street should be stopped ; and licenses for processions have been issued subject to the condition that music and tom-toms should be stopped within fifty yards on either side of the said mosque.

RECORD.

*In the
District
Court of
Kandy.*

No. 3.
Answer of
Defendant,
29th Nov.,
1913—*contd.*

24

1 6. The defendant admits that in answer to an application made to the Government Agent of the Central Province by the President of the Kandy District Committee of the Buddhist Temporalities Ordinance, asking for "the removal of the obstruction to beat tom-tom" opposite the Muhammadan mosque in Ambagamuwa Street, Gampola, on the occasion of the perahera of the Wallahagōda dewale, the Government Agent replied that licenses for the use of music and for the assembling of the body of persons joining the procession would be issued on condition that music was so stopped in passing the said mosque; but the defendant says that the fact of the Government Agent sending such reply does not in itself constitute an interference with any right, and that the plaintiff not having exercised the right as now claimed by him for many years, such rights, if he ever had any, have been lost by prescription, in terms of Ordinance No. 22 of 1871.

10 7. Answering to paragraph 6, the defendant states that notice was given to him of an action to have it declared that the plaintiff as and in his capacity of Basnayake Nilame is entitled to the right claimed in this action. The defendant denies that the said Basnayake Nilame as such is clothed with the said right, or the right to maintain an action in respect thereof, and pleads that the said notice is bad in law.

20 Wherefore defendant prays that the plaintiff's action may be dismissed with costs; and defendant also prays for such further and other relief as to this Court shall seem meet.

F. LIESCHING,
Proctor for Defendant.

Settled by—

T. F. GARVIN, Jr., *Solicitor-General.*
V. M. FERNANDO, *Crown Counsel.*

No. 4.

Issues.

No. 4.
Issues
submitted
by Plaintiff.
25

- 30 (1) Whether the plaintiff has the right to maintain this action ?
 (2) Whether the defendant is liable to be sued for the alleged wrongful act of the Government Agent for the Central Province complained of in the Plaintiff ?
 (3) Whether the allegations contained in the 1st, 2nd, and 3rd paragraphs of the Plaintiff are true ?
 (4) What, if any, damages is the plaintiff entitled to recover ?
 (5) Whether the Answer discloses a defence to plaintiff's action ?

Kandy, 17th December, 1913.

GOONEWARDENE AND WIJEGOONEWARDENE,
Proctors for Plaintiff.

1

No. 5.

Issues.

- (1) Does the Plaint disclose a cause of action against the defendant ?
- (2) Is the right claimed, to wit, a right to go in procession through Ambagamuwa Street in the town of Gampola, with elephants, and to the accompaniment of tom-toms, drums, and other musical instruments, one known to or recognized by the law ?
- (3) Is the plaintiff the Basnayake Nilame of the temple of Wallahagoda ?
- (4) If so, is he vested with the right claimed, and is he entitled to maintain this action ?
- (5) Assuming the answer to issues (2), (3), and (4) to be in the affirmative, can this action be maintained against the defendant ?
- (6) Can such a right as the one claimed be acquired by prescription, and if so, has the plaintiff acquired the right claimed by prescription ?
- (7) Have the plaintiff's rights, if any, been lost by prescription, for the reasons stated in paragraph 6 of the Answer ?
- (8) Can any procession, whether with or without elephants and music, pass through the streets or any particular street in the town of Gampola, except subject to and in conformity with the provisions of Sections 69, 84, and 90 of the Police Ordinance, and Section 64 of the Local Boards Ordinance ?
- (9) Was the letter of the Government Agent dated 27th August, 1912, and addressed to the President, District Committee, an interference with any right belonging to the plaintiff ?
- (10) What damages, if any, has plaintiff sustained ?

Kandy, 14th day of January, 1914.

W. K. S. HUGHES,
Proctor for Defendant.

RECORD.

*In the
District
Court of
Kandy.*

No. 5.
Issues
submitted by
Defendant.

27

28

10

20

30

No. 6.

Issues.

- (1) Does the Plaint disclose a cause of action against the defendant ?
- (2) Is the right claimed, to wit, a right to go in procession through Ambagamuwa Street in the town of Gampola, with elephants, and to the accompaniment of tom-toms, drums, and other musical instruments, one known to or recognized by the law ?
- (2a) If not, is the action still maintainable by the plaintiff ?
- (3) Is the plaintiff the Basnayake Nilame of the temple Wallahagoda ?
- (4) If so, is he vested with the right claimed, and is he entitled to maintain this action ?
- (5) Assuming the answer to issues (2), (3), and (4) to be in the affirmative, can this action be maintained against the defendant ?
- (6) Can such a right as the one claimed be acquired by prescription, and if so, has the plaintiff acquired the right claimed by prescription ?

No. 6.
Issues
framed by
District
Judge.

30

40

- 1 (7) Have the plaintiff's rights, if any, been lost by prescription, for the reason in paragraph 6 of the Answer ?
- (7a) Is the right claimed in the Plaint one liable to be lost by non-user ?
- (7b) If so, what is the period of prescription ?
- (8) Do the provisions of Sections 69, 84, and 90 of the Police Ordinance, No. 16 of 1865, and Section 64 of the Local Board Ordinance, No. 13 of 1898, empower the Government Agent to prohibit the exercise of the right claimed in the Plaint ?
- (9) Was the letter of the Government Agent dated 27th August, 1912, and addressed to the President, District Committee, Kandy, an interference with any right belonging to the plaintiff ?
- 10 (9a) Does such alleged interference disclose a tort on the part of the Government Agent of the Central Province ? 31
- (9b) If so, is the defendant liable to be sued thereon ?
- (9c) If it is not a tort, does it give the plaintiff a cause of action as against the defendant ?
- (10) What damages, if any, has plaintiff sustained ?
- (11) Did the Wallahagoda dewale enjoy the right and privilege, among others, of conducting the perahera procession as set out in paragraph 2 of the 20 Plaint ?
- (11a) If so, was such right and privilege acknowledged and confirmed by the Convention of 1815 ?
- (11b) Assuming that it was so acknowledged and confirmed, were the provisions of the Convention of 1815 subject to such modification as might be determined by subsequent legislation ?
- (11c) If so, was Clause 5 of that Convention in fact modified—
- (a) By the Proclamation of 21st November, 1818 ?
- (b) By the provisions of Sections 69, 84, and 90 of the Police Ordinance, No. 16 of 1865, and Section 64 of the Local Board Ordinance, No. 13 of 1898 ?
- 30 (12) If so, is the Wallahagoda dewale now entitled to the privilege claimed in paragraph 2 of the Plaint ?
- (13) If the action is based on contract, is the notice of action good ?

F. LIESCHING,
Proctor for Defendant.

GOONEWARDENE AND WIJEGOONEWARDENE,
Proctors for Plaintiff.

No. 7.

January 21, 1914.

Mr. LaBrooy, with Mr. Goonewardene.
Mr. Hughes.

40 All the plaintiff's issues are accepted, as well as the defendant's.

Trial for 20.3.14.—P. E. PIERIS, 21.1.14.

RECORD.

In the
District
Court of
Kandy.

No. 6.
Issues
framed by
District
Judge—contd.

No. 7.
District
Court Trial
Proceedings,
21st Jan.,
1914.

1

No. 8.

March 20, 1914.

RECORD.

33

In the District Court of Kandy.

No. 8. District Court Trial Proceedings, 20th March, 1914.

Mr. Schneider, with Messrs. LaBrooy, E. W. Perera, Batuwantudawa, Wijewardene, and A. Perera, instructed by Mr. Goonewardene.

Mr. James van Langenberg, *Solicitor-General*, with Mr. V. M. Fernando, *Crown Counsel*, instructed by Mr. Lee.

Mr. van Langenberg amends issues (7) and (8)—allowed. Also issue (9).

Mr. Schneider amends section 5 of the *Plaint* by altering "350" into "10,000," undertaking to supply stamps.

10

Mr. Schneider objects to issue (1) as being too vague.

The Solicitor-General explains the line of argument he proposes to adopt. I accept the issue.

Mr. Schneider admits that the reference in paragraph 4 of the *Plaint* to the refusal of 27th August, 1912, is contained in the letter of 27th August to the President, District Committee, from the Government Agent. 34

After discussion I frame issues:—

(9a) Does such alleged interference constitute a tort on the part of the Government Agent ?

(9b) If so, is the defendant liable to be sued thereon ?

20

(9c) If it is not a tort, does it give the plaintiff a cause of action as against the defendant ?

(2a) If not, is the action still maintainable by the plaintiff ?

Mr. Schneider declares that his action is not based on tort, but on contract.

On *Mr. Schneider's* suggestion I accept these additional issues:— 35

Did the Wallahagoda dewale enjoy the right and privilege, among others, of conducting the perahera procession as set out in paragraph 2 of the *Plaint* ?

30

If so, was such right and privilege acknowledged and confirmed by the Convention of 1815 ?

On these I alter issue (8) as follows:—

If the above two are answered in the affirmative, do the provisos of Sections 69, 84, and 90 of the Police Ordinance, No. 16 of 1865, and Section 64 of the Local Boards Ordinance, No. 13 of 1898, empower the Government Agent to prohibit the exercise of the right claimed in the *Plaint* ? 36

I add to issue (7):—

(7a) Is the right claimed in the *Plaint* one which is liable to be lost by non-user ?

40

(7b) If so, what is the period of prescription ?

The Solicitor-General asks me to dispose of the issues of law first. I am of opinion that I cannot separate the issues of law from the issues of fact.

Mr. Schneider wishes it recorded that he presses the issues of law and fact should not be separated.

P. E. PIERIS, 20.3.14.

1

No. 9.

Mr. Schneider addresses the Court.—The Basnayake Nilame is trustee under the Ordinance and is a corporation sole. All the temple's rights are vested in him. And calls—

37

In the District Court of Kandy.

No. 9.
District Court Trial Proceedings, 20th March, 1914—*contd.*

No. 10.

No. 10.

Tikiri Bandara Ellekewala, affirmed.—Plaintiff, Basnayake Nilame of Wallahagoda dewale, one mile from the present town of Gampola. I was elected Basnayake Nilame provisionally in 1911, and confirmed in 1912. I produce my certificate of appointment (P 1), signed by the President of the District Committee. Rules have been framed by the committee under Section 12 of the Ordinance. I produce a copy (P 2). Under Section 55 the certificate is final proof of appointment. The dewale is very ancient, and founded about 1236 A.D. by Prakrama Bahu. It is endowed with lands which are held by tenants rendering services. The tenants cultivate the muttetu, attend the peraheras, sweep the dewale premises, erect pandals, &c. Some of them have to beat tom-tom—"doulkara panguwa." The kapurala holds lands, and has to accompany the perahera and carry the karanduwa. Other tenants carry the god's palanquin or randolia in the perahera; others dance in the perahera; the trumpeters blow the horana in the procession. Others carry the canopy over the randolia. I have known the dewale ten years. I did not witness the perahera prior to my appointment. After my election I wanted to have the usual perahera; then I received a letter from the President of the Committee that the Government Agent had written to say that the beating of tom-tom, and all other music, must be stopped a hundred yards on either side of the mosque at Ambagamuwa Street. I cannot lay hands on the original letter, but shall produce a copy. I conveyed the message to the tenants concerned and the people of the village. There are fifteen processions in all, spread over fifteen days, and the last day we have the diyakapana ceremony; that is the most important procession; it is the Esala perahera. For that purpose the procession has to go along Ambagamuwa Street to Kahatapitiya to the Mahaweli-ganga, to a spot called Bothalapitiya; the spot in the river is Poruthota. After the water-cutting the procession retraces its steps by the same road. Along the route are four mosques. It is only at one of the four that our music had to cease. The other three do not object. There are also two Christian churches, which also do not object. As we were forbidden to have our music we did not hold the perahera. The tenants objected, and so did I. I spoke to the others who had to take part, and they objected.

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(*Mr. van Langenberg* objects.)

The temple is a very sacred spot, as of ancient origin. It is dedicated to the Kataragam deiyo. The right to celebrate the Esala perahera is a valuable right. I would not give it up for any sum of money.

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By the Solicitor-General.—I am 31 years old. I have lived at Wilapitiya, 22 miles from the temple. For some time I lived at Kadugannawa. I had been to the dewale only once before my election, two months before. I was

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1 elected in October, 1911. Before that I had nothing to do with the temple. I applied for the Basnayake Nilameship. It carries no salary, but is considered as a rank. After my election I visited once or twice a month. There are six pangus of tenants of the dewale. They all live near the dewale. Four or five of them are here. Three are come to give evidence. There are three maruveni pangus. Of the tenants, four live quite close to the temple. The date of the temple is given in the Service Tenures Commissioners' report and in Lawrie's "Gazetteer." The duties of the kapurala we know. It is common knowledge. There is a kapurala to every dewale, and their duties are always the same. The duties of the kapurala of this dewale are the same as those of a kapurala of any other. Every dewale has its procession. There is a karanduwa in each, and the kapurala carries that. The services of the tenants are detailed in Lawrie's "Gazetteer." I have to do with their performance of services. My predecessor, Angamana, is alive. My election is for life. I am not aware of an acting Basnayake Nilame in 1909. Halangoda was prior to Angamana, and is still alive. I hold permits issued by the Government Agent to Angamana to hold this procession. Angamana was in office four years. Four peraheras must have been held during his term of office. My papers show he applied for permission for each perahera to the Government Agent. I believe permits were issued by the Government Agent. Witness produces petition to Government Agent. [Mr. Schneider will put them in as evidence.] I applied for no license for 1912. I did apply. I know Nugawela, President for the Kandy District. I do not know if he made an application for permission for the procession in 1912. I know of the correspondence between the President and the Government Agent about the procession for 1912. The President was writing on behalf of myself and on my instructions: that is why he communicated the Government Agent's decision to me. I remember getting a copy of letter No. 3,554 of 27th August (P 3). The prohibited distance was fifty yards on each side. I am not aware of such a rule prevailing previously. There was a rumour that Angamana, my dismissed predecessor, was arranging with the Moors to obstruct the procession I contemplated. That is why I went to the President in the matter. My interview with Nugawela must have been shortly before the 17th August (letter 1,197 of 17th August, 1912, marked D 1). I believe D 1 was written as the result of our interview. The obstruction here referred to consisted of the two posts. I wanted to know if the prohibition signified by those two posts affected me also. I had not heard that the tom-toming of the dewale perahera had been stopped prior to 1912. The mosque is, I believe, twenty-five years old. I hear the worshippers of the mosque object to the tom-toms. I have heard that twenty-five years ago the Moors got up a sham pinkama to prove that tom-toming led to a disturbance among the Moors. I have not heard that the hour of our procession had been changed in consequence. I heard that the sham pinkama was got up five or six years ago. About the beginning of September, 1912, I heard of what Angamana was planning. I cannot be sure; it was probably in July or August. I received from Nugawela the letter P 3. He sent me a copy. He wrote again on 2nd September, No. 1,258 (D 2). I also received copy of 3,783 of 13th September (D 3). (Shown letter of 23rd September, D 4.) I wrote this letter. I proposed to have the perahera, avoiding the Ambagamuwa

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1 Street. After that letter was written the Government Agent insisted on 48
music being stopped before every mosque, therefore I abandoned the perahera.
The Government Agent said every place of worship. I received license D 5
on the application of D 4. I abandoned the procession, as both the people
and myself objected to the conditions. I was prepared to accept the
Government Agent's license if it was a proper license, and avoid Ambagamuwa
Street. I would not accept the license as it was not a proper one, and required
me to stop music before every place of worship. I arrived at a final conclusion 49
that I had no power to alter the proper route; that is subsequent to the
10 concession I made in D 4. When I was a candidate I knew the chief function
was the Esala perahera. I made no particular inquiries regarding it. When
I went to Nugawela I knew the history of the perahera and the route it took.
I knew that when I wrote D 4. When I wrote it I had already finished
fourteen processions, and I thought I must finish the festival, and I was
prepared to waive my right to get over the difficulty. I knew the procession
must go by Ambagamuwa Street. I did not think I could avoid Ambagamuwa
Street and yet have a proper perahera. I considered it better to have a 50
procession shorne of its rights than none at all. I acted under protest.
I claim the right to go by Ambagamuwa Street, as my predecessor had done
20 so. The perahera lasts for fifteen consecutive days in September. I claim
the right to go past the mosque even when service is going on. The fourteen
processions I held were within the dewale premises. On the fifteenth we
proceed through the town, and in 1912 we did not hold the fifteenth at all.
We did not go outside the premises or attempt to go through Ambagamuwa 51
Street. I claim the right of tom-toming during the procession, even if it
disturbed others. I require no permission from any one. We usually inform
the Government Agent that the perahera is on such a date; he then sends
police to keep order and regulate traffic, &c.; that is for his information.
In Kandy we never apply for permits. Sometimes villagers apply for permits:
30 we only inform the Government Agent. When I wrote D 4 I thought that
a license was required. Nugawela did not suggest that no license was required
at all. He has been President four or five years. It is a position of high 52
honour. The Government Agent on our information sends police to protect us,
to regulate traffic, and prevent disorderly conduct; if any one wrongfully
objected to our music and threatened a riot, the police must stop them, and
not us. All the dewales and the Dalada Maligawa claim the same privilege
as we do. I am not aware that the Maligawa processions are stopped on
Sundays. I know that there are no processions on Sundays. I have heard
of no police court cases over our perahera. I have already referred to the 53
40 sham pinkama of the Moors. We object to stop music, as it is not the custom.
If we stop at one place we might have to stop at every place. There was no
question of stopping because the drummers are tired, as there are relays of
them. My proctor suggested the value of my rights, and I agreed. That was
three hundred and fifty rupees. I say it is worth much more than ten
thousand rupees. It is a right that cannot be valued. It might be worth
a lakh, or any amount more. I would not sell the right for a lakh.
By Mr. Schneider.—In the six pangus are six or seven hundred tenants.
The Esala perahera is the most important; thousands of people from all parts 54

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1 of the Island attend it. As Basnayake Nilame I have to see that the tenants perform rajakariya. If they do not I sue them. All the revenue is administered by me. I am responsible for all improvements to the dewale and lands. I organize and conduct all the processions and ceremonies. The perahera cannot be held without me. I am the chief lay officer of the dewale. I have to accompany the perahera. Tom-tom beating and other music is essential, and the perahera will be incomplete without it. The music is an essential part of the perahera. It is a part of the ceremony offered to the god. The Kataragam deiyo is the god of war. I regard it as an insult to the god to stop the tom-toming. I wrote letter of 1st October, 1912, to the committee (P 4). The statements in this letter as to the objections of the Buddhists are correct. I produce three applications (P 5, P 6, P 7) to the Government Agent; these are what I described as permits. I regarded them as information to the Government Agent. Every Buddhist is interested in the question before the Court, and they are prepared to finance the fight. Angamana, my predecessor, is now a Registrar under Government. I do not think he will give evidence for me, as he is on bad terms.

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10 to stop the tom-toming. I wrote letter of 1st October, 1912, to the committee (P 4). The statements in this letter as to the objections of the Buddhists are correct. I produce three applications (P 5, P 6, P 7) to the Government Agent; these are what I described as permits. I regarded them as information to the Government Agent. Every Buddhist is interested in the question before the Court, and they are prepared to finance the fight. Angamana, my predecessor, is now a Registrar under Government. I do not think he will give evidence for me, as he is on bad terms.

By the Solicitor-General.—He was on bad terms for the last ten years.

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20 We had some litigation, and since then we had not spoken. On 16th March we were on bad terms.

By the Court.—There are tenants to carry the udaviyan; others spread pavada to carry the mutukuda and the randolia; those are the honours given to the king. The music is also among the honours given to the king. I do not know that music was stopped at the palace at the death of a near relative. I desire to correct a mistake: what the kapurala carries is not the karanduwa, but ranayudha, the emblem of the god. That is done in every dewale.

P. E. PIERIS, 20.11.14.

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March 21, 1914.

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30 Counsel as before.

Mr. Schneider calls—

Mudianse Kapurala, affirmed.—My family name is Brathmanekapugethera; I am a Kandyan, aged 40, and one of the paraveni tenants of this dewale. My rajakariya is the kapu service. I have held the kapu office for fifteen years, and before me my father and seven generations of us held the office. It is handed down in the family with the traditions and learning of the office. I cannot read or write. At Wallahagoda there is the vihare and the dagaba, two bo-trees, and a dharmasalawa; the Pahala dewale and the Maha dewale; the latter is dedicated to the Kataragam deiyo and the former to the Dewatabandara, the minister of the Kataragam deiyo. There are other nilakarayas beside me, about a hundred. Some of them have the dhoul service, the tom-tom service, the horanawu service, the thamboru service, the nagasingham, the chank blowing, the uduviyan, the paliha (of white brass),

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1 and various other services. As kapurala my duties are to decorate the god with flowers, the offering of the multan or cooked rice, the bathing of the god, the conveying of the maha ranayudha on elephant-back in the perahera procession, the cutting of the water, &c.

The festivals of the dewale are the alutsal, katti feast (in November), the new year's festival, and the perahera. The perahera commences on the eighth day of the increasing moon of Esala, and goes on for fifteen days—for fourteen days within the dewale premises, and culminates on the fifteenth day with the water-cutting ceremony. That is the most important function in the
 10 festival. The history connected with the water-cutting ceremony is this : 59
 There was a dewatawa who used to fashion a magic ship, and would bring it to the shore himself, in the semblance of a man. People being deceived would go on board, and he would take them to mid-ocean and have a feast off them. As he had ravaged numerous towns, the Kataragam deiyo obtained permission from Vishnu to kill the dewatawa, and went to the shore in human guise ; as usual the dewatawa brought the ship, people as usual boarded, and when he wanted to eat them the Kataragam god challenged him to fight. With a stroke of his sword he cut off the dewatawa's head, and took it and water in
 20 a golden vessel and ascended to heaven, and alighted on Mahameru, and offered the head and the vessel of water to Sakraya. The gods in heaven
 danced in joy, and Sakraya ordained that the event be commemorated for ever in every dewale.

On the fifteenth day we start conveying the ear ornaments of Valliamma, the wife of Kataragama, with her other ornaments. They are all placed in a box in the randolia ; also a sword of silver-gilt, with which to cut the water, and a vessel for water, also gilt. I mount the elephant with the ranayudha held over my head. Then the padhapuja of music commences : the dhoul, thammattang, bera, udekki ; the nagasingham, consisting of a bera, flute, one thamboru, and chank, all commence, with flags, shields, and sesath arranged
 30 in procession. The music goes first, then I come on elephant-back. 60

The ranayudha is the emblem of the god. About five or six elephants accompany me, and a large concourse of people follow—a thousand or two thousand. Starting from the dewale, we first proceed along the Ambagamuwa Road, turn to the Kandy Road, till we reach Kahatapitiya, and go to the river at Bothalapitiya. The same day the perahera from Gadaladeniya, Lanka-
 40 tillaka, Vegiriya, and Embekka go to the same spot. Each cuts the water in turn ; our perahera has to reach the spot first : we call this "Thottu allenuwa." If we fail to be there first we have to pay a fine to the other four dewales. The four dewales I have mentioned are dedicated to Vishnu (two),
 Kataragam, and Natha deiyo. These are the gods of the four quarters of the universe. On reaching the water I take the sword in my right, and the vessel I suspend from my left forearm. I then step into a boat, and curtains are drawn round to conceal me from view. I proceed to mid-stream ; I strike the water with the sword ; the water parts and I plunge my vessel and fill it, and then the divided water closes again. Then the procession returns to the dewale in the same order as before, and with the same ceremony. 61

Ambagamuwa Street is the ancient road ; according to our tradition the road is seven hundred or eight hundred years old, and is said to lead to the

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1 Sammantakuta. This is the traditional route for the perahera, from the time of Bosathbhuwaneke Bahu of Gangasiripura. It is essential that the procession should go along that road, otherwise there will be calamity for us. These ceremonies and route were fixed by King Bhuwaneke Bahu himself, and I have never heard that they have at any time varied the route. Along this street there are four Muhammadan mosques. The members of one have, I hear, for these two years objected to our passing with music. That mosque is a new one. There is an old mosque at Kahatapitiya. That mosque has taken the place of an old kovila which the Sinhalese had abandoned. That is the oldest mosque, and they do not object to our music.

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10 The Basnayake Nilame asked me if the music could be stopped in passing the mosque. I said it could not. I said once the music accompanying the god started from the dewale it could not stop till it reached the river. It is our tradition that such was the order of the king. If it was stopped there would be danger to the kapurala, and to everyone connected with the dewale. It would be disobedience to the god and would excite his wrath. For two years the water-cutting has not taken place; and for these two years there has been distress and trouble over the whole village, and devastation by flood. The Basnayake Nilame asked me what would happen if a different route were followed. I told him that I must decline to do anything to transgress what my ancestors have handed down to me. I declined to accompany the perahera if it went by a different route. This conversation took place the first year the fifteenth procession was abandoned. I have accompanied the procession in my father's lifetime, and never has the music been stopped. The tradition is the dewale was founded by a royal grant. My father has told me that the sannas was lost when Unambuwe Maha Nilame was Basnayake.

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30 *By the Solicitor-General.*—I have known since I reached an age to understand anything. I am a Buddhist layman. The Buddhist priests do not come to the dewale. On the night preceding the fifteenth procession there is a priest whose ancient rajakariya it is to come and recite pirit at the dewale. That is the only service conducted there by a Buddhist priest. He is a member of the Asgiriya College. That priest's tutor used to come before him, I have heard. The priest is from Niyangampaha vihare, which is separated by a field from the dewale. The two dewales have two kapuralas but one Basnayake Nilame. I believe in these gods, as my ancestors believed in them. I cannot say if they are gods recognized by Buddhism. I believe these are the gods who took over the protection of Buddhism and of Lanka from the Buddha. Therefore we recognize these gods. The procession is to the honour of the two gods Kataragam and Dewatabandara. There is no priest whose rajakariya is to accompany the procession. They have nothing to do with the water-cutting ceremony. The Basnayake Nilame accompanies the procession. I have not known the Basnayake Nilame ever to be ill during the procession. If he were ill I think the vidane, vannakurala, and kapuralas would hold the procession. If I were ill I would nominate my brother or son to take my place. I have never missed a perahera since I became kapurala. Before that I had been to five or six peraheras. The peraheras were held regularly. I have not heard of any permission being obtained of the Government Agent. I know Nugawela, the President of the committee. I respect him as I respect the other prominent

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1 gentlemen. I cannot say if he ever attended the perahera. Some police accompany the procession. I do not know why. I know nothing as to the reason why they come. I have seen them keeping the crowd in place in the procession, and they are all in uniform. They stop when we pass the gate at Bothalapitiya, and they are there when we return ; as far back as I remember they have accompanied us on the high road. I assert it is not open to us to stop the music on any account. I never had occasion to stop the music for a frightened horse. If a carriage came we would make way. We never stop the music. Offerings are made by people as the procession goes. That is the 10 perquisite of the kapurala. From the dewale to the river is two and a half miles, approximately. Buddhist pinkamas go in procession, with music, to the neighbouring Buddhist pansalas. They are in connection with religion. They are accompanied by music, more or less. I know nothing special about pinkamas ; I have had nothing to do with them. I cannot speak about what I have not taken part in. I know nothing about disturbances created by the Moors.

