

16, 1939

In the Privy Council.

No. 58 of 1937.

ON APPEAL FROM THE SUPREME COURT  
OF THE ISLAND OF CEYLON.

BETWEEN

SIMON CHRISTOPHER JAYAWARDENE - (*Plaintiff*) *Appellant*

AND

(1) ALFRED CHRISTY JAYAWARDENE; (2) DR.  
FREDRICK NICHOLAS JAYAWARDENE;  
(3) GEORGE LLEWELLYN JAYAWARDENE AND  
(4) THE HONOURABLE THE ATTORNEY  
GENERAL OF CEYLON - - (*Defendants*) *Respondents*

RECORD OF PROCEEDINGS.

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In the Privy Council.

No. 58 of 1937.

ON APPEAL FROM THE SUPREME COURT  
OF THE ISLAND OF CEYLON.

---

BETWEEN

SIMON CHRISTOPHER JAYAWARDENE - (*Plaintiff*) *Appellant*

AND

(1) ALFRED CHRISTY JAYAWARDENE; (2) DR.  
FREDRICK NICHOLAS JAYAWARDENE;  
(3) GEORGE LLEWELLYN JAYAWARDENE AND  
(4) THE HONOURABLE THE ATTORNEY  
GENERAL OF CEYLON - - - (*Defendants*) *Respondents*.

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RECORD OF PROCEEDINGS.

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IN THE DISTRICT COURT OF KALUTARA.

No. 19043.

Class : Rs. 30/-.

Amount : Rs. 68,200/-.

Nature : Land and damages.

Procedure : Regular.

SIMON CHRISTOPHER JAYAWARDENE of Kalutara - - - *Plaintiff*

*versus*

ALFRED CHRISTY JAYAWARDENE of Wasala Walauwa Halkand-  
10 awila and others - - - - - *Defendants*.

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No. 1.

Journal Entries.

(*Not Printed.*)

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*In the  
District  
Court of  
Kalutara.*

No. 1.

*In the  
District  
Court of  
Kalutara.*

No. 2.

Amended Plaintiff.

IN THE DISTRICT COURT OF KALUTARA.

No. 19043.

No. 2.  
Amended  
Plaint, 17th  
December,  
1934.

Nature : Land.  
Rs. 68,200/-.  
Stamps Rs.

SIMON CHRISTOPHER JAYAWARDENE of Kalutara personally  
and as Executor of the Estate of the late GATE MUDALIYAR  
J. V. G. JAYAWARDENE, deceased of Halkandawila -

*Plaintiff* 10

*versus*

(1) ALFRED CHRISTY JAYAWARDENE of Wasala Walawwa,  
Halkandawila; (2) DR. FREDRICK NICHOLAS JAYAWAR-  
DENE of the Municipality, Colombo; (3) GEORGE  
LLEWELLYN JAYAWARDENE of Avondale House, Avondale  
Road, Maradana; (4) THE HONOURABLE THE ATTORNEY  
GENERAL, Colombo - - - - -

*Defendants.*

On this 17th day of December, 1934.

The amended Plaintiff of the Plaintiff above named appearing by  
Dionysius K. Goonetilleke, his Proctor, states as follows :—

20

1. The cause of action hereinafter set forth arose and the land which  
is the subject matter of this action is situate within the jurisdiction of  
this Court.

2. At all dates material to this action the Crown was the lawful  
owner of the premises called Kajugahaudumulleduwa, Kajugahaudumulle-  
landa and Galagodakela of the extent of 57 acres 3 roods 13 perches and in  
the Schedule hereto fully described.

3. By Indenture No. 29 dated 29th October 1919 the Crown let and  
demised unto J. V. G. Jayawardene Gate Mudaliyar, his heirs executors,  
administrators and permitted assigns the said premises to be held by the  
said Mudaliyar Jayawardene in perpetuity subject inter alia to the  
condition that the said Mudaliyar Jayawardene shall not sub-let, sell,  
donate, mortgage or otherwise dispose of or otherwise deal with his interests  
in the said lease or any portion thereof without the written consent of the  
Lessor, and every such sub-lease, sale donation or mortgage without such  
consent shall be absolutely void.

30

4. The said Mudaliyar Jayawardene in pursuance of the said Indenture  
duly entered into possession of the said premises and planted the same with  
rubber and the said premises now constitute a valuable rubber estate and  
worth about Rs. 57,000/-.

40

5. The said Mudaliyar Jayawardene died on the 19th January, 1930,  
leaving a Last Will No. 824 dated 28th October, 1928, whereby he gave

and devised all his property to the Plaintiff and appointed the Plaintiff his Executor. The said Last Will was duly proved in Testamentary case No. 2282 D. C. Kalutara and the Plaintiff was duly appointed Executor of the estate of the said Mudaliyar Jayawardene. In terms of the said Last Will the Plaintiff is also now the owner of the said premises and the rubber plantation thereof.

*In the  
District  
Court of  
Kalutara.*

No. 2.  
Amended  
Plaint, 17th  
December,  
1934—con-  
tinued.

6. The 1st, 2nd and 3rd defendants who have no manner of right or title to the said premises or the said rubber plantation and are acting in concert, are wrongfully and unlawfully disputing the plaintiff's title thereto and are in the wrongful and unlawful possession thereof since November, 1932, when the 3rd defendant acting for himself and on behalf of the 1st and 2nd defendants entered into possession and continued to do so up to the end of July, 1933, when the 1st defendant acting for himself and on behalf of the 2nd and 3rd defendants entered into possession thereof and is continuing to possess the said premises to the plaintiff's loss and damage of Rs. 250/- per mensem clear of working expenses from the month of November, 1932.

(6A.) By reason of the defendant's excessive tapping the Rubber trees standing on the said land have been considerably injured and damaged which damage the plaintiff assesses at Rs. 5,000/-.

7. The plaintiff further says that the 1st, 2nd and 3rd defendants are claiming a three-fourths share of the said premises upon deeds of gift bearing numbers 175, 178 and 179 dated 27th May 1927, 28th May, 1927, and 30th May, 1927, respectively. The said deeds were executed by the late Mudaliyar Jayawardane without the written consent of the owner and are therefore void in view of the condition in the said lease referred to in paragraph 3 hereof.

Assuming but not admitting that the said deeds are valid the plaintiff is entitled to the remaining one fourth share of the said premises upon deed of gift No. 180 dated 30th May, 1927, and executed by the late Mudaliyar Jayawardane.

8. Plaintiff also says that the plaintiff is either the sole owner of the said premises on the footing of the plaintiff's claim and a co-owner on the footing of the 1st, 2nd and 3rd defendants. The plaintiff is further the executor of the estate of the late Mudaliyar Jayawardane. The plaintiff is thus entitled to the possession of the said premises but the defendants who are in wrongful possession are getting the rubber trees on the said premises excessively tapped and thereby injuring and deteriorating the same. The plaintiff further says that the defendants got themselves registered as proprietors of the said estate under the Rubber Control of Export Ordinance and are taking and selling the coupons that are being issued under the said Ordinance to the plaintiff's irreparable loss.

9. The 4th defendant is made a party to this action in order to give the Crown notice thereof inasmuch as the said premises are held on a lease from the Crown and it is necessary to get a final and complete adjudication

*In the  
District  
Court of  
Kalutara.*

No. 2.  
Amended  
Plaint, 17th  
December,  
1934—*con-  
tinued.*

in regard to the title to the said leasehold, but no relief is claimed as against the Crown.

Wherefore the plaintiff prays:—

- (a) That the plaintiff be declared entitled to the said premises.  
 (b) That the 1st, 2nd and 3rd defendants be ejected therefrom and that the plaintiff quieted in possession thereof.  
 (c) That the 1st, 2nd and 3rd defendants be decreed to pay to plaintiff Rs. 250/- per month as damages from the said month of November, 1932, till date of action.  
 (c1) And a further sum of Rs. 5,000/- as damages caused to the Rubber 10 trees.  
 (d) For an injunction restraining the 1st, 2nd and 3rd defendants or any of them or their agents from tapping the rubber trees on the said premises and from receiving and selling the coupons issued in terms of the Rubber Control of Export Ordinance, and that a receiver be appointed to work the estate and bring the proceeds to Court pending the final decision of this action.  
 (e) For costs and for such other and further relief as to this Court may seem meet.

(Signed) D. K. GOONETILLEKA, 20  
Proctor for Plaintiff.

The Schedule above referred to:—

An allotment of land called Kajugahaudumulleduwa, Kajugahaudumullelanda and Galagodakele situated at Duwegoda and Eladuwa in the District of Kalutara and bounded on the North by T. Ps. 277863 and 318671, East by Kitulahitiyekumbura claimed by Alison Appuhamy and other and reservation for a Road, South by Kitulahitiyekumbura claimed by Alison Appuhamy and others Kitulahitiyewatta claimed by A. Podineriya, T. P. 249617, Reservation for a Road and Reservation along the foot-path and West by T. Ps. 71911, 80188, 71853, Lots 4 and 5 in 30 P. P. 16319 and Lots 2 and 4 in P. P. 16486 and containing in extent, exclusive of the Reservation for a road running through the land, 57 acres 3 roods and 13 perches.

(Signed) D. K. GOONETILLEKA,  
Proctor for Plaintiff.

Settled by

N. E. WEERASOORIYE,  
Advocate.

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## No. 3.

## Answer of 1st, 2nd and 3rd Defendants.

*In the  
District  
Court of  
Kalutara.*

On this 26th day of March, 1935.

The answer of the 1st, 2nd and 3rd defendants abovenamed appearing by Joseph Aloysius Fernando and Felix Charles Aloysius Domingo de Silva their Proctors carrying on business in partnership under the name, style and firm of Fernando & de Silva, states as follows:—

No. 3.  
Answer of  
the 1st,  
2nd and 3rd  
Defendants,  
26th March,  
1935.

1. These defendants deny all and singular the averments contained in the plaint except as is hereinafter expressly admitted.

10 2. Further answering to the plaint these defendants state that by deeds Nos. 175, 178, 179 and 180 dated respectively 27th May, 1927, 28th May, 1927, 30th May, 1927 and 30th May, 1927, the said Mudaliyar Jayawardane gifted to each of these defendants and the plaintiff respectively along with and among various other properties a one-fourth share each of the said property described in the schedule to the plaint.

2 (a). The said gifts under the said deeds were all subject in each case to a fidei commissum in favour of the legitimate child or children, and in the absence of such child or children, the lawful heirs of each of the said donees.

20 2 (b). These defendants have never disputed the plaintiff's title to the said one-fourth share of the said property but have entered into possession thereof in the circumstances hereinafter mentioned.

2 (c). The said property described in the schedule to the plaint is reasonably of the value of Rs. 25,000/-.

3. These defendants state that the plaintiff having accepted the said gift by and under the said deed No. 180 cannot now in law repudiate the said deed of gift either in part or wholly.

30 4. Although the plaintiff is thus entitled only to a one-fourth share of the said property described in the schedule to the plaint, he wrongfully and unlawfully entered into possession of the entirety of the said property in or about the month of January, 1930, and remained in wrongful and unlawful possession thereof till the end of November, 1932, wrongfully and unlawfully appropriating unto himself the entire income from the said property during the said period.

5. The plaintiff has failed and neglected to account to these defendants for the said income, which income these defendants estimate at a sum of Rs. 300/- per month nett after deducting all expenses.

40 6. At the end of November, 1932, these defendants entered into possession of the said property as they lawfully might and are holding the one-fourth share to which alone the plaintiff is lawfully entitled from and out of the income thereafter accruing from the said property on behalf and at the disposal of the plaintiff until such time as an accounting takes place between the plaintiff and these defendants.



*In the  
District  
Court of  
Kalutara.*

No. 3.  
Answer of  
the 1st,  
2nd and 3rd  
Defendants,  
26th March,  
1935—con-  
tinued.

6 (a). These defendants expressly deny that the income accruing from and out of the said property since November, 1932, is Rs. 250/- per mensem clear of working expenses.

6 (b). These defendants state that from and after July, 1934, the plaintiff has been receiving a one-fourth share, to which alone he is lawfully entitled, of all coupons issued by the Rubber Controller in respect of the said property.

7. These defendants expressly deny (a) that they are in wrongful or unlawful possession of the said property, (b) that they are excessively tapping or injuring or causing to deteriorate the rubber trees standing thereon, (c) that the plaintiff has suffered damage in Rs. 5,000/- or any sum whatsoever. 10

8. By the said deeds Nos. 175, 178 and 179 mentioned in para. 2 above, the said Mudaliyar Jayawardane the donor under the said deeds, contracted and covenanted for himself his heirs executors and administrators with the donees under the said deeds, to wit, these defendants, that he had good right, full power and lawful authority to donate the said premises and that he had not at any time heretofore made done or committed or been party or privy to any Act, deed, matter or thing whatsoever whereby or by means whereof the said premises or any part thereof are, is, can, shall or may be impeached or encumbered in title charge, estate or otherwise howsoever and that he and his aforewritten shall and will at all times warrant and defend the same and every part thereof unto the said donees against any person or persons whatsoever. 20

9. The plaintiff who claims under his deceased testator the said Mudaliyar Jayawardane, is bound by the said contract and covenant and is estopped and precluded from questioning the title which the said testator and donor purported to convey to the said donees.

10. These defendants state that the plaintiff cannot in law have and maintain this action for a declaration that he is entitled to the entirety of the said property. 30

In the alternative.

11. In the event of the said deeds of gift Nos. 175, 178, 179 and 180 being held to be void in respect of the said property, these defendants state that the said deceased testator the said Mudaliyar Jayawardane had not in law the power to dispose of the said property by Will.

12. These defendants further state that even if the said Mudaliyar Jayawardane had the power to so dispose of the said property by Will he did not intend to and did not in fact dispose of the said property by his said Last Will No. 184 dated 28th October, 1928. 40

13. In either of the events mentioned in paras 11 and 12 above these defendants state that the said deceased testator died intestate in respect of the said property leaving as his heirs the plaintiff, these defendants, and

his other intestate heirs, so that the plaintiff is entitled to no more than a one-eighth share of the said property.

14. These defendants state that the plaintiff not having obtained Probate of the said Last Will cannot in law have and maintain this action in the capacity as Executor of the said Last Will.

15. These defendants expressly deny that the plaintiff is in law entitled (a) to an injunction restraining these defendants or any one of them or their agents from tapping the rubber trees on the said land or from receiving or selling the coupons issued in terms of the Rubber Export Control Ordinance, (b) to the appointment of a receiver to work the said property and bring the proceeds to Court pending the final decision of this action.

Wherefore these defendants pray :—

(a) that the plaintiff's action be dismissed with costs,

(b) for a declaration that the plaintiff and these defendants are entitled each to a one-fourth share of the said property,

(c) in the alternative that the plaintiff's action be dismissed with costs except in respect of a one-eighth share of the said property,

(d) for an accounting in respect of the income from the said property appropriated by the plaintiff for the period January, 1930, to November, 1932, both inclusive,

(e) for costs,

(f) for such other and further relief as to this Court may seem meet.

(Signed) FERNANDO & DE SILVA,

Proctors for 1, 2 and 3rd defendants.

Settled by

M. T. DE S. AMARASEKERA, Esquire,  
Advocate.

*In the  
District  
Court of  
Kalutara.*

—  
No. 3.

Answer of  
the 1st,  
2nd and 3rd  
Defendants,  
26th March,  
1935—con-  
tinued.

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**No. 4.**

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**Issues Proposed by 1st and 2nd Defendants.**

No. 19043.

DISTRICT COURT KALUTARA.

Issues proposed by the 1st, 2nd and 3rd Defendants.

(1) Are deeds of gift Nos. 175, 178, 179 and 180 dated respectively the 27th May, 28th May, 1927, 30th May, 1927, and 30th May, 1927, good and valid deeds until they are set aside?

(2) If so, could property dealt with by the said deeds of gift have been disposed of or dealt with by the Testator in the Last Will proved in these proceedings?

No. 4.

Issues  
proposed  
by 1st, 2nd  
and 3rd  
Defendants;  
16th April,  
1935.

*In the  
District  
Court of  
Kalutara.*

No. 4.  
Issues  
proposed  
by 1st, 2nd  
and 3rd  
Defendants,  
16th April,  
1935—con-  
tinued.

(3) Was one-fourth share of the Rubber land in dispute gifted to each of the sons of the Testator (viz. to the plaintiff and 1st, 2nd and 3rd defendants) on deeds of gift Nos. 175, 178, 179 and 180 referred to in the plaint ?

(4) If so, were such several gifts made subject to a fidei commissum in each case, in favour of any child or children of each donee ?

(5) Did the 1st, 2nd and 3rd defendants or any of them, or the said three defendants in concert as alleged in the plaint, wrongfully and unlawfully dispute the plaintiff's lawful rights in and to the said land ?

(6) Can the plaintiff now repudiate the gift made by the Testator on deed of gift No. 180 to the plaintiff after having once accepted it at its execution without the consent of the Official authorities ? 10

(7) Is the plaintiff entitled to the entire land or to only one-fourth of it ?

(8) Did the plaintiff enter into possession of the entire land in or about the month of January, 1930, and remain in such possession till the end of November, 1932 ?

(9) If so, was such possession lawful ?

(10) If the plaintiff was in such possession what income did he collect during such possession ? 20

(11) Is the plaintiff in part possession of the said land now by receiving one-fourth share of Coupons from the Rubber Controller ?

(12) Are the 1st, 2nd and 3rd defendants collecting one-fourth share of the income due to the plaintiff to be adjusted against the three-quarter shares of the income that was due to the 1st, 2nd and 3rd defendants from January, 1930, to November, 1932, which was collected and appropriated by the plaintiff ?

(13) Is there an income of Rs. 250/- per mensem accruing from the land in dispute ?

(14) Is the land in dispute worth Rs. 57,500/- as alleged in the plaint ? 30

(15) Are the 1st, 2nd and 3rd defendants tapping rubber excessively causing damage and deterioration ?

(16) Has the plaintiff suffered any damages ?

(17) If so, how much ?

(18) Is it competent to the plaintiff in law to question the validity of gifts made under the said deeds of gift Nos. 175, 178, 179 and 180 apart from the estoppels and preclusions by which he may be bound by his own acts ?

(19) Did the Testator contract and covenant for himself, his heirs executors and administrators with the 1st, 2nd and 3rd defendants as donees in the said deeds of gift Nos. 175, 178 and 179 that he had good right, full power, and lawful authority to donate to each of them one-fourth share of the land in dispute and did he warrant to defend the title so donated to each of the 1st, 2nd and 3rd defendants ? 40

(20) If so, is the plaintiff bound by such contract and covenant of the Testator ?

- (21) If so, is the plaintiff estopped and precluded from questioning the title so donated?
- (22) If the deeds of gift Nos. 175, 178, 179 and 180 are void did the Testator die intestate in regard to the land in dispute?
- (23) If the Testator died intestate does the plaintiff personally inherit any more than one-eighth share of the said land?
- (24) Did the Testator intend to leave the entire land in dispute to the Plaintiff alone to form part of the Residuary Estate left by Last Will?
- (25) Is the plaintiff entitled to an Injunction or to the appointment of a Receiver as asked for in the plaint?
- (26) Can the plaintiff maintain this action without obtaining Probate?

*In the District Court of Kalutara.*  
 —  
 No. 3.  
 Issues proposed by 1st, 2nd, and 3rd Defendants, 16th April, 1935—continued.

Kalutara,

16th April, 1935.

(Signed) FERNANDO & DE SILVA,  
 Proctors for 1st, 2nd and 3rd defendants.

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No. 5.

Issues Submitted by Plaintiff.

No. 19043.

DISTRICT COURT KALUTARA.

No. 5.  
 Issues submitted by Plaintiff, 9th May, 1935.

- 20 I move to submit the issues hereunder subject to revision at the trial.
- Issues referred to :—
1. Was the Crown the owner of the premises in question at all dates material to this action?
  2. Did the Crown by Indenture No. 29 dated 29th October, 1919, lease the said premises to the said J. V. G. Jayawardane subject to the conditions set out in paragraph 3 of the plaint?
  - 3 (a). Were the deeds of gift Nos. 175, 178 and 179 executed by the said J. V. G. Jayawardane in favour of the 1st, 2nd and 3rd defendants respectively without the written consent of the Crown?
  - 30 3 (b). If so, are the said deeds of gift void and of no effect?
  4. Did the said J. V. G. Jayawardane devise the said premises to the plaintiff by his Last Will No. 824 of 28th October, 1928?
  - 5 (a). Are the 1st, 2nd and 3rd defendants in wrongful possession of the said premises since November, 1932?
  - 5 (b). Are the 1st, 2nd and 3rd defendants getting the rubber trees on the said premises tapped excessively and damaging the same?

*In the  
District  
Court of  
Kalutara.*

5 (c). If issues 5 (a) and/or 5 (b) are answered in the affirmative what damages is plaintiff entitled to?

6. What is the value of the said premises?

Kalutara, 9th May, 1935.

(Signed) D. K. GOONETILLEKA,  
Proctor for Plaintiff.

No. 5.  
Issues sub-  
mitted by  
Plaintiff,  
9th May,  
1935—con-  
tinued.

Drawn and settled by

N. E. WEERASOORIYA, Esquire,  
Advocate.

10

No. 6.  
Issues  
suggested by  
Defendants'  
Counsel at  
Trial, 22nd  
June, 1935.

No. 6.

Issues suggested by Defendants' Counsel at Trial.

No. 19043.

DISTRICT COURT KALUTARA.

22.6.35.

Mr. N. E. WEERASURIYA with Mr. WIJERATNA instructed by Mr. D. K. GOONETILLEKA for Plaintiff.

Mr. AMARASEKERA with Mr. SILVA instructed by Messrs. FERNANDO and DE SILVA for 1st to 3rd defendants.

It is admitted that the Crown did not give consent required by clause 10 in part 4 of the Schedule so far as the deeds of gift are concerned. 20

Clause 2 of part 5.

Mr. AMARASEKERA suggests the following Issues :—

1. Are the deeds of gift good and valid until they are set aside at the instance of the Crown?

2. Were said gifts under the deeds subject to a fidei commissum in each case in favour of the legitimate child or children and in the absence of such child or children in favour of the lawful heirs of the donees?

3. Can the plaintiff having accepted the gift under deed No. 180 now repudiate the said deed in part or wholly?

4. Did the donor under the deeds 175, 178 and 179 covenant for himself, 30 his heirs, executors and administrators with the defendants donees in the manner set out in the 8th paragraph of the answer?

5. If so, is the plaintiff who is heir and executor of the deceased donor testator estopped and precluded from questioning the title which the said donor testator purported to convey to the defendants donees?

6. In the alternative had the testator in law power to dispose of the said property by Will?

7. Even if so did the testator intend to or in fact dispose of the said property by his Last Will 824 of the 28th October, 1928 ?

8. Did Mudaliyar Jayawardane die intestate in respect of the said property, if so what share are the parties entitled to ?

9. Can the plaintiff in law have and maintain this action for a declaration that he is entitled to the entirety of the said property ?

Up to to-day both sides waive damages of all nature, if any, due to them.

10. What was the value of the subject matter of the action when the plaintiff was filed ?

10 Mr. Weerasuriya accepts these issues and suggests :—

11. Can the defendant lead oral evidence to contradict either the terms of the deeds of gift or the Last Will of the late Mudaliyar Jayawardane ?

All these issues are accepted.

*In the District Court of Kalutara.*

No. 6. Issues suggested by Defendants' Counsel at Trial, 22nd June, 1935. —continued.

**No. 7.**

**Plaintiff's Case.**

**SIMON CHRISTOPHER JAYAWARDANE.** Sworn.

20 Plaintiff. I am suing personally and as executor of my father Mudaliyar Jayawardane. The Crown was the owner of the property described in the Schedule to the plaint and leased on deed 29 of 29th October, 1919, P.1 to my father. The lease was subject to certain conditions. Lease read. My father planted rubber on the land, and was in possession till he died on 19th January, 1930. Prior to his death he made a Last Will, 824 of 28th October 1928 (P. 2) proved in 2282. I was appointed executor and sole heir subject to payment of certain legacies. Under the Will I get the entirety of this land. (entire leasehold rights in perpetuity).

30 On 16th May, 1927, my father wrote letter P.3 to the A. G. A. in regard to the Crown lease. P.3 read. He asks for permission as he wanted to gift to me and the three defendants subject to his life interest. But before receiving replies he executed four deeds of gift viz. :—deed 175 of 27th May, 1927 (D.1), in favour of 1st defendant. 178 of 28th May, 1927 (D.2), in favour of 2nd defendant. 179 of 30th May, 1927 (D.3), in favour of 3rd defendant. 180 of 30th May, 1927 (P.4), in my favour. After these deeds were executed my father received reply (P.5) dated 27th July/1st August from the A. G. A. It is a reply to P.3. P.5 read. My father replied to P.5 by P.6 of 15th August, 1927. Read. The A. G. A. replied on 27th August, 1927, by P.7. P.7 read. On 4th September, 1927, my father replied to P.7 by P.8. P.8 read. The reply to P. 8 was by letter P.9 of 8th/9th September, 1927. P.9 read. Then subsequently my father wrote a letter (P.10) 1st November, 1927, to A. G. A. P.10 read.

Plaintiff's Evidence.

No. 7. Simon Christopher Jayawardane, Examination.

*In the  
District  
Court of  
Kalutara.*

Plaintiff's  
Evidence.

No. 7  
Simon  
Christopher  
Jayawardane,  
Examination—*con-  
tinued.*

On 26th February, 1928, P.11 the Mudaliyar sent a draft deed of cancellation for approval. The A. G. A. returned the deed of cancellation with letter of 8th March, 1928 (P.12). P.12 read. The deeds were never cancelled and consent of Government was never obtained. I produce an extract from a register of rents of Government lands (P.13) leased in perpetuity in which in regard to this land, my father is given as the original leasee and I am entered as substituted lessee. Up to date that is the position. My father died leaving me and the three defendants and two sisters. Two of them died in the life time of my father and they left heirs. I produce the Government valuation in the Testamentary case (P.14). This property has been valued at Rs. 57,750/-. My father died in January, 1930. I have paid estate duty on this basis. I filed this action in December, 1934. Rubber Restriction Ordinance came in June, 1934. In December, 1934, price was between 24 and 27 cents per pound. The restriction will last for 5 years at least. It is a well planted estate in good rubber area and the reasonable value will be about Rs. 1,000/- an acre. The trees were planted in 1919. For my one-fourth share I get coupons for 2,800 pounds or so a year. The estimated production is 23,000 pounds per year. Price of coupons today is 21 or 22 cents and the price of uncoupon rubber is about 9 cents. My valuation is a bona fide valuation.

(Mr. Amarasekera admits documents P.3 to P.12 and P.14.)

Cross-exa-  
mination.

CROSS-EXAMINED.

I was in possession from my father's death till November, 1932. After that my brother the 3rd defendant took charge of the property on behalf of himself and the other two defendants and possessed. Later the 1st defendant has been in possession on behalf of himself and 2nd and 3rd defendants. He did not possess on my behalf. I have been getting coupons for one-fourth since the new restriction. 1st defendant has not paid me for my one-fourth share of this land. He has made payments on account of the other gifted properties only for three months. That property is called Llewellyn Estate. In regard to that I have been paid my share for three months. The two lands adjoin each other, but they are distinct lands. Llewellyn contains both cocoanut and rubber. I do not know if the rubber from both lands is harvested together. There is only one rubber factory for both the lands. In my time I kept different check rolls for the two lands. I do not know if both the lands are worked together as Llewellyn Estate. In 1930 the price of rubber was 35 to 40 cents. There was no restriction then. In 1932 it came down to 11 cents towards the end. Rubber with coupons can be sold at 30 cents. The working expenses are about 10 cents. There is no 15 acre block in the land which is very bad. I know Mr. Willy Gunawardane of Badugama Estate who is a well known rubber planter and recognised visiting agent. I have knowledge of planting rubber. I learnt on Eladuwa Estate, and I was looking after my father's estate. After my father's death I paid Rs. 870/- in June, 1930. After that I have made payments also. The defendants have made payments and credited to my account in the

Government books as the present substituted lessee. The receipts were not sent to me. Shown receipt dated 24.11.33. (D.4). I admit payments by them. There are nine Kachcheri Receipts. All marked D.4.

*In the  
District  
Court of  
Kalutara.*

Mr. Gunawardane's report. D.5. Two reports. One dated 11th December, 1932 and the other dated 14th June, 1935 (D.6). D.5 read. I do not know about the 15 acres there referred to. D.6 read. It also refers to 15 acre block. I had no correspondence with the Government Agent and made no request to substitute me as lessee. The A. G. A. wrote to me that I was recognised as substituted lessee. Letter dated 20th April, 1933 (P.15), produced by Mr. Weerasuriya. This refers to an agreement I arrived at after interview with the A. G. A. I do not know if my brother arrived at a similar agreement. Letter dated 14th October, 1933 (D.7). Read to witness. Letter dated 2nd November, 1933 (D.8) read. Similar letters have been sent to me. On 29th November, 1933 this letter (D.9) was sent by the A. G. A. to 1st defendant. All this is credited to my account in the register. I got a gift of a one-fourth share of this land. I was present when the gift was made to the other defendants. I was present when all the gifts were made. I signed as witness to deed No. 178.

Plaintiff's  
Evidence.

No. 7  
Simon  
Christopher  
Jayawardane,  
Cross-examination—  
*continued.*

#### RE-EXAMINED.

Re-examination.

20 After my father died I sent a copy of the Probate to the A. G. A. I have from time to time received notices requesting me to pay the full rent. I produce letter dated 7th November, 1931 (P.16). P.16 read. I paid for 1930. Receipt dated 21st June, 1930 (P. 17). I paid the full rent. P.16 asks me to pay 1931 rent. The rent fell into arrears as there was litigation and on 20th July, 1932 I received letter P.18 requesting me to pay 1931 rent with interest before 15th August. I made an attempt to obtain reduction and enter into an agreement to pay by instalments and I received letter of 1st April, 1933 (P.19). P.19 read. I attended Kachcheri accordingly. There an agreement was entered into between me and the A. G. A. 30 and the latter wrote letter of 20th April, 1933, already produced P.15 There was further correspondence in regard to another attempt to reduce and the Executive Committee was consulted and I received letter P.20 of 21st September, 1933. P.20 read, giving me certain concessions. The concession was to extend till 30th June, 1934 according to P.20. On 1st September, 1934 I received from the A. G. A. P.21 intimating there will be no rebate from 1st July, 1934. I received letter (P.22) on 27th April, 1935, requesting me to confirm the rubber lands held by me on lease from the Crown and this land is referred to in P.22 My brothers got into 40 certain payments.

(Signed) N. M. BHARUCHA,  
District Judge.  
22.6.



*In the  
District  
Court of  
Kalutara.*

Plaintiff's  
Evidence.

No. 7.  
Simon  
Christopher  
Jayawardane,  
Re-exami-  
nation—  
*continued.*

Mr. Amarsekera objects to production of P.13 on the ground that notice of this document was given too late and he had had no time to call for inspection and the proper person is not producing the document and that he could not examine the original.

Mr. Weerasuriya says it is a certified copy of a public document.

Objection over-ruled. Document being a certified copy of a public document is admitted.

P.1-P.22 read.

Plaintiff's case closed.

DEFENCE.

10

Mr. Amarasekera is heard.

That he became aware for the first time today that plaintiff had been substituted for his father and he wants to examine the situation and lead the necessary evidence later. He also says Mr. Gunawardana is down with bronchitis.

Mr. Weerasuriya admits the genuineness of receipts D.4 and letters D.7-D.9.

Mr. Amarasekera can lead evidence on the next date regarding P.13, if necessary and also call Mr. Gunawardane to prove his reports.

Defendants to pay plaintiff Rs. 50/- as costs due to the adjournment. 20

Trial adjourned to 2nd July at 9 a.m.

(Signed) N. M. BHARUCHA,  
District Judge.  
22.6.35.

3.7.35.

Mr. D. K. GUNATILLEKE for plaintiff.

Messrs. FERNANDO and DE SILVA for 1st to 3rd defendants.

Trial is adjourned to 5th instant as the parties are not ready.

(Initialled) N. M. B.  
District Judge.  
3.7.

30

## No. 8.

## Judge's Notes on Plaintiff's Counsel's Address.

*In the  
District  
Court of  
Kalutara.*

5.7.35.

Trial resumed.

Appearances a before.

Of consent Mr. Weerasuriya is allowed to address the Court at this stage.

Deeds of gift void.

10 Permitted assigns only allowed by Crown lease para 1.  
Schedule Part 4 Covenant 10.

Ansons Contract page 14.

(Foot of page and top of 15.)

Part 6 paragraph (2).

Correspondence P.12 dated 8th March, 1912.

P.3 of 16th May, 1927.

He asked for permission but before getting he executed the deed.

Crown insisted on certain conditions.

No estoppel can arise as it is altogether void.

No prejudice either.

20 Property can be dealt with by Will.

Words used are "heirs, executors, administrators and permitted assigns."

Part 4 Covenant 10.

Otherwise dealt with.

Would this include a Will?

Not so.

General words to be read as of the same nature as words which proceed, sublet, sell, donate and mortgage.

Act intervivos, 1875, 10 Exchequer page 65.

30 At page 69 bottom and 70 top.

Words before void in the same clause.

Will comprehensive and exhaustive.

1892 Appeal cases 342 at 344 bottom and 345 top.

1885 30 Chancery Division page 393 bottom and 394 top.

Bona fide valuation.

No. 8.  
Judge's  
Notes on  
Plaintiff's  
Counsel's  
address,  
5th July,  
1935.