Our perahera begins fifteen days after the Kandy perahera ends. It was only after fourteen processions that the Basnayake Nilame questioned me : he asked me if I would stop the music at the mosque or go by another route. That was when he questioned me about the water-cutting ceremony. No such 20 suggestion had been made any previous year. I have never before these two years heard of any opposition to our perahera, or even to any pinkama. I live 2½ miles from Gampola, and might not go there even once in six months. I did not ask the Basnayake Nilame why he put that question to me. He did not tell me the Government Agent had made such an order. I merely answered him, and did not cross-examine him. The other dewale officers were present when I was questioned. The Basnayake Nilame told us to wait till he gave proper instructions, and we are waiting still. I did not ask him why he could not proceed along the original road. It is not that I acquiesced in what he said : I declined to transgress our custom. This year I believe the vidane told 30 me that the music had to be stopped opposite the mosque. He did not tell me who made the order, and I do not know to-day. Last year fourteen perahera processions were held, but not the fifteenth. It was only once the Basnayake Nilame and I discussed matters. This year we had no procession at all. Last year we had fourteen, and the year previous all the fifteen. This year, as there were no processions at all, I did not question the Basnayake. That is a matter for the vidane. I have met him. He said if permission could be obtained there would be a procession, but not otherwise. I do not know who was to give the permission. I put him no questions. I did not vote for the plaintiff as Basnayake Nilame. He had not questioned me as to the ceremonial 40 of the perahera. I cannot say where he got his information from. I know the railway station and the magistrate's bungalow. A road runs from one to the other. During the five years prior to 1912 it was not suggested to me by any one in authority either to stop the music opposite the mosque or go by the road from the magistrate's to the station.

So far as I have known our procession has always gone along Amba- gamuwa Road with the music, past the mosque. 69

My brother took my place two years when I was ill, but what happened when he went I do not know. (This is in answer to a suggestion that two

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1 years they went by the magistrate's road.) My brother is now in Singapore. He took my place when Angamana was Basnayake Nilame, at intervals of two or three years. Ukku Banda vidane is alive. He is no longer a vidane. The vidane is appointed by the Basnayake. I have noticed two posts on either side of the mosque. I do not know why they were there. I have noticed them for these six months.

By Mr. Schneider.—The Basnayake Nilame communicates to me through the vidane.

10 *By the Court.*—The maha ranayudha is the arrow of the god. It represents the god. It is taken instead of the god. It is placed in a vault in the innermost portion of the dewale. Nobody but the kapurala enters that vault. When we touch it we wrap several handkerchiefs round our hand, place betel-leaves over that, and hold it like that. I cover my face and tie a band across my mouth when I take it. At Gadaladeniya the dewale can be only entered through the attached vihare. In Buddhist temples, with the image of Buddha are those of Vishnu and Sumana.

P. E. PIERIS, 21.3.14.

The Solicitor-General undertakes to produce the documents the Colonial Secretary has supplied.

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Called 24th.—P. E. P.

No. 12.

(11b) Assuming that it was so acknowledged and confirmed, were the provisions of the Convention of 1815, in so far as they constituted legislative enactments, subject to such modifications as might be determined by subsequent legislation ?

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(11c) If so, was Clause 5 of that Convention in fact modified—

(a) By the Proclamation of 21st November, 1818 ?

(b) By the provisions of Sections 69, 84, and 90 of the Police Ordinance, No. 16 of 1865, and Section 64 of the Local Boards Ordinance, No. 13 of 1898 ?

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(12) If so, is the Wallahagoda dewale now entitled to the privilege claimed in paragraph 2 of the Complaint ?

P. E. P., 11.5.14.

May 11, 1914.

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Counsel as before.

The Solicitor-General proposes three further issues, (11b), (11c), and (12).

As to (11b), *Mr. Schneider* objects to the words " in so far as they constituted legislative enactments," as he does not admit that they are such.

Accept issue, omitting those words.

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(11c) and (12) are agreed to by *Mr. Schneider*.

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- Rankira*, affirmed.—My full name is Wallahagoda Berakarage. I am a Kandyan, 46 years of age. I am paraveni nilakaraya of the dewale, and hold the dhoulkara panguwa. My rajakariya is to beat the dhoul, and I am the panikkiya, a headman of the tom-tom beaters. My duty is to supervise the work of the tom-tom beaters, the trumpeters, and the dhoulkarayas. We have to beat dhoul at the four mangallas, including the perahera. The others are katti, alutsal, and illmal; the fourth is the Esala, and includes the perahera. At the last, four drummers take part in the first perahera, and for the chief perahera we get several more, for a large number up to fifteen volunteer for that day, in addition to the men I have to supply as panikkiya. They volunteer, as they expect the blessing of the god. The water-cutting perahera is a part of the worship of the god, and the music is essential during that procession. It takes place after fourteen processions, all in connection with the Esala mangalla.
- On that day the procession goes by the Ambagamuwa route, and I have known it to do so for thirty-two years, of which thirty years were while I was in office; that route was never altered. No other route is adopted. We have never been asked to deviate from that road. For the last two years the fifteenth procession has been omitted. As we were preparing for it the Basnayake Nilame told us we had been forbidden to go by the street and had been asked to take another route. All the people of the dewale who had to take part refused. We were not prepared to transgress the old customs. We feared danger from the gods. The discontinuance of the procession had led to great calamity. There has been an epidemic of dysentery and sore eyes, and the country was devastated by floods. While on the procession the tom-toms, which commence at the dewale, continue without interruption till Poruthota. I had never known the music to stop before any mosque. The procession has to pass three mosques, and a fourth at Kahatapitiya. Objection is taken only by the new mosque: the oldest is Kahatapitiya, and that too does not object. The new one was built fifteen or twenty years ago. We have to pass Christian churches; they do not object. Our family, according to tradition, has rendered this service from the foundation of the dewale. The service is hereditary.
- By the Solicitor-General*.—It is the rajakariya of the lands which we hold. There are posts all along the Ambagamuwa Road. I am not aware of the two posts on either side of the mosque as a sign that music is to be stopped there. The Basnayake Nilame told us we were forbidden to go along that street in procession with music; he said nothing about the mosque. All I understood was we were forbidden to go along the road with music. I did not understand we could go without music. We refused to go by another road. We were not told why we were forbidden. We were asked if we were willing to go by the station; we refused. We asked if we were forbidden to beat tom-tom along the whole road, or only a part of it. He told us we must stop near the church, that is the mosque. He did not say and I did not ask at what distance we should stop. He did not mention the posts. Before this the new mosque has not objected, to our knowledge. Till the

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- 1 procession was stopped two years ago, no objection had been taken by this mosque. The members of the mosque had not come and objected. For my twenty years I have not missed a single perahera. Within the last seven years the procession has never left Ambagamuwa Street and gone by way of the magistrate's bungalow. I do not know which year the present is. For the last twenty years the Esala perahera has been deviated along the station road. For the last seven years no Government official has compelled it to go by the station road. If such an order has been made we would prefer to abandon the perahera than to obey. The route is fixed and cannot be changed.
- 10 For the last ten years the tom-toming of the Esala perahera was never stopped by the police opposite the mosque. I had never stopped the tom-toming opposite the mosque. There is no sufficient reason of any kind for stopping the tom-toming, even for a short time. Such a thing has not happened these twenty years. I would not stop for a mischievous horse. For the Esala perahera we never start under fifteen drummers. Others do not join on the route; they all join at the dewale. We do not divide into groups. We all beat together. Even if an individual drummer is tired and stops, the noise of the drums goes on without ceasing. All the tom-tom beaters and trumpeters go ahead in one body, then follows the god, and then the dancers; then the dancers of the Pahala dewale. The tom-tom beaters are not distributed in sections, but are all in one body, and all in front of the god. In the Kandy processions there are several bands, each attached to its own dewale. I am not very skilful as a tom-tom beater, but I continue the duties of my ancestor. I would go with the vihare peraheras, as well at Gampola, each taking the route proper to its vihare. Some go along Ambagamuwa Street, others branch off from it. I would go to two or three a year. Some pass the mosque, but I have never in any perahera been stopped opposite the mosque. I am aware of no disturbance about a perahera at Gampola. I live at Wallahagoda.

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P. E. PIERIS, 11.5.14.

No. 14.

No. 14.

- Uddahakapugedera Dingirala*, affirmed.—I am a Kandyan Sinhalese, 35 years old, paraveni tenant of this dewale. My duty is to support the canopy and to carry the ehela tree on the day of the water-cutting; that latter is an honourable service. I have performed it for twenty years. I have to attend at the water procession, and have to carry the tree on my shoulder, with a white cloth attached to it. The route is by the Ambagamuwa Street to Bothalapitiya. All the way the music continues, and it cannot be interrupted for any reason, or the vengeance of the god will come on us. This has been laid down since Sinhalese times. For these twenty years the music has never been interrupted.

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- By the Solicitor-General*.—I have attended the procession twenty-five years, and have served in it for twenty years. I never missed one. I know the new mosque. I remember seeing some posts on the road. There are two or three iron posts near the mosque; may be for tying cattle; there are two

86

RECORD.

In the
District
Court of
Kandy.No. 13.
District
Court Trial
Proceedings,
11th May,
1914—*contd.*

1 on one side and one on the other side of the mosque. The first on the Kandy side is about thirty fathoms and the next twenty fathoms from the mosque ; the one on the other side is fifteen fathoms. Two are old and rusty ; one is a new post. I do not know when they were put up. I first saw them six months ago. Cattle are shod close to that. I have heard of no prohibition against tom-toms at that point. I have not gone in any procession but the Esala past the mosque. Year before last the Basnayake Nilame told us to stop the tom-tom, and we dropped the perahera. If in the procession the police told us to stop the music, it is not possible for us to stop. We have never
 10 been asked to stop. We have never had to divert the procession by the station road ; I am positive. 88

P. E. PIERIS, 11.5.14.

No. 15.

No. 15.

Yamanalagegedera Kuda Duraya, affirmed.—I am a Kandyan Sinhalese, 65 years old, of Wallahagoda, paraveni tenant of the dewale. My rajakariya is to hold the pandam or flambeau at the Esala perahera. I accompany with my torch the water-cutting procession in honour of the gods. I have done so for forty-five years. The procession is marshalled at the dewale and proceeds from there with music by the Ambagamuwa Road. We start about
 20 4 A.M. from the dewale. We reach the water at dawn. The music is continued without a break. To my knowledge the music has never been interrupted. It has always been conducted in this manner at this hour of the night. The crowd is not large till there is light, and at the water-cutting there is a very large assembly of Buddhists. I am a Buddhist.

By Mr. Fernando.—The crowds of the other dewales also join. We start back about 2 P.M. ; till then the offerings are being made. We get back by 5 P.M. ; that all depends on the time taken to finish the offerings. Nobody fixed the time for that. The police never attempted to fix the time for us. I go to Gampola once or twice a week. I have heard of a disturbance over
 30 a procession, about six years ago. Since then the police have not attempted to stop our perahera. I do not remember the Police Magistrate ever accompanying the Esala perahera. All I can say is I did not see him. I have my fixed place in the procession behind the elephant conveying the god. I never knew the procession go by the station road. I never missed a perahera. I have never known the music to stop by the new mosque. We were never asked to stop it. I know there are now two posts on either side of the mosque. I do not know if other processions stopped their music between them. We have never been told that the hour should be regulated so as not to clash with the services of the mosque. 91

40 P. E. PIERIS, 11.5.14.

No. 16.

No. 16.

Uddahakapugedera Appuhami, affirmed.—Kapurala, Kandyan Sinhalese, 56 years old, of Wallahagoda. Hereditary kapurala of the Palle dewale. The office has been held by us for eight hundred years, for rendering that service ; 92

- 1 there has been granted to us 1½ amunam. Our founder was Devadas
Brahkmana kapurala. The office is a sacred office, and as a rule conferred
on Brahmin families. As kapurala I have to keep the dewale clean, officiate
before the god, take the god in the procession, offer the food offering, all at
the innermost shrine. All this I do at the Palle dewale, which is dedicated
to Dewatabandara. He is the Alutnuwara deiyo, and is the minister of the
Kataragam deiyo. To the latter is dedicated the Udda dewale, and Mudianse
kapurala officiates there. The two dewales constitute the Wallahagoda
dewale. I know the history and ritual of the dewale; that is handed down
10 among us from father to son. According to that Wallahagoda dewale was
founded by King Walagam Bahu about eight hundred years ago. The sannas
is said to be hidden in the Unambuwa walawwa. I cannot say who actually
concealed it. Since Walagam Bahu there have been endowments by other
kings, but no sannas. We hold a talpath given by Colonel Hardy. 93
- There are four festivals: alutsal, aurudu, perahera, and katti. The first
is in January, and there is a procession then which comes up to the Dalada
Maligawa at Kandy. That procession lasts a day and a night. From Kandy it
goes to Gurudeniya and returns with the first-fruits. For the aurudu mangalla
in April there is no procession. The next is the perahera mangalla of Esala. 94
- 20 We plant our tree at the same time as the Natha dewale in Kandy, till the
Kandy perahera is over. We have music morning and evening round the
sacrificial tree; that is done at the morning watch and evening watch, and it
is a sabdapuja which is necessary for the worship of the gods. When the
Kandy perahera is over, after fifteen days we start ours; that will be a month
after the fixing of the tree. All that month, morning and evening, music 95
has to be performed. We then start in the dewale premises the first five
processions. There is offering of rice and the full complement of music and
dancing, all within the dewale premises. This lasts from 7 P.M. till 10 P.M.
There is a prescribed route round the dewale itself. A large assemblage of
30 Buddhists takes place; this lasts five days, and is the kumbal perahera; it
proceeds round the verandah and back into the dewale, with the five kinds of
music and dances, &c. The next is the dewale perahera for five days—once 96
in the day-time and once in the night-time. It emerges from the gate and
promenades round the maluwa of the dewale. The next is the randoli perahera,
in which the randolia is carried, with music, dancers, and elephants, the
procession proceeding to the pahala maluwa, or the lower courtyard; that is
also for five days, one by day and one by night. The last is the diyakepun
perahera, which lasts a night and a day. It starts from the dewale at night; 97
that is invariably so—about 2 A.M. First go the hevisi of the tom-toms, &c.;
40 then I go on an elephant with the Pahala dewale god; then the randolia—a
palanquin with the insignia of the Kataragam deiyo, to whom the dewale is
dedicated. There are separate tenants to carry the randolia; in it are the
ear ornaments, the gold sword, and the pitcher: then comes the Kataragam
god carried on the tusked elephant; that is the ranayudha, a gold arrow
representing the god; then a couple of hundred people. The Basnayake
Nilame follows the elephant conveying the god. The hour for starting the 98
procession is fixed among the kapuralas, as we consider what interval will be
required by us to reach the water in time. We do not consult any lucky hour 99

1 for the purpose. The Basnayake tells us when to start, but we follow our own time. The procession starts with music, which is continued without stop till we reach the Poruthota. The music is essential to the procession: the route is prescribed. For forty-five years I have known it to go by the Ambagamuwa Road. I have never known the music to be stopped before any mosque. We reach the water about 6 or 7 A.M., and there the Udaha dewale kapurala cuts the water; the procession stops there till the offerings are completed. We start back about 2 P.M., in the same order and with the music. We pass four mosques; the latest was built twenty-five years ago. Originally it was a thatched building on a somewhat different site inside the garden. The present building was erected twenty years ago, and was added to six years ago. A Buddhist priest comes from Niyangampaha vihare and recites pirit at the dewale. This dewale receives revenue and maintenance from all the vihares, including Niyangampaha and the villages in our district. 100

By the Solicitor-General.—I say this as the villagers come with their offerings. The only protection for the vihares and villages is our dewale. The trustees of the vihare do not contribute to the dewale. The dewale affords spiritual protection to the vihare; that is what I referred to as maintenance. A priest can recite pirit anywhere, even in a private house. 102

20 Our procession has to be by the water before the other four dewales. We judge the time by the moon and the position of the stars: now we know the time from the train. We start when the shadow cast by the moon is five feet long. We have to be by the water before 6 A.M. The new mosque is not fifty years old. I have regularly attended the perahera thirty-two years, without missing a single one. The prescribed route and the continuous music is essential to the perahera. It must be continuous from the dewale up to the water. For these seven years the Esala perahera has not, to my recollection, been taken by the station road. I have heard that the Moormen had a sham pinkama and that there was a disturbance; that was about six years ago. Since then the Esala perahera has never been stopped by the police near the mosque. The congregation of that mosque never protested. I assert that the music cannot be stopped under any circumstances. If we were passing the house of a person who is seriously ill we would not stop the music. The man may die—that is better than incurring the wrath of the deity. If a mischievous horse came in sight, that would have to be controlled, but we will not stop. There are constables on duty on the road, but we do not want them. I deny that special police are sent; they are on duty at their beats; at least I am not aware of any special police. Constables come to see the procession, and they do not go with the procession. I know the posts on either side of the mosque. I do not know who fixed them. They are not objects of beauty. They are not very tall. I cannot say when they were fixed—may be six years. I heard the posts were fixed to indicate where the music was to stop, but we paid no attention to that. We do not consult the Moormen as to when our procession should go past the mosque. 103

30 40

By Mr. Perera.—I first heard of the significance of those posts three years ago. But we did not stop the music.

P. E. PIERIS, 11.5.14.

RECORD.

In the
District
Court of
Kandy.

No. 16.
District
Court Trial
Proceedings,
11th May,
1914—contd.

1

No. 17.

RECORD.

*In the
District
Court of
Kandy.*

No. 17.
District
Court Trial
Proceedings,
11th May,
1914—*contd.*

Niyangampayahe Gunaratana Unnanse, affirmed.—I am a Kandyan 106
Sinhalese. Ordained Buddhist priest, 63 years old. I have been in robes
fifty-two years. I am the incumbent of Niyangampaha vihare, with the
twelve others attached to it. I have been at this vihare for these fifty-two
years; it is less than half a mile from the dewale. As incumbent priest of
the Niyangampaha vihare, the vihare portion of the Wallahagoda dewale
is in my charge. I know the dewale premises, and Uda and Palle dewale;
the Wallahagoda vihare is within the dewale maluwa. The buildings are 107
10 grouped together. The worship at the dewale and vihare go hand in hand.
I cannot give details of the dewale, but have always heard of it as being eight
hundred years old. It is revered as a holy shrine. I know the Esala perahera
there for fifty-two years. Prior to thirty years ago I used to go to the
perahera. For the water-cutting procession the route was by Ambagamuwa
Street. Music accompanied it, and it was never stopped before any mosque.
It had to be continuous till the water-cutting ceremony. I know the new 108
mosque. It was erected twenty-five years ago. I recite pirit at the dewale
at the perahera, inside the building, and that is the evening before the final
procession, which starts ten peyas before dawn. The procession must go by
20 the prescribed route. I cannot say who prescribed it: that was done in
ancient times. Of all dewales the chief officer is the Basnayake Nilame: he
is in charge of the revenues. It is his duty to summon the tenants for the 109
perahera. He summons me also, to recite pirit.

By the Solicitor-General.—The vihare is under a separate roof from
the dewale. The dewale is in the Basnayake Nilame's charge. My tutor
recited pirit before me; then I. There is also a priest residing at the vihare
on my behalf. He is very ill now. He has been there about forty years.
He is Summana Unnanse. Thirty years ago there was a small cadjan mosque
where the present one is. It was improved on this side of twenty-five years, 110
30 and was added to three years ago. When I was young the thatched mosque
was there. The new mosque was built in the vicinity of the old building.
Under no circumstances should the music be stopped. When the procession
reaches a vihare or dewale of importance the music does not stop, but it will
perform a special piece in honour of the sacred spot. Unless the music is
stopped by some "antharawa" the music cannot be stopped. If, for instance, 111
an enraged elephant charged from the other side; if that happens, what is one
to do? The men must save their lives. In the case of a patient who is very
ill, the music would not be stopped. The procession is going on the road,
and the patient is indoors. The procession moves on, and what does it
40 matter to the patient? I cannot think of any disease that will be affected
by the music. If I were told that the noise was dangerous to the patient, I
would not stop the music. The patient is not greater than the god. In the
case of a mischievous horse being met, the Basnayake Nilame and the owner 112
of the horse would have to settle the question. Is it possible to stop a
procession for a horse? It is the horse that should be controlled. As I have
stated, music can be stopped only for an "antharawa." The danger is to the
passenger in the horse carriage, and to the patient—the latter is not an

1 "antharawa." If an accident were threatened to the passengers, that would not excuse the stopping of the music. If danger is threatened by the horse 113 to the musicians, I do not know what it would be if the two parties had arranged the matter; otherwise it would not be right to stop the music under those circumstances. I mean, cannot the owner of the horse speak to the Basnayake, and quietly get the horse out of the way? If danger were threatened to people not concerned with the procession, and to avoid that danger the music had to be stopped, it might be stopped after consulting the Basnayake Nilame. It will be for the Basnayake Nilame to decide. It 114

10 is a part of our religion to respect the religion of others. If a procession with music disturbed a congregation worshipping at a church, I cannot say if that is a good ground for stopping the music. All I can say is, none of the other churches or mosques objects to the procession. I can express no opinion if they objected. I cannot speak of the perahera at Kandy. I have never witnessed it. What I said about the necessity of continuous music refers to all dewales. Each dewale had its Esala perahera. The rule should apply to all peraheras. Even at Anuradhapura the rule will have to be observed till the water is reached. There are numerous petty peraheras connected 115 with pinkamas, but the petty man might stop the music in his timidity. It

20 might be that he is frightened by the police or by the headman, but to stop the music would be wrong. The priests of the Bomaluwa, Ruanweli Seya, and of Isurumuniya are high ecclesiastical personages. I am not aware of their agreeing to stop music when going past churches. There are four chief 116 festivals: aurudu, alutsal, nanumura, and the other I forget. Yes, there is a katti mangalla, but I do not remember. All Buddhists observe these.

By the Court.—The alutsal has to do with the harvesting—the new crop is taken to the vihares. For the alutaurudda the temples have to be cleaned. I do not know what connection with religion the katti mangalla has. There is a vihare attached to the Pattini dewale across the road. Similarly 30 with the Natha dewale across. To every important dewale there is a vihare 117 attached. I have nothing to do with the worship of the Kataragam deiyo. I have nothing to do with the perahera except with the reciting of pirit. It would not be proper for me to be seen with the perahera procession.

By the Solicitor-General.—For my first twenty-three years I used to attend the perahera; later it dawned on me that it was not proper to do so.

To-morrow.—P. E. PIERIS, 11.5.14.

No. 18.

May 12, 1914.

Counsel as before.

40 *Horanakaragedera Pinna*, affirmed.—I am 75 years old, Kandyan Sinhalese. I live at Talagama. I am a paraveni tenant of this dewale, and my duty is to blow the trumpet. I have done so for thirty years. The office is hereditary. I have to perform at the morning and evening services; that

RECORD.

In the District Court of Kandy.

No. 17. District Court Trial Proceedings, 11th May, 1914—contd.

No. 18. District Court Trial Proceedings, 12th May, 1914. 118

- 1 music has to be performed regularly, morning and evening. The services are called handadura or aluyandura. I have also to perform at the alutsal, 119
aurudu, Esala perahera, &c. The Esala perahera commences by the fixing of a post on a socket cut into a rock : that is the ehela tree, and it is planted in front of the dewale. When it is fixed music has to be performed : this inaugurates the perahera. There are fifteen of them. For each the music is essential : the musicians who attend are the berakarayo, dhoulkarayo, tammattayo, horanakarayo, and the udekkikarayo. The kapurala blows the chank. The horns and the music are a portion of the fixed ritual. On the 120
- 10 day of the water-cutting ceremony the procession starts from the dewale about midnight. The musicians go in the procession. I attend with my trumpet. The trumpeter goes first, then the drummers, next the flags. The music continues unceasingly till we reach Bothalapitiya; that is the custom from ancient times. The music may not be stopped. The insignia of the god is taken in the procession. About fifty or sixty assistants start from the dewale; as we proceed large numbers of Kandyan Buddhists join. We travel by Ambagamuwa Street; that is the route from ancient times. 121
We start back about 3 P.M., also with continuous music, including the tom-toms. There is no intermission. We take the same route back.
- 20 new mosque has been there about ten years. We have never stopped the tom-toms before it. For thirty-five years without a break I have gone in the procession, and the drummers have never been stopped. If the music 122
were stopped it would be evil to the performers; their life would be in danger, and they would contract illness. I would not stop my trumpet on any account.

By the Crown Counsel.—Mine is the horanakara pangu; I hold a field of 15 lahas. Every morning and evening the year through I or my deputy have to perform at the dewale. Even if the Basnayake Nilame told me to stop my trumpet, I would not stop. He has never told me so these thirty years.

- 30 About five elephants accompany the procession. On our return a large 123
crowd of over one thousand would accompany us. The drummers go either in one band or two. Sometimes if there is not sufficient room on the road there may be three or four bands. The ordinary crowd will not intervene between the bands : they go on quite a different side ; here and there chance people might cross between the bands. The tom-tom beaters will not follow the elephants, but will always go ahead. If there are two bands of musicians, 124
there would not be more than six feet between them. It is only one set of drummers for the two dewales at Wallahagoda, though there are two kapuraras. At the perahera at Kandy each dewale has its own drummers, but I
40 cannot say if they are separated or not; they are not separated at Wallaha-
goda. Every year we start for the water at the same time, and we reach Bothalapitiya about the same time. We start back about the same time. I 125
do not remember the time being advanced or delayed by the Basnayake Nilame.

The new mosque is now tiled—for about ten years. The original cadjan building was about twenty-five yards further off ; that building was used as a mosque, and was in existence sixty years ago, used as a mosque. I have known of the musicians being frequently affected with illness for stopping

1 their music. The present kapurala's father died of sudden illness because he did not celebrate perahera, as he had become unclean by attending a funeral 126 house. Through our fear we will not stop the music. Our ancestors have warned us of the danger. When once the perahera is started the Basnayake Nilame cannot stop the music ; even in case of sudden danger the drummers would not stop at the Basnayake Nilame's orders.

By Mr. Perera.—The new mosque is about fifteen yards from the high road. The previous cadjan building was behind the new building and further from the road.

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P. E. PIERIS, 12.5.14.

RECORD.

In the District Court of Kandy.

No. 18.
District Court Trial Proceedings, 12th May, 1914—*contd.*

No. 19.

No. 19.

Nugawela Kuda Banda, affirmed.—I am Diva Nilame, a Kandyan 127 Sinhalese, 68 years old. I am a member of a noble family. Our family is considered among the most illustrious among the Kandyans. My great grandfather was Chief of the Dumbara and Harispattu Districts, and our family holds the royal sannas granted to him. My grandfather was Dissawa of Nuwarakalawiya under the last king, and he was also Basnayake Nilame of the Pattini dewale at Kandy. Under the British, my father was Rate- 128 mahatmaya of Harispattuwa. Members of my family are in high office to-day. I was forty years in the public service, as President of the Village Tribunals and Ratemahatmaya, and I am now on pension. I was sent by the Government to represent the Kandyan Chiefs at the Diamond Jubilee in 1897, in London. I hold the office of Diyawadana Nilame of the Dalada Maligawa. I was elected in 1901. It is a very honourable office. A Kandyan 129 chief being a Buddhist cannot aspire to a higher office in connection with the Buddhist religion. The office has existed from ancient times. A chief of distinction was selected for the post. The Diyawadana Nilame is the custodian of the Tooth Relic which is enshrined at the Dalada Maligawa. In the Buddhist world to-day that is the most sacred relic. I have a 30 residence in Kandy. Pilgrims from all parts of the world come to worship this relic. The Maligawa was richly endowed under the Sinhalese kings. The temporalities are in my charge. The present Government has deprived 130 the relic of some of its endowments. Those endowments were for the purpose of carrying on the services and processions in connection with the relic. I am the chief lay officer of the Maligawa. For the services and procession the ritual was laid down in ancient times. I say so because the custom is handed down from ancient times, and these are matters which cannot be altered according to the whims of individuals. There is a ritual which has to be 131 observed year after year, and that has not been varied. The ancient books 40 of the Maligawa are lost. I have a knowledge of ritual, custom, and history such as the average man will not have : there may be men who know more. I have heard that for the safety of the relic the Kandyan chiefs entered into a compact with the British Government. Under the Sinhalese kings the worship of Buddha and of the gods was maintained side by side as one. Supporting the Dalada Maligawa there are four dewales ; they are Natha, 132 Maha Vishnu, Pattini, and the Kataragam dewale. The last is dedicated to

1 Kandaswamy. The peraheras of the four dewales are conducted in connection with that of the Maligawa. The Maligawa celebrates the Esala perahera and Wesak perahera. The Maligawa perahera is conducted through the streets of Kandy with music, tom-toms, and elephants, followed by the processions of the dewales, also accompanied by music. The Esala perahera 133 is the most ancient of all, and has, I have heard, been conducted from ancient times. The British authorities have never interfered with the conduct of the perahera through the streets of Kandy. The local authorities always assist us. Before we hold the procession we inform the authorities as to when

10 it will begin and end, and what elephants will be brought, &c. This is sent to 134 the Government Agent, who sends it to the police, who publish it for general information. I produce the "Ceylon Independent" (P 8), showing such a notice published in August, 1913. The streets are cleared of traffic and all assistance rendered to us. The Esala procession of the Maligawa is at the end of July or beginning of August, in the Sinhalese lunar month of Esala. The first five peraheras are conducted within the dewale premises, and then they proceed into the public streets. They assemble opposite the Maha dewale, 135 and when the Maligawa procession is ready they walk up at the firing of the Maligawa gun, and meet it. Certain relics belonging to the Dalada Maligawa

20 are carried in the procession; in all about forty elephants take part; also fifty or sixty drummers, whip-crackers, dancers, udekki players, and an immense crowd from every part of Ceylon. Thousands of people assemble; even the hotels are filled with sight-seers. If the Supreme Court is sitting, that Court 136 and the District Court suspend their sittings for the day of the water-cutting ceremony. On the last day alone the perahera goes by day; the roads are cleared, and wheeled traffic taken to a side. I never heard of the music being stopped by order of Government; such a thing has not happened in my processions. The perahera perambulates the four main streets and some of the cross streets in Kandy; virtually every street of importance is

30 traversed. The water-cutting is at the ferry at Getambe. The Maligawa 137 section stops at Adana Maluwa at Asgiriya, while the dewale section continues; that is where the Sinhalese kings were cremated, and is opposite Trinity church. Our music—poya hevisi—is continued without a break till the dewale peraheras return and join us. That hevisi is of the nature of an offering to the Buddha. The dewale peraheras which continue to Getambe keep up their music without interruption till their return. It is not customary 138 to stop the music at any time, nor can such a custom come into existence in connection with this perahera procession. In Kandy our perahera goes past seven or eight Christian churches, two principal mosques, and a third which

40 we only approach. One of them, the chief mosque, is close to the Adana 139 Maluwa. Every morning and evening at the Maligawa and the four dewales the service is celebrated with music and drummers; that is so on Sundays too. The services are aluyandura and handadura. The Pattini dewale is about fifty fathoms from St. Paul's church. The Natha dewale adjoins; the Maha dewale is a little further away. The music at these dewales is not stopped because of the services at St. Paul's. There is no reason why the tom-toming should disturb the services. (This is in answer to the question, "Tom-toming if noisy is bound to disturb the service?")

RECORD

*In the
District
Court of
Kandy.*No. 19.
District
Court Trial
Proceedings,
12th May,
1914—*contd.*

1 The procession proceeding to Getambe goes along the high road to Peradeniya; there is no other road. The second road by Haloluwa was only opened recently, and is several miles longer. The Wallahagoda and other dewales in the province have been endowed by the kings. The Esala perahera of the Wallahagoda dewale is worked in conjunction with ours, but later. Fifteen days after the Maligawa procession ceases the rural processions begin; that has been the immemorial custom. The only exception is Alutnuwara dewale. Wallahagoda is regarded by the Buddhists as a sacred shrine, and is three-quarters of a mile from Gampola. This last was at one time the capital of the country. Wallahagoda was established at that time before Kandy was the capital. Kahatapitiya is the same as Bothalapitiya. The Basnayake Nilame is the chief lay priest of the Wallahagoda dewale, and takes part and directs the ceremonies. I am the chief lay officer of the Maligawa. Other dewales have Basnayake Nilames: the office dates from the time of the Sinhalese kings. The Basnayake Nilame, by his officers, has the procession marshalled. I have been present at Poruthota when the Wallahagoda perahera arrived; four other processions from four other dewales also arrive there, from Lankatillaka, Vegiriya, Embekka, &c. These are ancient shrines, with Basnayake Nilames. The Wallahagoda perahera has to come first (Thotta allanawa). On its arriving first the other dewales pay it a fine. If another dewale comes first the Wallahagoda dewale has to pay a fine of five ridis; a ridi is an old Sinhalese coin. I cannot say which ought to arrive first. Whoever comes first is entitled to the fine. At Kandy the courts and kachcheri practically adjoin the Maligawa, and fall within the same enclosure. The District Court offices belong to the Maligawa, and form a part of the premises of the Maligawa. The District Court is a few yards from the audience hall. The old palace, where the Government Agent resides now, is about sixty yards from the Maligawa, and are enclosed by one wall within the palace square. In addition to the morning and evening services, on every day there is a rice offering at 10 A.M., invariably with tom-toming. All the other dewales have the same.

(The *Solicitor-General* objects, as irrelevant.)

144

By the Solicitor-General.—I was twenty-seven years, Ratemahatmaya, and retired two years ago. I have heard of the Proclamation of 1818. My ancestors did not benefit under that Proclamation. Several members of my family have served the British Government; four of them are Ratemahatmayas now. My brother was Dissawa. From 1883 till 1901 I was Chairman under the Buddhist Temporalities Ordinance. My nephew, P. B. Nugawela, has been President for six or seven years. I know his handwriting; this signature (D 5a, of 14th September, 1912) is his.

145

The Maligawa perahera lasts sometimes twelve, sometimes fourteen days. The astrologers calculate and lay down when the perahera should begin and when it should end. At one time they were held on consecutive days; that was the necessary custom. Now Sundays are excepted; that arrangement was made in the time of Dunuwille Diyawadana Nilame, over twenty-five years ago. That was not by arrangement with the Government authorities. He was a great friend of Mr. Parsons. The latter sent word that his wife was seriously ill, and asked not to disturb her with tom-toms. That day

146

1 the procession did not go; that day was a Sunday, and ever since that has
been observed as a custom. Mr. Parsons was the Government Agent here.
The following year the procession was not held on Sunday. Sometimes two 147
Sundays fall within the period, and now there is no perahera on both Sundays.
As I understand, it was a friendly arrangement between Mr. Parsons and
Dunuwille. I cannot say how long Mr. Parsons was in office. As he had
asked for the ceremony to be stopped on Sunday it grew into a custom.
After Mr. Parsons left I do not know if any attempt was made to resume the
perahera on Sundays. I made no attempt. We now stop the perahera so
10 as not to disturb Christian worship. We do not desire to disturb the worship 148
of others. I cannot entirely acquiesce. Where a new religious place intrudes
where there is an old-established one, it is for the learned to decide with whom
justice lies. We now conduct our ceremony so as not to disturb others. My
personal opinion is that it was wrong to stop the perahera on Sunday. What
I say is that the old custom must be observed, and should not be interrupted
because new institutions spring up, with new objections. I do not say that 149
others are disturbed by our perahera. The plea that church service was
disturbed is not a sufficient excuse for stopping the perahera, nor was Mrs.
Parsons' serious illness. I would assuredly have held the perahera under such
20 circumstances. I have heard from my ancestors that a week before the
perahera commenced the city was purified; invalids and pregnant women
were sent beyond the river. We have no authority to do so now. We could 150
not send Mrs. Parsons away; that was no reason for stopping the perahera.
It may be Mr. Parsons left in 1878, I do not know. The great perahera we
call the Esala or Dalada perahera. We must have music; we must have
elephants; we cannot have it without elephants. The two have gone
together from the time of the kings, and are equally necessary. Elephants
cannot be brought into town without permission from the authorities. That 151
does not apply to the perahera elephants. The general law is one of the
30 British Government, but I cannot say how old it is. I have known it for
many years. We inform the Government Agent that certain elephants are
being brought for the perahera, and we get no further communication from
him. In accordance with the Ordinance we inform the authorities, and the
police assist us to bring the elephants. I do not know what the Ordinance
is, and have not read it. We do not receive written permission. We do not 152
ask for permission, we only give notice. If we did not do so, the police
would stop us. I do not know what is required by the Ordinance. I only
say what is our custom. I know a little English. This document (D 6)
bears my signature. This speaks of permission from the Government Agent
40 and help from the police; that is the usual way in which we write our letters.
We write like that every year. I assert we can bring the elephants in as of
right, once we have informed the Government Agent. We have first to sign
a security bond. I have done so ever since I have held this office. The 153
document D 7 is signed by me and the Basnayake Nilames of the four dewales;
that is the bond signed every year. In 1901 I received a letter to say to the
effect of this D 8. I observed the conditions laid down there, for we only
require elephants after 6 P.M. I remember one year there was some trouble
about the various parts of the procession not keeping close together. I cannot 154

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1 remember if a letter on the point was written to me. (D 9, of 1910, marked, with Mr. Schneider's consent.) The music of a procession should not be stopped. I cannot speak about the petty processions which are conducted with police license. The Esala perahera is governed by ancient customs. Similarly in the Wesak perahera, the music should be necessary; but we give notice about bringing in the elephants. For the katti mangalla there are petty peraheras with music, but without elephants. But I am not sure about this perahera. The custom for nanumura mangalla is to have music without 155 ceasing. The beating of the tom-toms is a custom from the olden times. So 10 far as my knowledge goes the tom-toms may not stop. The office which I hold is higher than that of a Basnayake Nilame. Before the Buddhist Temporalities Ordinance the Basnayake Nilames used to listen to what the Diyawadana Nilame said. Formerly he could issue orders to them, but now, as their appointment is vested in the committee, they do not pay so much regard to what the Diyawadana Nilame says. I do write to them when 156 necessity arises, about the processions. If my requests are ignored I cannot enforce obedience. Before the Ordinance, as the Diyawadana Nilame had the chief voice in their appointment, the Basnayake Nilames paid more heed to his words. Before the Ordinance Basnayake Nilames were appointed 20 by the ratemahatmayas, koralas, and other Basnayake Nilames, the act of appointment being issued by Government. They should have had the power 157 to dismiss, but no such cases have arisen.

To-morrow.—P. E. PIERIS, 12.5.14.

No. 20.

May 13, 1914.

Counsel as before.

Nugawela Kuda Banda (re-called), affirmed.—I say so as they have the power to appoint they should have the power to dismiss. I am not aware of any resignations. In case of death a successor would be appointed within 30 a couple of months, a meeting being summoned by the Diyawadana Nilame. The selection was by the majority of votes: we now act in accordance with the Ordinance. Everything that has to be done in connection with the place 159 is done by the Basnayake Nilame. He has to see to the four mangallas, the processions, and the maintenance of the place. The dewale closest to the Maligawa is the Natha dewale; it is in a separate compound, separated from the Maligawa by the public road. There is a vihare attached to the Natha dewale, and a bo-tree in the same compound. The dewales are dedicated to various gods, Vishnu, Kataragama, Natha, &c. There is one group of gods called the Samyadristi gods, who believe in the Buddha. Those 160 I have named, and various others, fall into that group. The Hindus, too, recognize Vishnu as their god. The combination of Buddhism with the worship of these gods is not of modern date. In connection with the Esala perahera I send word to the Basnayake Nilames; each Basnayake Nilame arranges his own perahera. When I give notice that the perahera is on a certain day,

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- 1 the Basnayake Nilames have to join. On the death of a Basnayake Nilame, and before the election of a successor, minor matters are attended to by the other officials of the dewale. But for anything of importance a new 161 Basnayake Nilame must be appointed. In general, in towns processions cannot be held without informing the police. I do not know as a matter of fact if they receive a license. Without permission the procession would not come to town. I cannot speak specifically of police regulations. I do not know details of processions in general. I have never taken part in an ordinary procession on a license. I cannot speak specifically of occurrences at 10 Anuradhapura. If I as ratemahatmaya had sent some circulars relating to 162 arrangements at Anuradhapura in 1905, that may be the case, but I have no recollection. I would read it, but I would have no recollection of any details. If I was told to publish any agreement, no doubt I did so through my headman. (Shown D 10.) This contains some arrangement regarding proceedings at Anuradhapura. I remember receiving the circular. I must have published it in the village, and village tribunal, and bazaar. I have heard of the prosecution of a Basnayake Nilame of Kataragam dewale, and of his being fined for conducting a procession with music without a license. I cannot speak without referring to the correspondence. (Shown D 11.) 163 20 This letter was written by me to the Government Agent. I received a reply in accordance with the report D 12.

When I referred to the Maligawa being deprived of its lands, I referred to what the Temple Lands Commissioners did. I cannot speak to the procedure followed. No doubt the title-deeds were produced; that was in 1859. The fine of five ridis is now calculated as equal to seventy-five cents.

P. E. PIERIS, 13.5.14.

No. 21.

No. 21.

- P. B. Dissanayaka*, affirmed.—I am 49 years of age, a Kandyan Sinhalese. I have been a Buddhist all my life. I am now the honorary 164 30 secretary of the Kandy District Committee, under the Buddhist Temporalities Ordinance. The office is honorary and demands a good deal of my time. I have private means. I have been secretary since 1909. My family have been Buddhists for generations. I have always taken an interest in Buddhism and have studied its literature. The Kandy District Committee controls all the temples and vihares in the Kandy District. The temples within the Kandyan Provinces are the best endowed in Ceylon. The temporalities are now administered under the provisions of the Ordinance. The dewales 165 are dedicated chiefly to the four gods, Vishnu, Natha, Kataragama, and Pattini. They are worshipped in Ceylon by the Buddhists. The "Mahavansa" contains 40 the most authentic annals of Ceylon. I refer to the edition of 1909, part II., page 241. That refers to one of the Prakrama Bahus rebuilding a dewale of Vishnu and appointing the Esala perahera, about 1200 A.D. Part I., page 31, referring to Lanka and Buddhism being placed under the 166 protection of Vishnu at the request of Buddha himself by Sakraya. Part II.,

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1 page 286. This refers to King Kirtisri's attitude to the perahera, and the importance thereof. He combined that with a procession in honour of the relics of the Buddha.

I know Lawrie's "Gazetteer." Sir Archibald Lawrie was District Judge at Kandy for many years, and was a well known student of Kandyan antiquities. He was subsequently knighted and raised to the Supreme Court 167 Bench, and for some time acted as Chief Justice. In vol. II., page 906, is a history of Wallahagoda dewale. In vol. I., pages 396 and 397, is a reference to the water-cutting ceremony. On page 456 of vol. I. is a reference to 10 Kobbekaduwa (see in that connection vol. 2, page 907). I knew the late Colonel Olcott; he was an American, an Orientalist, and took a great interest in Buddhism. He practically brought about a revival of Buddhism in Ceylon, thirty years ago. I remember the Kotahena riots of 1883. There a 168 Buddhist pinkama procession, proceeding to the Kotahena temple with music, was attacked by the Roman Catholics opposite their church, and in the riot a man was killed. The Buddhists asserted the offenders were not brought to justice, and they regarded the act of the Catholics as an interference with their performance of their religious duties. Feeling ran high. A meeting was called in Colombo, and a Buddhist defence committee formed and funds collected. 20 Colonel Olcott was sent for by the committee from India to assist, and an 169 agitation was started, and Olcott corresponded with the local Government. Failing here he was sent to London, where he communicated with the Secretary of State.

(The Solicitor-General objects, as hearsay. Mr. Schneider proposes to put in the connected documents, which he has summoned the Colonial Secretary to produce.)

I have read the correspondence. The committee asked: 1, for the offenders in the riot to be brought to justice; 2, that religious neutrality 170 should be established; 3, that Buddhist religious processions should be permitted to be conducted peaceably with tom-toms; 4, that the birthday 30 of the Buddha be celebrated as a public holiday; 5, that Buddhist registrars of marriages be appointed; 6, that legislation should be introduced for the protection of the Buddhist temporalities. Subsequently an assurance was given and the Buddhists satisfied. Buddhist registrars have been appointed; the Wesak has been proclaimed a holiday; legislation has been introduced with regard to the temporalities.

Question.—Since the agitation do you know that Buddhist processions 171 have been freely allowed to proceed with tom-toms?

Answer.—Yes.

40 (The Solicitor-General objects.)

I knew Colombo before and after the agitation.

(The Solicitor-General objects to question as to celebrations in Colombo.)

After the agitation I have seen Wesak processions go freely through Colombo with tom-toms. I have read Colonel Olcott's correspondence with Government: it was published in book form by him. Since the Kotahena riots I am personally aware of no interference with the beating of tom-toms in Buddhist processions, till the Wallahagoda incident. The present plaintiff 172 informed my committee of the interference in 1912. My committee took up

1 the matter. I produce my office file. D 1 of 17th August, 1912, was by our president to the Government Agent. We received the reply P 3 of 27th August, 1912. We wrote D 2 of 2nd September, and called attention by P 9 of 11th September, 1912. We received the reply D 3 of 13th September. We then wrote D 5a of 14th September. All these letters were drafted by me, under the instructions of my committee. The suggestion of altering the route was made by us by way of a compromise, as there was not enough time to refer to Government for a decision, and we did not wish to give 173 up the perahera, which at the time was going on. We received reply P 10 of 18th September. We sent copies of the correspondence to the plaintiff, with letter P 11 of 19th September. (*The Solicitor-General* calls for the original of this.) He replied by P 4 of 1st October, 1912. We then wrote to the Colonial Secretary P 12 of 10th October. At the same time we informed the Government Agent by P 13 of 10th October. We received from the Colonial Secretary P 14 of 18th November. A copy was sent to the plaintiff with P 15 of 2nd November. I produce a circular (P 16 of 18th July, 1890) from 174 the Colonial Secretary to the Government Agents. A copy of the Service Tenures register of Wallahagoda, P 17 and P 18. Also a map of Gampola town, issued from the Surveyor-General's office (P 19), in two sheets. I have marked 20 on it in red certain sites ; the whole road is shown in red :—1 is Wallahagoda dewale ; x is the point where the road from the dewale meets the Ambagamuwa Road ; 2 is a mosque ; 3 is the mosque which objects to the music ; 4 is a Catholic church ; 5 is a Baptist church ; 6 is a Hindu temple ; 7 is a mosque ; 8 is an old mosque at Kahatapitiya ; xx is Bothalapitiya, where the Bisso 175 Bandara was cremated ; xxx is Poruthota.

The Ambagamuwa Road is the old road from Kandy to Adam's Peak, where is the footprint of Buddha : that footprint is revered by Buddhists and other religionists throughout the world. In the "Mahavansa" there are references to this road. Part II., page 243, that refers to the road being 30 put in order through Gampola by Devapathirajah, under Prakrama Bahu. Gangasiripura is Gampola. The road is described as going through Gampola 176 past Ulapane to Ambagamuwa, and that is how it runs still. I produce deed No. 242 of 1889 (P 20). That is the title-deed of the land on which the disputing mosque is.

By the Solicitor-General.—I am 49 years old. I have spent my life in Kandy, but I have visited Colombo. In 1911, and six years before that, I attended the Esala perahera at Wallahagoda. In 1911 the perahera went by the Ambagamuwa Road, and not by the station road ; I am certain. It may have been in 1910. I accompanied the procession back from Poruthota. I did 40 the same the previous occasion. What I stated about the Kotahena riots I cannot speak to from personal knowledge. I was not a member of the 177 defence committee. What I said of the defence committee was also what I have read. I had no experience of Wesak processions in Colombo before 1883. I had not been to Colombo before 1883. I went there first about 1888. I have since spent one Wesak in Colombo, between 1888 and 1892. I was not responsible for any procession, but I witnessed two. I cannot name the street where I witnessed them : it was not near a temple. The first procession was for offering flowers, and tom-toms were being beaten : there were about

1 three hundred people. This was between 8 and 9 A.M. I did not see it pass 178
any place of religious worship, and I do not know who was conducting it.
The people in the procession told me they were going to Maligakanda vihare.
I do not know if the person conducting the procession held a permit from the
police. In the same street, and immediately after, a quarter of a mile off,
I saw the second procession—a flower pinkama going to the same place. This
was somewhere near Maligakanda. I do not know who conducted the
procession, and did not see it pass a place of worship. I did not follow it.
The tom-toms were being beaten. I do not know that it is a police regulation 179
10 in Colombo that no procession can go with music without a permit. In Kandy
the police used to issue licenses, with certain conditions as to stopping music
on the approach of horses and nearing places of worship. I have never
applied for permits, but I know others have for ordinary pinkamas. As
regards the mosque at Gampola, there has been trouble between the Muham-
madans and Buddhists for some time. Paragraph 4 on D 2 contains 180
information we received, and which I believe to be true. I have not heard
of a riot in 1885. There was no trouble with the congregation of the mosque
about the Esala perahera till 1912, so far as I can find out: my information
was from the people of Gampola, of whom we got up six or seven people to
20 inquire. I know Angamana Tikiri Banda, once Basnayake Nilame: we did
not question him, as these troubles arose after he had to be got rid of. I did
not hear of any trouble in 1907. I have not seen the posts near the mosque. 181
I have heard of them, and that they indicated the interval for which all music
must stop near the mosque. Complaint was made to us about them in 1912:
we knew nothing before that. The people belonging to Wallahagoda dewale
were those who objected most to them. The Basnayake Nilame complained
to us of them. We would not have addressed the Government on the subject
if we did not consider them to be of importance. I would have expected the
dewale people to know of those posts. We satisfied ourselves that the 182
30 grievance was a public one. The recommendation on D 5a to go by an
alternative route was made by the committee, who are representative
Buddhists. The plaintiff was not consulted; there was no time to consult
him. In sending P 11 with the connected correspondence, we intended to
convey to the Basnayake Nilame our recommendation that he should take
the alternative route. The Esala perahera would have been on 28th–29th
September. So far as I know there should not be such a thing as postponing
the perahera. At Kandy, since Mr. Parsons' time, the perahera is not 183
40 proceeded with on Sunday. It is the fact that it was first stopped owing to
Mrs. Parsons' illness. The then Diyawadana Nilame was a great friend of
Parsons, and I do not know what arrangements they made later. I do not
admit that the stoppage was to suit the convenience of the church service,
for as a matter of fact every day the drummers of dewales surrounding the
church play at the usual time. Strictly speaking the peraheras should be on 184
consecutive days. The suggestion that it was stopped owing to the church
service is a fair one. I do not know the original circumstances of the
arrangement, and find it difficult to offer an explanation. The Archdeacon
who was in charge of St. Paul's church was Mr. Parsons' particular friend,
and may have influenced Parsons in the matter. Apparently one Diva Nilame

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1 having stopped on Sunday, his successor continued. I think he blindly followed his predecessor.

By Mr. Schneider.—I will make no suggestion as to Angamana's share 185 in this matter. I know Yatawara, who is Ratemahatmaya of Uda Palata. Wallahagoda is in his jurisdiction: he and Angamana are married to two sisters. The Government Agent must get information of matters in their districts through the ratemahatmayas.

By the Court.—The Anglican church at the time was a church endowed and supported, and the clergy were paid, from the public funds. The clergy- 186 men at St. Paul's were appointed by Government. It is no longer an established church.

To-morrow.—P. E. PIERIS, 13.5.14.

RECORD.

In the District Court of Kandy.

No. 21. District Court Trial Proceedings, 13th May, 1914—*contd.*

May 14, 1914.

Counsel as before.

Mr. Schneider puts in P 1 to P 20. Also an appeal to Earl Derby (P 21, with two annexures, A and B). Letter of 10th January, 1884, by the Colonial Secretary, Ceylon, to Mr. Perera, P 22. Despatch from the Secretary of State to the Governor, of 8th December, 1883, P 23. Letter by Colonel Olcott to the Earl of Derby, of 17th May, 1884, P 24 (with three enclosures). 20 Letter by Colonel Olcott to the Earl of Derby, of 27th May, P 25 (with 188 enclosures). Secretary of State to Colonel Olcott, of 17th June, 1884, P 26. Colonel Olcott to Secretary of State, of 19th June, 1884 (with enclosures), P 27. Letter from Colonial Office, London, to Colonel Olcott, of 27th June, 1884, P 28.

(*The Solicitor-General* objects to P 21 to P 28, as irrelevant.)

Mr. Schneider.—They are relevant under Section 13 of the Evidence Ordinance, Section 17, as admissions by the Secretary of State.

Mr. Schneider reads P 21 as leading up to an admission by the Secretary 189 of State of the right to hold processions with music. He reads through all the exhibits.

30 (Plaintiff's Documents in Volume II.)

The Solicitor-General addresses the Court, and calls—

No. 22.

No. 22.

H. A. Collette, sworn.—I am Assistant Superintendent of Police, Colombo South. I have been in the force sixteen years. Processions that go with music in Colombo must have a license. I produce a form that applies to all processions and all religions. This form has been in existence ever since I joined the force. It applies also to Buddhist processions in Wesak. It is a general form, applicable all over the Island.