*In the  
District  
Court of  
Kalutara.*

**No. 9.**

**Evidence of W. M. Gunawardane.**

**W. M. GUNAWARDANE. Sworn.**

Defendants'  
Evidence.

No. 9.  
W. M. Gun-  
awardane.  
Examina-  
tion.

I am Superintendent Badugama Estate. J. P., U. P. M. In December, 1932, I visited this estate for the purpose of report. Shown D.5. I issued (D.5) this report after inspecting. I did so at the request of the 3rd defendant, G. L. Jayawardane. Later on 14th June, 1935, I inspected the estate again at the request of the 1st defendant for the purpose of valuation. I issued this report (D.6) giving the valuation. I have valued the whole property at Rs. 19,848/-. Report read. I have valued the estate on a 6 years basis. That is the general principal because of the uncertainty of the market. Even the best estates are valued on that basis. I am one of the Assessors for the Rubber Control Department. There is a 15 acre block in this estate which is referred to in my report. It is in a very bad condition. The rubber is utterly useless. It would not pay to work that portion. 10

**CROSS-EXAMINED.**

Cross-exa-  
mination.

1st defendant showed me round the estate on the 2nd occasion when I valued. I went all over the land. About 75 per cent. is good rubber. I put 15 acres as bad land. The trees on the 15 acres are all stunted. I went all over the 15 acres as I especially wanted to see it. On the first occasion I was shown the same 15 acres. No deeds or plans were produced. Previously when there was no restriction but not during the depression I valued on 7 years basis. I may have given evidence in Court about the value of property on that footing. I have not valued lands on a 10 years basis. Even Rs. 25,000/- would be also excessive. 20

**RE-EXAMINED.**

Re-exami-  
nation.

There is a rubber estate. I am a member of the Kalutara Planters Association and I am a recognised visiting Agent. I do not remember if I valued at the instance of the plaintiff to reduce the Crown Assessment. I have taken rent also into consideration. 30

(Signed) N. M. BHARUCHA,  
District Judge.

5.7

D.1-D.9 read.  
Defence closed.

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## No. 10.

## Judge's Notes on Defendants' Counsel's Address.

Mr. Amarasekera is heard.

1 Volume Smith leading cases page 32.

Waiver.

Rent accepted by the Crown from the donees.

D.7 letter dated 14th October, 1933, addressed to 1st defendant.

Wille Landlord page 176, 177.

3 Appeal cases page 115, 128.

10 4 B. L. A. page 664, 401.

17 N. L. R. page 279.

18 -do- page 222.

Deeds of gift deal with other properties.

Krause translation of Voet. page 31 section 13.

Sampayo Voet page 17.

Bawas page 160.

1910 2 Queens Bench page 32.

20 N. L. R. page 225. 238 general words.

1895 1 Queens Bench page 749.

20 5 C. W. R. page 32.

*In the  
District  
Court of  
Kalutara.*

No. 10.  
Judge's  
notes on  
Defen-  
dants'  
Counsel's  
address,  
5th July,  
1935.

## No. 11.

## Judgment.

This is a dispute between four brothers regarding devolution of title to certain leasehold interests held by their late father Mudaliyar J. V. G. Jayawardane on Crown Lease P.1 dated 29th October, 1919. The material conditions in the Lease Deed are as follows :—

(1) At the commencement it is stated that the word " Lessee " shall include heirs, executors, administrators and permitted assigns of Mudaliyar Jayawardane.

30 (2) The Lessee and his aforewritten shall not sublet, sell, donate, mortgage, or otherwise dispose of or deal with his interest in this Lease or any portion thereof without the written consent of the Lessor and every such sublease, sale, donation, or mortgage without such consent shall be absolutely void.

40 Without obtaining the consent required by the Deed of Lease Mudaliyar Jayawardane donated one-fourth share each to his four sons namely the Plaintiff and the first three defendants on deeds of gift executed about May, 1927. These deeds also deal with other properties belonging to Mudaliyar Jayawardane and create a " fidei Commissum " in favour of the children of the donees. Prior to the execution of these Deeds of Gift

No. 11.  
Judgment.  
5th July,  
1935—con-  
tinued.

*In the  
District  
Court of  
Kalutara.*

No. 11.  
Judgment.  
—continued.

Mudaliyar Jayawardane had applied for permission from the Assistant Government Agent of Kalutara and there was correspondence between the parties. Mudaliyar Jayawardane was informed that these deeds were absolutely null and void and the Crown was prepared to allow him to donate the property subject to certain conditions to be inserted in the deeds. Mudaliyar Jayawardane did not comply with this request. He died in January, 1930 leaving a Last Will admitted to Probate appointing the plaintiff his sole heir and executor subject to payment of certain Legacies which do not include the land now in dispute. The plaintiff has brought this action both as Executor of the Estate of his father and in his personal capacity. His case is that the deeds of gift are absolutely null and void and under the Will he is entitled to the entirety of the property in dispute. 10

The first question for decision is whether the deeds of gift whereby each of the four sons acquired one-fourth share are null and void. It was suggested for the defence that it was only at the instance of the Crown that these deeds could be set aside. The Crown has been made a party to the action but has taken no part in these proceedings. I am unable to uphold the defence contention. The words used in the deed are "shall be absolutely void". And in the correspondence between the parties the Assistant Government Agent pointed out to Mudaliyar Jayawardane that the Deeds executed by him without obtaining prior consent were null and void. It would be doing violence to the language used in the Indenture of Lease to say that what was intended was that sublease, sale, donation or mortgage without written consent shall be voidable at the instance of the Crown only. 20

After the death of Mudaliyar Jayawardane in the Register of Lease of Crown lands the name of the plaintiff has been inserted as Lessee and he has paid rent when he was in possession of the property. Sometime afterwards there was dispute and first defendant entered into possession and was asked to pay rent by the Crown and has actually done so on behalf of himself and the other Donees. It is stated that the Crown by accepting the rent waived its rights to enforce the clause in the Deed regarding Sub-leasing and etcetra. This argument in my opinion is not sound. In the Register the plaintiff's name has been entered as the successor in title of the original Lessee. The demand may have been made on the first defendant as he was in possession and enjoying the income from the Lease Premises. This could hardly be regarded as a waiver by the Crown to enforce its rights under the Deed of Lease. 30

The Deeds of Gift deal not only with this property but also with other lands belonging to Mudaliyar Jayawardane. There is a warranty clause in the Deeds of Gift. It is argued that the plaintiff stands in the same position as Mudaliyar Jayawardane and cannot repudiate or question the Deeds of Gift. I do not agree with this point of view. There is no question of estoppel. The Deeds are absolutely null and void in view of the clause referred to in the Crown Lease. 40

A further question now arises whether the deceased Mudaliyar Jayawardane could have dealt with this property by Last Will. It is argued for the defence that the words "otherwise dispose of or deal with

his interest in this Lease" include disposition by Last Will. These words are preceded by "shall not sublet, sell, donate, mortgage". The rule of construction is that when general words are used following particular words they must be interpreted as meaning acts of the same nature, in this case deeds inter vivos. Against this the defence Counsel has cited 20 N. L. R. pages 225 and 238. The question as to what meaning should be assigned to these general words will depend on the general construction of the whole deed. In this case in the beginning of the Lease as pointed out the word Lessee included his heirs, executors, and his permitted assigns.

10 And in the clause against alienation the concluding portion is as follows:—  
 "Every such sublease, sale, donation or mortgage without such consent shall be absolutely void". There is nothing stated about disposition by Will or by any other act. It is clear therefore that what was intended to prohibit was an assignment of the lease by an act inter vivos such sub-lease, sale, donation, or mortgage. I would therefore hold that the deceased could have dealt with this property by his Last Will.

Parties have agreed to waive all damages up to the date of trial. Any subsequent damages should form the subject matter of a separate action as no evidence has been led before the Court on the matter. In fixing the value of the subject matter of the action the plaintiff has acted on the Crown valuation of the property as on the date of the death of the deceased Mudaliyar Jayawardane in January, 1930. When the plaintiff filed the plaint Rubber restriction had come into operation and the value of the property must have since the Crown valuation gone up. The total extent is however some 57 acres odd and the value given by the plaintiff viz:— Rs. 57,000/- appears to be excessive. The plaintiff was himself misled by the Crown valuation and did not intentionally over value the subject matter of the action. I do not think that this property is worth more than Rs. 25,000/- or so. Plaintiff will be allowed costs from the defendants on the basis that the subject matter of the action is worth Rs. 25,000/-. I do not think it fair under the circumstances to order the plaintiff to pay the difference in costs, if any, between the class in which he has brought the action and the Rs. 25,000/- class.

30

Decree may be entered accordingly in plaintiff's favour with costs and damages as above stated. Documents to be filed on 10.7.

(Signed) N. M. BHARUCHA,

District Judge.

5.7.35.

*In the  
District  
Court of  
Kalutara.*

No. 11.  
Judgment.  
—continued.

*In the  
District  
Court of  
Kalutara.*

**No. 12.**

**Decree.**

No. 19043.

No. 12.  
Decree, 5th  
July, 1935.

IN THE DISTRICT COURT OF KALUTARA.

SIMON CHRISTOPHER JAYAWARDANE of Kalutara personally  
and as Executor of the Estate of the late GATE MUDALIYAR  
J. V. G. JAYAWARDANE deceased of Halkandawila - *Plaintiff*

against

(1) ALFRED CHRISTY JAYAWARDANE of Wasala Walauwa,  
Halkandawila; (2) DR. FREDRICK NICHOLAS JAYAWAR- 10  
DANE of the Municipality, Colombo; (3) GEORGE  
LLEWELLYN JAYAWARDANE of Avondale House, Avondale  
Road, Maradana; (4) THE HONORABLE, THE ATTORNEY  
GENERAL, Colombo - - - - - *Defendants.*

This action coming on for final disposal before N. M. Bharucha,  
Esquire, District Judge of Kalutara on the 5th day of July, 1935, in the  
presence of Mr. Advocate N. E. Weerasuriya, instructed by Mr. D. K.  
Goonetilleka, Proctor on the part of the Plaintiff, and Mr. Advocate  
M. T. de S. Amarasekera, instructed by Messrs. Fernando and de Silva,  
Proctors on the part of 1 to 3 defendants. It is ordered and decreed that 20  
the Plaintiff be and he is hereby declared entitled to the lands called Kajugaha  
Udumulleduwa, Kajugaha Udumulle landa, and Galagodakele more  
fully described in the schedule hereto attached.

It is ordered and decreed of consent that all damages up to the date  
of trial be and the same are hereby waived.

It is further ordered and decreed that any subsequent damages do  
form the subject matter of a separate action.

It is further ordered and decreed that the 1st, 2nd and 3rd defendants  
be ejected therefrom and that the Plaintiff be put and placed in quiet  
possession thereof. 30

And it is further ordered that the said 1st, 2nd and 3rd defendants do  
pay to the said Plaintiff his costs of this action as taxed by the Officer of  
the Court, as in a case of Rs. 25,000/- class.

(Signed) N. M. BHARUCHA,  
District Judge.

The 5th day of July, 1935.

The Schedule above referred to :—

An allotment of land called Kajugahaudumulleduwa, Kajugahaudumullelande, and Galagodakele situated at Duwegoda and Elladuwa in the District of Kalutara, Western Province and bounded on the north T. Ps 277863 and 318671, East by Kitulahitiye Kumbura claimed by Alison Appuhamy and others and Reservation for a road, South by Kitulahitiye Kumbura claimed by Allison Appuhamy and others, Kitulahitiyewatta claimed by A. Podineriya, T. P. 249617, Reservation for a road and Reservation along the foot-path and West by T. Ps 71911, 80188, 71853, **10** lots 4 and 5 in P. P. 16319 and lots 2 and 4 in P. P. 16486 and containing in extent exclusive of the Reservation for a road running through the land, Fifty seven acres three roods and thirteen perches. (Acres 57, Roods 3, Perches 13.)

(Signed) N. M. BHARUCHA,  
District Judge.

The 5th day of July, 1935.

True Copy.

(Signed) GUY O. GRENIER,  
Registrar,  
Supreme Court,  
Ceylon.

20

*In the  
District  
Court of  
Kalutara.*

No. 12.  
Decree, 5th  
July, 1935.  
—continued.

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No. 13.

List of Papers not transmitted to the Privy Council.

(Not Printed.)

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No. 13.  
List of  
Papers not  
transmitted  
to the  
Privy  
Council (*not  
printed*).



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

**No. 14.**

**Petition of Appeal of the 1st, 2nd and 3rd Defendants.**

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

No. 14.  
Petition of  
Appeal of  
the 1st, 2nd  
and 3rd  
Defendants,  
8th July,  
1935.

SUPREME COURT (Final) No. 238.L.  
1935.

No. 19043.

DISTRICT COURT KALUTARA.

SIMON CHRISTOPHER JAYAWARDANE of Kalutara personally  
and Executor of the Last Will of the late GATE MUDALIYAR  
J. V. G. JAYAWARDANE of Halkandawila - - -

*Plaintiff* 10

*Versus*

(1) ALFRED CHRISTY JAYAWARDANE of Wasala Walawwa  
and two others - - - - -

*Defendants*

*Between*

(1) ALFRED CHRISTY JAYAWARDANE of Wasala Walawwa  
Halkandawila; (2) DOCTOR FREDRICK NICHOLAS  
JAYAWARDANE of the Municipality, Colombo; (3) GEORGE  
LLEWELLYN JAYAWARDANE of Avondale House, Aven-  
dale Road Colombo - - - - -

*Defendants-Appellants*

and

20

(1) SIMON CHRISTOPHER JAYAWARDANE of Kalutara person-  
ally and Executor of the Last Will of the late GATE  
MUDALIYAR J. V. G. JAYAWARDANE of Halkandawila

*Plaintiff-Respondent*

(2) THE HONOURABLE THE ATTORNEY-GENERAL OF CEYLON,  
Colombo - - - - -

*4th Defendant-Respondent*

To

His Lordship the Chief Justice and the other Justices of the  
Honourable the Supreme Court of the Island of Ceylon.

On this 8th day of July, 1935.

30

The petition of appeal of the 1st, 2nd and 3rd Defendants-Appellants  
abovenamed appearing by Joseph Aloysius Fernando and Felix Charles  
Aloysius Domingo De Silva their Proctors carrying on business in  
partnership under the name, style and firm of Fernando and de Silva,  
states as follows:—

1. This is an action brought by the Plaintiff-Respondent against his  
three brothers the Defendants-Appellants to obtain a declaration of title,  
and an order in ejectment and damages against them in regard to an  
allotment of land fully described in the plaint, which was held on a Crown

lease by the late Gate Mudaliyar J. V. G. Jayawardane the deceased father of both the Plaintiff-Respondent and Defendants-Appellants.

2. One condition of the Crown lease inter alia was that “ the lessee shall not sub-let, sell, donate, mortgage or otherwise dispose of or deal with his interest in this lease or any portion thereof without the written consent of the Lessor or the Controller of Revenue for the time being acting for and on behalf of the Lessor, and every such sub-lease, sale, donation or mortgage without such consent shall be absolutely null and void”.

10 3. The deceased J. V. G. Jayawardane first tried to obtain the official sanction of the Lessor or designated officials in order to donate the leasehold to his four sons the Plaintiff and defendants, and having had long correspondence with the Assistant Government Agent of Kalutara who communicated with the deceased Mudaliyar J. V. G. Jayawardane on behalf of the Officials concerned and there having been long delay in arriving at the desired result of the correspondence the said Mudaliyar J. V. G. Jayawardane donated the Crown lease to his four sons viz. the Plaintiff-Respondent and Defendants-Appellants in equal shares on P1\*, D1, D2 and D3.

20 4. These gifts specially provided warranty of title by the donor to the donees and the gifts were made in each case subject to a fidei commissum.

5. After executing the four deeds of gifts the late Gate Mudaliyar J. V. G. Jayawardane informed the Assistant Government Agent of Kalutara of such execution by his letter marked P6 and in the course of further correspondence he sought to have the said deeds ratified by the Crown vide letter marked P7 in which the late Mudaliyar J. V. G. Jayawardane more or less defended his action in executing such deeds of gift.

30 6. Since the execution of the above described deeds of gift the late Gate Mudaliyar J. V. G. Jayawardane made a Last Will which was admitted to Probate in Testamentary Proceedings No. 2282 D. C. Kalutara, wherein he left the residue of his Estate to the Plaintiff-Respondent alone.

7. The Plaintiff-Respondent is seeking in this action to claim the Crown lease-hold for himself only under the Last Will ignoring the donations to all the four sons and is trying to include it into the Residuary Estate left by the said late Mudaliyar J. V. G. Jayawardane to the Plaintiff-Respondent alone by his Last Will.