By Mr. Schneider.—I was once stationed at Kandy. I have no personal 190 knowledge of this form being used in Kandy. The form is kept in duplicate, and the counterfoils are preserved for official reference. If issued in Kandy the counterfoils will be available. I now recollect these forms were in use in Kandy. I cannot say that this form was used for the perahera at Kandy. I do not know if licenses were issued for the perahera. I have nothing to do 191 with the Government Agent.

P. E. PIERIS.

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No. 23.

RECORD.

In the District Court of Kandy.

No. 23. District Court Trial Proceedings, 14th May, 1914—contd.

P. A. C. Ekneligoda, sworn.—Kachcheri Mudaliyar, Anuradhapura. (Shown D 10.) I have been at that kachcheri for twelve years. I remember this circular (D 10). The Bomaluwa, Ruanweli Seya, and Isurumuniya are the three chief Buddhist shrines at Anuradhapura; it is at them that tom-tom beating is mostly carried on. Clause 8 refers to processions passing religious buildings. Ever since D 10 was passed the provisions of it have been observed. I am aware of applications being made under rule 7; some were refused and some granted, subject to rule 8.

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By Mr. Schneider.—I say that, as they pass my hand. When D 10 was drawn up I was not the head of the Native Department. It represents a special agreement between the Government and the chief priests. Before the agreement processions used to be carried on with tom-toms as the pilgrims liked, without interference from Government authorities. But when they passed the Catholic church, if service was going on the constables stopped the music. With the opening of the railway pilgrims came in larger numbers, tom-toming went on every night, and it was pandemonium. I am a Christian. Government was very anxious to come to terms with the priests, and to reduce the noise. There is a Christian church within hearing of the shrines.

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By the Solicitor-General.—At the Elala Sohona a good many Buddhist processions stop their music as a mark of respect, in accordance with an order made by King Dutugemunu 2,000 years ago.

194

P. E. PIERIS, 14.5.14.

No. 24.

No. 24.

Walter de Livera, sworn.—I am Deputy Fiscal, Colombo, and a member of the Subordinate Civil Service. From 1902 to 1910 I was Police Magistrate, Gampola; during that time applications were made to me for processions passing the streets of Gampola with music. I remember such applications for the Esala perahera of Wallahagoda. I endorsed on the applications: "Allowed, under police supervision," and returned them to the applicants. This was between 1902 and 1907. If the procession was to be with elephants, I referred them to the Government Agent. This document (D 14) is one for the Esala perahera of 1905. It speaks of two elephants taking part. My authority was under the Police Ordinance, and I had no authority to deal with elephants. I endorsed accordingly on D 14.

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In May, 1907, there was a disturbance in Ambagamuwa Street because a pinkama passed in procession with tom-toms and without a license; the disturbance was near the mosque, and was between Buddhists and Muhammadans. I went later, and the place was pointed out to me; there is only one mosque there. Several people were injured; some were prosecuted, some committed to the District Court. The leader was prosecuted for taking a procession without a license. The Local Board, in consequence of this, fixed

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1 up two posts, I believe 50 yards on either side the mosque. Tom-toming 197
was to stop between these two posts. I have no independent recollection
of receiving this letter (D 15) of 21st May, 1907. I remember a procession,
shortly after the disturbance, organized by a certain Jemma. I have no
independent recollection of receiving D 16, of June, 1907. The Government
Agent, Superintendent of Police, and I accompanied Jemma's procession
past the mosque. Jemma stopped the music for the prescribed distance.
After 1907 applications for processions continued to be made. I remember 198
the Esala procession of 1907. The police wanted them to stop the music for
10 50 yards on either side the mosque ; they were unwilling, and the procession
was not taken on the fixed day. Some days later the ratemahatmaya and
Basnayake Nilame came to me and told me they had permission to go by
Ambagamuwa Street with music. I refused permission. The ratemahatmaya
told me he would take the responsibility, and that some of the leading
Moormen would go with him. Then I told him he might do so. The procession
accordingly was taken.

(Shown D 17, 1st October, 1907.) This apparently refers to the same 199
perahera. Subsequently, too, applications were made for the Esala perahera
and other processions. I endorsed the applications with : " Allowed, under
20 police supervision ; music to stop within 50 yards of the Ambagamuwa
mosque." For the Esala procession of 1909 the Basnayake Nilame Angamana
complained that the police would not allow music past the mosque. I told
him to go by another road, past my bungalow. My impression is that in
1909 he followed the route I suggested. I was aware of the existence of the 200
two posts : everybody in the town knew of them.

By Mr. Schneider.—It was not the invariable rule to make the
application for the Esala perahera to the Police Magistrate. Sometimes it was
to me and sometimes to the Government Agent. After 1907 they had to get
one of the printed forms of permit from the police ; at least I used to direct
30 them to get such a permit from the police. I think I have seen one such 201
permit for the Esala perahera. In 1907 there was no permit. For 1909 I had
seen no permit. (Shown permit P 29, of August, 1909.) This would be a
sufficient authority for conducting the procession through the town without
authority from me or the police. The Government Agent was at the time the
head of the police. In spite of P 29, if the police ordered the music to stop
opposite the mosque, I say the music had to stop. I have no independent
recollection of the procession of 1909. It was for that year I think the 202
perahera was taken by the alternative route. I do not know which route it
took going. I am at least positive that on one occasion the perahera on its
40 return went by the station road route. I say that everybody knew of the
posts, as there were several complaints to me about them ; that is my only
reason. There are no notices attached to them. They were not put up with
any special ceremony. The posts are two old iron lamp-posts, about two 203
inches in diameter, standing three feet high on the side of the road away from
the mosque : one is by the steps of the Catholic church ; further down along
the road are other similar posts. These two would not catch the eye of the
passer-by.

RECORD.

In the
District
Court of
Kandy.

No. 24.
District
Court Trial
Proceedings,
14th May,
1914—contd.

1

No. 25.

RECORD.

*In the
District
Court of
Kandy.*

No. 25.
District
Court Trial
Proceedings,
14th May,
1914—*contd.*

G. Menon, affirmed.—Police Sergeant No. 1560, now stationed at Nuwara Eliya. I was at Gampola from 1907 to 1909. I remember the Esala perahera from Wallahagoda. Police are sent to accompany every procession of which they are informed. I would receive a petition or a license about the procession at the station before I started. I received this petition (D 18) of 10th September, 1908, addressed to the Superintendent of Police, and forwarded to me. I made an endorsement on it of 12th September. It is to the effect that within certain hours the procession could pass the mosque with music, but would have to stop it outside those hours.

10

By Mr. Schneider.—I am a Hindu and an Indian. The Esala procession is about the middle of the year. I do not know other processions by name. I remember the name Esala, as that procession comes with elephants, and it was spoken of as the Esala procession. I do not remember the special names of any other processions. I looked up the Information Book and saw the name, but before that, too, I knew it. I went to Gampola in 1907, and I was there only for one Esala procession, probably of 1908. I arrived there on 30th May, 1907, and left in 1909—certainly before 16th August. I stopped the Esala procession—at least a procession. From the Information Book it was on 13th September. The entry there is “No complaints”—the day was Sunday. There is nothing to show in the Information Book that it was the Esala perahera, but I remember that fact. I remember I stopped the beating of tom-toms opposite the mosque; such were my orders; that is contained in the Police Ordinance. In view of my endorsement the procession must have come after 12 noon. My entry of the 13th September is timed 12.50 noon: that was after my return from the spot. I returned after the procession passed the mosque; it would take me ten minutes to return to the station from where I left the procession. Of the stopping of the music I speak from recollection. If they applied to beat tom-toms outside the hours we fixed I would have recorded that. If tom-toms had been beaten outside our time limit there would have been a disturbance. I have recorded there was no complaint: therefore I infer that the music was stopped. If they passed before 12 noon they could have beaten tom-toms. I assert that I actually remember stopping the music of this particular procession. The Superintendent made inquiry from the Muhammadans as to their prayer hour. There is a church opposite the mosque. No inquiry was made from them. Inquiry was made by the Muhammadans alone; the procession was on Sunday.

20

30

40

By the Solicitor-General.—I returned to the station at 12.15, so the procession passed the mosque after 12 P.M. In view of D 18 there is no mistake as to the identity of the perahera. This document (D 19) is the license for 1908. I saw it before I started to the spot.

To-morrow.—P. E. PIERIS, 14.5.14.

1

No. 26.

May 15, 1914.

RECORD.

210

Counsel as before.

K. Menon, affirmed.—Police Sergeant No. 1045. I am now stationed at Elpitiya. In 1909 I was Court Sergeant at Gampola. In August, 1909, on the 29th I see from the Information Book, I was in charge of the police station. The entry on page 142 (D 20) is in my handwriting, and was made at 2.35 P.M. (He reads the entry.) That day the procession did not go by the Ambagamuwa Road, but passed the Police Magistrate's house.

In the District Court of Kandy.
No. 26.
District Court Trial Proceedings,
15th May, 1914.

10

By Mr. Schneider.—That, too, was on Sunday. The Police Magistrate ordered me to see that the music was stopped 50 yards either side of the mosque, as usual. I ascertained it was the practice to stop the tom-toms on either side the mosque. No special order was given on this occasion. They could have gone by Ambagamuwa Street if they stopped the tom-toming opposite the mosque.

_____ P. E. PIERIS, 15.5.14.

No. 27.

No. 27.

20

J. M. Pakir, affirmed.—Police Sergeant No. 1029. I am now Police Sergeant at Maturata. In 1910 I was at Gampola from 5th March, till 10th March of 1911. I know the Wallahagoda dewale. I know that the perahera in 1910 went from there to Kahatapitiya, along the Kandy Road through Ambagamuwa Street. There is a mosque there, and the tom-tom was, as usual, stopped opposite to it. There are two posts there; the music of this procession was stopped between the posts by the police. There were no orders, but that was the practice of the police—so my predecessor told me. This procession had with it a petition to the Government Agent, with an endorsement on it. I am sure.

30

By Mr. Schneider.—I remember seeing that petition. It was brought to the police station, and I told them to get it countersigned by the Police Magistrate. I did not see it again. I did not read the petition, but it referred to the procession. I remember the music being stopped, as it is the usual practice. I must have seen several processions pass the mosque. I cannot remember this particular procession.

By the Solicitor-General.—I remember two or three processions, and all of them stopped the music. It was the Basnayake Nilame who brought the petition to me, and I accompanied him to the Police Magistrate. It is the standing order that all processions stop their music opposite the mosque.

_____ P. E. PIERIS.

No. 28.

No. 28.

40

O. A. Amath, affirmed.—Police Sergeant No. 720. I am now stationed at Agrapatna. I was in Gampola from March, 1911, to March, 1913. I know the Esala perahera from Wallahagoda; it goes through Gampola. Only one water-cutting procession passed through the town in my time; that was in 1911. The procession requires a license from the Government Agent. In

1 1911, both going and coming, it went by the station road and not by the Ambagamuwa Road. I do not know why that was so. There were elephants 216 and tom-tom beaters.

By Mr. Batuwantudawa.—I am a Muhammadan, so is the last witness. I must have made an entry in the Information Book. I do not know if it was Sunday. I received no instructions as to the route the perahera was to take. The practice is for processions to stop tom-toming opposite the mosque; that is what my predecessor told me. I succeeded Sergeant J. M. Pakir in March. He told me of the peraheras passing the mosque, and the meaning of 217 the two posts. He told me this at Udispattu, when he came to relieve me there: that is 28 miles from Gampola, and was in the month of March.

(*The Solicitor-General* admits there is no entry in the Information Book by this witness.)

P. E. PIERIS.

RECORD.
—
In the District Court of Kandy.
—
No. 28.
District Court Trial Proceedings, 15th May, 1914—*contd.*

No. 29.

No. 29.

C. H. Collins, sworn.—I am a member of the Civil Service, and Office Assistant to the Government Agent. I produce the *Government Gazette* of 24th August, 1872, that contains the appointment of J. Parsons as Government Agent of the Central Province. The Civil List for 1877 shows 218 Mr. Parsons as Government Agent for that year, and the *Government Gazette* of 11th January, 1878, shows Mr. Adams appointed to act as Government Agent. The kachcheri records show that Mr. Parsons was no longer Government Agent after 1877. (*Mr. Schneider* waives the formal production of the documents.)

To-morrow.—P. E. PIERIS, 15.5.14.

May 16, 1914.

219 District Court Trial Proceedings, 16th May, 1914.

Counsel as before.

The Solicitor-General puts in D 1 to D 20. Despatch from Lord Bathurst of 1815, D 21. Memorandum by Sir John Dickson of 1872, D 22. Minute by Sir Robert Brownrigg of 25th September, 1818, D 23. Despatch by Lord Grey of 1847, D 24.

Mr. Schneider objects to D 21 to D 24, as irrelevant. 220

Mr. Schneider puts in a Minute by the Governor of 21st January, 1818, P 30.

A statement of the issues in the order agreed on between the parties, and on which they went to trial, is also put in, and agreed as correct.

(Documents D 1 to D 24 in Volume II.)

No. 30.

No. 30.

The Solicitor-General addresses the Court.—Can an action be based on the 40 Convention? Section 5 merely indicates the policy the Sovereign proposed to adopt—the standing policy of the Crown. See the Proclamation of September 23, 1799 (page 9 of vol. I., ed. 1868). That of 1815 contains the

1 substance of the Convention: any breach can be remedied only by petition for redress, and not by action. Any right conferred thereby could be modified 221 by the Sovereign. A rebellion was followed by the Proclamation of 1818. Sections 7-10 and 11 altered Section 4; Section 16 altered Section 5; Sections 53-55 altered Section 7; Section 3a altered Section 8; Section 56 reserved power to alter; Section 5 of the Convention was objected to (see D 21, replied to by D 22). See D 23. See Ordinance No. 2 of 1846, which was disallowed. See D 24. Nathan, vol. III., note, page 1063. Till 1833 legislation for Kandyan country was by separate Proclamation: from 1833 it ceased to
10 be a separate entity and was legislated for by the Legislative Council. Vital changes have been made: rajakariya abolished; criminal law abolished; civil law modified. See Section 18, Charter of 1833. Kandyan Province ceased 222 to exist.

The Solicitor-General proposes to put in evidence the notice of action. *Mr. Schneider* objects, but does not press objection. Puts in D 25.

How is the Convention a contract? Who are the parties: the king, and who? What is the plaintiff's status? Is he a corporation sole? He is an elected officer, not hereditary. The Convention is a political, not a legal document. How do the descendants of original contractors claim? The
20 recognition in the Convention is of the religion as a whole: the individual institution has obtained no right. The averment in the *Plaint* is absurd, as the plaintiff declares he requires no permission. His complaint is that permission was refused. At any rate the Government Agent's action at most is tort. Assuming a binding contract, can this action be maintained? 223 The local Ordinances have laid down the law: Section 27, No. 13 of 1843; Sections 31, 36, 37, No. 17 of 1844. No one is exempted. Are these *ultra vires*? Can the District Court so hold? According to plaintiff the rite is immutable as to time, route, and music. The evidence shows time was not material: see *De Livera's* evidence, and Kandy practice as to Sunday. The same as
30 to route. See the *Diyawadana Nilame's* evidence as to Kandy route, and D 5a and D 4. The objection came only from the ignorant villagers. As to 224 music, it has been stopped since 1907, off and on. Then the witnesses: why were no conspicuous priests or laymen called? Look at the *Anuradhapura* agreement; the Colombo practice. In the *Olcott* set of exhibits no right is claimed: it is a complaint of unfair differentiation by the police. The modification of 1818 is recognized in them. Lord Derby's despatch is only a declaration of policy.

At the *Solicitor-General's* request I add the further issue 9:—

If the action is based on contract, is the notice of action good?

Mr. Schneider in reply.—Issues 2, 11, 11a—nature of the right.—The Convention is a treaty, *ergo* a contract. See official bulletin of 2.3.1815. The Convention is there: the Proclamation is merely an announcement of its contents. Section 4 preserves the people's right. Section 12 deals with what 225

1 is outside the Convention. Proclamation of 31.5.1816 accepting Convention (page 190). There is no reference to Section 5, which is untouched. In Proclamation of 1818 Section 16 is a ratification of Section 5 of 1815. Has the new mosque been built on license? Section 21 is an emphatic ratification of Section 5. See Section 6: that shows what this Proclamation was intended to modify. Read Section 21 with Proclamation of 18.9.1819: dewales and vihares treated together. Proclamation of 21st May, 1822, the same. D 21 to D 24 are irrelevant where they help defendant as being self-serving. Plaintiff can use them. D 21 shows the liberal policy followed. See P 30. Section 5 has not
 10 been and cannot be annulled or modified, but Government has emphasized its validity throughout.

RECORD.
 In the
 District
 Court of
 Kandy.
 No. 31.
 District
 Court Trial
 Proceedings,
 16th May,
 1914—contd.

Issues 8, 11b, 11c, 12, effect of subsequent legislation.—Issue 11b: One party to a contract cannot by a subsequent act rid himself of his obligations: 1 Thompson, page 2; Walter Pereira, page 38; Chitty, Prerogatives, 29; Campbell v. Hall, 1 Cowper, 208. "Convention" is higher than "capitulation," cites Thomas' Constitutional Law, page 57; Nathan III., 1061, quotes the case.

Issues 8, 11c, 12.—The Police Ordinance does not touch the special rights conserved by Section 5. The fact of the privilege not being insisted on
 20 in a few instances is irrelevant. If the police succeeded once or twice in stopping the music, are they to suffer? That is why they have come to Court. The Anuradhapura arrangement was the result of the recognition of the right.

Issues 2a, 3, 4, competency of parties.—P 1 shows capacity of the plaintiff. Basnayake Nilame is equal to "trustee," Section 20, Ordinance No. 8 of 1905. Section 17, the trustee has a perpetual succession under the Ordinance. Section 30, he is responsible for the performance of the ceremony.

Issues 1, 5, 9a, 9b, 9c, liability.—Is 9a worth discussing, in view of
 30 the attitude of the Crown? The petition addressed to the Government Agent is interpreted in two ways by the two parties: the letter is an indirect threat of police interference. The notice served gave all the essential information. Even if not so, the objection is taken too late. The suggestion is that the Government Agent, in what he believed to be the *bona fide* exercise of his rights, interfered with plaintiff's rights. Therefore the Attorney-General is sued as representing the Government, and not the Crown. It is admitted the contract was with the Crown, and not with the Government of Ceylon.

Issues 6, 7, 7a, 7b.—Issue 6 is abandoned by plaintiff. Prescription
 40 does not apply to the case of a Treaty: Ordinance No. 22 of 1871 is only concerned to private parties.

No. 32.

No. 32.

The Solicitor-General.—In Campbell's case the Court got jurisdiction through the act of the king: the king was not sued.

Judgment reserved.

P. E. PIERIS, 16.5.14.

1

No. 33.

RECORD.

June 4, 1914.

230

*In the
District
Court of
Kandy.*

Proctors present.

JUDGMENT.

No. 33.
Judgment
of District
Court,
4th June,
1914.

The plaintiff in this case is the Basnayake Nilame of the Kataragam dewale at Wallahagoda, a mile from Gampola. A dewale is a temple dedicated to one out of a certain number of the divinities of the Hindu Pantheon, of whom more will be said later. This particular dewale is dedicated to the Kataragam deiyo, the terrible war god, and has attached to it a smaller dewale dedicated to his minister, the Dewatabandara.

10 The office of Basnayake Nilame, as is well known, is one dating from the earliest times of Sinhalese history. Under Section 17 of the Buddhist Temporalities Ordinance, 1905, "The principal lay officer of a dewale, who has hitherto been styled or called by the title of Basnayake Nilame, shall continue to hold that title." Dr. John Davy, M.D., F.R.S., who was in Ceylon from 1816, the year after the occupation of the Kandyan country by the British, till 1821, has left a valuable account of the interior of Ceylon (London, 1821). There he says (page 148): "The dewalay-basnayake-nilamis were laymen of high rank, not appointed by the college of priests, but by the king himself, and held their office (which was generally combined with some civil employment of consequence) only during his majesty's pleasure." Under the Ordinance quoted above Basnayake Nilames are entitled to act as the trustees of their dewales. In them is vested all the property, movable and immovable, belonging to the dewales. They are responsible for the maintenance of the buildings, and of the ministerial officers attached to the temples, and also for (Section 20c) "the due performance of religious services and ceremonies as heretofore carried on, in, or by, or in connection with, such temple." Dr. Davy confirms the parol evidence which has been led for the plaintiff on this point: "It was his duty to attend to the temporal affairs of the temple, assist at its religious rites, and take care that all the ceremonies of religion were duly performed." The Basnayake Nilame is the proper person to sue on behalf of the dewale in all matters affecting the interests of the dewale.

The defendant has for some unknown reason denied that the plaintiff is the Basnayake Nilame of the Wallahagoda dewale. (Issue 3.) His appointment has been sufficiently proved (see P 1 and P 2), and is dated 3rd February, 1912.

40 Gampola, the ancient Gangasiripura, was in the fourteenth century of the Christian era the capital of the Sinhalese kings. To the end of the Sinhalese monarchy the place was one which was greatly favoured by the kings. It contained a royal village, including a large stretch of valuable rice fields. Details can be obtained from the "Gazetteer of the Central Province," compiled by the late Sir Archibald Lawrie, who was for so many years the District Judge of this Court. Wallahagoda appears to be the most important dewale in the neighbourhood of Gampola. The significance of that proximity is locally well understood, and here again Dr. Davy saves the necessity for

1 a lengthy digression : “ Under the old government the alliance of church and State was as strong as possible, in corroboration of which remark it may be observed that the Sinhalese seem to consider the temples of the gods as necessary appendages of a royal palace. Accordingly every royal residence had its orthodox number of temples, which, in two or three instances, had survived the palaces to which they were attached ”—page 36. This fact may 232 be witnessed in Kandy, the last of the Sinhalese capitals, where the great dewales and the Shrine of the Tooth Relic of the Buddha, known as the Dalada Maligawa, are only a few yards from the palace. The same fact was 10 noticed by Spilbergen in 1602, and is illustrated in the plan of Kandy attached to his journal.

That the Wallahagoda dewale is of great antiquity can hardly be doubted. All that is required for the purposes of the present case is proof that it was in existence in 1815. The tenure under which its lands are held by its service tenants takes it right within the period of the Sinhalese monarchy. That its sanctity is very great is proved by the fact that it is the rival of such renowned shrines as Gadaladeniya and Lankatillaka, Embekka and Vegiriya, which appear to have seen their most flourishing period when 20 Gampola was the capital. The plaintiff asserts that among other ancient privileges this dewale exercised the right of conducting a procession named the Esala perahera, in which “ the Basnayake Nilame of the said temple, with the retainers and tenants of the said temple, had the right and privilege of marching to and from and through all the streets of the town of Gampola, including that portion of Ambagamuwa Street with which this action is concerned, with elephants, to the accompaniment of tom-toms, drums, and other musical instruments.” The defendant has again denied the truth of these assertions, and I am not quite sure why. It may be that all that he meant to deny was the idea conveyed in the words “ right and privilege.”

What the great Esala perahera is, is known to every child in Ceylon. 30 Here I need only remark that what the plaintiff’s witnesses have deposed to with reference to it are corroborated by Dr. Davy, pages 170–173.

Has the procession been in the habit of proceeding along the Amba- 233 gamuwa Road, round which the present struggle centres ? The perahera had to proceed from one fixed point to another once a year, from the dewale to the Mahaweli-ganga at Poruthota. The natural road to go by for a portion of the way is the Ambagamuwa Road. It is not often that ancient Sinhalese roads can have their identity established by writings. But here the passages from the “ Mahavansa ” quoted for the plaintiff prove that centuries back this Ambagamuwa Road was a *via sacra*, along which religious processions 40 wended their way to that most famous of Oriental shrines, where the Moor from Tunis and the Mongol from China would meet the Brahmin from Benares and the Sinhalese Buddhist in common worship of the mysterious footprint, Samantakuta, the Adam’s Peak of to-day. This, taken with the mass of parol evidence on the subject, makes it clear that for centuries the Esala perahera had proceeded along Ambagamuwa Road to Poruthota. Assuming all that is asserted for the defendant to be true, the fact that once or twice within recent years the procession has been compelled by the authorities, in spite of passionate remonstrance, to vary the route at a particular spot, is of no special

1 significance. That music accompanied the procession is a matter of course, and the above remarks also apply to any recent interruption thereof by the authorities. The position assumed by the plaintiff is this: that it is an essential portion of the religious worship, as maintained at the Wallahagoda dewale, that the procession should go along the usual route by Ambagamuwa Road, and that the music should perform, without ceasing, from the start till the procession returned within the dewale.

To appreciate this point of view it is necessary first to try and understand what the perahera means to the Sinhalese Buddhist. Long, long ago, before the beginning of years, when the gods walked among the children of men, an evil spirit was plaguing mortals, whom he entrapped into his vessel and devoured on the sea. And as the gods looked down in compassion from heaven, the Kataragam deiyo volunteered to rid the earth of the curse. Rendering himself incarnate in human flesh, he descended to the world and slew the evil spirit in single combat on board his own ship. Then with the head of his vanquished foe, and filling his golden pitcher with water, he ascended into heaven. And the celestial halls rang with happiness, and the assembled gods danced in their joy, and Sakraya, the great god, made order that every year should mortals observe the commemoration of this great deliverance. How great a hold this celebration has obtained upon the religious feelings of the Sinhalese is proved by the writers of many nations. The "Mahavansa," the most important of the Sinhalese historical records, and which was compiled by Buddhist priests, narrates how in the thirteenth century of the Christian era King Pandita Prakrama Bahu, one of the most distinguished of the Sinhalese kings, personally proceeded to Dewundara at the southern extremity of the Island, to repair the dewales of Vishnu which were there, and how he ordained the Esala perahera there (page 241). In 1603 we find the Hollanders at Batticaloa complaining that they could not provision their fleet because all the inhabitants in the district were gone to the perahera at Tirukovil ("Ceylon, the Portuguese Era," I., page 396). Raja Sinha II. himself, the bold warrior, in spite of his Portuguese education and Christian mother, would withdraw from the field of war to attend the perahera (*ibid*, 235 page 393).

In the middle of the eighteenth century King Kirtisri Raja Sinha reformed the Buddhist church by re-introducing the ancient Sinhalese succession of ordination back from Siam. "And like the former kings of Lanka, he desired to show to the divers classes of his subjects the rejoicings that were held in honour of Natha, Vishnu, and other gods, which were regarded by all the people as conducive to prosperity. And to that end he caused preparations to be made throughout the whole city, so that it looked like the city of the gods. And he assembled together all the inhabitants of Lanka in that city. And he caused the emblems of the gods to be placed on the backs of elephants, and commanded that they should be taken in procession, accompanied before and behind by elephants and drums, and a host of dancers, by numbers of divers elephants and horses, by men in the dress of Brahmas, arrayed gorgeously in divers garments, by persons holding divers kinds of umbrellas and chowries, by numbers of divers classes of women and officers of State, by numerous sword bearers and shield bearers, and spearmen, and men armed

1 with divers kinds of weapons, by persons carrying divers cloths and flags, by people of strange countries, and men skilled in divers languages, by numerous artificers and handicraftsmen, and by many such people. And then the king followed in royal state, like the king of the gods; and after that he had gone round the whole city with the procession, returned with it and entered the palace at the conclusion thereof.”—Page 286.