40 8. The Defendants-Appellants filed answer claiming 3/4 shares of the lease-hold donated to them maintaining that the gifts were valid though no sanction of the official authorities had been previously obtained for such donations, that it was not the intention of the Testator to give the entire Crown lease-hold at any time to the Plaintiff-Respondent alone, that the Plaintiff-Respondent as Executor of his father's Last Will was bound to warrant and defend the title donated by the Testator, that the donations made without the official sanction was not ab initio void but it was voidable

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

No. 14.  
Petition of  
Appeal of  
the 1st, 2nd  
and 3rd  
Defendants,  
8th July,  
1935—con-  
tinued.

\* Note.—  
This should  
be P4.

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

No. 14.  
Petition of  
Appeal of  
the 1st, 2nd  
and 3rd  
Defendants,  
8th July,  
1935—con-  
tinued.

only at the instance of the Lessor (the Crown) and that that objection was not open to the Plaintiff-Respondent, that the land which had been valued by the Plaintiff-Respondent at Rs. 57,500/- was excessively valued and that it was worth only Rs. 25,000/-, inter alia.

9. The case was heard on the 22nd June 1935 and 5th July 1935 and after hearing, the learned District Judge entered judgment for Plaintiff with costs and without damages on waiver on the said 5th day of July, 1935.

10. The Defendants-Appellants are aggrieved by the findings of the learned District Judge and beg to appeal therefrom to Your Lordships' Court on the following grounds among others that may be urged by Counsel at the hearing of this appeal. 10

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

(b) The learned District Judge is wrong in holding (a) that the donations were void, and not voidable, (b) that it was open to the Plaintiff-Respondent to raise the question of the validity of the deeds and (c) that it was not the privilege of the lessor (the Crown) alone to raise the question as to whether the donations were valid.

(c) The learned District Judge is again wrong in holding that the Plaintiff-Respondent as Executor of the Donor is not precluded from questioning the title donated by the Testator. 20

(d) The learned District Judge is faulty in his construction of the words of prohibition viz. "shall not sub-let sell, donate, mortgage or otherwise dispose of, or deal with" and he has further misinterpreted the avoidance of repetition of all the words of prohibition in the declaration that prohibited alienations and dispositions were null and void.

(e) The learned District Judge should have treated the donations and the Last Will both as prohibited dispositions of the same nature and as special reservations made for the benefit of the Crown only by way of a forfeiture. 30

(f) The learned District Judge has attached undue importance to the entry made by a Kachcheri clerk in the register of Crown leases in the Kachcheri to the effect that the Plaintiff-Respondent is the Successor in title of the lessor. It is obvious that when the Plaintiff-Respondent produced the Probate in the Kachcheri as Executor the entry must have been made by the Kachcheri clerk. No evidence was forthcoming at the trial under what circumstances the Kachcheri clerk made the entry. It was certainly no indication of the attitude of the Crown in recognizing the lawful heirs of Mudaliyar J. V. G. Jayawardane regarding the rights to the Crown lease in the absence of any positive evidence on the point. 40

(g) The learned District Judge has entirely misconceived the effect of the Crown having been made a party to this case. His Honour observes however that the Crown has taken no part in these proceedings and he has not followed up his own reasoning to its logical conclusions.

When the Crown is made a party and the Crown does not avail itself of the opportunity to enforce the forfeiture provided in the lease, which is admittedly its privilege, the irresistible conclusion would be that the Crown is not interested in enforcing the forfeiture.

When the Crown as lessor has declined to enforce the forfeiture by filing answer, it is submitted for Your Lordships' consideration, that the law will not permit a third party to avail itself of the forfeiture by committing a breach of contract in refusing to warrant and defend the title donated by the Testator.

10 (h) The learned District Judge has entirely failed to give any effect to the fidei commissum attaching to the deeds of gift.

Wherefore the Defendants-Appellants pray that the judgment of the learned District Judge may be set aside, that this action be dismissed with costs in both courts, or that such other order be made as to Your Lordships' court may seem meet.

(Signed) FERNANDO & DE SILVA,  
Proctors for Defendants-Appellants.

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

No. 14.  
Petition of  
Appeal of  
the 1st, 2nd  
and 3rd  
Defendants,  
8th July,  
1935—*con-  
tinued.*

**No. 15.**

**Decree and Judgment.**

20 EDWARD THE EIGHTH, BY THE GRACE OF GOD OF GREAT BRITAIN IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS KING, DEFENDER OF THE FAITH, EMPEROR OF INDIA.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

S.C. (Final) No. 238.  
1935.

S. C. JAYAWARDANE of Kalutara personally and Executor of the Last Will of the late GATE MUDALIYAR J. V. G.  
JAYAWARDANE - - - - - *Plaintiff-Respondent*  
against

No. 15.  
Decree and  
Judgment,  
4th Decem-  
ber, 1936.

Decree.

30 (1) A. C. JAYAWARDANE; (2) DR. F. N. JAYAWARDANE  
(3) G. L. JAYAWARDANE - - - - - *Defendants-Appellants.*

Action No. 19043.

IN THE DISTRICT COURT OF KALUTARA

This cause coming on for hearing and determination on the 24th and 25th days of November, 1936, and on this day, upon an appeal preferred by the defendants before the Honourable Mr. F. A. Moseley, M.C., and the Honourable Mr. V. M. Fernando, Puisne Justices, of this Court, in the presence of Counsel for the Appellants and Respondent.

40 It is considered and adjudged that the Decree made in this action by the District Court of Kalutara and dated the 5th day of July, 1935, be and the same is hereby set aside, and the plaintiff's action is dismissed.

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

No. 15.  
Decree and  
Judgment,  
4th Decem-  
ber, 1936—  
*continued.*  
Judgment.

And it is further ordered and decreed that the plaintiff-respondent do pay to the 1st to 3rd defendants-appellants their taxed costs of this action in the said District Court and of this appeal.

Witness the Honourable Sir Sidney Solomon Abrahams, Knight, Chief Justice, at Colombo, the 4th day of December, in the year of our Lord One thousand Nine hundred and thirty six, and of Our Reign the First.

(Signed) GUY O. GRENIER,  
Registrar, Supreme Court.

(SEAL)

10

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

S. C. (F) No. 238.  
1935.

D. C. Kalutara No. 19043.

Present : MOSELEY J. and FERNANDO A.P.J.

Counsel : H. V. PERERA, CHITTY, and COLVIN R. DE SILVA for one to three defendants-appellants.

WEERASURIYA and JAYAWARDANE for plaintiff-respondent.

Argued : 24th and 25th November, 1936.

Delivered on : 4th December, 1936.

20

Fernando,  
A. P. J.

FERNANDO, A. P. J.

The plaintiff and 1-3 defendants are brothers all four being sons of the late Mudaliyar J. V. G. Jayawardane. In 1919 lease P.1 was entered into between the Crown and Mudaliyar Jayawardane, and by that lease the Crown leased the land referred to therein to the Mudaliyar in perpetuity, subject to various conditions among which was covenant No. 10 in P.1 to the effect that the lessee shall not sublet, sell, donate, mortgage or otherwise dispose of or deal with his interest in the lease without written consent of the lessor and that every such sublease, sale, donation and etcetra without such consent shall be absolutely void.

30

On the 16th May, 1927, the Mudaliyar by letter P.3 applied for permission to gift his rights under the lease to his four sons, and certain correspondence followed between him and the Assistant Government Agent of Kalutara. On the 30th May, 1927, the Mudaliyar executed four deeds of gift in terms similar to P.4 in favour of his four sons giving each a one-fourth share of his interest in the leased premises, and on the 15th August, 1927, by letter P.6, the Mudaliyar sent to the Assistant Government Agent a copy of one of the deeds executed by him. On the 8th March, 1928, the Assistant Government Agent wrote to the Mudaliyar letter P.12 stating inter alia that the deeds of gift already executed are invalid by reason of the fact that consent of Government had not been given. Government, however, was willing to consent to the donation on certain conditions, but the Mudaliyar did not comply with the requirements set out in the correspondence between him and the Assistant Government Agent. On the 28th October, 1928, the Mudaliyar executed a Last Will P.2 by which he devised and bequeathed all his property of whatever

40

kind, movable and immovable nothing excepted to the plaintiff, but no express mention is made in that document of the lease in question, and the Mudaliyar died on the 19th January, 1930, leaving this Last Will. The plaintiff now brings this action to have it declared that he as executor of the Will and as devisee under it, is entitled to the possession of the Land which is the subject of the lease, on the footing that the deeds of gift in favour of himself and the three defendants were executed without the written consent of the Lessor, and are therefore void in view of the condition which has been referred to above. He also asked that the

10 defendants be ejected, and claimed certain damages.

The learned District Judge held that the deeds of gift were absolutely null and void in view of the clause referred to, that the plaintiff was entitled to the premises as claimed by him, and he entered judgment in his favour accordingly, with damages and costs. The main contention put forward by Counsel on behalf of the appellants was that the deeds of gift did not become absolutely void by the operation of Covenant No. 10, and that it was necessary for the Crown to ask for a cancellation of those deeds before the deeds would cease to be operative. In other words, Counsel argued that Covenant No. 10 in effect merely provided that any donation

20 without the consent of the Lessor would be voidable at the Lessor's instance. He also argued that the plaintiff as executor represents the deceased Mudaliyar and would be considered his heir under the Roman Dutch Law, and that as such heir he is bound to abide by the donation and cannot himself impeach it. Counsel for the respondent, on the other hand argued that by the operation of Covenant No. 10, the donation would be a nullity.

Wille in "Landlord and Tenant" 1st edition, Page 156 states that where there has been an express agreement between the landlord and the tenant, that the tenant may not sublet or assign without the consent of the landlord in writing, a sublease or assignment made by the tenant without

30 having first obtained the written consent of the landlord is of no effect as against the landlord who will be entitled to cancellation of the alleged sublease or assignment. Such an agreement may however be waived by the landlord to the extent that his verbal consent will be sufficient to render a sublease or assignment effectual, and in page 155 he states that, "if the tenant purports to sublet or assign, such sub-lease or assignment is of no force or effect whatever against the landlord, and the landlord is entitled to cancel the sub-lease or assignment whether the lease contained a special agreement to that effect or not". This being the law in South Africa, it would appear that it is left to the lessor to take appropriate

40 action on a breach of the covenant, and that it is open to him to consider the donation without his consent as of no effect, but the question that arises here is whether the donor himself or his executor can claim that the donation made by the lessees is inoperative. Sands in his Treatise on "Restraints on Alienation" at page 269 states that the heir of a person who has alienated property which is by will prohibited from alienation is bound to abide by such alienation, and cannot impeach it according to the rule, "the heir must take upon himself all acts of the person whom

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

No. 15.  
Decree and  
Judgment,  
4th Decem-  
ber, 1936.  
Fernando,  
A. P. J.—  
*continued.*

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

No. 15.  
Decree and  
Judgment,  
4th Decem-  
ber, 1936.  
Fernando,  
A. P. J.—  
*continued.*

he succeeds for he receives his wealth from him," and the heir is regarded as one and the same person with the deceased, and Counsel argued that a gift would come under the same principles. Of course Sande is here dealing with restraints upon alienation of immovable property created by a will, but there does not seem to be any reason why the same principles should not apply in the case of a donation contrary to the provisions of a lease for the reason, that the proposition of law stated by him is based on the rule, and the rule itself that the heir must take upon himself all acts of the person whom he succeeds is expressed in the widest possible meaning. Counsel also referred to a passage from Sampson. "Translation 10 of Voet," Title 6, Chapter 1, section 17 and 18, to the effect that the seller cannot himself vindicate property belonging to another, but which had been sold by him on the ground that he is not the owner, even if the seller had subsequently become the owner, or is heir of the true owner, and here again the rule is that no one ought to gainsay his own act. It must also be noted that by clause 2 of the general provisions of the lease, it is provided that if any breach is committed by the lessee of any of the covenants on the lessee's part (and covenant 10 comes within the lessee's covenant) then this demise and the privileges thereby reserved shall forthwith cease and determine, and the lessor may thereupon enter into the said premises, and the said premises shall forthwith revert to the Crown, and this clause was 20 relied on by Counsel for the Appellants as showing that it was for the Crown to claim that the donations were contrary to the covenant, and that therefore, the land had reverted to the Crown. The evidence in this case indicates that the Crown does not propose to claim a reversion as a result of the donations by the Mudaliyar, and Counsel then argues that in the absence of any claim by the Crown, the donations must be regarded as good and operative between the parties. It may also be mentioned here that the Crown has accepted the rent due on the lease in some instances from the plaintiff, and in some instances from the defendants, being 30 apparently contented to leave the question to be decided as between the parties themselves.

In the case of *Perera v. Perera* 10 N. L. R. 230, this Court dealing with a clause of forfeiture in a lease for non-payment of rent on the due date, stated that such a clause was only intended as security for the due payment of the rent, and that both under the English Law, and the Roman Dutch Law, a lessee was entitled to relief against such forfeiture, and reference is made to the earlier *Perera v. Thaliff* 8 N. L. R. 118. It was there held, that the Court would grant a lessee relief against a provision in the lease giving the lessor a right to claim cancellation in the event of a breach of a stipulation by the lessee, in a case where the breach thereof did not involve 40 a notably graven and damnifying mis-use of the property leased and went on to state that the nature of the mis-use, and the question whether it should be punished by a cancellation or by condemnation in damages is entirely a matter that must be left to the discretion of the Court. It is not necessary to refer to all the cases, but I might refer to the case of *Banda v. Fernando* 6 C. W. R. 161 where it was held that the failure of a party to

carry out an express stipulation in a lease which provided that such failure shall entitle the lessor to cancellation would ordinarily be looked upon by the Court as the breach of an essential stipulation which would entitle the lessor to an order cancelling the lease, unless there are equitable grounds for allowing relief against such cancellation. There in fact, this Court in appeal gave relief to the defendant whose lease had become liable to be set aside subject, however, to certain terms which were laid down by the Court. Considering the principles laid down in these cases, and the authorities cited, I come to the conclusion that the effect of a clause in terms of  
 10 covenant No. 10 is not of itself to affect the operation of a deed of gift like the one we are considering, but merely to provide that in appropriate circumstances, such a deed may be set aside by a Court of Law, and that appropriate steps to secure such an Order from Court must be taken by one of the parties to the lease. The lessor may bring an action to secure a cancellation of the lease if he so desires, but till the lease is cancelled, the deed of gift must remain operative as between the parties. I would also hold that under our Law, a person in the position of the plaintiff who is the executor under the will of the Mudaliyar, and the devisee of his residuary estate is bound to abide by a donation made by the deceased and cannot  
 20 vindicate the property from the donee.

With regard to the effect of the covenant in question, I might also refer to the judgment of de Sampayo J in *Silva v. Mohamudu* 19 N. L. R. 426. He refers at length to the South African case of *Braytenback v. Frankil* 1913 S. L. R. App. Div. 390, and observes that even in the case of void contracts, (as distinguished from those that are merely voidable) the universal practice in Holland was to apply for restitution and as Lord de Villiers observed in the course of the argument what was the universal practice in Holland must be taken to be the Law with us. Thus it appears  
 30 that a person cannot be judge in his own cause, and that where he wished to get rid of the effect of his own act, he must seek the assistance of the Court.

In view of the conclusion at which I have arrived, it is not necessary to discuss the other questions that were argued before us. The appeal of the 1st to 3rd defendants is allowed, the Decree of the District Court is set aside, and plaintiff's action is dismissed with costs, here and in the Court below.

(Signed) V. M. FERNANDO,  
Acting Puisne Justice.

40 MOSELEY J.  
I agree.

Moseley J.

(Signed) F. A. MOSELEY,  
Puisne Justice.

True Copy  
(Signed) GUY O. GRENIER,  
Registrar, S. C.

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

No. 15.  
Decree and  
Judgment,  
4th Decem-  
ber, 1936.  
Fernando,  
A. P. J.—  
*continued.*



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

No. 16.

No. 16.

**Notice to First Respondent of Intention to Appeal to the Privy Council,  
17th December, 1936**

*(Not printed.)*

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No. 17.

No. 17.

**Notice to 2nd, 3rd and 4th Respondents of Intention to Appeal to the Privy Council,  
17th December, 1936.**

*(Not printed.)*

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No. 18.  
Letter from  
the  
Attorney  
General to  
the  
Registrar of  
the Supreme  
Court, 15th  
December,  
1936.

No. 18.

**Letter from the Attorney General to the Registrar of the Supreme Court.** 10

No. C. 80/35.

Colombo, December 15th, 1936.

*S.C. No. 238(F) D.C. Kalutara 19043.*

Sir,

With reference to the notice served on me by the petitioner in the matter of an application for conditional leave to appeal to His Majesty the King in Council against the judgment of the Supreme Court in the above stated action, I have the honour to state that I have no cause to show as no relief has been claimed against me.

I am, Sir,

Your obedient Servant,

(Signed) R. R. CROSSETTE THAMBYAH,  
for Attorney-General.  
KA.

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The Registrar,  
Supreme Court.

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No. 19.

No. 19.