Such is the account preserved of the Esala perahera at Kandy as 236 observed by the High Priest Tibbotuwawa, the writer of that portion of the “Mahavansa,” who was among the first batch of priests to be ordained under 10 the Siamese succession. In 1817 Dr. Davy witnessed the Esala perahera, the festival which, he says, of the Sinhalese festivals, “was observed with the greatest pomp and parade.” The Kandyan country had been ceded two years before. The Sinhalese monarchy had ceased to exist. But round him were men to whom the manner of celebration under the Sinhalese kings was a matter of every-day knowledge. In vivid language he has described the grandeur with which it was celebrated. For fourteen days, after elaborate preparations, the festival has been celebrated with ever-increasing pomp. Day by day the circuit of the procession grew wider and wider. Gradually all the royal resources of display were sent to join. The king’s state elephants, 20 under the Gajanayake Nilame, the chief of the household officers, his artillery, his men at arms, the chiefs of the various districts, with their insignia and attendants, all took part in the procession. And finally, on the fifteenth night, the festival culminated in an outburst of splendour in the water-cutting ceremony. The king himself took part, riding in his golden chariot drawn by eight horses: the great court ladies attended the palanquins which conveyed the arms of the gods. And with the first flash of dawn, at the ferry at Ganoruwa, the golden swords in the hands of the kapuralas flashed in the water within the veiled enclosure, and as the water shrank back on this side and on that, the golden pitcher was plunged in and filled, and once more the 30 procession started back, having fulfilled the command of the great god delivered so long ago.

All these writers bear evidence to the correctness of the parol evidence 237 placed before me. They serve to show that under the Sinhalese monarchs the Esala perahera, as celebrated at Kandy, was the greatest of the national festivals, a religious festival directed by the king in person as the head of the State. And in every dewale the same ceremony was performed, with varying grandeur in accordance with the importance of the dewale. And Wallahagoda is the chief dewale in the proximity of the ancient capital of Gampola. Ritual is the name given to that fossilized form which is the final development of 40 religious practice. The ritual of an Oriental religion is adamantine. For instance, take the case of the Wallahagoda dewale. It has numerous tenants, each of whom has to perform a definite part in its ritual. It may be the tom-tom beater, or the trumpeter, or the man who supports one pole of the canopy, or who carries the flambeau. His sole duty in life is to perform that definite task, and for doing so his material wants are provided for. And generation after generation his family performs the same task, and it is these families who are the repositories of the ritual of the dewale. They unanimously declare that the Esala perahera must go by Ambagamuwa Street, and

RECORD.
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*In the
District
Court of
Kandy.*
—
No. 33.
Judgment
of District
Court,
4th June,
1914—*contd.*

1 that the music which commenced at the dewale must not cease till the dewale is reached again. As for the road, I have little hesitation in holding that for centuries the procession from Wallahagoda has proceeded by the old road of pilgrimage, the Ambagamuwa Road, to Poruthota, and that it is a part of the necessary ritual that it should proceed by the same fixed route on every occasion.

Then as to the music. With every nation and at all times the accepted 238 manner of showing particular honour is to make a noise. The greater the noise the greater the honour. It does not matter whether the noise is made by firing a hundred and one rounds from the heavy guns of a super-dreadnought, 10 or by beating all the sixty-four kinds of drums known to the Sinhalese. To interrupt the music or to alter the route would be to displease the god. That they dare not do under any circumstances, declare the temple tenants, for it is as much as their future well-being is worth. They could not stop for a restive horse on the road. They could not stop because their noise might mean the death of a sick man. No patient is above the god. All this sounds artificial, unreal, forced for the purposes of this case. But is it so? The matter has to be judged, not according to the standards of a Christian or Agnostic of the twentieth century, but according to the ideas of a Sinhalese Buddhist before 1815. It is only necessary to read again the accounts in the 20 "Mahavansa" and Dr. Davy to realize how utterly impossible it was for the Sinhalese mind to conceive of the stopping of the music for a horse or a sick man. It is manifest that everything had to give way to the perahera. The question of a horse would not, of course, have arisen in Sinhalese times, as there were no horses in use in the country, save what were imported for the use of the kings. And it is clear from the answers of the witnesses that they could not grasp the possibility that a sick man could find their music a source of annoyance. Does a softly sung hymn in some great cathedral during the celebration of the Eucharist disturb the communicant? That is the mental 239 attitude of the Sinhalese Buddhist towards his drums.

30 Kirtisri Raja Sinha, as already quoted, held that the celebration of the perahera was "conducive to prosperity." That is what the witnesses say too, and they declare that to infringe on the honour due to the god will bring untold trouble on them. The perahera has not been held at Wallahagoda for two years, and in consequence the countryside has been devastated by terrible floods, and dysentery has scourged the people. For these Hindu divinities are verily jealous gods. No human being may dare step within their holy place, save only their chosen priest, and that too after elaborate purification. These gods "take a lively interest in what is passing on the earth, which they protect, and in the affairs of mankind, which they watch 40 and superintend. No one must appear before their shrines unless he has lived on a vegetable diet many days previously and is strictly pure," says Dr. Davy, page 198. Even the Basnayake Nilame dare not enter the shrines. "None but the officiating priests called kapuralas being qualified or daring to appear before the idols," says he again, page 149. One witness has spoken to the untimely death of the father of the present kapurala as being the result of his negligence in connection with the ceremonial of the god.

Fortunately there is available certain unquestionable evidence which goes to prove that the extreme punctiliousness displayed by these tenants is

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1 not artificial and a pretence, but a stern reality and an article of fervent faith. No European has written of the Sinhalese with the knowledge of Robert Knox, for so many years the captive of Raja Sinha II. Referring to the perahera, he says : " This festival of the gods taking their progress through the city, in the year 1664, the king would not permit to be performed. And that same year 240 the rebellion happened, but never since hath he hindered it. At this time they have a superstition, which lasteth six or seven days, too foolish to write. It consists in dancing, singing, and juggling. The reason of which is lest the eyes of the people, or the power of the yaccos or infernal spirits, might any

10 ways prove prejudicial or noisome to the aforesaid gods in their progress abroad. During the celebration of this great festival there are no drums allowed to be beaten to any particular gods at any private sacrifice." (Philalethes' Knox, 1817, page 160.) Music is a mark of honour when a great person is making a progress, is well known. It is mentioned in a letter of this same Raja Sinha, in 1656 : " His camp had been silent in grief for the death of a friend, the commander of the Hollanders, but now that the king was to move again, it was right that there should be music." (" Ceylon, the Portuguese Era," II., 440.) Under the Dutch administration the grant of a number of drums to a favoured chief was regarded in the same way as is

20 to-day an increase in the number of his guns by an Indian rajah. I see from the latest publication of the Government Archivist that in 1697 two of the timid Wanniyas of the north declined to attend the Governor's durbar, because he had not sent his drummers to escort them (" Diary of De Heere," page 20). In the perahera here is the god himself, as represented by the maha ranayudha, proceeding with all conceivable solemnity to the greatest ceremony held in his honour. In his honour the music, that sacrifice of praise and thanksgiving which is performed every morning and evening at the temple, is being performed by men who by immemorial custom hold their lands on the service of performing that music. Is it possible for that music to stop

30 on the way? What would a royal personage think if a salute of artillery fired 241 in his honour has to be interrupted to suit the convenience of another? I think the plaintiff is right, and that the continuous performance of the music till the perahera is back again in the dewale is an essential part of the perahera.

The defendant relies upon a certain arrangement come to in 1905 between certain prominent Buddhist priests of Anuradhapura and the representatives of Government for regulating the beating of tom-toms at their institutions, and for the cessation of music in their processions when near places of public worship in which service is being performed. (See D 10.) These processions have nothing to do with the Esala perahera of the dewales, in which

40 the main factor is that the god himself, as represented by his sacred emblem, was making a progress. But I see that this agreement concedes the right to the priests at the full moon of the month Esala to have tom-toms beaten for seventy-two consecutive hours. He then relies on certain alterations which have been made in the management of the perahera at Kandy. It appears that since the seventies no procession falling into the Esala festival is celebrated in Kandy on Sunday. The circumstances here are peculiar. The Anglican church has thought proper to erect its church in the midst of the most venerated dewales round the palace. It is in fact a few yards from the Natha dewale,

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1 and on what was probably once the dewale premises. The Anglican church was an Established church. The chief representative of the Government in the Province, the Government Agent, lived at the palace across the road. The entrance to the residence of the Governor is under the shadow of the Vishnu dewale. A Sinhalese official has the very liveliest regard for the wishes of 242 the Government official. The latter's displeasure might mean his undoing. This feeling was even stronger a generation back, for the Government official still had around him something of the glamour which surrounded the person of a semi-divine king. If, then, a complacent Diyawadana Nilame agreed to any

10 alteration to suit the prejudices of the established Christian church, that does not in any way affect the Wallahagoda dewale. As to the propriety or otherwise of postponing a procession, or omitting it for one day, I am not called upon to decide. I believe that under certain circumstances, such as ceremonial pollution, the perahera can be postponed. (See Administration Reports, 1872, page 462.) What I have to deal with is this, whether, once the perahera has started on the fifteenth day for the water-cutting ceremony, accompanied by the emblem of the god and escorted by music, that music can, according to religious custom, be stopped for any reason at all. No serious attempt has been made by the defendant, by placing before me the opinions of people with

20 expert knowledge on the point, to controvert the position assumed by the plaintiff. On the other hand, the plaintiff has placed the best evidence that can be procured, so far as the Wallahagoda dewale is concerned—that of the people who for generations have served the dewale in various capacities. That opinion is supported by the weighty testimony of the Diyawadana Nilame of the Dalada Maligawa, an officer of the highest social status among the Kandyan Sinhalese, whose dignified and historic office as the custodian of the temple of the Sacred Tooth Relic is the highest aspiration of every Kandyan. I have tested that evidence by the records of independent writers. I arrive at the conclusion that I must accept the position urged by the plaintiff as being

30 correct.

The plaintiff next argues that under the Kandyan Convention of 1815 243 the rights claimed by him were recognized and the continued enjoyment thereof guaranteed. He relies on paragraph 5 of the Proclamation of 2nd March of 1815. This reads: "The religion of Boodho professed by the chiefs and inhabitants of these Provinces is declared inviolable, and its rites, ministers, and places of worship are to be maintained and protected." Assuming that this Section is still in force, it is not possible to question the correctness of the plaintiff's assertion. The Solicitor-General seemed to feel some hesitation as to whether the cult represented by the Basnayake Nilame—who is of course

40 a Buddhist—in this case can come under the description "religion of Boodho." That term means the established State religion under the Sinhalese kings, which was Buddhism, with a large admixture of Hinduism growing side by side with it. Evidence has been placed before the Court to prove that Vishnu is the protector of Buddhism in the Island, that images of Hindu divinities appear by the side of the images of Buddha. The Diyawadana Nilame has explained who are regarded by Buddhists as the Samyadristi gods—those having the correct faith. Under the institution of King Kirtisri Raja Sinha the Tooth Relic of the Buddha itself was carried in the Esala perahera at

1 Kandy, though its place is now taken by other Buddhist relics, and attached to every important dewale is a small Buddhist temple the priest of which performs a Buddhist ceremony at the Hindu dewale the night before the Esala perahera. This is a point that is too well known to demand discussion at length. The dewales and Buddhist viharas have always been dealt with together, and Section 5 of the Proclamation refers to the two of them. 244 (Issue 11a.) See also Proclamations of 18th September, 1819, and 21st May, 1822. But, says the defendant, Section 5 has been modified by the Proclamation of November 21, 1818. That runs: "As well the priest as all the
10 ceremonies and processions of the Budhoo religion shall receive the respect which in former times was shown them; at the same time it is in nowise to be understood that the protection of Government is to be denied to the peaceable exercise by all other persons of the religion which they respectively profess, or to the erection, under due license from His Excellency, of places of worship in proper situations."

This Section has not modified Section 5 of the previous Proclamation. It has been merely framed to remove some possible misunderstanding which the extremely ample wording of Section 5 was likely to give rise to. This is proved by Lord Bathurst's despatch of 30 August, 1815 (D 21), to the Governor
20 in Ceylon. "His Royal Highness has commanded to signify to you his general approbation of the principles of liberal policy by which you have been guided in acceding to the Convention as proposed for the annexation of the Kingdom of Kandy to His Majesty's Dominions. But I cannot conceal from you that the satisfaction of His Royal Highness would have been more complete if the 5th Article of the Convention, which relates to the superstition of Boodho, had been couched in terms less liable to misconstruction. I am too well aware of your own feelings on these subjects, and of their perfect accord with those of His Majesty's Government, to doubt that the sense in which you acceded to that Article, and therefore that in which it was accepted by the
30 Kandyan people, was that expressed in the latter part of the Article, which provides for the maintenance and protection of the rites, ministers, and places of worship of the religion of Boodho. And in this sense His Royal Highness has no hesitation in giving to it his most unqualified approbation. If, however, the term inviolable in the first clause of the Article is, as I do not conceive it can have been, understood as precluding the efforts which are making to disseminate Christianity in Ceylon, by the propagation of the Scriptures, or by the fair and discreet preaching of its ministers, it would be very much at variance with the principles upon which His Majesty's Government have uniformly acted for guarding against so great an evil."

40 This fully explains Section 16. It left Section 5 of the Proclamation untouched, but removed any suspicion that might arise that the British Government was pledged to oppose the propagation of Christianity.

(Issue 11c (a)). It is of importance in the present connection to note that the Proclamation of 1818 speaks specifically of the "processions of the Budhoo religion" receiving "the respect which in former times was shown them." Section 21 is an emphatic confirmation of Section 5 of the Proclamation of 1815. It has been urged on behalf of the defendant that the provisions of the Convention of 1815 were subject to such modifications

1 as might be determined by subsequent legislation, and that as a matter of fact they have been so modified by Sections 69, 84, and 90 of the Police Ordinance, No. 16 of 1865, and Section 64 of the Local Boards Ordinance, No. 13 of 1898. (Issues 11b and 11c (b)).

The Solicitor-General has strenuously urged that the Convention was 246 merely a political document enunciating the general principles on which the British Sovereign proposed to act, and that any privilege conferred thereby was liable to modification at the will of the Sovereign. He proceeded to quote numerous instances in which such modifications have been made, vitally 10 altering the state of things which existed in 1815. There is no doubt as to the correctness of these latter facts. They show in what light the Convention was regarded by the British authorities, both here and at Downing Street. They are no proof that that view is right. This is the first time that the nature of the Convention has been brought before a court of law for a judicial interpretation, and the question must be decided on its own merits.

What is the Convention? This is what the Official Bulletin, dated British Headquarters, Kandy, 2nd March, 1815, says: "This day a solemn Conference was held in the Audience Hall of the Palace of Kandy, between His Excellency the Governor and Commander of the Forces on behalf of His Majesty 20 and of His Royal Highness the Prince Regent on the one part, and the Adigars, Dessaves, and other principal chiefs of the Kandyan Provinces on the other part on behalf of the people, and in presence of the Mohottales, Coraals, Vidaans, and other subordinate headmen from the different provinces, and a great concourse of inhabitants. A Public Instrument of Treaty, prepared in conformity to conditions previously agreed on, for establishing His Majesty's Government in the Kandyan Provinces, was produced and publicly read in English and Cingalese, and unanimously assented to. The British flag was 247 then for the first time hoisted."

Then follows the "Official Declaration of the settlement of the Kandyan 30 Provinces." This recites the misrule of the captured king, and continues: "On these grounds His Excellency the Governor has acceded to the wishes of the Chiefs and People of the Kandyan Provinces, and a Convention has in consequence been held, the result of which the following public Act is destined to record and proclaim." The Proclamation is prefaced by the following preamble: "At a Convention held in the City of Kandy, between His Excellency Lieut.-General Robert Brownrigg, acting in the name and on behalf of His Majesty George the Third, King, and His Royal Highness George, Prince of Wales, Regent, of the United Kingdom of Great Britain and Ireland, on the one part, and the Adigars, Dessaves, and other principal chiefs 40 of the Kandyan Provinces on behalf of the inhabitants, and in presence of the Mohottales and of the people then and there assembled on the other part, it is agreed and established as follows."

The first three Sections deal with the deposition of the Malabar Dynasty, which had long occupied the throne at Kandy. By Section 4 "The dominion of the Kandyan Provinces is vested in the Sovereign of the British Empire, saving to all classes of the people the safety of their persons and property, with their civil rights and immunities, according to the laws, institutions, and customs established and in force amongst them."

1 Section 5 conserved the established religion. The subsequent Sections 248 dealt with matters of civil and criminal justice, "Saving always the inherent right of Government to redress grievances and reform abuses in all instances whatever, particular or general, where such interposition shall become necessary." There were also certain provisions regarding matters of revenue.

10 All this merely reproduced what had been done at the Convention of Malwana in 1597, when at the death of King Dharmapala the chiefs and people of the Kingdom of Jayawardhana Kotte, which claimed the suzerainty over the entire Island, agreed to accept Philip of Spain and Portugal as their king, in accordance with the donation and will of Dharmapala. (See "Ceylon, the Portuguese Era," vol. I., pages 310-312.) The procedure adopted in 1815 was well known to the Sinhalese. Where a king died without near relations, "should not the king before his death have nominated his successor, the office of selection devolved on the ministers. It then became their duty to find out a proper person, propose him to the chiefs and people, and with their consent place him on the throne." (Davy, page 141.) All that the assembled Sinhalese saw on 2nd March, 1815, was the not very uncommon sight of a change of dynasty. That probably did not interest them very much. Their own lives were regulated by something greater than a king, namely, custom. The power of the king over the subject, except of course in the case of the tyrant, was strictly governed by custom. And those customs were conserved.

20 The Proclamation itself records the terms of a contract of the most 249 solemn kind that can be conceived. On the one side was the King of Great Britain, by his agent the Governor; on the other side were the principal Kandyan chiefs, the recognized agents, and acting professedly on behalf of the people, of the Kandyan Provinces. The people agreed to accept the King of Great Britain as their Sovereign; the latter covenanted to fulfil certain conditions. When once the act of the Governor has been ratified by the British Sovereign himself—and this has been ratified with 30 some slight reservations by the Proclamation of 31st May, 1816—is it competent for one of the parties to the contract to modify it in the future?

40 A petty rebellion occurred in 1818. Governor Brownrigg was of opinion that the system of administration through the native chiefs was impolitic, and proposed certain alterations. He addressed a Minute, dated 25th September, 1818, to the Board of Commissioners at Kandy (D 23), containing his views. Therein occurs the following significant passage: "Under these circumstances, where so many of the chiefs have broken their part of the Convention by withdrawing their allegiance, and have seduced and forced the people to the same wicked course of rebellion, it is not imperative on His Excellency to consider the letter of the Articles of that Convention as so completely fettering his measures that he is not, on the subjugation of the existing insurrection, to take steps to fortify the hands of the British Officers appointed to the Executive Government, to invest them with powers of compelling immediate obedience, &c."

His proposals consisted of certain alterations in the machinery of administration, so as to reduce the power of the chiefs and to loosen the bonds which connected them with the people. He also refers to the priests thus: 250

1 “ A third (party) of no little power, kept at least neutral by the inviolable respect paid to the property of temples and a proper regard to the due administration of their funds, already pointed out to the notice of the Board in the Minute of 21st January last.”

In this latter Minute the Governor, after referring to Section 5 of the Convention—“ This Article of the Convention, which was one most anxiously pressed by the Kandyan chiefs ”—expressed his opinion that it was “ an especial part of the duty of Government ” to see that the temple revenues should be utilized for the purposes for which they had been assigned by the
10 Sinhalese kings, and to see that the edifices were kept in a proper state of repair. “ It appears to His Excellency that the first point necessary to enable Government to fulfil its part of the Convention with the people of the Kandyan Provinces” was to ascertain the revenue and expenditure, and to estimate the amount required for repairs, “ and the Governor will have it in his power to determine in what manner any present deficiency in the means actually existing is to be supplied.” He proposed the creation of a reserve fund, with an annual audit, as this would “ convince the inhabitants that Government is equally attentive in this as in every other point of its administration.”
20 He hoped that the “ Commissioners will equally see with himself the impolicy of so material a subject as the religious establishments to which a native is so much attached appearing to suffer neglect.”

The Governor’s views of the liability of the British Government under the Convention are thus very clear (P 30). His reading of the Convention 251 was adopted, and the dignitaries of the Buddhist church were appointed by the Government. In 1846 an Ordinance was passed in the local Legislature, being number 2 of that year, because “ it is expedient for the British Government to withdraw from direct interference in the appointment of priests and chiefs of vihares and dewales.” This Ordinance was disallowed by Earl Grey, the Secretary of State, by his despatch of 13th April, 1847
30 (D 24). He there says that the Queen’s Advocate, Mr. Buller, had expressed the opinion “ that the Treaty into which we entered on the conquest of Kandy constitutes a law or compact binding and unalterable in all following times, however urgent might be the motives, and however extreme the exigency demanding the alteration of it,” and that under it the Sovereign was bound to maintain the Buddhist religion in the same fashion as the Established Church of England. Earl Grey repudiated this view. “ I cannot subscribe to the opinion that any law, whether it assume the form of an enactment or the form of a compact, can be justly regarded as incapable of such changes as in the process of time and under new and unforeseen circum-
40 stances the general interests of society may demand.” He refers to Section 5 of the Convention as being in no way modified, and adds: “ The obvious meaning of these words is that the Buddhists should be free to celebrate their religious rites and to hold all the places and property devoted to their worship, without molestation from their new Sovereign or from any one else But if I were compelled to admit the construction thus put on these words I should then deny that such an engagement would be valid or binding. And why ? The Christian Sovereign of a Christian State had no authority to bind himself and his successors to a course of conduct which Christianity 252

1 unequivocally forbids. If for the sake of argument it were conceded that His Majesty King George the Fourth pledged himself not only to secure to the Buddhists a perfect exemption from all loss and injury in the celebration of their religious observances, but to enforce by law and by administrative authority the mutual rights and duties of the priests and people, that assumption would conduct us to the inevitable conclusion that his late Majesty had, however unadvisedly, pledged himself to the maintenance of abominations to which not merely the revealed Law of God, but the general conscience of mankind, is irreconcilably hostile."

10 The noble lord appears to have had as sound a knowledge of the tenets of Buddhism as the Roman emperors did of those of Christianity. He fortunately interprets the words of the Convention in an unmistakable manner, and appears to be expressing the opinion, not of a lawyer or a statesman, but of an earnest Christian of 1847. It will be seen how widely his views have diverged from those of Governor Brownrigg. The rest of the long despatch is of value mainly by its recognition that the provisions of Section 5 had not been modified.

I am called upon to decide between the views of Mr. Buller, the Queen's Advocate, and Earl Grey, the Secretary of State. I adopt the
20 opinion of the Queen's Advocate, and hold that "the Treaty into which we entered on the conquest of Kandy constitutes a law or compact binding and unalterable in all following times, however urgent might be the motives, and however extreme the exigency demanding the alteration of it." Accordingly 253 the right claimed by the plaintiff has not been in any way affected by the Sections of the Police and Local Boards Ordinances relied on by the defendant (issue 8). Certain issues have been raised regarding prescription (Nos. 6, 7, 7a). I cannot conceive of a right of this nature being lost to the dewale by non-user on the part of the Basnayake Nilame. Under any circumstances the facts on which the defendant relies are too trivial to construct thereon any
30 loss through non-user. It appears that there are four mosques and some Christian churches on the route of the perahera. One of these mosques, which commenced as a thatched hut, has increased in wealth and was rebuilt about twenty years ago, and was added to a few years back, gradually bringing it nearer to the road. This is the newest of the mosques, and is patronized by immigrants from South India known as Coast Moormen. These men object to Buddhist processions passing their mosque with music, and apparently threatened to make a disturbance. Instead of binding them over to keep the peace, the police adopted another device. They buried two pieces of old gas-pipe, two inches in diameter, and standing three feet above the ground,
40 fifty yards on either side of the mosque, and declared that all processions must stop their music within the intervening space. None of the older mosques object to the music. A certain amount of peculiar evidence has been placed before me. The Police Sergeant G. Menon, by a certain arithmetical calculation over a matter of about five minutes difference, has arrived at the conclusion that he stopped the music of the Esala perahera in 1908 while going past the mosque. Unfortunately neither the Information Book kept at the 254 station nor his report endorsed on D 18 make any mention of such cessation. Police evidence in this country is so notoriously unreliable that this Sergeant's

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1 assertion is entitled to no respect. In 1909 it would seem that the procession having once started was stopped by the police, and after a strong protest by the Basnayake Nilame, and after the personal interference of the Police Magistrate, deviated from its proper route (see D 20). I attach no weight to the evidence of Amath or Pakir. Even if they are speaking the truth, no inference is to be drawn from the facts deposed to by them but that police pressure was being gradually brought to bear till the position became intolerable to those interested in the dewale. It would appear from D 17 that the first time an attempt was made to stop the music opposite the mosque was in 1907, and
10 then the temple tenants refused to take part in a perahera shorne of its music, and after much agitation and a postponement the perahera was duly taken. The fact that it was usual to notify the Government Agent of the date of the perahera is no admission of any right in him to stop the music or alter the route. All these are matters of recent occurrence, and cannot affect the right involved. I do not think that any question of prescription arises in the case. A careful distinction should be drawn between the procession of the Esala perahera of a dewale, accompanied by the emblem of the deity, and the petty processions or pinkamas conveying flowers or other offerings to a Buddhist vihare. The two have nothing to do with each other.

20 I have held that the rights claimed by the plaintiff are a necessary 255 portion of a certain religious ceremonial; that the exercise of those rights is guaranteed by the Convention of 1815; that the provisions of that Convention have not been and cannot be modified in this respect; and that no question of prescription arises. I therefore answer the twelfth issue, "Is the Wallahagoda dewale now entitled to the privilege claimed in paragraph 2 of the Plaint?" in the affirmative. The right claimed is one which must be recognized in a court of law, and it seems obvious that the proper person to maintain an action in connection with that right is the plaintiff, the Basnayake Nilame and trustees of the dewale (issues 2, 2a, 4).