**Application for conditional leave to appeal, 10th December, 1936.**

*(Not printed.)*

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No. 20.

Decree granting conditional leave to appeal, 19th January, 1937.

(Not printed.)

In the  
Supreme  
Court of  
the Island  
of Ceylon.

No. 20.

No. 21.

Security Bond, 13th February, 1937.

(Not printed.)

No. 21.

No. 22.

Application for final leave to appeal, 13th February, 1937.

(Not printed.)

No. 22.

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No. 23.

Decree Granting final leave to appeal to the Privy Council.

GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN,  
IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS KING,  
DEFENDER OF THE FAITH, EMPEROR OF INDIA.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

SIMON CHRISTOPHER JAYAWARDENA of Kalutara personally  
and as Executor of the Last Will of the late GATE  
MUDALIYAR J.V.G. JAYAWARDENE of Halkandawela

*Plaintiff-Petitioner*

No. 23.  
Decree  
granting  
final leave  
to appeal  
to the  
Privy  
Council,  
15th March,  
1937.

20

against

(1) ALFRED CHRISTY JAYAWARDENE of Wasala Walauwa,  
Halkandawela; (2) Dr. FREDERICK NICHOLAS JAYA-  
WARDENE of the Municipality, Colombo; (3) GEORGE  
LLEWELLYN JAYAWARDENE of Avondale House, Avondale  
Road, Colombo; (4) The HONOURABLE the ATTORNEY-  
GENERAL of CEYLON, Colombo - - - *Defendants-Respondents.*

DISTRICT COURT OF KALUTARA.

Action No. 19043.

(S.C. Final No. 238).

In the matter of an Application by the Plaintiff-Petitioner above-named  
30 date 13.2.37 for Final Leave to Appeal to His Majesty the King in Council  
against the decree of this Court dated 4.12.36.

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

This matter coming on for hearing and determination on the 15th day of March, 1937, before the Honourable Mr. Kenneth Elliston Poyser, K.C., and the Honourable Mr. Francis Joseph Soertsz, K.C., Puisne Justices of this Court, in the presence of Counsel for the Petitioner and the Respondents.

No. 23.  
Decree  
granting  
final leave  
to appeal  
to the  
Privy  
Council,  
15th March,  
1937—con-  
tinued.

The Petitioner having complied with the conditions imposed on him by the Order of this Court dated the 19th January, 1937, granting Conditional Leave to Appeal.

It is considered and adjudged that the Applicant's Application for Final Leave to appeal to His Majesty the King in Council be and the same is hereby allowed. 10

Witness the Honourable Sir Sidney Solomon Abrahams, Knight, Chief Justice, at Colombo, the Fifteenth day of March, in the year of our Lord One thousand Nine hundred and Thirty Seven, and of Our Reign the First.

(Signed) GUY O. GRENIER.  
Registrar, Supreme Court.

(Seal)

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## EXHIBITS.

Exhibits.

Plaintiff's list of documents.1st, 2nd and 3rd Defendants' list of documents.

## P. 1.—Lease from the Crown to J. V. G. A. Jayawardana.

No. 29.

P. 1.  
Lease from  
the Crown,  
29th Octo-  
ber, 1919.

This Indenture, made on the dates specified on page 2, between His Excellency Sir William Henry Manning, K.C.M.G., K.B.E., C.B., Governor of Ceylon (hereinafter called "the Lessor," which expression shall include his successor in office for the time being), acting herein for and on behalf of  
 10 His Majesty King George the Fifth, his heirs and successors of the one part, and John Vincent Gomes Abeysinghe Jayawardana, Gate Mudaliyar of Kalutara North (hereinafter called "the Lessee," which expression shall include his heirs, executors, administrators, and permitted assigns), of the other part :

*Witnesseth*, that in consideration of the sum of Rupees One thousand One hundred and nine and Cents Twenty (Rs. 1109.20) and of the rents hereinafter reserved and of the Covenants on the part of the Lessee hereinafter contained, the Lessor doth hereby demise unto the Lessee, subject to such exceptions and reservations as are hereinafter contained, all that  
 20 allotment of Crown Land called Kajugahaudumulleduwa, Kajugahaudumullelanda and Galagodakele. In Duwegoda Village, Maggon Badda, Kalutara Totamune and Eladuwa Village, Iddagoda Pattu, Pasdun Korale West, in the District of Kalutara, Western Province, containing in extent Fifty seven Acres, Three Roods, and Thirteen Perches (A.57, R.3, P.13), and more particularly described in the first part of the Schedule hereto annexed, together with all ways, rights, easements and appurtenances thereto belonging. Except and reserving to the Crown out of this demise  
 30 all mines, plumbago, gold, silver, precious stones, iron, tin, lead, and all petroleum, rock oil, mineral oil, coal, shale, or other deposit or formation from which any such oil may be obtained (which said petroleum, rock oil, mineral oil, coal, shale, or other deposit or formation as aforesaid shall hereinafter in these Presents be deemed to be included and comprised in the term "minerals"), and all other minerals or metals of whatsoever nature, or the ores thereof, in, under, or upon the said premises or any part thereof, together with all right to mine, search, and prospect for the same, and all other powers and privileges necessary or requisite for discovering or working such mines, or procuring, smelting, and carrying away such plumbago, gold, silver, precious stones, iron, tin, lead and all other minerals or metals of whatsoever nature, or the ores thereof. And except and reserving further  
 40 to the Crown out of this demise the right to quarry for and take and remove from the premises hereby demised, or any part thereof, all gravel and metal that the Crown may hereafter require for the purpose of metalling any public road, or in or for the construction of any public work, and so that the Lessee shall not be entitled to any compensation for loss sustained by means of the exercise of the right herein reserved; but provided that he shall be

Exhibits.  
 —  
 P. 1.  
 Lease from  
 the Crown,  
 29th Octo-  
 ber, 1919—  
*continued.*

entitled to claim a reduction of the rent herein reserved in proportion to the extent of land affected by the exercise of the said right. Provided always, and it is hereby expressly agreed and declared, that the Lessor, his agent, servants, and workmen, may at any time hereafter, upon giving to the Lessee one month's notice in writing of their intention so to do, enter upon the said demised premises or any part thereof, and execute and carry out any of the purposes or works contemplated by the reservations hereinbefore contained, and subject to such several exceptions and reservations.

To Hold the said premises unto the Lessee for the term mentioned in the second part of the said Schedule, yielding and paying the rent mentioned in the third part of the said Schedule. And the Lessee doth hereby covenant with the Lessor as in the fourth part of the said Schedule is expressed. And it is also agreed and declared by and between the said parties hereto as in the fifth and sixth parts of the said Schedule is expressed. And it is declared that the said Schedule shall be deemed part of these Presents and be read and construed accordingly. 10

(Signed) J. V. G. JAYAWARDANE,  
 Signature of Lessee.

Witness to the Signature of the Lessee at Kalutara this twenty-ninth day of October, One thousand Nine hundred and nineteen. 20

(1) (Signed) A. ALWIS,

(2) (Signed) ERNEST GUNAWARDANE,

(Signed) W. H. MANNING,

Signature of His Excellency the Governor.

I certify that the above signature, attached by means of a stamp under the provisions of Ordinances No. 11 of 1884, No. 30 of 1884, and No. 15 of 1915, has been so attached in my presence at Colombo, this twenty-third day of February, One thousand Nine hundred and twenty.

(Signed) ROBERT TREFUSIS,  
 Private Secretary to the Governor. 30

Lease Plan No. 1566.  
 R.G.

*Plan  
 not  
 Printed.*

Sheet 0 2

29.37.A.

Field Book No. 29III.P.23.

Kitalahitiya

kumbura claimed

by D. Suta & others.

Kitalahitiya

kumbura claimed

by Alison Appuhami  
 & others. 40

Kitalahitiyawatta claimed  
 by A. Podineriya.

Chains.

Scale of 8 chains to an inch.

## PLAN

of an allotment of land called Kajugahaudumulleduwa, Kajugahaudumullelanda and Galagodakele in Duwegoda Village, Maggon Badda, Kalutara Totamune and Eladuwa Village, Iddagoda Pattu, Pasdun Korale West, Kalutara District, Western Province.

Exhibits.

P. 1.  
Lease from  
the Crown,  
29th October,  
1919—  
*continued.*

Bounded as follows :—

North by T. Ps. 277863 and 318671.

East by Kitalahitiyakumbura claimed by D. Suta and others and Alison Appuhami and others and Reservation for a Road.

10 South by Kitalahitiyakumbura claimed by Allison Appuhami and others, Kitalahitiyawatta claimed by A. Podineriya, T. P. 249617, Reservation for a Road and Reservation along the Foot Path.

West by T. Ps. 71911, 80188, 71850 and 71853, Lots 4 and 5 in P.P. 16319 and Lots 2 and 4 in P.P. 16486.

Containing in Extent.

A.	R.	P.
57.	3.	13.

Acres Fifty-seven, Roods Three and Perches Thirteen.

Exclusive of the Reservation for a Road passing through the land.

Applied for A. G. A's 600

20 5.7.1918

Drawn by. Initialled. Illegible.

Written by „ Illegible.

Examined by „ Illegible.

Registered by „ Illegible.

Surveyor-General's Office.

Colombo, 24th August, 1918.

(Signed) W. C. S. INGLES,  
Surveyor-General.

The schedule above referred to.

30 PART I.—THE LAND DEMISED BY THIS LEASE.

All that allotment of Crown land called Kajugahaudumulleduwa, Kajugahaudumullelanda and Galagodakele, in Duwegoda Village, Maggon Badda, Kalutara Totamune and Eladuwa Village, Iddagoda Pattu, Pasdun Korale West, Kalutara District, Western Province.

Bounded as follows :—North by T. Ps. 277863 and 318671.

East by Kitalahitiyakumbura claimed by D. Suta and others and Allison Appuhami and others and Reservation for a Road.

40 South by Kitalahitiyakumbura claimed by Allison Appuhami and others, Kitalahitiyawatta claimed by A. Podineriya, T. P. 249617, Reservation for a Road and Reservation along the Foot Path.

West by T. Ps. 71911, 80188, 71850 and 71853, Lots 4 and 5 in P.P.16319 and Lots 2 and 4 in P.P.16486, containing in extent—Exclusive

Exhibits.  
 P. 1.  
 Lease from  
 the Crown,  
 29th Octo-  
 ber, 1919—  
*continued.*

of the Reservation for a Road passing through the Lane—Fifty-seven Acres, Three Roods and Thirteen Perches (A.57, R.3, P.13), and more particularly delineated and described in Lease Plan No. 1566 dated the 24th day of August, 1918, authenticated by W. C. S. Ingles, Esquire, Surveyor General.

#### PART II.—DURATION OF LEASE.

The Lessee shall hold the said Crown land in perpetuity, subject to the provisions hereinafter contained in Parts III, IV, V and VI hereof.

#### PART III—RENT

Rent in manner following shall be payable annually in advance to the Assistant Government Agent of the Kalutara District of the Western Province, at the Kalutara Kachcheri, on the Tenth day of June of each and every year. 10

During the first period of thirty years the rent for the first six years shall be Rupees Two hundred and Ninety (Rs. 290,00) per annum, and for the remaining twenty-four years thereof Rupees Eight hundred and Seventy (Rs. 870,00) per annum. Thereafter, during each successive period of thirty years, such annual rent as the said Assistant Government Agent shall fix for each such period. Provided that he shall not increase the rent payable during any period by more than fifty per cent. of the rent paid during the preceding period of thirty years; and also provided that the rent during the first period of thirty years shall be reckoned at Rupees Eight hundred and Seventy (Rs. 870.00) per annum. 20

#### PART IV.—COVENANTS.

1. That the Lessee and his aforewritten shall and will pay the said annual rents at the rates and dates as herein appointed, and shall also pay all rates, taxes, assessments, and outgoings whatsoever now payable or which shall become payable in respect of the premises demised.

2. The Lessee shall during each year of the first five years from the date hereof clear and plant at least one-tenth of the said land with Rubber and Coconut but not with any other product save with the written consent of the Government Agent of the Province for the time being in that behalf first had and obtained. He shall clear and plant as aforesaid at least one-fourth of the total area during the next following five years. The Lessee, whenever he shall clear any part of the premises, shall forthwith plant the same in manner aforesaid. 30

3. In the event of the Lessee failing from any cause whatever to clear and plant the said land or any portion thereof within the periods specified in the preceding clause, the Lessee shall become liable to pay to the Government Agent double the rental per annum from the period between the seventh and thirtieth years of the first period of thirty years provided for in Part III of this Lease for the whole area of land not clearly brought under cultivation in terms of Clause 2 herein. 40

4. In the event of the Lessee failing to clear and bring into cultivation the land as provided in Clause 2 herein, it shall be optional for the Lessee to resign, surrender, and release the whole land instead of payment of double rent as stipulated and provided for in Clause 3 herein, and to apply for a new lease for the portion brought under cultivation by him. The Lessor shall have the right to grant a new Lease for such portion or not as he shall think fit.

Exhibits.  
—  
P. 1.  
Lease from  
the Crown,  
29th Octo-  
ber, 1919—  
*continued.*

5. The Lessee shall and will pay to the said Government Agent before the execution of these Presents the rent for the first year of the term hereof, and subsequent payment shall be made in advance at intervals of one year from that date.

6. In case of non-payment of any annual instalment of rent or any part thereof, or of any double rent due under Clause 4 hereof, for the space of thirty days after the time hereby appointed for payment thereof, whether the same shall have been lawfully demanded or not, such instalment of rent shall carry interest at the rate of nine per centum per annum till payment in full.

7. In the event of any instalment of rent, or of any double rent under Clause 4 hereof, being in arrear for the space of more than one year, whether the same shall have been lawfully demanded or not, the said Government Agent shall be at liberty to declare the Lease forfeited to the Crown, and the said land and premises, together with its plantations and improvements, shall revert to and become the absolute property of the Crown, without any claim to compensation therefor on the part of the Lessee. The said Government Agent shall after such declaration be entitled to re-sell the said Lease.

8. The Lessee shall not, without the written consent of the Lessor or of the said Government Agent or otherwise than in accordance with the conditions of such consent, erect any permanent building upon the said land, other than structures which may be necessary for the proper cultivation of the said land, such as factories, stores, superintendent's bungalow, hospital, dispensary, cooly lines, or other buildings, necessary for the agricultural industry to be carried on under this Lease (including in each case the respective appurtenances thereof), and any breach of this condition shall entitle the Lessor to terminate this Lease forthwith, and the said land and premises, together with all plantations and improvements, shall thereupon revert to and become the absolute property of the Crown.

9. The Lessee shall permit the Lessor, his agent or agents, or surveyors, at all reasonable hours of the day during the continuance of this Lease, to enter upon the said land for the purpose of inspecting the condition thereof.

10. The Lessee and his aforewritten shall not sub-let, sell, donate, mortgage, or otherwise dispose of or deal with his interest in this Lease, or any portion thereof, without the written consent of the Lessor, and every such sub-lease, sale, donation, or mortgage, without such consent, shall be absolutely void.



Exhibits.

## PART V—THE LESSOR'S COVENANT.

P. 1.  
Lease from  
the Crown,  
29th Octo-  
ber, 1919—  
*continued.*

If the Lessee shall be desirous, in view of the growth of population and the development of new industries in the vicinity, to construct buildings other than those provided for in this Lease, it shall be competent to the Lessee to surrender the portion of land required for such building purposes to the Lessor, if the Lessor shall grant him a fresh Lease of the portion so surrendered and intended to be built upon or opened up as a township, on such terms and conditions as may be agreed upon.

## PART VI.—GENERAL PROVISIONS.

In the event of proceedings being taken under Ordinance No. 3 of 1876 10  
for the acquisition of any portion of land included in this Lease, it is specially agreed by and between the parties that the compensation to be paid shall be a sum which shall bear the same proportion to the premium paid at the sale of this Lease as the extent of the portion to be acquired bears to the total extent of the land leased, together with a further sum representing the difference between the value of the portion of land to be acquired as appraised at the date of the Lease and the enhanced value due to cultivation and improvements effected by the Lessee. This latter sum, if the Govern-  
ment Agent acting on behalf of the Lessor and the Lessee are unable to agree 20  
on its amount, shall be determined by two arbitrators, to be nominated respectively by the Government Agent acting as aforesaid and the Lessee; and if they differ between themselves, by an umpire to be chosen by them before they proceed to determine the amount.

2. That if any rent hereby reserved shall remain unpaid and in arrear for the space of more than one year after the time hereby appointed for pay-  
ment thereof, whether the same shall have been lawfully demanded or not,  
or if any breach shall be committed by the Lessee of any of the Covenants  
herein on the Lessee's part contained, or if the Lessee shall abandon or  
cease to cultivate the said land in manner provided in Part IV. of this  
Lease, or if the Lessee shall become bankrupt or compound with his creditors, 30  
or if the said land or the interests of the Lessee or his aforewritten be sold in  
execution of a decree against him or his aforewritten, then, and in any of the  
said cases, this demise and the privileges hereby reserved, together with  
these Presents, shall forthwith cease and determine, and the Lessor, his agent  
or agents, may thereupon enter into and upon the said land and premises,  
or any part thereof in the name of the whole, and the same have, re-possess,  
and enjoy as in his former estate, and the said land and premises shall  
forthwith revert to the Crown, without any claim on the part of the Lessee  
or his aforewritten against the Lessor for compensation on account of any  
improvements or otherwise howsoever. 40

**P. 3.—Letter—Mudaliyar J. V. G. Jayawardene to Assistant Government Agent, Kalutara.** Exhibits.

No. 368.

The Assistant Government Agent,  
Kalutara.

Wasala Walauwa,  
Paiyagala, 16th May, 1927.

P. 3.  
Letter,  
Mudaliyar  
J. V. G.  
Jayawardene to  
Assistant  
Government  
Agent,  
Kalutara,  
16th May,  
1927.

*Lease in perpetuity.*

Sir,

I have the honour to inform you that it is my intention to gift my  
10 rights to the lots described in Lease Bond 29 (Folio 3) to my four sons  
Alfred Christie, Frederick Nicholas, Simon Christopher, and George  
Llewellyn in equal shares reserving a life interest to myself and subject to  
the conditions therein stipulated.

I beg you to obtain for me the necessary permission to do this.

I beg to remain, Sir,

Your obedient Servant,

(Signed) J. V. G. JAYAWARDANE.

Copied by :—Initialled. R.D.S.

Checked by :—Initialled. P.R.

20

True Copy.

(Signed) Illegible.

for Assistant Government  
Agent, Kalutara.

---

**D. 1.—Deed of Gift to Frederick Nicholas Jayawardene.**

Prior Registration :—A203/6, 136/223, C32/397, 35/288, A235/288, 247/187,  
271/124, C12/67, Nil, A210/303, 210/304, Nil. Search dispensed with.

No. 175.

To all to whom these presents shall come JOHN VINCENT GOMIS  
ABEYSINGHE WICKREMARATNE JAYAWARDENE of "Wasala Walauwa"  
30 Paiyagala, in the District of Kalutara in the Island of Ceylon, Esquire,  
Mudaliyar of the Governor's Gate, Justice of the Peace and Unofficial  
Police Magistrate.

D. 1.  
Deed of  
Gift to  
Frederick  
Nicholas  
Jayawardene, 27th  
May, 1927.

Sends greeting.

Whereas under and by virtue of Deeds Nos. 35 and 36 both dated  
5th August, 1905, 157 dated 16th May, 1907, 158 dated 2nd June, 1907,  
166 dated 29th August, 1907, 183 dated 30th April, 1908, 237 dated 29th  
July, 1909, 239 dated 30th August, 1909, 252 dated 4th February, 1910, 268  
dated 31st June, 1910, 318 and 319 both dated 3rd July, 1911, and all  
attested by C. A. L. Orr of Kalutara Notary Public, and Crown Grant Nos.

Exhibits. 50922 and 50923 both dated 20th July, 1912, and Nos. 51166 and 51169 both dated 7th December, 1912, and No. 51588 dated 26th January, 1914, Henrietta Maria Gomis Abeyesinghe Jayawardene, Lama Etana, late of Kalutara North, was, during her lifetime, seized and possessed of or was otherwise well and sufficiently entitled to all those several contiguous allotments of land situated in Duwegoda Halkandawila and Eladuwa in the District of Kalutara forming one property and called and known as "Llewellyn's Estate," and in the Schedule hereto more fully and particularly described.

—  
D. 1.  
Deed of  
Gift to  
Frederick  
Nicholas  
Jayawar-  
dene, 27th  
May, 1927  
—continued.

And whereas while being so possessed of the Llewellyn's Estate the said Henrietta Maria Gomis Abeyesinghe Jayawardena (hereinafter referred to as the deceased) departed this life at Kalutara on the 12th April, 1914, intestate leaving behind her as her heirs, inter alia, her husband the said John Vincent Gomis Abeyesinghe Wickremeratne Jayawardane (hereinafter called and referred to as the Donor) who thereupon became entitled to an undivided half share of the said Llewellyn's Estate. 10

And whereas the estate of the said deceased was administered in Testamentary proceedings No. 817 of the District Court of Kalutara, and the Donor was duly appointed Administrator thereof.

And whereas by deed of Gift No. 2364 dated 4th July 1922 and attested by W. D. Martin of Kalutara Notary Public, the Donor gifted an undivided 1/4th share, reserving to himself the remaining 1/4th share of the said estate. 20

And whereas under and by virtue of Deed No. 1 dated 30th November, 1914 and attested by J. A. Fernando of Kalutara Notary Public No. 293 dated 23rd August, 1916 and attested by P. G. Cooke of Colombo, Notary Public, No. 1718 dated 19th August 1918, 1784 dated 18th December, 1918, 2136 dated 26th July 1920, 2137 dated 4th August, 1920, 2504 dated 30th July, 1923, and 2669 dated 18th July, 1925, all attested by W. D. Martin of Kalutara Notary Public, and Crown Grant No. 3171 dated 31st August, 1920 the Donor is seized and possessed of or is otherwise well and sufficiently entitled to all those several allotments of land situated in the said villages of Duwegoda and Eladuwa and now forming one property called and known as "Eden's Grove" and in the Schedule hereto more fully and particularly described. 30

And whereas by an Indenture of Lease in perpetuity bearing No. 29 and dated 23rd February, 1920, the Donor is the Lessee in perpetuity of 3 contiguous lands situated in the said villages of Duwegoda and Eladuwa and now forming a part of the estate called Eden's Grove.

And whereas in accordance with the covenants in the said Lease in perpetuity contained, the Donor has applied for and obtained the written consent of His Excellency the Governor to deal with his interests in the said Lease. 40

And whereas under and by virtue of Deed No. 2609 dated 11th July, 1924, and attested by W. D. Martin, Notary Public, and Crown Grant No. 3400 dated 9th March, 1922, the Donor is seized and possessed of or is otherwise well and sufficiently entitled to 3 allotments of land called

Kitulketiyekele and Kitulahitiyelande and Oruwatibbagodaowita situated at Duwegoda and Eladuwa respectively and in the Schedule hereto more fully described.

Exhibits.

D. 1.

Deed of Gift to Frederick Nicholas Jayawardene, 27th May, 1927

—continued.

And whereas the Donor is desirous of gifting an undivided 1/4th share of his interests in the said Llewellyn's Estate, Eden's Grove, and the other Lands (which said share of the said lands is hereinafter referred to as the said Premises) to his son Frederick Nicholas Jayawardene of Avondale House in Colombo, reserving to the Donor a life interest in the same, and upon the condition that the said Frederick Nicholas Jayawardene shall  
10 not be at liberty to deal with the property in any manner whatsoever.

Now know ye and these presents witness that for and in consideration of the affection which he has and bears unto his son the said Frederick Nicholas Jayawardena, (hereinafter referred to as the Donee) and for divers other good causes and considerations him hereunto specially moving the Donor doth hereby give grant convey set over and assure unto the Donee his heirs executors and administrators as a gift irrevocable but subject to the condition that the Donee shall not possess enjoy or enter upon the said premises nor take or receive the rents income or produce thereof during  
20 the lifetime of the Donor, nor at any time whatsoever sell gift Lease out or mortgage or in any other manner alienate or encumber the same, but that at his death, it shall devolve on and be vested in his legitimate child or children, and in the absence of such child or children, on his lawful heirs, together with all and singular the rights ways easements servitudes and appurtenances whatsoever to the said premises belonging or in any wise appertaining or used or enjoyed therewith or reputed or known as part or parcel there and all the estate right title interest property claim and demand whatsoever of the Donor in to upon or out of the same and every part thereof.

To have and to hold the said premises hereby gifted or intended so to  
30 be which is of the value of Rupees Thirty Five Thousand (Rs. 35,000/-) unto the donee and his aforewritten for ever subject to the conditions aforesaid.

And the donor for himself his heirs executors and administrators doth hereby covenant and declare to and with the donee his heirs executors and administrators that he hath good right full power and lawful authority to donate the said premises in manner aforesaid and that he had not at any time heretofore made done or committed or been party or privy to any act deed matter or thing whatsoever whereby or by means whereof the said premises or any part thereof are is can shall or may be impeached or  
40 encumbered in title charge estate or otherwise howsoever and that he and his aforewritten shall and will at all times hereafter warrant and defend the same and every part thereof unto the donee and his aforewritten against any person or persons whatsoever and further shall and will at all times hereafter at the request and cost of the donee or his aforewritten do and execute or cause to be done and executed all such further and other acts deeds matters and things whatsoever for the further and more perfectly

Exhibits.  
 —  
 D. 1.  
 Deed of  
 Gift to  
 Frederick  
 Nicholas  
 Jayawar-  
 dene, 27th  
 May, 1927  
 —continued.

assuring the said premises unto the donee and his aforewritten as by him or them may be reasonably required.

And These Presents further witness that the donee gratefully and thankfully accept the said gift and the conditions hereinafore set out.

In witness whereof the donor and the donee do hereunto and to two others of the same tenor date and purport as These Presents set their respective hands at Kalutara on this Twenty Seventh day of May in the year One thousand nine hundred and twenty seven.

The Schedule above referred to.

An undivided one fourth (1/4) share or part of the following lands, 10  
 to wit :—

(1) An undivided 1/4th share of all those several allotments of lands now forming one property and called and known as “Llewellyn’s Estate with the buildings standing thereon situated in the villages Halkandawila and Duwegoda in Maggon Badda of Kalutara Totamune in the District of Kalutara Western Province and in the village Eladuwa in Iddagoda Pattu of Pasdun Korle West in the District of Kalutara aforesaid and bounded on the North by T.P. 71812, the Halkandawila Ela T.Ps 74685, 74686, 260437 and lot 22475 in P.P. 13488 and lot 2888 in P.P. 14807 East by Korle boundary paddy field, Crown reservation and lot C. 397 in P.P. 6113, and lot 20  
 22475 in P.P. 13488 and by Crown land, South by land of private parties and T.Ps 71850 and 125880 and by Crown land and on the west by T.Ps 74688, 224328 and 108890, Gansabawa Road and T.Ps 102964 and lot 14556 in P.P. 11996 and T.Ps 138348 and by land of private parties containing in extent more or less one hundred and seventy six acres one rood and sixteen perches (A.176 R.1 P.16).

(2) All those several contiguous allotments of land now forming one property and called Eden’s Grove and from their situation as respects each other can be included in one survey to wit :—

(a) All that allotment of land called Kajugahaudumulla situated at 30  
 Duwegoda aforesaid and bounded on the North and West by Crown land East by Crown land and T.P. 71853, South-East by Crown land and South by Crown land and land purchased by O. Dona and others containing in extent five acres three roods and thirty five perches (A.5 R.3 P.35), as per T.P.71850.

(b) All that allotment of land marked Lot B from and out of the land called Delgahakele situated at Eladuwa aforesaid and bounded on the North-East and East by Lot A, South and South-East by land claimed and Crown land and on the West and North-West by T.Ps 277863 and 284387 containing in extent Eleven Acres and Twenty Two Perches (A.11 R.0 P.22) 40  
 as per plan No. 195 dated 31st July 1916 made by T.F. Collette, Licensed Surveyor.

(c) All that allotment of land called Kitulehitiyeowita situated at Eladuwa aforesaid and bounded on the North East and West by Crown Forest land, and South by a field containing in extent about Two Acres,

One Rood and Thirty one and Sixteen one hundredth Perches (A.2 R.1 P.31.16). Exhibits.

(d) All that allotment of land marked Lot C. with the building thereon, out of the land called Millagahakele situated at Duwegoda aforesaid and bounded on the North by a path, East by Lot 19117 in P.P. 12838, and T.P.80188 South by T.P. 80188 and Lot B, and West by Lot B, containing in extent two acres (A.2 R.0 P.0) as per plan No. 423 dated 22nd October 1918 made by T. F. Collette, Surveyor. D. 1. Deed of Gift to Frederick Nicholas Jayawardene, 27th May, 1927

(e) All that allotment of land bearing Lot F.543 in P.P. 71853 called Galawetiye Kumbura situated at Duwegoda aforesaid and bounded on the West by T.P. 71850, and on all other sides by lands belonging to the Crown containing in extent about one and half acres (A.1 R.2 P.0). —continued.

(f) All that allotment of land called Kajugahaudumullenegenairapitalanda situated at Duwegoda aforesaid and bounded on the North by T.P. 125880, East by Crown Land, South by T.P.s 71853 and 71850, and West by T.P. 71850, containing in extent two acres three roods and eight perches (A.2 R.3 P.8), as per T.P. 212,165.

(g) All that allotment of land called Polgahamulakumbura situated at Eladuwa aforesaid and bounded on the North and East by portions of the same land, South by a portion of the same land bought by G. Harmanis, and West by Godakele containing in extent two and half bushels of paddy sowing, and, according to a recent survey thereof No. 1403 made by T. F. Collette Surveyor two acres, one rood, and fourteen perches (A.2 R.1 P.14).

(h) All that allotment of land called Galawetiyekumbura situated at Duwegoda aforesaid and bounded on the North by T.P. 71853 and Lot 2 in P.P. 16486 East and South by Lot 1 in P.P. 16486 and West by L.P. 1566 containing in extent twenty-five perches (A.0 R.0 P.25).

(i) An allotment of land called Kajugahaudumulleduwe, Kajugahaudumullelanda and Galagodakele situated at Duwegoda and Eladuwa aforesaid and bounded on the North by T.P.s 277863 and 318671 East by Kitulahitiyekumbura claimed by Alison Appuhamy and others and Reservation for a road South by Kitulahitiyekumbura claimed by Alison Appuhamy and others Kitulahitiyewatte claimed by A. Podineriya, T.P. 249617, Reservation for a road and Reservation along the foot-path and West by T.P.s 71911, 80188, 71853, Lots 4 and 5 in P.P. 16319 and Lots 2 and 4 in P.P. 16486, containing in extent, exclusive of the Reservation for a road running through the land fifty-seven acres three roods and thirteen perches (57A. 3R. 13P.) as per Lease Plan No. 1566 dated 24th August, 1918.

(j) All that allotment of land called Kitulketiyekele situated at Duwegoda aforesaid and bounded on the North and East by Crown Land South by T.P. 275625 and Lot 25598 in P.P. 13946 and West by T.P.'s 278269 and 78061 containing in extent one acre one rood and thirty-one perches (1A. 1R. 31P.) as per T.P. 290188.

(k) All that allotment of land called Kitulahitiyelanda situated at Duwegoda aforesaid and bounded on the North and East by Crown land

Exhibits.

—  
D. 1.  
Deed of  
Gift to  
Frederick  
Nicholas  
Jayawardene,  
27th  
May, 1927  
—continued.

South by T.P. 290188, and West by T.P. 78061 and Crown land containing in extent One acre Two roods and Twenty-six perches (A.1 R.2 P.26) as per T.P. 309356, and

(1) An allotment of land called Kahatagahapittaniya or Oruwatibbagoda-aowita, Kahatagahapittaniya or Oruwatibbagoda and Kahatagahapittaniya or Keenagahaowita situated at Eladuwa aforesaid and bounded on the North by Maragaswela claimed by K. A. Philip and Reservation along the Halkandawela Ela East by T.P. 142477 Lot 1 in P.P. 16740 Eladuwawela claimed by P. Jamia and Reservation along the Keenagahaowita Ela and South by Reservation along Keenagahaowita Ela and Water Course and West by T.P.s 346457 and 346458 Reservation along the Halkandawila Ela and a Water Course containing in extent exclusive of the Halkandawila Ela Keenagahaowita Ela and Reservations One acre Two roods and Nine perches (A.1 R.2 P.9) as per T.P. 34740. 10

Signed in Our presence :—

(Signed) JNO. V. G. JAYAWARDENE,

(Signed) FRED. N. JAYAWARDENE.

(Signed) P. A. COOREY,

(Signed) S. C. JAYAWARDANE,

(Signed) A. R. SENEVIRATNA,

Notary Public. 20

Notarial Certificate (*not printed*).

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D. 2. D. 2.—Deed of Gift to Alfred Christy Jayawardene similar except for Name of Donee and Date to P. 4, 28th May, 1937.

(*Not printed.*)

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D. 3. D. 3.—Deed of Gift to George Llewellyn Jayawardene similar in all respects except for Name of Donee to P. 4, 30th May, 1937.

(*Not Printed.*)

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**P. 4.—Deed of Gift to Simon Christopher Jayawardene from J. V. G. A. W. Jayawardene.** Exhibits.

Prior Registration. A203/6; 136/223, C32/397, 35/288, A235/288, 247/187, 271/124, C12/67, Nil, Nil; A210/303; 210/304; Nil.  
Search dispensed with.