30 Was the letter of the Government Agent dated 27th August, 1912 (P 3), and addressed to the President, District Committee, Kandy, an interference with any right belonging to the plaintiff? (issue 9). On 17th August, 1912, the President wrote to the Government Agent the letter D 1, informing him that he had heard that the previous year the two gas pipes already referred to had been erected on either side of the mosque, as a warning that the beating of tom-tom must be stopped between the posts. He protested that such a prohibition prevented the dewale from duly observing its religious ceremonies, and he requested the Government Agent to "be kindly pleased to cause the obstruction to beat of tom-tom opposite this particular mosque removed on the
40 occasion of the perahera of the temple." To this the Government Agent replied by P 3, that "The licenses will be issued to you on condition that music is stopped fifty yards on one side of the mosque and is not resumed before a point fifty yards beyond the mosque is reached." This of course 256 meant that any attempt to pass the mosque with music would be stopped by the police, and the responsible parties prosecuted. On the 2nd September the President, by D 2, firmly protested against this invasion of the rights of the dewale. But he was prepared to show all consideration for the religious feelings of the Muhammadans, and, in spite of the pecuniary loss it would

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1 entail, he expressed himself as willing, on behalf of the Basnayake Nilame, to take the procession past the mosque at any time the Government Agent would fix ; but he insisted that he should “ not be deprived of the privilege granted and enjoyed by us for so long a time for the pleasure of a handful of Moors who had come and fixed a mosque by the side of a road which had been used from time immemorial as the route for the procession.” The only reply was the somewhat brusque letter of the 13th September, that the Government Agent saw “ no reason to alter (his) previous order ” (D 3). Things were getting critical. It should be noted that the Basnayake Nilame was only appointed
10 in February, and this was his first perahera. Obviously he had little knowledge and no experience, as proved from his own evidence. The great water-cutting ceremony was to be on the 29th. On the 23rd he wrote to the Government Agent in person, that rather than lose everything he was prepared to avoid the portion of Ambagamuwa Street which lay past the mosque, and asked for a license (D 4). He was presumably acting on the advice of the committee, as stated in their letter D 5a of 14th September. When the license did arrive it was found to contain the condition that music must stop within one hundred yards of any place of public worship, and that the procession could not go past the mosque at all.

20 This proved too much for the temple tenants, and they refused to have 257 anything to do with the procession, just as they did in 1907. Apparently all the Buddhists who were interested objected to the innovation (see P 4). I think the letter of the Government Agent is sufficient cause for the plaintiff's action.

It has been argued on behalf of the plaintiff that the present action is one for breach of contract. The argument is that the Convention was a contract between the British Sovereign and the Kandyan people; there has been a breach of it by the act of the Government Agent, and therefore the Government of Ceylon is sued. I cannot follow this; but one thing seems
30 clear, that though the Convention was no doubt a contract, it is not a contract that will give a private party a right of action for damages in case of the breach of any of its provisions. The Convention is a Treaty which on ratification became an immutable law. “ The articles of capitulation upon which the country is surrendered, and the articles of peace by which it is ceded, are sacred and inviolable according to their true intent and meaning,” said Lord Mansfield in 1774, in the case of *Campbell v. Hall*. There he was referring to Grenada, which had been taken by the British in open war with the French. That Convention, when ratified, became the most solemn law : in fact it is the Constitution, to which all other legislation must be subordinate.

40 Here the plaintiff was by law entitled to a certain right. The act of the Government Agent was a violation of that right. No doubt in Ceylon the Government or the Crown, whichever it is called, cannot be sued in damages for the tortious act of its servant. In so far as it is sought to recover damages 258 from the defendant, I think the plaintiff cannot maintain this action. But the Government, having adopted the act of its agent, I do not see why the plaintiff should not be held entitled to come into Court, to demand, on the analogy of the action *rei vindicatio*, a declaration of his title to the right

1 which has been violated. I accordingly am of opinion that this action has been properly brought against the Attorney-General.

I accordingly give judgment, declaring plaintiff entitled to the right and privilege set out in the second paragraph of his *Plaint*. I allow him his costs, but no damages.

P. E. PIERIS,
Acting District Judge.
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In the District Court of Kandy.

No. 22,466.

WICKRAMASINGHE NAWARATNE PAN-
DITTA WASALA ABEYKOON GANWILA
HERAT MUDIANSSELAGE TIKIRI BAN-
DARA ELLEKEWALA, Basnayake
Nilame and Trustee of Wallahagoda
Temple, Gampola, *Plaintiff,*

Against

THE HONOURABLE THE ATTORNEY-
GENERAL, Colombo, *Defendant.*

No. 34.
Decree of
District
Court,
4th June,
1914.

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This action coming on for final disposal before Paul E. Pieris, Esquire, Acting District Judge, Kandy, on the 4th day of June, 1914, in the presence of Mr. Goonewardene, on the part of the plaintiff, and of Mr. Liesching, on the part of the defendant: it is ordered and decreed that the plaintiff as the Basnayake Nilame and trustee of Wallahagoda temple, Gampola, be and he is hereby declared entitled to the right of holding and conducting a perahera ceremony or procession, by which the Basnayake Nilame of the said temple, with the retainers and tenants of the said temple, have the right and privilege of marching to and from and through all the streets of the town of Gampola, including that portion of Ambagamuwa Street with which this action is concerned, with elephants, to the accompaniment of tom-toms, drums, and other musical instruments.

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And it is further ordered that the said defendant do pay to the said plaintiff his costs of this action as taxed by the officer of the Court.

The 4th day of June, 1914.

P. E. PIERIS,
Acting District Judge.

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PART II.

No. 35.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

RECORD.

No. 35.
Petition of
Appeal,
16th June,
1914.

Supreme Court, No. 245.—District Court, Kandy, No. 22,466.

FINAL.

WICKRAMASINGHE NAWARATNE PANDITTA
WASALA ABEYKOON GANWILA HERAT
MUDIANSSELAGE TIKIRI BANDARA ELLEKE-
WALA, Basnayake Nilame and Trustee of
Wallahagoda Temple, Gampola, *Plaintiff-
Respondent,*

10

Versus

THE HONOURABLE THE ATTORNEY-GENERAL,
Colombo, *Defendant-Appellant.*

To the Honourable the Chief Justice and the other Justices of the said Court.

The Petition of Appeal of the Defendant-Appellant.

1. The plaintiff instituted this action to have it declared that he, as Basnayake Nilame of the Wallahagoda dewale, is entitled to the right and privilege of marching to and from and through all the streets of the town of Gampola, with elephants, to the accompaniment of tom-toms, drums, and other musical instruments.

20 He alleged that by letter dated the 27th August, 1912, the Government Agent of the Central Province wrongfully and in breach of the Kandyan Convention refused to allow the plaintiff permission to proceed in procession through Ambagamuwa Street within a hundred yards of the Muhammadan mosque, and that he had suffered damages to the extent of twenty-five rupees.

30 2. The defendant pleaded that the action was bad in law; that the letter of the Government Agent was not an interference with any right belonging to the plaintiff; that the right claimed was not known to or recognized by law; and he also denied that the plaintiff was entitled to such a right.

1 3. The case came on for trial on the 20th day of March, 1914, and the following issues were framed:—

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- (1) Does the Plaintiff disclose a cause of action against the defendant ?
- (2) Is the right claimed, to wit, a right to go in procession through Ambagamuwa Street in the town of Gampola, with elephants, and to the accompaniment of tom-toms, drums, and other musical instruments, one known to or recognized by the law ?
- (2a) If not, is the action still maintainable by the plaintiff ?
- 10 (3) Is the plaintiff the Basnayake Nilame of the temple at Wallahagoda ?
- (4) If so, is he vested with the right claimed, and is he entitled to maintain this action ?
- (5) Assuming the answers to issues (2), (3), and (4) to be in the affirmative, can this action be maintained against the defendant ?
- (6) Can such a right as the one claimed be acquired by prescription, and if so, has the plaintiff acquired the right claimed by prescription ?
- (7) Have the plaintiff's rights, if any, been lost by prescription for the reasons stated in paragraph 6 of the Answer ?
- (7a) Is the right claimed in the Plaintiff one liable to be lost by non-user ?
- (7b) If so, what is the period of prescription ?
- 20 (8) Do the provisions of Sections 69, 84, and 90 of the Police Ordinance, No. 16 of 1865, and Section 64 of the Local Boards Ordinance, No. 13 of 1898, empower the Government Agent to prohibit the exercise of the right claimed in the Plaintiff ?
- (9) Was the letter of the Government Agent dated 27th August, 1912, and addressed to the President, District Committee, Kandy, an interference with any right belonging to the plaintiff ?
- (9a) Does such alleged interference disclose a tort on the part of the Government Agent of the Central Province ?
- (9b) If so, is the defendant liable to be sued thereon ?
- 30 (9c) If it is not a tort, does it give the plaintiff a cause of action as against the defendant ?
- (10) What damages, if any, has plaintiff sustained ?
- (11) Did the Wallahagoda dewale enjoy the right and privilege, among others, of conducting the perahera procession as set out in paragraph 2 of the Plaintiff ?
- (11a) If so, was such right and privilege acknowledged and confirmed by the Convention of 1815 ?
- (11b) Assuming that it was so acknowledged and confirmed, were the provisions of the Convention of 1815 subject to such modification as might be determined by subsequent legislation ?
- 40 (11c) If so, was Clause 5 of that Convention in fact modified—
- (a) By the Proclamation of 21st November, 1818 ?
- (b) By the provisions of Sections 69, 84, and 90 of the Police Ordinance, No. 16 of 1865, and Section 64 of the Local Boards Ordinance, No. 13 of 1898 ?
- (12) If so, is the Wallahagoda dewale now entitled to the privilege claimed in paragraph 2 of the Plaintiff ?
- (13) If the action is based on contract, is the notice of action good ?

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1 4. The District Judge delivered judgment on the 4th June, 1914, declaring plaintiff entitled to the right and privilege claimed, and awarding him his costs, but no damages. The defendant is aggrieved at the said judgment, and begs to appeal therefrom to Your Lordships' Court for the following reasons:—

(a) The judgment is contrary to law and to the weight of evidence adduced in the case.

10 (b) The plaintiff claimed the right as Basnayake Nilame of the temple. It was not alleged in the Plaint that he was or had acted as trustee. In these circumstances it is submitted that the plaintiff was not entitled to sue on behalf of the dewale, and that the Judge was wrong in entering judgment in terms of the plaintiff's prayer, declaring him entitled to the right. 4

20 (c) The most important issues framed were issues (11a), (11b), (11c), and (12). It was argued on behalf of the plaintiff that the present action was one for breach of contract, that the Kandyan Convention of 1815 was a contract between the British Sovereign and the Kandyan people, that this contract was inviolable, that one party to the contract could not by a subsequent act rid himself of his obligations, and that the plaintiff was entitled under Clause 5 of the Convention to the right he claimed. It was further contended that the defendant was sued as representing the Government of Ceylon, and not the Crown, for an interference by the Government Agent in what he believed to be the *bona fide* exercise of his rights with a right belonging to the plaintiff. The District Judge finds that there is no distinction between the Government of Ceylon and the Crown, and that the Crown cannot be sued in damages for the tortious act of its servant, and that the plaintiff, in so far as he sought to recover damages, could not maintain his action. He also finds that the Convention was not a contract that would give a private party a right of action for damages in case of breach of any of its provisions. He proceeds, however, to hold that the plaintiff was entitled to demand, on the analogy of the action *rei vindicatio*, a declaration of his title to the right which has been violated. It is submitted that the District Judge should have dealt with the plaintiff's claim in the way in which it had been presented to him, and that the plaintiff's case being one for breach of contract, the District Judge should have, on his findings quoted above, ruled that the plaintiff could not maintain an action for breach of contract. 5

30 (d) It was argued on behalf of the defendant that not only was the Convention not a contract enforceable at law, but that the District Court had no jurisdiction to entertain an action to enforce it. The District Judge on this point holds that the right claimed is one which must be recognized in a court of law. 5

40 (e) Counsel for the plaintiff, at the close of his case, produced certain documents, being copies of correspondence that passed between the Secretary of State for the Colonies, Colonel Olcott, the Colonial Secretary of Ceylon, and Mr. E. F. Perera, proctor, in connection with the Kotahena riots of 1883. These documents were objected to on behalf of the defendant, on the ground that they were irrelevant to the interpretation of the Convention, which only applied to the Kandyan Provinces. The Judge made no order on the objection, and has made no order in his judgment. He has referred to some of these

1 documents and based some of his findings thereon. It is submitted that these documents should have been rejected as irrelevant.

(f) It was also contended on behalf of the defendant that Clause 5 of the Convention of 1815 had been modified by the Proclamation of 21st November, 1818, and that Clause 56 of the latter reserved power to the Governor to alter the provisions of that Proclamation. Clause 5 of the Proclamation of 1818 refers to the insurrection of 1817, and to the year of conflict which was the result of that insurrection. The District Judge finds that this was a petty rebellion, and seems to imply that it was no excuse for the modification of the Convention.

10 The District Judge apparently finds that Section 16 was intended to explain and confirm Section 5, but he has failed to attach any importance to the latter part of that Section or to Section 56. He accordingly appears to hold that though the Proclamation of 1818 replaced the Convention of 1815, still matters were not altered by the former. It is submitted that Sections 16 and 56 make it amply clear that Clause 5 of the Convention was in fact modified.

(g) In exercise of the powers reserved by Section 56 and in pursuance of the authority granted by the Letters Patent of 1843, the Legislative Council passed Ordinances Nos. 16 of 1865 and 13 of 1898. The contention of the plaintiff that these Ordinances were *ultra vires* was not even pressed at the argument, as would appear from the notes of the learned Judge, and he himself gives no reason for holding that they were so *ultra vires*, except that the Convention was inviolable. The defendant submits that these Ordinances did modify Clause 5 of the Convention and Clause 16 of the Proclamation of 1818, and that issue (11c) should have been answered in the affirmative.

(h) The District Judge is wrong in stating that this is the first time that the Convention has come before a court of law for judicial interpretation. The judgment of Layard, C.J., in *Government Agent v. Sudhena et al.*, in 5 Tambyah, 39, supports the view taken by the defendant in this case, and the learned District Judge's attention was called to it before he delivered judgment.

(i) Even assuming that the Convention was an immutable law, Clause 5, on which the plaintiff relied, only protected the "religion of Boodho." It is clear from the judgment as well as from the evidence that the procession in question was not a part of the Buddhist religion, but a ceremony belonging to the rites of the Hindu religion.

(j) Assuming that the District Judge was right in treating this as an action *rei vindicatio*, the plaintiff failed to prove that the right claimed by him was one known to or recognized by law. The right belonging to an individual to go in procession one day in the year through a town in the manner claimed by him is unknown to the Roman-Dutch law, and is not a right for which the action *rei vindicatio* will lie.

(k) The whole action was based on the letter of the Government Agent dated 27th August, 1912, and addressed to the President, District Committee, Kandy. The President had written to the Government Agent, asking him to remove the obstruction to the beating of tom-toms while passing certain portions of Ambagamuwa Street. The Government Agent treated this as an

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1 application for a license under Sections 84 and 90 of the Police Ordinance, No. 16 of 1865, and replied that licenses would only be issued on condition that the beating of tom-toms is stopped fifty yards on either side of the mosque. If the plaintiff had the right as alleged, there was no necessity for him to apply for or obtain a license from the Government Agent, and it is thus apparent that the Government Agent's refusal to issue a license was not an interference with the plaintiff's right, if he had any.

10 (l) With regard to the right itself, it was alleged that it was essential for the procession to pass along the Ambagamuwa Street, and that the beating of tom-toms was a part of the religious ceremony, and could not be stopped on any account. It was proved by the evidence called for the defence that on two occasions the procession had passed along another route, avoiding Ambagamuwa Street, and that since 1907 this procession, like all others, had stopped the beating of tom-toms when passing this mosque. The District Judge apparently does not believe this evidence, and states that police evidence in this country is notoriously unreliable. It is submitted that this general statement is not justified, and that the evidence of the police officers, corroborated as it was by that given by Mr. de Livera, Police Magistrate of Gampola, and by the Information Books that were produced, should have
20 been accepted.

(m) It was further proved that the plaintiff himself, and the President of the District Committee under the Buddhist Temporalities Ordinance, who was admitted by the plaintiff himself to be an authority on all Buddhist affairs, had agreed to take the procession along another route, avoiding Ambagamuwa Street. It is therefore submitted that it is not essential that
8 this procession should pass Ambagamuwa Street.

(n) With regard to the beating of tom-toms, it was alleged for the plaintiff that the rule that the beating of tom-toms could not be stopped applied to all Buddhist processions and in all parts of the Island. It was
30 proved for the defence that the beating of tom-toms had been strictly regulated by the police, and that no procession in Colombo could pass a place of religious worship without stopping the beating of tom-toms. It was also proved that in Anuradhapura the leading Buddhist priests had agreed to stop the beating of tom-toms while passing places of religious worship. No evidence was called for the plaintiff on this point of any Buddhist priest or other expert on the Buddhist religion, but merely villagers, who were not able to discriminate between what was essential and what was not. It is submitted that on the record it is clear that it was not essential that tom-toms should be beaten the whole time till the procession was over. The distinction drawn by
40 the District Judge between the Esala perahera and other Buddhist processions is not borne out by the evidence in the case.

(o) In the judgment the District Judge relies on passages from books on Ceylon history which were not cited at the trial or relied on by either side. The District Judge was wrong in so doing.

(p) The District Judge does not deal with issue (1) at all.

A perusal of the Plaint will show that no act on the part of the Crown is alleged as being the cause of action, and it follows that the plaintiff had no cause of action as against the defendant. The letter of the Government

1 Agent, even if it amounted to an interference with a right belonging to the plaintiff, could only constitute a tort on his part, and the defendant was not liable to be sued thereon.

Wherefore the defendant prays that the judgment of the District Judge be set aside and that plaintiff's action be dismissed with costs.

Kandy, 16th June, 1914.
Settled by—

J. VAN LANGENBERG, *Solicitor-General.*
V. M. FERNANDO, *Crown Counsel.*

F. LIESCHING,
Proctor for Defendant.

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No. 36.

No. 245 D. C. Final.

GEORGE THE FIFTH, by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith.

In the Supreme Court of the Island of Ceylon.

W. N. P. W. A. G. H. M. TIKIRI BANDARA
ELLEKEWALA, Basnayake Nilame and
Trustee of Wallahagoda Temple, Gam-
pola, *Plaintiff-Respondent,*

Against

THE HONOURABLE THE ATTORNEY-
GENERAL, *Defendant-Appellant.*

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Action No. 22,466.

District Court of Kandy.

This cause coming on for hearing and determination on the 18th-21st days of January, 1915, and on this day, upon an appeal preferred by the defendant before the Hon. Mr. Walter Sidney Shaw and the Hon. Mr. Thomas Edward de Sampayo, K.C., Puisne Justices of this Court, in the presence of Counsel for the appellant and the respondent :

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It is considered and adjudged that the decree made in this action by the District Court of Kandy, and dated the 4th day of June, 1914, be and the same is hereby set aside, and the plaintiff's action is dismissed.

And it is further ordered and decreed that the plaintiff-respondent do pay to the defendant-appellant his taxed costs of this action, both in the said District Court and in this Court.

Witness the Hon. Mr. Alexander Wood Renton, Chief Justice, at Colombo, the Second day of February, in the year of our Lord One thousand Nine hundred and Fifteen, and of Our Reign the Fifth.

F. C. Loos, *Registrar.*

*In the
Supreme
Court of the
Island of
Ceylon.*

—
No. 36.
Decree of the
Supreme
Court,
2nd
February,
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No. 37.

The following is the judgment of the Supreme Court, on the same date pronounced by the Court :—

DE SAMPAYO A. J.—

The plaintiff is the Basnayake Nilame and trustee of the Wallahagoda dewale within the Local Board limits of the town of Gampola. It is customary for the annual Esala perahera or procession of that dewale to march through the streets of Gampola, including what is known as Ambagamuwa Road, with elephants, to the accompaniment of tom-toms and other music. For some 10 years the procession has been conducted on license issued by the authorities under the provisions of the Police Ordinance, No. 16 of 1865, and the Local Boards Ordinance, No. 13 of 1898. In the Ambagamuwa Road is situated a Muhammadan mosque, and some trouble having arisen between the Muhammadans and the Buddhists in connection with the beating of tom-toms when the procession passed the mosque, and a riot having taken place in consequence, a condition came to be insisted on, that music should be stopped within a certain distance on either side of the mosque, and in order to mark the distance the authorities in 1911 placed two posts with signboards notifying that the beating of tom-toms should be stopped between these two posts. On the 17th 20 August, 1912, when the procession of that year was about to take place, the President of the District Committee appointed under the Buddhist Temporalities Ordinance wrote to the Government Agent of Kandy a letter in which he claimed for the dewale the right to conduct the procession without any interruption of music, and requested the Government Agent to remove the posts, which were described as an "obstruction" to the beating of tom-toms opposite the mosque. Apparently the Government Agent was addressed either in his capacity as Chairman of the Local Board of Gampola or as having police authority. In reply, the Government Agent informed the President that the license would be issued as usual, subject to the condition above referred to. 30 Thereupon the procession was abandoned, and the plaintiff brought this action against the Attorney-General as representing the Crown. The Plaintiff asserted that the right of the plaintiff as Basnayake Nilame of the dewale to conduct the perahera without any restriction was acknowledged and confirmed by the Kandyan Convention of 1815, and stated as a cause of action that the Government Agent had wrongfully and in breach of the Kandyan Convention and of the rights and privileges of the said temple, refused to allow the plaintiff permission to conduct the Esala procession within one hundred yards of either side of the mosque in Ambagamuwa Road, and proceeded to pray that 40 "the plaintiff, as Basnayake Nilame of the Wallahagoda temple, may be declared entitled to the right and privilege claimed by him, together with Rs. 25 as damages already incurred, and Rs. 25 as further damages per year until the said privilege and right is granted." The plaintiff's case was put in the Court below as a matter of contract constituted by Article 5 of the Kandyan Convention, but the District Judge, rejecting the theory of a contract, but purporting to act on what he considered the analogy of an action *rei vindicatio*, which was held to be maintainable against the Crown in

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1 *Le Mesurier v. The Attorney-General*,¹ declared that the plaintiff as Basnayake Nilame and trustee of the Wallahagoda temple was entitled to conduct the procession with elephants, to the accompaniment of tom-toms, drums, and other musical instruments, through all the streets of Gampola, including that portion of Ambagamuwa Road with which this action is concerned, and he entered judgment for the plaintiff accordingly with costs of action, but without damages. From this judgment the Attorney-General has appealed.

10 Among other defences the Attorney-General pleaded that this action, being one *ex delicto*, was not maintainable against the Crown, that the plaintiff as Basnayake Nilame or trustee had no right to sue on the alleged cause of action, and that no cause of action had in fact arisen. These points were argued before us at great length on both sides. But on the last day of argument the Attorney-General intimated to us that for the purposes of the present appeal he waived these points and desired a decision on the other questions involved in the case, and it is therefore unnecessary to express any opinion on them, though I would have been quite prepared to do so. The questions remaining to be considered are : (1) whether the evidence satisfactorily shows the Buddhist rite in connection with the Esala perahera to extend to the use of an unvarying route and continuous beating of tom-toms ; (2) whether such a privilege can be said to have been secured by Article 5 of the Kandyan Convention ; (3) whether on the footing that the Kandyan Convention is a Treaty the plaintiff is not bound by subsequent legislation relating to processions and music ; and (4) whether the rights under the Treaty, whatever they are, can be enforced by action in a Municipal Court ?

20 The District Judge has gone at length into the history of dewales and the institution of the Esala perahera, but his citations are remarkable only for the absence of any statement that any particular route or the unceasing beating of tom-toms during the whole course of the procession is essential to the ceremony. The District Judge chiefly relies, however, on the oral evidence of the dewale tenants, such as the kapurala, tom-tom beaters, and trumpeters, who speak of the practice during their period of service and of the tradition in regard to the matter. They add that unless the perahera proceeds along the Ambagamuwa Road, and unless the tom-toms are beaten continuously without any interruption for any cause whatever, the god in whose honour the ceremony takes place will send great calamities upon the people, and they even attribute to this cause the recent floods at Gampola and the sudden death of a certain kapurala. The District Judge seriously accepts all this evidence, though he himself says in a moment of critical exercise of judgment that "all this sounds artificial, unreal, forced for the purposes of this case," but he rejects his own doubt, and adds that the matter has to be judged, not according to modern standards, but according to the ideas of a Sinhalese Buddhist before 1815. The problem of a sick person lying at the point of death or of a restive horse or elephant becoming dangerous to the processionists themselves is considered by him, and is disposed of by the remark that it was "utterly impossible for the Sinhalese mind to conceive of the stopping of the music for a horse or a sick man," and that "everything had to give way to the perahera." I confess that I find it difficult to believe that the religion of Buddha, which so insistently preaches the

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¹ 5 N. L. R. 65.

1 doctrine of gentleness and regard for life, has anything to do with this species of inhumanity. It is curious that even the more intelligent witnesses, like the Dewa Nilame of the Dalada Maligawa, the priest of the Niyangampaha Vihare, and the Secretary of the Buddhist Committee, proceed on the same lines as the dewale tenants. A possible and even probable explanation is that they are (to use the District Judge's expression) "forced for the purposes of this case" to give the evidence they have given, because any admission as to the stoppage of music on account of a special emergency, such as was put to them, would seriously prejudice the whole case. For, then, it may have to be logically admitted also that the necessities of public order and peace would be a good ground for such stoppage. Moreover, these witnesses, who were apparently called as experts, have not been able, any more than the illiterate dewale tenants, to point to any religious or historical work for the proposition that an unvarying route and unceasing music are of the essence of the Esala perahera. Taking the oral evidence as *bona fide*, it seems to me that it amounts to no more than saying that, so far as the knowledge of the witnesses goes, the custom has been such as they describe, and that they argue from what has been to what ought to be. Even this, as will presently be seen, is negatived by facts proved in the case; but before alluding to these facts, I may mention a bit of evidence which has been given by Mr. Ekneligoda, the Kachcheri Mudaliyar of Anuradhapura, but which the District Judge has failed to notice. The Mudaliyar says that at the Elala Sohana (the tomb of King Elala at Anuradhapura) Buddhist processions stop their music as a mark of respect in accordance with an order made by Dutugemunu. The allusion no doubt is to the story recorded in the *Mahavamsa*, how the King Dutugemunu, having killed King Elala in single combat, erected a monument in honour of the dead king, and ordained that all processions when passing the monument should as a mark of respect stop the music. The order appears to be observed to this day. So that ancient authority shows that the custom in connection with the Esala or any other procession is not "adamantine," as the learned District Judge puts it, but is subject rather to regulation by those in power, and that the unvarying character claimed for it is not founded upon any rule of religious obligation, for otherwise King Dutugemunu, the great patron of Buddhism and himself a pious Buddhist, would hardly have interfered with it for a mere sentimental or personal reason. Quite in harmony with this view of the matter is the practice under the British Government. The evidence indicates that for a great many years, probably ever since the provisions of the Police Ordinance relating to processions and street music were put into active operation, the Wallahagoda dewale authorities have applied for and obtained a license and the procession has been conducted under the supervision of the police, and for some years—certainly since 1902—the license has been granted subject to the condition that the procession shall stop the beating of tom-toms when passing the Ambagamuwa Road mosque, or shall take another route. In 1912—the year with which we are particularly concerned—the plaintiff himself applied for and obtained a license to conduct the procession avoiding the Ambagamuwa Road, though the procession was abandoned, it is said, owing to the protests of the dewale tenants. It is true that in a previous year also the procession was abandoned for the same reason, but that does not

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1 diminish the force of the effect of the imposition and observance of the condition on the general question. The plaintiff's very case is that he has an absolute right, secured by the Kandyan Convention, to conduct the procession, and that no license to do so is required. And yet Basnayake Nilames of the dewale, including plaintiff himself, have hitherto acknowledged the necessity of a license being obtained from the constituted authorities. The power to grant a license necessarily implies the power to withhold it or to impose conditions. Similarly, in Kandy, where the great perahera is participated in not only by the various dewales, but by the Maligawa itself, it has been the practice, not perhaps to obtain a license, but to inform the Government Agent, who thereupon takes the necessary steps to keep order by means of the police. To bring elephants into the town for the purpose of the perahera a license is absolutely required, and is invariably applied for, and the chiefs of the Maligawa and the dewales even enter into the security bond to answer for any injury or damage that may be caused by the elephants. Here it may be noted that the claim being to have a procession with elephants as well as tom-toms, the circumstance just mentioned seriously affects the plaintiff's case. One important admission made by the Dewa Nilame is that, though according to the right contended for it is imperative that the perahera should take place during fifteen consecutive days without interruption, the perahera has, at least since the seventies of the last century, been intermitted on all Sundays during the period of the festival. The Dewa Nilame explains that this originated from the fact that Mrs. Parsons, wife of the then Government Agent, was ill, and the procession was stopped on a Sunday at the request of Mr. Parsons. Why Mrs. Parsons' illness should require the stoppage of noise on a Sunday only does not appear. But this explanation, such as it is, does not account for the intermission ever since. The District Judge, however, suggests that the Anglican church of St. Paul being in the neighbourhood of the temple and the Church of England being at one time the Established church, the representatives of the Government were able to interfere with the perahera in that manner. The suggestion does not adequately explain the matter either. I have no doubt that the Sunday procession was stopped at the desire of some Government official, but I entertain a serious doubt that, if the right claimed is of vital importance as represented, the Dewa Nilame, the four Basnayake Nilames, and the numerous worshippers would have complacently agreed for the last thirty-five years and more to perform a maimed rite. The same departure from the alleged unvarying and invariable custom is exhibited at Anuradhapura, the sacred city of Buddhism. In 1905 certain arrangements were agreed upon in conference with the High Priest with the Government Agent, and were embodied in a notification by the Governor (see document D 10), whereby various restrictions were laid down with regard to the beating of tom-toms in connection with the Esala and other annual festivals; *inter alia*, that "in case of processions having to pass any place of public worship in which service is proceeding, the beating of tom-toms, music, and all noise likely to disturb the service must cease within one hundred yards of such building." This again shows that the High Priest of the sacred shrines and the Buddhists generally, who have since acted up to the arrangements so made, did not consider that the cessation of tom-toms and other music in front of places of

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1 worship was a violation of the rites of the Esala perahera. After examining the whole evidence, I have come to the conclusion that the plaintiff has failed to establish the claim for the unceasing use of tom-toms during the whole course of the procession, and that the evidence rather proves the contrary.

This being my view of the facts, it is, perhaps, hardly necessary that I should deal with the legal points involved in the case, but as they were debated at great length on both sides, and as they are in themselves important, I think it is right for me to do so. The Convention of 2nd March, 1815, was entered into between the British Sovereign and certain chiefs on behalf of the people
10 in connection with the establishment of His Majesty's Government in the Kandyan Provinces. The nature of the instrument is a matter of some difficulty to determine. The official bulletin of that date calls it a "Public Instrument of Treaty," and the Attorney-General was willing that it should be so treated in this case. I shall deal with the case on that footing, though I am bound to say that there is good ground for thinking that the instrument, whatever it may be called, derives all its efficacy and virtue from its being recorded and proclaimed by the Proclamation of the same date. Now, Article 5 of the Convention runs thus: "The religion of Boodho, professed by the chiefs and inhabitants of these provinces, is declared inviolable, and its
20 rites, ministers, and places of worship are to be maintained and protected." What did this mean? Does it rigidly provide that, even in matters touching the general peace and safety of the country and the various classes of its people, the hands of the British Government should ever after be tied? Does it necessarily mean that the rites of the Buddhist religion in all their external details, even where they affect public order, should be invariably maintained? I think it will appear otherwise, when the matter is regarded in the proper historical perspective. It is an invariable rule of British policy to respect the religion of a conquered country. Quite the contrary policy had been followed by the Government of the Portuguese and the Dutch, who preceded the English, and
30 the Buddhists of those parts of the Island which were occupied by them had various causes of grievance in that respect. This state of things was doubtless in the minds of those who entered into the Convention, and it seems to me that the essence of the Article in question is to assure freedom of worship to the Buddhists of the Kandyan Provinces which were then annexed to the British territories. This freedom cannot, however, be absolute, but must necessarily be subject to higher considerations of State and the fundamental principles of Government. This is so in all cases. For instance, the practice of *suttee* had by inveterate custom acquired the force of religious obligation among the Hindus of India, and was even protected by the provision of the Statute Geo.
40 III., c. 142, s. 12, and yet it was by the Regulation 18 of 1829 declared illegal and made punishable as an offence, the preamble to that Act reciting that the legislature did not intend to depart "from one of the first and most important principles of the system of British Government in India, that all classes of the people be secure in the observance of their religious usages, so long as that system can be adhered to without violation of the paramount dictates of justice and humanity." Applying these considerations to the present case, I cannot think that Article 5 of the Kandyan Convention according to its purpose and meaning justifies the conclusion that if the Esala perahera, in

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1 the course which it pursues or the manner in which it is conducted, threatens danger to public health or safety, the duly constituted authorities shall not have the power to regulate it. The first Article of this very Convention recites that the oppressions of the King of Kandy "in the general contempt and contravention of all civil rights" had become intolerable, "the acts and maxims of his Government being equally and entirely devoid of that justice which should secure the safety of his subjects," and by the second Article the king was accordingly "declared fallen and deposed from the office of king." It would be strange if this same Convention be construed as introducing a new

10 species of tyranny under the protection of the British Government, namely, the tyranny of processions conducted without any regard to the safety of the processionists themselves and the common rights of all other classes of the subjects. That this is not the effect of Article 5 is shown from what was declared almost immediately afterwards by the British Government. In the year 1817 some of the chiefs became unfaithful, and the insurrection which arose having been soon put down, the Proclamation of 21st November, 1818, was issued laying down various regulations for the government of the Kandyan Provinces. Clause 16 of this Proclamation declared that "As well the priest as all the ceremonies and processions of the Budhoo religion shall receive the

20 respect which in former times was shown them; at the same time it is in no wise to be understood that the protection of Government is to be denied to the peaceable exercise by all other persons of the religion which they respectively profess," &c. This, indeed, is the spirit which may be said to have inspired the terms of the Convention when it guaranteed to the people of Kandy the right of free exercise of their religion; that is to say, that it should be exercised consistently with the performance of the supreme duty of Government towards the rest of His Majesty's subjects. The precaution of requiring a license and of imposing a condition in the license for the Esala perahera of the plaintiff's dewale was to conserve public order and to prevent riots between the different

30 religious bodies, such as took place at Gampola in connection with this perahera. For the British Government to have bound itself by the Convention not to take such precautions would be to have deliberately abandoned one of the chief and essential functions of sovereignty. It is obvious that such could not have been the true intent of the Convention.

The next point to consider is the effect of subsequent legislation relating to processions and tom-toms. The argument on behalf of the plaintiff is that Article 5 of the Convention is fundamental law, and that any legislation inconsistent with it is unconstitutional and inoperative. Before I refer to the chief authority upon which this argument is founded I should like to say

40 that, in my opinion, there is within the four corners of the Convention itself sufficient reservation of power to the British Government to effect alterations and reforms. After providing that the Kandyans shall enjoy their civil rights "according to the laws, institutions, and customs established and in force amongst them" (Article 4), and that the religion of Buddha and its rights shall be protected (Article 5), and after prohibiting every species of bodily torture (Article 6), and any sentence of death except by the warrant of the British Government (Article 7), the Convention proceeds in Article 8 to provide as follows: "Subject to these conditions, the administration of

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1 civil and criminal justice and police over the Kandyan inhabitants of the said provinces is to be exercised according to established forms and by the ordinary authorities. *Saving always the inherent right of Government to redress grievances and reform abuses in all instances whatever, particular or general, where such interposition shall become necessary.*" It is clear to my mind that herein is contained an express reservation of power to introduce changes in respect of the matters provided for in the previous articles. Even if the saving clause, which I have italicized, is limited, as I think it should not be, to Article 8 itself, the regulation of public processions and street music is a matter touching

10 the "administration of police," and, therefore, the provisions in question in the Police Ordinance, 1865, and the Local Boards Ordinance, 1898, are quite within the purview of the saving clause. The larger operation of that clause, however, is illustrated by the laws enacted and applied without any demur from the date of the Convention down to the present time. I have already referred to the Proclamation of 21st November, 1818, by which the jurisdiction conferred upon the ancient tribunals of Kandy by Article 8 was entirely swept away. As to other instances, I need only mention the Ordinances which interfere with or modify the Kandyan law, the tenure of lands, including those of the temples themselves, the system of marriages and their solemnization and

20 dissolution, and the administration of the Buddhist temporalities. These are Ordinance No. 5 of 1852, Ordinance No. 13 of 1859, now superseded by Ordinance No. 3 of 1870, Ordinance No. 4 of 1870, and, lastly, Ordinance No. 3 of 1889, now superseded by Ordinance No. 8 of 1905. This last is the most important in this connection, because it relates to matters intimately affecting the Buddhist priesthood, who under the Buddhist ecclesiastical laws were the rightful administrators of the affairs of the temples and their property and offerings, but from whom, though the Convention provided for their protection, the right was wholly taken away and vested in popularly elected lay committees and trustees. Not only so, but the Ordinance by one of its clauses prohibits the

30 acquisition, by purchase, gift, or otherwise, of immovable property by the temples except with the consent of the Governor, though the temples equally with the priests were to be maintained and protected under the Convention. It is interesting to note that the plaintiff in this action is himself a creature of the Buddhist Temporalities Ordinance, No. 8 of 1905, and would have no right to sue at all but for his status as Basnayake Nilame and trustee appointed under that Ordinance. It was stated at the Bar, in avoidance of the difficulty arising from the enactment and acceptance of this Ordinance, that the Buddhists themselves had asked for it. If so, the fact makes the matter worse for the plaintiff, because then it would appear that in the estimation of the

40 Buddhists themselves Article 5 of the Convention has not the inviolability which is now claimed for it. The course of legislation to which I have referred seriously interferes with other articles of the Convention, *e.g.*, Article 4. If one Article of the Convention is sacred so must another be, and yet no one has said or can say that Ordinance No. 5 of 1852 and Ordinance No. 3 of 1870, which according to the argument contravene Article 4 of the Convention, are invalid and inoperative. It was in this connection suggested that mistaken acquiescence in all this legislation did not disentitle a party to take the objection when it arose in an action. I should say rather that the course of legislation

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1 for a whole century which has been uniformly and freely accepted and acted upon by the Kandyans in their relations amongst themselves and with the Government throws a reflex light upon the nature of the Convention itself, and shows it not to be of the inviolable character claimed for it.

In this part of the case Mr. Bawa, for the plaintiff, mainly relies on the judgment in *Campbell v. Hall*,¹ in which Lord Mansfield, referring to the consequences of the conquest of a country, lays down six preliminary propositions, the third of which is in the following terms: "That the articles of capitulation upon which the country is surrendered, and the articles of peace by which it is ceded, are sacred and inviolable according to their true intent and meaning." The Attorney-General, however, points out that this is an *obiter dictum*, and contends that it is therefore not binding. The point of the decision in that case is undoubtedly different, but as to those propositions, Lord Mansfield says that they were propositions in which both sides were agreed, and which were too clear to be controverted. The proposition above quoted is reproduced as indisputable in recognized text books on the Royal Prerogative and Constitutional Law, and I think we ought to accept it as absolutely correct. I have already ventured to state what, in my opinion, is "the true intent and meaning" of the Kandyan Convention, and the proposition in question may, I think, be applied to this case without the plaintiff being able to derive any benefit from it. But further, when the articles of capitulation and of peace are declared to be "sacred and inviolable" according to their true intent and meaning, there remains the question whether they are so in the domain of law as administered by the Courts, or only in the international and political sphere. In the former case the Court must interpret the Treaty, and ought to have the power to hold that any legislative act is *ultra vires* as being a violation of the Treaty. No case has, however, been cited to us in support of the contention that the Court can do so. There are indeed cases, such as *In re Adam*,² in which it has been decided that on a question as to what system of law governs a particular subject-matter, the Treaty, if it contains a provision on the subject, determines the matter. This may be illustrated in the present case by reference to Article 4 of the Convention, by which it is agreed that the civil rights of the Kandyans shall be governed by the Kandyan law. But for the Court to enforce the Treaty as against subsequent acts of the Sovereign or of the Legislature is quite a different matter. Mr. Bawa referred us also to the South African case of *White & Tucker v. Rudolph*,³ but that case by no means supports his contention. There, in 1879, after the first annexation of the Transvaal, the defendant as Landdrost of Utrecht had, upon the order of the Administrator of the Transvaal, forcibly entered the plaintiff's shop and seized the stock of liquor therein, in order to prevent sale of liquor to the soldiers then engaged in the Zulu war, notwithstanding the fact that the plaintiff had a license to deal in wines and spirits issued to him by the Government of the Transvaal, and it was held that the Administrator had no authority to issue the order to the defendant, and that the defendant's acts were illegal, inasmuch as it was provided by the Annexation Proclamation that the Transvaal should remain a separate Government with its own laws and legislature, and inasmuch as the

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¹ 1 Cowp. 204.² 1 Moore P. C. 461.³ Kotze's Trans. Rep. 115.

1 Crown, whom the Administrator represented, had no longer any legislative authority by reason of the existence of the Legislature which had been confirmed and continued by the Proclamation. This is, in fact, the point decided by Lord Mansfield in *Campbell v. Hall*,¹ namely, that when the King delegates to a legislative assembly in a conquered country the power of legislation vested in him, he thereby deprives himself of the right of exercising it again. It will be seen that these decisions have no bearing on the present case, except so far as they uphold the supremacy of a local Legislature. The cases cited by the Attorney-General further confirm the view that the laws enacted by a

10 competent Legislature in a conquered or ceded Colony have force and validity, even though they may be inconsistent with the provisions of a Treaty. The local case of *Government Agent v. Suddhana*² is a direct authority bearing on this case. For there also, in answer to a charge of beating tom-toms without a license in contravention of Section 90 of the Police Ordinance, 1865, Article 5 of the Kandyan Convention was invoked as justifying the beating of tom-toms without a license on the occasion of a Buddhist religious ceremony, and Layard C.J. held, *inter alia*, that the Convention did not, and could not, control the Legislature so as to exempt the Buddhists from the operation of the Police Ordinance, and the learned Chief Justice suggested that if there was any

20 grievance on the subject, the remedy should be constitutional and not judicial. On the general question of the power and authority of a local Legislature, it is sufficient to quote the following passage from the judgment in *Phillips v. Eyre*³: “A confirmed act of the local Legislature lawfully constituted, whether in a settled or conquered Colony, has, as to matters within its competence and the limits of its jurisdiction, the operation and force of sovereign legislation, though subject to be controlled by the Imperial Parliament.” The matter of competence and jurisdiction of a local Legislature is to be determined by the act constituting it. The Legislative Council of Ceylon was constituted by the Letters Patent of 19th March, 1833, with plenary power to make laws subject

30 only to Royal Instructions, and subject to the power and authority of the King to disallow any such laws, and to make, with the consent of Parliament or with the advice of the Privy Council, such laws as may appear necessary. The Instructions of 1833 were those in operation when the Police Ordinance, 1865, was passed, but they contain nothing which may affect the validity of that Ordinance. In the later Instructions of 6th December, 1889, which were in force at the time of the enactment of the Local Boards Ordinance, 1898, there is a provision which requires notice. Clause XXV. directs that the Governor shall not assent to certain specified classes of Ordinances unless they contain a clause suspending their operation until the signification in the Island of the

40 King’s pleasure. One of the classes specified is any Ordinance “the provision of which shall appear inconsistent with obligations imposed upon Us by Treaty.” The reference is, I think, to Treaties with Sovereign Powers, and not to such instruments as the Kandyan Convention. However that may be, the Local Boards Ordinance, 1898, though it contains no suspensory clause, was duly sanctioned, and no question can now arise as to the validity of Section 64 of the Ordinance, which, notwithstanding Article 5 of the Convention, gives power to the Board to grant permission for religious or public processions and

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¹ 1 *Cowp* 204.² 5 *Tamb.* 39.³ 40 *L. J. Q. B.* 28.

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1 street music and to regulate and restrict such processions and music. The Attorney-General reminded us of another instance of an Ordinance over-riding the articles of an instrument similar to the Kandyan Convention. In Article 18 of the Dutch Capitulation it was provided "that the clergy and other ecclesiastical servants should receive the same pay and emoluments as they had from the Company," and yet the Ordinance No. 14 of 1881, providing for the discontinuance of ecclesiastical stipends, equally affected the chaplains of the Dutch Presbyterian Church. The authorities show that treaties and legislation are on quite different and independent planes; in other words, a treaty is a political and not a legal document, and its sanctions are other than those which a court of law recognizes or enforces. In harmony with this is the principle that the ordinary civil courts have no jurisdiction in such matters as rights founded on treaties. In *Cooke v. Sprigg*¹ it was successfully argued that as between the treaty-making Powers the acts done are acts of State not to be interpreted or conferred by Municipal Courts, and that the same principle applied as between either Sovereign Power and its own subjects in respect of the same matters; and the Privy Council observed: "It is a well established principle of law that the transactions of independent States between each other are governed by other laws than those which Municipal Courts administer"; and again, even as regards private property, their Lordships said: "If there is either an express or a well-understood bargain between the ceding potentate and the Government to which the cession is made that private property shall be respected, that is only a bargain which can be enforced by Sovereign against Sovereign in the ordinary course of diplomatic pleasure." Further, in *West Rand Central Gold Mining Co. v. Rex*² it was observed: "There is a series of authorities from the year 1793 down to the present time holding that matters which fall properly to be determined by the Crown by treaty or an act of State are not subject to the jurisdiction of the Municipal Courts, and that rights supposed to be acquired thereunder cannot be enforced by such Courts." The same principle was laid down by the Privy Council in the Indian case of *Rajah Salig Ram v. The Secretary of State for India*,³ which was concerned with the effect of the arrangements made with Shah Allum, the King of Delhi, on the annexation of that kingdom to the British Crown. In the judgment of the Privy Council this important passage occurs: "If, shortly after the arrangements had been made, the British Government had found it necessary as a matter of political expediency to alter, without the consent of Shah Allum, the arrangements introduced into the assigned territory, it is impossible to conceive that a court of law would have had jurisdiction to enforce the arrangements in a suit brought by His Majesty (late King of Delhi) either by granting a specific performance or by awarding damages for the breach of it." This observation has special application to the circumstances of this case, and it should, I think, he held that, if the provisions of the Police Ordinance, 1865, and the Local Boards Ordinance, 1898, in respect of licenses for processions and tom-toms in any way contravene the Kandyan Convention, which, as I have already ventured to express my opinion, they do not, neither the District Court nor this Court has jurisdiction to enforce the Convention as against the Ordinances.

¹ (1899) A. C. 572.² (1905) 2 K. B. 391.³ 18 Sutherland Weekly Reports 389.

1 For the above reasons, I am of opinion that the judgment appealed against is erroneous, and I would set it aside, and dismiss the plaintiff's action with costs in both Courts.

SHAW J.—

10 The plaintiff brought this action in his capacity as Basnayake Nilame of the Wallahagoda dewale against the Attorney-General as representing the Crown, claiming a declaration that he as such Basnayake Nilame is entitled to the right and privilege of holding and conducting a perahera procession, by which the Basnayake Nilame of the Wallahagoda temple, with the retainers and tenants of the said temple, has the right and privilege of marching to and from and through all the streets of the town of Gampola, including that part of Ambagamuwa Street with which this action is concerned, with elephants, to the accompaniment of tom-toms, drums, and other musical instruments. He further claimed a declaration that he was entitled to damages of Rs. 25, and further damages of Rs. 25 per year until the said right and privilege should be granted. The Plaintiff alleged that the right and privilege claimed is a very ancient one, enjoyed in connection with the temple prior to the cession of the Kingdom of Kandy to the British Government, and that the rights and privileges of the temple were acknowledged, recognized, and confirmed to the temple when all the inhabitants of the Kingdom of Kandy were by the Crown, on the cession of the Kingdom of Kandy under the Kandyan Convention of 1815, confirmed in and allowed to enjoy the rights and privileges they had enjoyed under the Kandyan Government; that the rights and privileges claimed were, after the Kandyan Provinces came under the British Government, enjoyed and exercised by the temple through its various Basnayake Nilames, and are necessary for its proper dignity and prestige and for the proper conducting and carrying out of the ceremonies to be performed by the temple, and further claimed that the temple has acquired a right by prescription to the performance and enjoyment of the said rights and privileges.

30 It then proceeded to allege that the Government Agent for the Central Province, on the 27th August, 1912, wrongfully and in breach of the said Kandyan Convention and agreement and of the rights and privileges enjoyed by the temple, refused to allow the plaintiff permission to proceed through that portion of Ambagamuwa Street within a hundred yards of either side of the Muhammadan mosque in the town of Gampola, to the accompaniment of tom-toms, drums, and other musical instruments, and still refuses to do so though thereto often requested, and went on to claim the declaration, damages, and costs.

40 The defendant by his answer submitted—

- (1) That the Plaintiff discloses no cause of action against the defendant.
- (2) That, even if the Government Agent of the Central Province was guilty of any wrongful act, which the defendant denies, the defendant is not liable to be sued in respect thereof.
- (3) That the right claimed is not one which is known to or recognized by law.

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- 1 (4) That the plaintiff is not vested with the said right, and cannot maintain any action in respect thereof.
(5) That, assuming such a right to exist, the present action is not maintainable against the defendant.

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10 He further denied various allegations in the *Plaint*, and submitted that all assemblies and processions in the public roads, streets, and thoroughfares of the town of Gampola are governed by the provisions of Section 69 of the Police Ordinance, No. 16 of 1865, and Section 64 of the Local Boards Ordinance, No. 13 of 1898, and that the right, if any, of any person to hold and conduct the perahera ceremony of procession and to beat tom-toms in the streets of Gampola is subject to such provisions, however ancient such right may be, and that the licenses referred to in the Government Agent's letter of 27th August, 1912, were the licenses referred to in the said Ordinances. That for many years past it has been thought necessary that music and the beating of tom-toms in all processions passing the Muhammadan mosque situated in Ambagamuwa Street should be stopped, and licenses for processions have been issued subject to the condition that music and tom-toms should be stopped within fifty yards on either side of the said mosque.

20 The answer then admitted that in answer to an application made to the Government Agent asking for "the removal of the obstruction to beat tom-toms opposite the Muhammadan mosque in Ambagamuwa Street, Gampola, on the occasion of the perahera of the Wallahagoda dewale, the Government Agent replied that licenses for the use of music and for the assembly of the body of persons joining the procession would be issued on condition that the music was so stopped in passing the said mosque, and submitted that the fact of the Government Agent sending such replies did not itself constitute an interference with any right, and further alleged that the right, if any, has been lost by prescription through non-user, and also submitted that the plaintiff is not, as Basnayake Nilame, clothed with the right claimed, or with
30 the right to maintain an action in respect of it.

The case put forward at the hearing on behalf of the plaintiff was as follows.

40 That at the time the Kandyan Kingdom was taken over by His Majesty King George III. in 1815 a Convention was made between His Majesty and the principal chiefs of the Kandyan Provinces, acting on behalf of the inhabitants, agreeing to the terms of cession of the kingdom and the rights to be enjoyed by the inhabitants of the Kandyan Provinces in the future, which Convention was given effect to by the Proclamation of 2nd March, 1815. It was contended that this Convention and the Proclamation giving effect to it constitute a Treaty binding and immutable, which can neither be annulled or varied by His Majesty or by any legislative authority to whom he might subsequently delegate his powers of legislation, and that any subsequent legislation varying this Proclamation or limiting any rights under it is consequently invalid. That by paragraph 5 of the Convention and Proclamation it is declared that "the religion of Boodho, professed by the chiefs and inhabitants of these provinces, is declared inviolable, and its rites, ministers, and places of worship are to be maintained and protected."

1 That prior to 1815 and from time immemorial the Basnayake Nilames of the Wallahagoda temple at Gampola have had and exercised the right, on the occasion of the annual Esala perahera, on the occasion of the water-cutting ceremony, of proceeding from the dewale to a spot called Bothalapitiya on the Mahaweli-ganga, where the ceremony takes place, with elephants and tom-tom beating, and that it is an essential rite in the perahera procession that the route to be taken should pass through Ambagamuwa Street, and that the music and beating of tom-toms should be continuous from the time the perahera starts until it arrives at the place where the ceremony takes
10 place, and that this perahera with its necessary essentials is a rite of the religion of Buddha existing at the date of the Convention of 1815, and therefore inviolable under the provisions of paragraph 5 of the Convention, and that there is no power to annul or abridge the rights granted by the Convention by any subsequent legislation.

The learned Acting District Judge having heard a large quantity of verbal evidence, and having received in evidence a large number of documents, found that this Esala perahera was a rite of the religion of Buddha which was undertaken to be maintained and protected under the Convention, and that the
20 accustomed route of the perahera and the continuous performance of the music was an essential part of the rite, and held that the Kandyan Convention constitutes a law or compact binding and unalterable in all following times, however urgent might be the motives, and however extreme the exigency demanding the alteration of it. He held that so much of the claim as claims damages against the Government could not be sustained, but that the plaintiff was entitled to maintain an action against the Government for a declaration of the rights claimed, and that he was the proper person to sue. Accordingly he gave judgment for the plaintiff granting the declaration asked for, with costs against the defendant.

From this judgment the defendant appealed, raising many objections
30 to the judgment which I will not at the moment recapitulate, but the most important of which I will deal with later.