Registered  $\frac{A304}{124}$  :  $\frac{305}{82 : 83 : 84}$  :&  $\frac{C60}{210}$

Kalutara 16 July, 1927.

(Signed) Illegible.

P. 4.  
Deed of Gift  
to Simon  
Christopher  
Jayawardene  
from  
J. V. G. A.  
W. Jayawardene,  
30th May,  
1927.

10

No. 180.

To all to whom these presents shall come

JOHN VINCENT GOMIS ABEYSINGHE WICKREMERATNE JAYEWARDENE of "Wasala Walauwa," Paiyagala, in the District of Kalutara in the Island of Ceylon, Esquire, Mudaliyar, of the Governor's Gate, Justice of the Peace and Unofficial Police Magistrate.

Sends Greeting.

Whereas under and by virtue of Deeds Nos. 35 and 36 both dated 5th August, 1905. 157 dated 16th May, 1907, 158 dated 2nd June, 1907, 166 dated 29th August, 1907, 183 dated 30th April, 1908, 237 dated 29th July, 1909, 239 dated 30th August, 1909, 252 dated 4th February, 1910, 268 dated 31st June, 1910, 318 and 319 both dated 3rd July, 1911, and all attested by C. A. L. Orr of Kalutara Notary Public, and Crown Grant Nos. 50922 and 50923 both dated 20th July 1912, and Nos. 51166 and 51169 both dated 7th December 1912, and No. 51588 dated 29th January 1914, Henrietta Maria Gomis Abeysinghe Jayawardene, Lama Etane, late of Kalutara North, was, during her lifetime seized and possessed of or was otherwise well and sufficiently entitled to all those several contiguous allotments of land situated in Duwegoda Halkandawila and Eladuwa in the District of Kalutara forming one property and called and known as "Llewellyn's Estate," and in the Schedule hereto more fully and particularly described.

And whereas while being so possessed of the said Llewellyn's Estate, the said Henrietta Maria Gomis Abeysinghe Jayewardene (hereinafter referred to as the deceased) departed this life at Kalutara on the 12th April 1913, intestate, leaving behind her as her heirs, inter alia, her husband the said John Vincent Abeysinghe Wickremeratne Jayewardene (hereinafter called and referred to as the Donor) who thereupon became entitled to an undivided half share of the said Llewellyn's Estate.

And whereas the estate of the said deceased was administered in Testamentary Proceedings No. 317 of the District Court of Kalutara, and the Donor was duly appointed Administrator thereof.

40



Exhibits.  
 ———  
 P. 4.  
 Deed of Gift  
 to Simon  
 Christopher  
 Jayawardene  
 from  
 J. V. G. A.  
 W. Jaya-  
 wardene,  
 30th May,  
 1927—con-  
 tinued.

And whereas by Deed of Gift No. 2364 dated 4th July, 1922, and attested by W. D. Martin of Kalutara Notary Public, the Donor gifted an undivided 1/4th share, reserving to himself the remaining 1/4th share of the said Estate.

And whereas under and by virtue of Deed No. 1 dated 30th November, 1914 and attested by J. A. Fernando of Kalutara Notary Public, No. 293 dated 23rd August, 1916 and attested by P. G. Cooke of Colombo Notary Public. No. 1718 dated 19th August 1918, 1784 dated 18th December, 1918, 2136 dated 26th July, 1920, 2137 dated 4th August, 1920, 2504 dated 30th July, 1923, and 2669 dated 18th July, 1925 all attested by W. D. Martin of Kalutara Notary Public, and Crown Grant No. 3171 dated 31st August 1920, the Donor is seized and possessed of or is otherwise well and sufficiently entitled to all those several allotments of land situated in the said villages of Duwegoda and Eladuwa and now forming one property called and known as "Eden's Grove" and in the Schedule hereto more fully and particularly described. 10

And whereas by an Indenture of Lease in perpetuity No. 29 and dated 23rd February, 1920, the Donor is the Lessee in perpetuity of 3 contiguous lands situated in the said villages of Duwegoda and Eladuwa and now forming a part of the said Estate called Eden's Grove. 20

And whereas in accordance with the covenants in the said Lease in perpetuity contained, the Donor has applied for the written consent of His Excellency the Governor to deal with his interest in the said Lease.

And whereas under and by virtue of Deed No. 2609 dated 11th July, 1924 and attested by W. D. Martin Notary Public, and Crown Grant No. 3400 dated 9th March, 1922, the Donor is seized and possessed of or is otherwise well and sufficiently entitled to 3 allotments of land called Kitulketiyekele and Kitulahitiyelande and Oruwatibbagodeowita situated at Duwegoda and Eladuwa respectively and in the Schedule hereto more fully described.

And whereas the Donor is desirous of gifting an undivided 1/4th share of his interest in the said Llewellyn's Estate, Eden's Grove, and the other lands (which said share of the said lands is hereinafter referred to as the said premises) to his son SIMON CHRISTOPHER JAYEWARDENE of "Wasala Walauwa," Paiyagala, upon the condition that the said Simon Christopher Jayewardene shall not be at liberty to deal with the property in any manner whatsoever. 30

Now know ye and these presents witness that for and in consideration of the love and affection which he has and bears unto his son the said SIMON CHRISTOPHER JAYEWARDENE (hereinafter referred to as the donee) and for divers other good causes and considerations him hereunto specially moving the Donor Doth hereby give grant convey set over and assure unto the donee his heirs executors and administrators as a gift irrevocable but subject to the condition that the donee shall not at any time whatsoever sell gift lease out mortgage or in any other manner alienate or encumber the said premises or any part thereof but that at his death it shall devolve on and be vested in his legitimate child or children, and in the absence of such child or children, on his lawful heirs, together with all and singular the 40

rights ways easements servitudes and appurtenances whatsoever to the said premises belonging or in any wise appertaining or used or enjoyed therewith or reputed or known as part or parcel thereof and all the estate right title interest property claim and demand whatsoever of the donor in to upon or out of the same and every part thereof.

To have and to hold the said premises hereby gifted or intended so to be which is of the value of Rupees Thirty five thousand (Rs. 35,000/-), unto the donee and his aforewritten for ever subject to the conditions aforesaid.

- 10 And the Donor for himself his heirs executors and administrators doth hereby covenant and declare to and with the donee his heirs executors and administrators that he hath good right full power and lawful authority to donate the said premises in manner aforesaid, and that he hath not at any time heretofore made done or committed or been party or privy to any act deed matter or thing whatsoever whereby or by means whereof the said premises or any part thereof are is can shall or may be impeached or encumbered in title charge estate or otherwise howsoever, and that he and his aforewritten shall and will at all times hereafter warrant and defend the same and every part thereof unto the donee and his aforewritten against
- 20 any person or persons whomsoever, and further shall and will at all times hereafter at the request and cost of the donee or his aforewritten do and execute or cause to be done and executed all such further and other acts deeds matters and things whatsoever for the further and more perfectly assuring the said premises unto the donee or his aforewritten as by him or them may be reasonably required.

And these presents further witness that the donee gratefully and thankfully accepts the said gift and the conditions hereinbefore set out.

- 30 In witness whereof the Donor and the Donee do hereunto and to two others of the same tenor date and purport as these presents set their respective hands at Kalutara on this thirtieth day of May in the year One Thousand Nine Hundred and Twenty Seven.

The Schedule above referred to.

*(Not printed similar to D.1.)*

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Exhibits.

—  
P. 4.  
Deed of Gift  
to Simon  
Christopher  
Jayawardene from  
J. V. G. A.  
W. Jayawardene,  
30th May,  
1927—*continued.*

Exhibits. **P. 5.—Letter—The Assistant Government Agent, Kalutara to Mudaliyar J.V.G. Jayawardane**

P. 5.  
Letter, The  
Assistant  
Government  
Agent,  
Kalutara,  
to Mudali-  
yar J. V. G.  
Jayawar-  
dane, 27th  
July, 1927.

No. L. C. 616.

27th July, 1927

1. 8.

From—The Assistant Government Agent, Kalutara.

To—Mudaliyar J. V. G. Jayawardane, Wasala Walauwa, Paiyagala.

LEASE IN PERPETUITY.

Sir,

I have the honour to request you to be good enough to furnish me with 10  
a draft of the proposed deed of gift for perusal, if you are willing to abide by  
the conditions in the succeeding paragraph.

2. The deed of gift should make express provision as follows :—

(a) The party or parties who should continue to pay the rents and  
observe the Conditions in the Lease during the pendency of the life interest  
should be clearly mentioned in the deed of gift. It should be either the  
Lessee who retains the life interest or the donees, and such person or persons  
should be made liable for all defaults. If the donees are made liable, none of  
them should be minors.

(b) It should also be clearly expressed in the deed of gift that after the 20  
expiry of the life interest, the four donees should be jointly and severally  
liable for the due payment of rent and performance of the Lessee's Covenants  
irrespective of the shares held by them under the deed of gift.

(c) The donees should understand that the lease is liable to cancellation  
for any default.

I am, Sir,

Your obedient Servant,

(Signed) E. T. DYSON,

Assistant Government Agent.

Copies by :—Initialled by R. D. S.

Checked by :—Initialled P. R.

30

True copy,  
(Signed) Illegible,  
for Assistant Government Agent,  
Kalutara.

P. 6.—Letter—Mudaliyar J. V. G. Jayawardane to Assistant Government Agent, Kalutara. Exhibits.

Wasala Walauwa,  
Paiyagala, 15th August, 1927.

No. 375.

The Assistant Government Agent,  
Kalutara.

P. 6.  
Letter,  
Mudaliyar  
J. V. G.  
Jayawardane to  
Assistant  
Government  
Agent,  
Kalutara,  
15th August,  
1927.

LEASE IN PERPETUITY.

Sir,

10 In reply to your letter L.C. 616 dated the 1st instant, I have the honour to annex copy of the deed of gift No. 178 which has been already executed.

2. The donees are not minors.

3. If the conditions be infringed by the donor or the donees, the lease is, of course, liable to cancellation.

4. I beg to tender my unreserved apology for the hasty manner in which the deed was executed—the attendant circumstances need not be explained here.

I remain, Sir,

Your obedient Servant,

(Signed) J. V. G. JAYAWARDANE,

20

Copied by :—Initialled R. D. S.

Checked by :—Initialled P. R.

True Copy.

(Signed) Illegible,  
for Assistant Government Agent,  
Kalutara.

Exhibits. **P. 7.—Letter to Mudaliyar J. V. G. Jayawardane from Assistant Government Agent.**

P. 7.  
Letter to  
Mudaliyar  
J. V. G.  
Jayawardane from  
Assistant  
Government  
Agent,  
27th August,  
1927.

No. L. C. 616.  
The Kacheri,  
Kalutara, 27th August, 1927.

LEASE IN PERPETUITY.

Sir,

With reference to your letter No. 375 dated the 15th instant I have the honour to return herewith the copy of the deed of gift forwarded therewith and to inform you that it does not meet with the requirements contained in paragraphs 2 (a) (b) and (c) of my letter No. 616 dated the 10th instant to your address.

2. What is required is a draft of the proposed deed donating your interests in Lease Indenture No. 29 to your sons on lines indicated in paragraph 2 of my letter above referred to.

Submitted for approval.

Gate Mudaliyar J. V. G. Jayawardane.

Initialled K. T. S. G.

Copies by :—R. D. S.

Checked by :—P. R.

True copy.  
(Signed) Illegible,  
for Assistant Government Agent,  
Kalutara.

20

P. 8.  
Letter,  
Mudaliyar  
J. V. G.  
Jayawardane to  
Assistant  
Government  
Agent,  
Kalutara,  
4th September,  
1927.

**P. 8.—Letter—Mudaliyar J. V. G. Jayawardane to Assistant Government Agent, Kalutara.**

Wasala Walauwa,  
Paiyagala, 4th September, 1927.

No. 377.

The Assistant Government Agent,  
Kalutara.

LEASE IN PERPETUITY.

30

Sir,

In reply to your letter No. L. C. 616 dated the 27th ultimo I have the honour to state that the deed in question had been already executed and the donees do not get more rights than I am entitled to. A fresh deed will, I believe, be irregular and involve unnecessary expense and inconvenience. I beg leave to suggest that the donees should in writing be permitted to undertake the liabilities mentioned in your letter.

I remain, Sir,

Your obedient Servant,

(Signed) J. V. G. JAYAWARDANE.

40

Copied by : Initialled R. D. S.

Checked by :—Initialled P. R.

True copy.  
(Signed) Illegible,  
for Assistant Government Agent,  
Kalutara.

P. 9.—Letter—Assistant Government Agent, Kalutara to Mudaliyar J. V. G. Jayawardane. Exhibits.

No. L. C. 616.

8th September, 1927.  
9th

P. 9.  
Letter,  
Assistant  
Government  
Agent,  
Kalutara, to  
Mudaliyar  
J. V. G.  
Jayawar-  
dane, 8th  
September,  
1927.

From—The Assistant Government Agent, Kalutara.

To—Mudaliyar J. V. G. Jayawardane,  
Wasala Walauwa,  
Paiyagala.

10

LEASE IN PERPETUITY.

Sir,

I have the honour to state that I regret to inform you that these are requirements laid down by the Honourable the Controller of Revenue and that they must be embodied in the deed of gift before formal Consent for the assignment can be given.

I am, Sir,

Your obedient Servant,

(Signed) E. T. DYSON,

Assistant Government Agent.

20

Copied by :—Initialled R. D. S.

Checked by :—Initialled P. R.

True copy.

(Signed) Illegible,  
for Assistant Government Agent,  
Kalutara.

Exhibits. P. 10.—Letter—Mudaliyar J. V. G. Jayawardane to Assistant Government Agent, Kalutara.

P. 10.  
Letter,  
Mudaliyar  
J. V. G.  
Jayawar-  
dane to  
Assistant  
Government  
Agent,  
Kalutara,  
1st Novem-  
ber, 1927.

The Assistant Government Agent,  
Kalutara.

Wasala Walauwa,  
Paiyagala, 1st November, 1927.

LEASE IN PERPETUITY.

Sir,

In acknowledging receipt of your letter No. L.C. 616 of yesterday's date I have the honour to inform you that the deed in question will be cancelled by a Notarial document the draft of which is in the hands of an Advocate for revision. When it is ready it will be submitted to you for approval. 10

I remain, Sir,  
Your obedient Servant,

(Signed) J. V. G. JAYAWARDANE,

Copied by :—Initialled R. D. S.

Checked by :—Initialled P. R.

True copy,

(Signed) Illegible,  
for Assistant Government Agent,  
Kalutara.

20

P. 11.—Letter—W. D. Martin to Mudaliyar J. V. G. Jayawardane.

Exhibits.

Kalutara, 24th February, 1928.

P. 11.

My dear Mudaliyar,

Herein enclosed please find a draft copy of the Deed of Cancellation you wanted me to do. Please send it up to the Government Agent and see whether this draft would do. As there are four deeds of gift dealing with the land leased from the Crown it requires four deeds to cancel the four deeds of Gift. The delay in this affair was due to the fact that I had to get the deeds before I could have done anything.

Letter,  
W. D. Martin to  
Mudaliyar  
J. V. G.  
Jayawardane, 24th  
February,  
1928.

10

I remain,

Yours sincerely,

(Signed) W. D. MARTIN,

J. V. G. JAYAWARDANE, Esquire,  
GATE MUDALIYAR & J.P., U.P.M.,  
Wasala Walauwa,  
Eladuwa,  
Paiyagala.

No. 383.

Submitted to the Assistant Government Agent Kalutara for approval.

20

(Signed) J. V. G. JAYAWARDANE,  
26.2.28.

Copied by :—Initialled R. D. S.

Checked by :—Initialled P. R.

True copy

(Signed) Illegible,  
for Assistant Government Agent,  
Kalutara.



Exhibits. **P. 12.—Letter—Assistant Government Agent, Kalutara to Mudaliyar J. V. G. Jayawardane.**

P. 12.

Letter,  
Assistant  
Government  
Agent,  
Kalutara, to  
Mudaliyar  
J. V. G.  
Jayawardane, 8th  
March,  
1928.

No. L.C. 616.

8th March, 1928.

*From*—The Assistant Government Agent, Kalutara.

*To*—Mudaliyar J. V. G. JAYAWARDANE,  
Wasala Walauwa,  
Paiyagala.

Subject : LEASE IN PERPETUITY.

Referring to your No.

10

383

26.2.28.

Sir,

I have the honour to return the draft deed of cancellation and to inform you that the deed of gift already executed of your own accord is invalid by reason of Government Consent not having been given thereto. If you are legally advised that cancellation is necessary no question of obtaining Government Consent arises.

Deeds of Gift invalid.

Son heir under the Will.

20

I am, Sir,

Your obedient Servant,

(Signed) E. T. DYSON,  
Assistant Government Agent.

**P. 2.—Will of John Vincent Gomis Abeyesinghe Wickremaratna Jayawardane.**

Exhibits.

No. 824.

P. 2.

This is the Last Will and Testament of me John Vincent Gomis Abeyesinghe Wickremaratna Jayawardane, Mudaliyar of the Governor's Gate, Justice of the Peace, an Unofficial Police Magistrate, of Wasala Walauwa, Halkandawila, Paiyagala.

Will of  
John  
Vincent  
Gomis  
Abeyesinghe  
Wickrema-  
ratna Jaya-  
wardane,  
23rd Octo-  
ber, 1928.

I hereby revoke all Last Wills and Testaments and writings of a testamentary nature, if any, heretofore made by me.

I give, devise and bequeath all my property, of what kind or nature  
10 soever, moveable as well as immoveable, found or situate, in possession or expectancy in remainder or reversion, nothing excepted to my dear son Simon Christopher Jayawardane of Wasala Walauwa, Halkandawila, Paiyagala, whom I hereby appoint the executor of this my Last Will and Testament.

Further I hereby direct my executor to pay Rupees Three Thousand (Rs. 3,000/-) to my dear grand-daughter Miss Mary Marjorie de Silva, daughter of Dr. and Mrs. Hinton de Silva of "The Retreat," Kalutara, on her attaining the age of twenty years or on her wedding day whichever occurs earlier.

20 In witness wherefore I do hereby set my hand to this and to another of the same date and tenor at Wasala Walauwa, Halkandawila, Paiyagala on this twenty third day of October, One thousand Nine hundred and Twenty eight (1928).

Witnesses who declare that they  
are well known to the execu-  
tant and know his proper  
name, occupation and resi-  
dence. } (Signed) J. V. G. JAYAWARDANE.

(Signed) CLEMENT P. WIJERATNE.

30 (Signed) OLIVER G. D'ALWIS.

(Signed) DIONYSIUS K. GOONETILEKE,  
Notary Public.

Notarial attestation (*not printed*).

---

Exhibits.

**P. 17.—Receipt for Payment of Rent for the Subject Matter of the Case.**

P. 17.  
Receipt for  
payment of  
rent for the  
subject  
matter of  
the case,  
21st June,  
1930.

SEAL.

(Kalutara Kachcheri)  
( 21st June, 1930. )

Received from Mr. S. C. Jayawardena the sum of Rupees Eight hundred and seventy, being rent for 1930 on Lots 1, 2 and 3 etc. in P.P. 16319 etc. folio 3.

(Signed) Illegible.

Signature and Designation.  
Shroff.

Rs. 870/-.

D 58808.

I

Date 21.6.1930.

10

P. 16.  
Letter,  
Assistant  
Government  
Agent,  
Kalutara, to  
S. C. Jaya-  
wardene,  
7th Novem-  
ber, 1931.

**P. 16.—Letter—Assistant Government Agent, Kalutara to S. C. Jayawardene.**

No. L.C. 2185,  
The Kachcheri,  
Kalutara.

7.11.1931.

RENT OF CROWN LANDS.

20

Sir,  
I have the honour to inform you that the sum of Rs. 870/- is due from you being rent on lease No. 29 for Lots 1, 2 and 3 in P.P. 16319 and Lot 1 in P.P. 16486 for the year 1931.

2. Please remit this amount immediately with interest at 9% per annum from 10.6.31 to date of payment.

I am, Sir,

Your obedient Servant,

(Signed) C. R. OORLOFF,

for Assistant Government Agent.

30

To—

S. C. JAYAWARDENA, Esquire,  
Wasala Walauwa,  
Halkandawila.

**P. 14.—Notice of Assessment of Estate Duty and Attached Details of Assessment.**

Exhibits.

“THE ESTATE DUTY ORDINANCE, No. 8 of 1919.”

Form H.—Notice of Re-assessment of Estate Duty.

Estate No. 19874.

D. C. Kalutara Case No. 2282.

In the Estate of J. V. G. A. W.

Jayawardane,

*Deceased.*

P. 14.  
Notice of  
Assessment  
of Estate  
Duty and  
attached  
details of  
assessment,  
5th May,  
1932.

I hereby give you notice that I have this day re-assessed the estate duty payable in the above estate at Rs. 2,623/76 with interest, and upon receipt of such sum, the certificate referred to in Section 2 (3) of the Ordinance will be issued by me.

The value of the property upon which such duty has been re-assessed amounts to Rs. 165,575/09, as shown in statement annexed.

Stamp Office,

Colombo, 5th May, 1932.

(Signed) Illegible,

for Commissioner of Stamps.

C.

20 S. C. JAYAWARDANE,

c/o D. K. Goonetilleke Esquire,  
Proctor,  
Kalutara.

*Note.*—If the duty is not duly paid, steps will be taken to recover it by execution through the District Court in terms of Section 32 of the Ordinance.

List No. 1.

1/16th of Llewellyn Estate	... ..	Rs. 6,250.00
11/16th share of the building on Llewellyn Estate the remaining shares being gifted by the deceased on		
30 Deeds No. 175, 178, 179, 180 and 164	... ..	10,312.50
Lot. No. 2 of Sannalamoderawatta at Paiyagala	... ..	2,500.00
		<hr/>
		19,062.50
		<hr/>

## Exhibits.

## List 3.

P. 14.  
Notice of  
assessment  
of Estate  
Duty and  
attached  
details of  
assessment,  
5th May,  
1932—con-  
tinued.

## Allowance under Section 17 (iv).

Deed No.	Offl. Valn.	Estate Duty.	Stamp duty.	Allowance.	
175	Rs. 26,400/-	Rs. 1,320/-	Rs. 1,229/-	Rs. 1,229/-	
178	Rs. 26,400/-	Rs. 1,320/-	Rs. 1,229/-	Rs. 1,229/-	
179	Rs. 26,400/-	Rs. 1,320/-	Rs. 559/-	Rs. 559/-	
180	Rs. 26,400/-	Rs. 1,320/-	Rs. 1,229/-	Rs. 1,229/-	
164	Rs. 7,187/50	Rs. 359/38	Rs. 159/-	Rs. 159/-	
				Rs. 4,405.00	
2364	Rs. 25,000/-	Rs. 625/-	Rs. 1,400/-	Rs. 625/-	10
				Rs. 625.00	

## List No. 2.

1. One-fourth of Llewellyn Estate with building	...	...	...	...	Rs. 28,750.00
2. Eden's Grove	...	...	...	...	Rs. 16,850.00
3. Kadjugahaudumulladuwa Kadjugahaudumullalanda and Galagodakele	...	...	...	... }	Rs. 57,750.00
4. Kituleketiyakele	...	...	...	...	Rs. 1,000.00
5. Kitulehitiyelanda	...	...	...	...	Rs. 1,000.00
6. Kahatagahapittaniya	...	...	...	...	Rs. 250.00
					Rs. 105,600.00
					Rs. 26,400.00
					20

1/4th share dealt with in each Deed =

## Estate No. 19874.

	Assets.	
Money in the National Bank	...	Rs. 1,366.29
Money out on mortgages	...	Rs. 1,236.00
Household goods	...	Rs. 4,576.50
Unsold produce at date of death	...	Rs. 2,347.11
Arrears of salary	...	Rs. 199.19
Immovable property undisposed of with the deceased's 11/16th of the build- ings on Llewellyn Estate Official valuation (List 1)	...	Rs. 19,062.50
		Rs. 28,787.59
		30

Gifts executed by the deceased within 3 years of his death :—		Exhibits.
On Deed No. 175 of 29.5.27—Offl. valn. (List 2) ... ..	26,400.00	P. 14. Notice of assessment of Estate Duty and attached details of assessment, 5th May, 1932— <i>con- tinued.</i>
On Deed No. 178 of 28.5.27—Offl. valn. (List 2) ... ..	26,400.00	
On Deed No. 179 of 30.5.27—Offl. valn. (List 2) ... ..	26,400.00	
On Deed No. 180 of 30.5.27—Offl. valn. (List 2) ... ..	26,400.00	
On Deed No. 164 of 23.4.27—(Offl. valn., including 1/16th of buildings) ... ..	7,187.50	
10 Cesser of deceased's life interest on the property gifted on Deed No. 2364—Offl. valn. ... ..	25,000.00	
	<hr/>	
	Rs. 166,575.09	
Deductions.		
Funeral expenses (allowed) ... ..	1,000.00	
	<hr/>	
	Rs. 165,575.09	
Estate Duty—Rate of duty 5%.		
On Rs. 28,787/59 less Funeral Expenses Rs. 1,000/- i.e. Rs. 27,787/59 @ 5% ... ..	Rs. 1,389.38	
On Rs. 112,787/50 @ 5% ... ..	Rs. 5,639.38	
Less allowance under Section 17 (iv) (List 3) 4,405.00	1,234.38	
20 On Rs. 25,000/- @ 2½% (half rate)... ..	625.00	
Less allowance under Section 17 (iv) ... ..	625.00	nil
	<hr/>	
	Rs. 2,623.76	
with interest @ 4% per annum from 20th January, 1931.		

Exhibits.

**P. 18.—Letter—Assistant Government Agent, Kalutara to S. C. Jayawardene.**

P. 18.  
Letter,  
Assistant  
Government  
Agent,  
Kalutara, to  
S. C. Jaya-  
wardene,  
20th July,  
1932.

Circular No. L.E.2616.

The Kachcheri,  
Kalutara.

20th July, 1932.

## ARREARS OF RENT ON LONG TERM LEASES.

Sir,

I am directed by the Land Commissioner to inform you that it has been definitely decided by Government not to give relief to lessees on long term leases in respect of any arrears and to request you to remit to this Kachcheri the sum of Rs. 870/- being rent falling due on 10.6.31 as specified below with interest thereon at 9% on or before the 15th August, 1932. 10

2. In failure to do so, legal action will be taken to recover the amount with interest and costs and for cancellation of the lease bond.

I am, Sir,

Your obedient Servant,

(Signed) B. M. CHRISTOFFELSZ.

for Assistant Government Agent.

Lots 1, 2 and 3.

P.P. 16319.

Situation. Duwagoda etcetra.

Amount. 870.00.

S. C. Jayawardena, Esquire,

Waluwa,

Halkandawila,

Paiyagala.

20

P. 19.—Letter—Assistant Government Agent, Kalutara to S. C. Jayawardene.

Exhibits.

No. L. E. 2616.

The Kachcheri,  
Kalutara.

1st April, 1933.

P. 19.  
Letter,  
Assistant  
Government  
Agent,  
Kalutara, to  
S. C. Jaya-  
wardene,  
1st April,  
1933.

ARREARS OF RENT ON LONG TERM LEASES.

Sir,

10 With reference to my circular No. L.E. 2616 of December 1932 and consequent correspondence on the subject of payment of arrears on long term leases due up to 1st July 1932, I have the honour to inform you that I have been directed to meet lessees in order to arrive at an agreement for the payment of arrears of rent by instalments and to consider what interest should be levied.

2. I have to request you therefore to be good enough to attend the Kachcheri on 19th April 1933 at 2.30 p.m. in order that this matter be carefully considered.

I am, Sir,

Your obedient Servant,

(Signed) B. M. CHRISTOFFELSZ,  
for Assistant Government Agent.  
Kalutara.

20

S. C. Jayawardena, Esquire.  
Halkandawila,  
Paiyagala.



Exhibits.

P. 15.  
Letter,  
Assistant  
Government  
Agent,  
Kalutara, to  
S. C. Jaya-  
wardene,  
20th April,  
1933.

**P. 15.—Letter—Assistant Government Agent, Kalutara to S. C. Jayawardene.**

No. L. E. 2616.  
The Kachcheri,  
Kalutara, 20th April, 1933.

ARREARS OF RENT ON LONG TERM LEASES.

Sir,

I have the honour to state that the agreement shown below was arrived at with you at the interview granted on the 19th instant in respect of the payment of arrears and rent fell due 1st July, 1932 :—

(a) Lease of Lots 1, 2 and 3 in P.P.16319, Lot 1 in P.P.16486. 10  
A sum of Rs. 1,740.00 due as arrears and Rs. 348.00 as reduced  
rent (which falls due on 10.6.33).

2. You agree to pay Rs. 348.00 on or before 10th June, 1933, and arrears at Rs. 435.00 a quarter with interest at 9% commencing from 1st July, 1933.

3. I request you to be good enough to confirm this agreement in acknowledging receipt of this letter.

I am, Sir,

Your obedient Servant,

(Signed) B. M. CHRISTOFFELSZ, 20  
for Assistant Government Agent,  
Kalutara.

S. C. Jayawardane, Esquire,  
Halkandawila,  
Paiyagala.

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**P. 21.—Letter—Assistant Government Agent, Kalutara to S. C. Jayawardane.**

Exhibits.

Circular No. L.E.2616.

The Kachcheri,  
Kalutara.

1st September, 1934.

P. 21.  
Letter,  
Assistant  
Government  
Agent,  
Kalutara, to  
S. C. Jay-  
awardane,  
1st Septem-  
ber, 1934.

REDUCTION OF RENT ON CROWN LAND LEASED FOR RUBBER 1934-35.

Sir,

With reference to my Circular No. L.E.2616 of 21st September 1933 on the subject of the reduction of rent by 80% for one year commencing from 1st July 1933 to 30th June 1934 for all lands leased on long term for rubber cultivation, I have the honour to inform you that the Executive Committee of Agriculture and Lands has decided not to grant any rebate from 1st July 1934 for lands leased by the Crown and cultivated with rubber.

2. You should therefore remit the rent in full for your lands the rent for which falls due after 1st July, 1934.

I am, Sir,

Your obedient Servant,

(Signed) GEO. H. PERERA,  
for Assistant Government Agent,  
Kalutara.

30 Mr. S. C. JAYAWARDANE,  
Llewellyn Group,  
Paiyagala.

Exhibits.

P. 20.—Letter—Assistant Government Agent, Kalutara to S. C. Jayawardane.

P. 20.  
Letter,  
Assistant  
Government  
Agent,  
Kalutara, to  
S. C. Jaya-  
wardane,  
21st Sep-  
tember,  
1933.

No. L. E. 2616.  
The Kachcheri,  
Kalutara.

21.9.1933.

## REDUCTION OF RENT ON CROWN LANDS LEASED FOR RUBBER.

Sir,

With reference to my letter No. L.E. 2616 of 8th December, 1932, on the subject of allowing a reduction of 60% for rubber leases, I have the honour to inform you that the Executive Committee of Agriculture and Lands has since decided to allow a reduction of 80% on all rents for rubber leases that fall due between 1st July, 1933, and 30th June, 1934. 10

2. This concession applies only for one year and in no case is the rent to be reduced to less than Rs. 1.50 an acre.

3. Please remit all rent due for the land under lease to you falling within the period mentioned in para. 1 of this letter without delay. No reduction will be made in the rate of interest which is 9% per annum for any period, that has lapsed from the date the rent fell due.

I am, Sir,

Your obedient Servant,

20

(Signed) B. M. CHRISTOFFELSZ,  
for Assistant Government Agent,  
Kalutara.

S. C. JAYAWARDANE, Esquire,  
Wasala Walauwa,  
Llewellyn's Group,  
Paiyagala.

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P. 22.—Letter—Assistant Government Agent, Kalutara to S. C. Jayawardane.

Exhibits.

No. L.E. 4065.

The Kachcheri,  
Kalutara.

27th April, 1935.

P. 22.  
Letter,  
Assistant  
Government  
Agent,  
Kalutara, to  
S. C. Jaya-  
wardane,  
27th April,  
1935.

RENT ON LONG TERM CROWN LEASES.

Sir,

I have the honour to request you to be so good as to let me know the Rubber Control Registration numbers of the rubber lands (a list of which is appended below) held by you on lease from the Crown.

Village.	Name of Land.	Lot & P.P. No.
Duwagoda & Eladuwa.	—	1, 2 & 3 in P.P.16319. 1 in P.P.16486.

I am, Sir,

Your obedient Servant,

(Signed) J. LIGHT,  
Assistant Government Agent,  
Kalutara.

F.

20 (Signed) Illegible.  
Office Assistant.

To—S. C. JAYAWARDANE, Esquire,  
Llewellyn's Group,  
Paityagala.

In the Privy Council.

No. 58 of 1937.

ON APPEAL FROM THE SUPREME COURT  
OF THE ISLAND OF CEYLON.

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BETWEEN

SIMON CHRISTOPHER JAYAWARDENE

*Appellant*

AND

(1) ALFRED CHRISTY JAYAWARDENE;  
(2) DR. FREDRICK NICHOLAS JAYAWARDENE ; (3) GEORGE LLEWELLYN  
JAYAWARDENE

AND

(4) THE HONOURABLE THE ATTORNEY  
GENERAL OF CEYLON - *Respondents.*

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RECORD OF PROCEEDINGS.

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O. A. CAYLEY,

30, Bedford Row, W.C.1,

*Solicitor for the Appellant.*

BURCHELLS,

5, The Sanctuary, Westminster, S.W.1,

*Solicitors for the 4th Respondent.*