I am of opinion that the appeal must be allowed. The letter of the Government Agent of 27th August, 1912, upon which the cause of action is based, is to the effect that the licenses and permissions required on the occasion of the perahera under Sections 69 and 90 of the Police Ordinance, 1865, for the use of music and to beat tom-toms in the streets, and under Section 64 of the Local Boards Ordinance, 1898, for the holding of a religious procession and the performance of music in the streets of the town, would only be issued on the condition that the music was stopped fifty yards on one side of the
40 Muhammadan mosque in Ambagamuwa Street and was not resumed before a point fifty yards beyond the mosque was reached. I think that this letter and the condition mentioned in it are amply justified by the terms of the Ordinance referred to. The sections apply generally to all occasions when it is desired to have religious processions and music in the streets, and there is no exception in favour of this or any other particular perahera. On behalf of the respondent it was contended that these sections were not intended to, and did not in fact apply to, this particular perahera, because the Wallahagoda Esala perahera is a religious rite of the Buddhist religion which existed prior

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1 to the Convention of 1815, at which continuous music along a particular route is essential, and that paragraph 6 of the Convention of 1815 must be read as giving a particular right to this especial perahera, which the general terms of the sections of Ordinances referred to did not take away; and even if in fact they did purport to take it away, they were to that extent invalid, because rights acquired under a Convention by which a territory is ceded to the Crown are inviolable, and cannot afterwards be annulled or varied by the Crown by subsequent legislation.

10 I am unable to accede to either of these propositions. The enactments are in general terms, and include all occasions on which it is desired to hold religious or other processions in the streets accompanied by music; moreover, I do not think that the paragraph of the Convention referred to does in fact give any special right to this particular perahera. The paragraph reads: "the religion of Boodho, professed by the chiefs and inhabitants of these provinces, is declared inviolable, and its rites, ministers, and places of worship are to be maintained and protected."

20 In my opinion the paragraph means that the religion of Buddha generally as practised in the ceded provinces will be maintained and protected, not that every local custom of particular towns or districts should for ever remain unaltered; and I do not think that the paragraph gives, or was intended to give, this particular perahera any right to be conducted in a manner different to other religious processions in the Colony, or to be for ever conducted apart from the ordinary police supervision for the protection of the public peace and safety which may appear to the Government to be necessary. But even supposing that the particular right claimed was reserved by the Convention to this particular perahera, such right is now controlled and varied by the provisions of the Police and Local Boards Ordinances, and I am unable to agree with the argument that the Kandyan Convention of 1815, whether it be considered as a Treaty of cession or as a piece of legislation, is immutable and
30 not subject to alteration by subsequent legislation.

The sovereign powers of legislation delegated by the King to the Imperial Parliament and to local Legislatures, to be exercised with his consent as to matters within their competence and subject to the control of the Imperial Parliament, are absolute and unlimited. "If," says Blackstone at *Volume I., Comm., p. 91*, "Parliament would positively enact a thing to be done which is unreasonable, there is no power in the ordinary forms of the Constitution that is vested with authority to control it." And as to the power of Colonial Legislatures, Willes J., in delivering the judgment of the Full Court of King's Bench in *Phillips v. Eyre*,¹ says: "We are satisfied that it is sound law that
40 a confirmed act of the local Legislature lawfully constituted, whether in a settled or ceded Colony, has, as to matters within its competence and the limits of its jurisdiction, the operation and force of sovereign legislation, though subject to be controlled by the Imperial Parliament."

It was suggested that under the Royal Instructions regulating legislation by the local Legislature in this Colony the authority to legislate contrary to any obligations imposed by Treaty was restricted. When, however, we look

¹ *L. R. 6 Q. B., at p. 20.*

1 at the Royal Instructions of 1833, which were in force when the Police Ordinance was passed, we find they contain no such restriction; and those of 1889, which were in force when the Local Boards Ordinance was passed, merely contain instructions to the Governor not, *inter alia*, to assent to any bill the provisions of which shall appear inconsistent with obligations imposed upon the Sovereign by Treaty, unless the bill contains a suspending clause. As, however, the Royal Assent has been given to both the Ordinances referred to, the objection seems to have no force.

10 The only authority I know of which may appear to in any way restrict the powers to legislate in abrogation or derogation of rights conferred by Treaty are the much-quoted dictum of Lord Mansfield in *Campbell v. Hall*¹ and the case of *White & Tucker v. Rudolph*.² In *Campbell v. Hall*¹ Lord Mansfield says: "The articles of capitulation upon which the country is surrendered, and the articles of peace upon which it is ceded, are sacred and inviolable according to their true intent and meaning."

20 This dictum was in no way necessary for the decision of the point involved in the case. The facts of that case were that the Island of Grenada was taken by the British arms from the French King. The island surrendered on capitulation, one of the terms of which was that the inhabitants should pay no other duties than what they before paid to the French King. After the capitulation His Majesty appointed a Governor, with power to summon an Assembly to make laws with the consent of the Governor in Council, in the same manner as the other Assemblies of the King's Provinces in America. Having done this, and before any Legislative Assembly met, the King purported by Letters Patent to impose an export duty of 4½ per centum on all produce exported from the island in lieu of all customs and export duties hitherto collected.

30 The decision in the case was that His Majesty having delegated his power of legislation in the island to an Assembly, the subsequent legislation by the King himself was invalid, and that the plaintiff, who had paid certain duties to the collector of customs, was entitled to recover them back. The dictum of Lord Mansfield did not, and was never intended to mean, that the articles of capitulation could never be altered by competent legislation, and this, I think, appears clear from the words used by him at the end of the judgment: "it can only now be done by the Assembly of the island, or by an Act of the Parliament of Great Britain."

40 As a matter of fact I know, as having been at one time Acting Chief Justice of the Island of Grenada, that the duties have been frequently altered by the local Legislature, and now stand at a very much higher rate than at the time of the capitulation. The decision in *White & Tucker v. Rudolph*² turned on practically the same point as *Campbell v. Hall*.¹ There the Crown, by Proclamation dated 12th April, 1877, proclaimed that the Transvaal should remain a separate Government "with its own rights and Legislature," and that "the laws now in force in the State should be retained until altered by competent legislative authority." After the Crown had done this and given up all claim to legislate in the ceded country in favour of the Legislature

¹ 1 Cowp. 204.² Kotze's Trans. Rep. 115.

RECORD.

In the
Supreme
Court of the
Island of
Ceylon.

No. 37.
Judgment of
the Supreme
Court,
2nd
February,
1915—contd.

1 to be appointed for the separate government of the Transvaal, the Administrator sought by an order to alter the licensing laws of the country ; this it was held, following *Campbell v. Hall*,¹ he had no power to do, the Crown having given up all claim to legislate for the territory. Looking at the Kandyan Convention itself, we find it has been varied in several respects by subsequent legislation, apart from the Ordinances bearing on this case, and no question has ever been raised as to the validity of such legislation. I refer as instances to the Proclamation of 31st May, 1816, which was prior to the time when His Majesty had delegated his powers of legislation in the Kandyan Provinces to the Legislative Council of this Colony; also to the Buddhist Temporalities Ordinance and to various other Ordinances passed by the local Legislature relating to the administration of justice which apply to the Kandyan Provinces.

Another example of Treaty rights being altered by subsequent legislation will be found in this Colony in the alteration of Article 15 of the Treaty of Colombo as to the payment of the clergy, by Ordinance No. 14 of 1881. In my opinion it is clear that it was within the competence of the Legislature of the Colony to vary any rights acquired under the Convention of 1815.

20 The view I have taken on this point renders it unnecessary for me to go to any length into the other points raised in the case, and without reviewing the whole of the evidence, I will only say that I do not agree with the finding of the Acting District Judge on the facts. I do not think that the evidence satisfactorily shows that it is an essential part of the rite of the water-cutting ceremony either that the perahera should pass down Ambagamuwa Street, or that the music should be continuous during the whole of the route; all that it seems to me to show is that, in the opinion of the witnesses called for the plaintiff, the route and continuance of the music were essential because they were customary, and the evidence shows that similar customary proceedings in respect of the similar ceremony in the town of Kandy, the headquarters of the Buddhist religion, such as the purification of the town prior to the ceremony and the continuance of the ceremony for fifteen days without a break, have been discontinued without demur, and even in the town of Gampola itself the evidence seems to me to satisfactorily establish that since the year 1907, although there have been protests from the persons having the management of the perahera, the route of the procession has either not passed the mosque concerning which the present dispute arises, or the music has stopped when passing the mosque.

40 In the course of the appeal the Attorney-General pressed upon the Court the contention that the claim in the case, involving as it does the construction of a Treaty and the acquisition of personal rights under it, was not within the jurisdiction of the Court.

There can be no doubt that the law on this point is as laid down by Lord Alverston in *West Rand Central Gold Mining Co. v. Rex*,² where he says: " There is a series of authorities from the year 1793 down to the present time holding that matters which fall properly to be determined by the Crown by

¹ 1 Cowp. 204.

² (1905) 2 K. B., at pp. 408-9.

RECORD.

In the
Supreme
Court of the
Island of
Ceylon.

No. 37.
Judgment of
the Supreme
Court,
2nd
February.
1915—contd.

1 Treaty or as an act of State are not subject to the jurisdiction of the Municipal Courts, and that rights supposed to be acquired thereunder cannot be enforced by such Courts"; and a little lower down on the same page, where he says: "it is a well-established principle of law that the transactions of independent States between each other are governed by other laws than those which Municipal Courts administer."

Similar principles were applied in *Rustomjee v. The Queen*,¹ *Cook v. Sprigg*,² and other cases quoted by the Attorney-General. It does not seem to me, however, that these cases or the principles laid down in them apply to
10 the present case. What the Court was here asked to construe and enforce were alleged rights under the Proclamation of 2nd March, 1815. In my opinion this Proclamation is not a Treaty. The Treaty, or Convention, was entered into prior to the Proclamation, and is contained in a separate document signed by the various chiefs of the Kandyan Provinces. The original Bulletin of 2nd March, 1815, printed at page 180 of Legislative Acts of the Ceylon Government printed in 1856, sets out the preamble to the Proclamation, which concludes as follows: "On those grounds His Excellency the Governor has acceded to the wishes of the chiefs and people of the Kandyan Provinces, and a Con-
20 vention has in consequence been held, the result of which the following Act is destined to record and proclaim."

The Proclamation affirming what was agreed to by the Convention appears to me to be a piece of legislation by His Majesty, who then had the sole power of legislating in the ceded provinces, to give effect to the agreements arrived at, and is subject to be construed and enforced by the Courts in the same manner as any other act of legislation.

Three other points were taken by the Attorney-General and argued before us:—

- (1) That no action lies against the Crown in respect of the cause of action alleged;
- 30 (2) That the plaintiff has no cause of action as Basnayake Nilame and trustee of the Wallahagoda temple; and
- (3) That the letter from the Government Agent of 27th August, 1912, did not constitute any infringement of a right, even if such right existed.

At the conclusion of the case the Attorney-General stated that he did not wish to take any technical points, and withdrew his objections to the judgment on these grounds. I will, therefore, not deal with them beyond saying that nothing in this case must be construed as inferring any acquiescence on my part to any view that a claim of this character lies
40 against the Government of this Colony or could be enforced in England under a petition of right.

In my opinion the appeal should be allowed, and judgment entered for the defendant with costs.

F. C. Loos, Registrar.

¹ 2 Q. B. D. 69.

² (1899) A. C. 572.

No. 38.

In the Supreme Court of the Island of Ceylon.
Final, 245 of 1914. District Court of Kandy, No. 22,466.

WICKRAMASINGHE NAWARATNE PAN-
DITTA WASALA ABEEKOON GANWILA
HERAT MUDIANSSELAGE TIKIRI
BANDARA ELLEKEWALA, Basnayake
Nilame and Trustee of Wallahagoda
Temple, Gampola, *Plaintiff*,

Versus

THE HONOURABLE THE ATTORNEY-
GENERAL, Colombo, *Defendant*.

To the Honourable the Chief Justice and the other Justices of the Supreme Court.

On the 15th day of February, 1915.

The petition of the plaintiff above named, appearing by his proctors Frederick Llewellyn Goonewardene and Edward Lionel Wijegoonewardene, carrying on business under the name and style of Goonewardene and Wijegoonewardene, state as follows :—

1. The plaintiff instituted this action to have it declared that he, as
20 Basnayake Nilame of the Wallahagoda dewale, is entitled to the right and
privilege of marching to and from and through all the streets of the town of
Gampola, with elephants, to the accompaniment of tom-toms and other musical
instruments. He claimed, *inter alia*, that these rights and privileges were
acknowledged, recognized, and conferred to the said temple by the Crown
under the Kandyan Convention of 1815, and that the said rights were valued
at Rs. 10,000. The defendant pleaded that the action was bad in law, and
also denied that the plaintiff was entitled to such a right.

2. The learned District Judge, after a lengthy trial, gave judgment
for the plaintiff with costs.

30 3. The defendant having appealed against the said judgment, this
Honourable Court, by its judgment dated the 2nd February, 1915, reversed
the judgment of the District Court, and dismissed the plaintiff's action with
costs in both Courts.

4. Being dissatisfied with the said judgment, the plaintiff is desirous
of appealing to His Majesty in Council.

5. The subject-matter of this action is over Rs. 5,000 in value.

6. Notice of this application has been served on the defendant.

The petitioner prays for—

40 (i.) Conditional leave to appeal under Rule 3, Schedule I., of the
Ordinance No. 31 of 1909.

(ii.) That the Court do determine the nature and amount of the
security to be given by the petitioner.

Settled—

EDWARD W. PERERA, *Advocate*.

GOONEWARDENE AND WIJEGOONEWARDENE,
Proctors for Petitioner.

RECORD.

In the
Supreme
Court of the
Island of
Ceylon.

No. 38.
Petition for
conditional
leave to
appeal,
18th
February,
1915.

List.
Initialled,
F. C. L.,
18.2.15.

19.2.15.
For
defendant,
Solicitor-
General
appears
on notice.

Allowed on
usual terms
as to
security, &c.
Initialled,
C. W. G.

1

No. 39.

GEORGE THE FIFTH, by the Grace of GOD of the United Kingdom of Great Britian and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith.

In the Supreme Court of the Island of Ceylon.

No. 245, District Court Final.

WICKRAMASINGHE NAWARATNE PANDITTA WASALA ABEYKOON GANWILA HERAT MUDIANSSELAGE TIKIRI BANDARA ELLEKEWALA, Basnayake Nilame and Trustee of Wallahagoda Temple, Gampola, *Plaintiff-Applicant,*

Against

THE HONOURABLE THE ATTORNEY-GENERAL, Colombo, *Defendant-Respondent.*

Action No. 22,466.

District Court of Kandy.

20 In the matter of the application of the plaintiff above named dated 18th February, 1915, for conditional leave to appeal to His Majesty in Council against the judgment and decree dated the 2nd February, 1915:

This cause coming on for hearing and determination on this day before the Hon. Mr. James Cecil Walter Pereira, K.C., and the Hon. Mr. Thomas Edward de Sampayo, K.C., Puisne Justices of this Court, in the presence of counsel for the applicant and the respondent:

It is considered and adjudged that this application the same is hereby allowed, upon condition that the appellant do within three months from this date—

30

(i.) Deposit with the Registrar of the Supreme Court a sum of Rs. 3,000, and hypothecate the same by bond or by such other security as the Court shall, on application made after notice to the other side, approve.

(ii.) Deposit with the said Registrar a sum of Rs. 300 in respect of the amounts and fees mentioned in section 5 (2) (b) and (c) of Ordinance No. 31 of 1909.

Provided that the appellant may apply in writing to the said Registrar, stating whether he intends to print the record or any part thereof in Ceylon, for an estimate of such amounts and fees, and thereafter deposit the estimated sum with the said Registrar.

40

Witness the Hon. Mr. Alexander Wood Renton, Chief Justice, at Colombo, the Nineteenth day of February, in the year of our Lord One thousand Nine hundred and Fifteen, and of Our Reign the Fifth.

F. C. Loos,
Registrar.

RECORD.

*In the
Supreme
Court of the
Island of
Ceylon.*

No. 39.
Order of the
Supreme
Court
allowing
conditional
leave,
19th
February,
1915.

1

No. 40.

In the Supreme Court of the Island of Ceylon.

District Court, Kandy, No. 22,466. Supreme Court Final, No. 245 of 1914.

WICKRAMASINGHE NAWARATNE PAN-
DITTA WASALA ABEEKOON GANWILA
HERAT MUDIANSSELAGE TIKIRI BAN-
DARA ELLEKEWALA, Basnayake Nilame
of Wallahagoda Dewale, Gampola,
Plaintiff-Appellant,

RECORD.
No. 40.
Application
for final
leave to
appeal,
27th March,
1915.

10

Versus

THE HONOURABLE THE ATTORNEY-
GENERAL, Colombo, *Defendant-
Respondent.*

To the Honourable the Chief Justice and the other Justices of the Supreme Court.

The 27th day of March, 1915.

The humble petition of the above-named plaintiff-appellant, appearing by his proctors Frederick Llewellyn Goonewardene and Edward Lionel Wijegoonewardene, practising in partnership under the name, style, and firm of
20 Goonewardene and Wijegoonewardene, showeth as follows :—

1. That the appellant on the 19th day of February, 1915, obtained conditional leave from this Honourable Court to appeal to His Majesty the King in Council against the judgment of this Court pronounced on the 2nd day of February, 1915.

2. That the appellant has, in compliance with the conditions on which such leave was granted, deposited a sum of Rupees Three thousand (Rs. 3,000) as security, and a further sum of Rupees Three hundred (Rs. 300) as Registrar's fees.

Wherefore the appellant prays that he be granted final leave to appeal
30 against the said judgment of this Court dated the 2nd day of February, 1915, to His Majesty the King in Council.

GOONEWARDENE AND WIJEGOONEWARDENE,
Proctors for Plaintiff-Appellant.

F. LIESCHING, *Crown Proctor.*

E. W. Perera, with D. B. Jayatilleke, for applicant.

Fernando, C.C., for respondent.

Application allowed—10.5.15.

1

No. 41.

GEORGE THE FIFTH, by the Grace of GOD of the United Kingdom of Great Britian and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith.

RECORD.
No. 41.
Order of
Supreme
Court
allowing final
leave to
appeal,
10th May,
1915.

In the Supreme Court of the Island of Ceylon.

No. 245, District Court Final.

10

WICKRAMASINGHE NAWARATNE PAN-
DITTA WASALA ABHEYKON GANWILA
HERAT MUDIANSSELAGE TIKIRI
BANDARA ELLEKEWALA, Basnayake
Nilame and Trustee of Wallahagoda
Temple, Gampola, *Plaintiff-Appli-
cant,*

Against

THE HONOURABLE THE ATTORNEY-
GENERAL, Colombo, *Defendant-
Respondent.*

Action No. 22,466.

District Court of Kandy.

20

In the matter of the application of the plaintiff above named, dated the 27th day of March, 1915, for final leave to appeal to His Majesty in Council against the judgment and decree of this Court dated 2nd February, 1915: This cause coming on for hearing and determination on this day before the Hon. Mr. Alexander Wood Renton, Chief Justice, and the Hon. Mr. George Francis Macdaniel Ennis, Pusine Justice of this Court, in the presence of counsel for the applicant and the respondent:

30

The appellant having complied with the conditions imposed on him by the order of this Court granting conditional leave to appeal and dated 19th February, 1915, it is considered and adjudged that the appellant's application for final leave to appeal to His Majesty's Privy Council be and the same is hereby allowed.

Witness the Hon. Mr. Alexander Wood Renton, Chief Justice, at Colombo, the Tenth day of May, in the year of our Lord One thousand Nine hundred and Fifteen, and of Our Reign the Fifth.

F. C. Loos, *Registrar.*

1

No. 42.

In the Supreme Court of the Island of Ceylon.

District Court, Kandy, No. 22,466. Supreme Court Final, No. 245 of 1914.

RECORD.

No. 42.
Security
Bond,
27th March,
1915.

WICKRAMASINGHE NAWARATNE PAN-
DITTA WASALA ABEYKOON GANWILA
HERAT MUDIANSSELAGE TIKIRI
BANDARA ELLEKEWALA, Basnayake
Nilame of Wallahagoda Dewale,
Gampola, *Plaintiff-Appellant*,

10

Versus

THE HONOURABLE THE ATTORNEY-
GENERAL, Colombo, *Defendant-
Respondent.*

20

Know all men by these presents that I, Wickramasinghe Nawaratne Panditta Wasala Abeykoon Ganwila Herat Mudianselage Tikiri Bandara Ellekewala, Basnayake Nilame of Wallahagoda dewale, Gampola, the plaintiff-appellant above named, am held and firmly bound to the Registrar of the Supreme Court for the time being in the sum of Rupees Three thousand (Rs. 3,000), which I deposited with the said Registrar on the Fifth day of March, 1915, and for the payment of which sum I bind myself, my heirs, executors, and administrators by these presents.

Whereas the said Wickramasinghe Nawaratne Panditta Wasala Abeykoon Ganwila Herat Mudianselage Tikiri Bandara Ellekewala, Basnayake Nilame, plaintiff-appellant, on the 19th day of February, 1915, obtained leave to appeal to His Majesty the King in His Privy Council against the judgment and decree of the Supreme Court pronounced on the Second day of February, 1915 :

30

And whereas leave to appeal was granted subject, *inter alia*, to the conditions that the said Wickramasinghe Nawaratne Panditta Wasala Abeykoon Ganwila Herat Mudianselage Tikiri Bandara Ellekewala, Basnayake Nilame, plaintiff-appellant, should within three months from the date of the hearing of the application deposit with the Registrar of the Supreme Court the sum of Rupees Three thousand (Rs. 3,000) :

40

Now the condition of this obligation is such that if the above-bounded appellant should duly prosecute the said appeal to His Majesty in Council, and shall and will well and truly pay or cause to be paid all such costs as may become payable to the respondent in the event of the appellant not obtaining an order granting his final leave to appeal, or of the appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the appellant to pay to the respondent costs of appeal (as the case may be), then this obligation to be void and of no effect, otherwise to remain in full force.

Signed and delivered, at Kandy this 27th day of March, 1915, in the presence of—

F. L. GOONEWARDENE, Proctor, Supreme Court,
who testifies hereby to the signature and identity
of T. B. Ellekewala, Plaintiff-Appellant.

T. B. ELLEKEWALA,
Plaintiff-Appellant.

1

No. 43.

LIST OF PAPERS NOT TO BE TRANSMITTED TO THE
PRIVY COUNCIL.No. 43.
List of
papers
not to be
transmitted
to the Privy
Council.

Papers on the Record of the Original Suit No. 22,466 of 1913, instituted on the 30th September, 1913, in the District Court of Kandy, and decided on the 2nd February, 1915.

No.	Description of Document.	Date.	Page in original record.
10	1 .. Plaintiff's list of witnesses	Mar. 16, 1914 ..	261
	2 .. Plaintiff's additional list of witnesses	Mar. 20, 1914 ..	263
	3 .. Defendant's list of witnesses	Mar. 16, 1914 ..	264
	4 .. Defendant's additional list of witnesses	Mar. 18, 1914 ..	265
	5 .. Defendant's second additional list of witnesses	Mar. 20, 1914 ..	266
	6 .. Additional list of defendant's witnesses	May 14, 1914 ..	267
	7 .. Additional list of defendant's witnesses	May 12, 1914 ..	268
	8 .. Additional list of defendant's witnesses	May 11, 1914 ..	269
	9 .. Secretary's certificate in appeal	July 9, 1914 ..	270
20	10 .. Proxy from the plaintiff in favour of Messrs. Goonewardene and Wijegoonewardene, Proctors	Sept. 30, 1913 ..	271
	11 .. Appointment of Mr. Francis Charles Liesching, Proctor of the Supreme Court, by the Acting Attorney-General, to appear in the case on behalf of the Crown	Oct. 21, 1913 ..	272
	12 .. Appointment of Mr. William Kevitt Smyth Hughes, Proctor of the Supreme Court, by the Acting Attorney-General, to appear in the case on behalf of the Crown	Jan. 10, 1914 ..	274
	13 .. Appointment of Mr. Francis Charles Liesching, Proctor of the Supreme Court, by the Attorney-General, to appear in the case on behalf of the Crown	June 16, 1914 ..	276
30	14 .. Motion to the District Court by Mr. W. K. S. Hughes, Proctor, to file proxy in his favour from the defendant, as Mr. F. C. Liesching is away in England	Jan. 12, 1914 ..	278
	15 .. Motion to the District Court by Messrs. Goonewardene and Wijegoonewardene, Proctors for plaintiff, for a summons on Mr. G. A. Joseph of the Colombo Museum to produce certain documents at the hearing of the case	Mar. 16, 1914 ..	279
	16 .. Motion to the District Court by Messrs. Goonewardene and Wijegoonewardene, Proctors for plaintiff, for a summons on the Colonial Secretary to produce certain documents at the hearing of the case	Mar. 16, 1914 ..	280
40	17 .. Letter from Mr. G. A. Joseph of the Colombo Museum to the Secretary of the District Court informing him that Mr. W. B. Nonis will appear in answer to the summons of the 16th March, 1914, to produce certain books specified therein	Mar. 19, 1914 ..	282
	18 .. Letter from Mr. F. C. Liesching (defendant's Proctor) bringing to the notice of the District Judge the fact that under the rules and regulations of the Colombo Museum, Mr. G. A. Joseph has no power to produce the books which he has been summoned to produce, and moving that under the circumstances his attendance at the trial of the action be dispensed with	May 4, 1914 ..	283
50	19 .. Notice by Mr. F. C. Liesching filing his appointment as Proctor for the defendant, and also the defendant's petition of appeal in the case in the absence of Mr. Hughes from the Island	June 16, 1914 ..	284

1	No.	Description of Document.	Date.	Page in original record.	No. 43. List of papers not to be transmitted to the Privy Council— <i>contd.</i>
	20	Motion by Mr. F. C. Liesching (defendant's Proctor) that security in appeal be dispensed with in the case, and also notice of appeal	June 22, 1914	285	
	21	Precept to Fiscal to serve summons on the Hon. the Attorney-General	Oct. 9, 1913	286	
	22	Fiscal's report to precept	Oct. 20, 1913	287	
10	23	Summons to defendant	Oct. 9, 1913	288	
	24	Fiscal's report to precept	Mar. 19, 1914	289	
	25	Summons to witness—Benjamin Rodrigo, Registrar, Gampola	Mar. 16, 1914	290	
	26	Precept to Fiscal to serve summons to witness	Mar. 16, 1914	291	
	27	Precept to Fiscal to serve summonses to witnesses	Mar. 16, 1914	292	
	28	Fiscal's report to precept	Mar. 18, 1914	293	
	29	Summonses to witnesses—(1) The Hon. the Colonial Secretary, Colombo; (2) Mr. Gerard A. Joseph of the Colombo Museum	Mar. 16, 1914	294	
	30	Summons to witness—the Colonial Secretary of Colombo	Mar. 16, 1914	296	
	31	Precept to Fiscal to serve summonses to witnesses	May 4, 1914	298	
20	32	Fiscal's report to precept	May 8, 1914	299	
	33	Summons to witness—W. de Livera	May 4, 1914	300	
	34	Letter from Messrs. Goonewardene and Wijegoonewardene (Proctors for the plaintiff) to the Secretary of the District Court of Kandy, <i>re</i> the supplying of Rs. 32·50 stamps to make up the deficiency by reason of the class of the case being raised from Rs. 350 to Rs. 10,000.			