

CIT 62

9, 1950

UNIVERSITY OF LONDON
 W.C.1.
 14 JUL 1953
 INSTITUTE OF ADVANCED
 LEGAL STUDIES

75

1947

78

No.

1947

UNIVERSITY OF LONDON
 W.C.1
 28 MAR 1951
 INSTITUTE OF ADVANCED
 LEGAL STUDIES

Supreme Court of Ceylon
 No. 205/1945

District Court, Colombo
 No. 15380.

IN THE PRIVY COUNCIL
 ON AN APPEAL FROM THE SUPREME
 COURT OF CEYLON

BETWEEN

H. E. WIJESURIYA of "Wijegiri", Mahavilla,
 Panadura.....*Plaintiff-Appellant*

AND

THE ATTORNEY-GENERAL of Ceylon.....*Defendant-Respondent.*

RECORD
 OF PROCEEDINGS

INDEX—PART I.

Serial No.	Description of Documents	Date	Page
1	Journal Entries	11th February, 1944 to 16th February, 1945 ...	1
2	Plaint of the Plaintiff	11th February, 1944 ...	6
3	Answer of the Defendant	4th April, 1944 ...	8
4	Plaintiff's Affidavit	5th October, 1944 ...	9
5	Issues Framed	12th October, 1944 ...	10
6	Plaintiff's Evidence	—	12
7	Defendant's Evidence	—	46
8	Addresses to Court	—	94
9	Judgment of the District Court	3rd November, 1944 ...	97
10	Decree of the District Court	3rd November, 1944 ...	115
11	Petition of Appeal of Defendant to Supreme Court... ..	11th November, 1944 ...	116
12	Cross-Appeal of Plaintiff to Supreme Court	22nd October, 1945 ...	119
13	Judgment of the Supreme Court	22nd August, 1946 ...	120
14	Decree of the Supreme Court	22nd August, 1946 ...	128
15	Application for Conditional Leave to Appeal to Privy Council	30th August, 1946 ...	129
16	Decree granting Conditional Leave to Appeal to Privy Council	11th September, 1946 ...	130
17	Application for Final Leave to Appeal to Privy Council	17th September, 1946 ...	131
18	Decree Granting Final Leave to Appeal to Privy Council	25th September, 1946 ...	133

INDEX—PART II.

30985

EXHIBITS

Plaintiff-Appellant's Documents

Exhibit No.	Description of Document	Date	Page
P 1	Government Gazette	23rd January, 1942 ...	164
P 2	Letter from Assistant Government Agent Badulla to Land Commissioner	2nd April, 1942 ...	165
P 3	Letter from Land Commissioner to Assistant Government Agent	6th April, 1942 ...	166
P 4	Letter from Assistant Government Agent to Land Commissioner	17th April, 1942 ...	166
P 5	Letter from Land Commissioner to Assistant Government Agent	25th April, 1942 ...	167
P 6	Permit	10th August, 1942 ...	171
P 7	Letter from Government Agent to Land Commissioner	21st January, 1943 ...	173
P 8	Application by Sabapathipillai to the Land Commissioner	7th January, 1943 ...	172
P 9	Letter from Land Commissioner to Government Agent	28th January, 1943 ...	174
P 10	Letter from Assistant Government Agent to Sabapathipillai	2nd March, 1943 ...	176
P 11	Receipt	5th March, 1943 ...	178
P 11A	Receipt (Original)	5th March, 1943 ...	178
P 12	Cheque	4th March, 1943 ...	177
P 13	Minute by Assistant Government Agent to Chena Survey Muhandiram	4th March, 1943 ...	177
P 14	Letter from Chena Survey Muhandiram to Plaintiff	6th March, 1943 ...	179
P 15	Letter from Chena Survey Muhandiram to Plaintiff	13th March, 1943 ...	181

Plaintiff-Appellant's Documents—Contd.

Exhibit No.	Description of Document	Date	Page
P 16	Letter from Plaintiff to Assistant Government Agent	18th June, 1943	186
P 16A	Minute by Assistant Government Agent ...	14th June, 1943	187
P 17	Letter to Minister for Agriculture and Lands ...	23rd March, 1943	188
P 18	Letter from Minister for Agriculture and Lands ...	4th May, 1943	186
P 19	Letter from Government Agent to Plaintiff ...	5th July, 1943	189
P 20	Letter from Government Agent to Plaintiff ...	14th December, 1943	191
P 21	Letter to Attorney-General	28th December, 1943	191
P 22	Letter to Government Agent	29th December, 1943	192
P 23	Letter from Attorney-General	27th January, 1944	192
P 24	Letter to Attorney-General	28th January, 1944	193
P 25	Answer of defendant served on Proctor for Plaintiff	4th April, 1944	194
P 26	Agreement between Sabapathipillai and Karunatileke	9th June, 1942	168
P 27	Requisition for payment of money	(Undated)	196
P 28	Letter from Land Commissioner to Government Agent	27th April, 1942	167
P 29	Letter from Government Agent to Land Commissioner	2nd February, 1943	174
P 30	Letter from Land Commissioner to Government Agent	25th February, 1943	175
P 31	Letter from Land Commissioner to Government Agent	21st June, 1943	188
P 32	Letter from Government Agent to Land Commissioner	18th June, 1943	187
P 33	Statement by Attanayake	27th March, 1943	184
P 34	Statement by Attanayake	9th February, 1944	193
P 35	Minute by Assistant Government Agent ...	10th March, 1943	179

Defendant-Respondent's Documents

Exhibit No.	Description of Document	Date	Page
D 1	Minute by Attanayake	4th March, 1943 ...	177
D 2	Petition by Plaintiff to Minister for Agriculture and Lands	18th March, 1943 ...	182
D 3	Minute by Attanayake	11th March, 1943 ...	181
D 3A	Order by Government Agent	12th March, 1943 ...	181
D 3B	Minute by Government Agent	10th March, 1943 ...	181
D 4	Telegram from Land Commissioner	10th March, 1943 ...	179
D 5	Letter from Land Commissioner to Government Agent	10th March, 1943 ...	180
D 6	Letter from Government Agent to Land Com- missioner	18th August, 1943 ...	189
D 7	Letter from Sabapathipillai to Government Agent ...	5th March, 1943 ...	178
D 8	Indenture of Lease	7/16th November, 1939...	153
D 9	Indenture of Lease	10th May, 1940 ...	158
D 10	Land General Orders	—	184

No.....

Supreme Court of Ceylon
No. 205/1945

District Court, Colombo
No. 15380.

IN THE PRIVY COUNCIL
ON AN APPEAL FROM THE SUPREME
COURT OF CEYLON

BETWEEN

H. E. WIJESURIYA of "Wijegiri", Mahavilla,
Panadura.....*Plaintiff-Appellant*

AND

THE ATTORNEY-GENERAL of Ceylon.....*Defendant-Respondent.*

RECORD OF PROCEEDINGS

PART I.

PART I.

No. 1.

Journal Entries.

IN THE DISTRICT COURT OF COLOMBO.

No. 15380.

Amount : Rs. 81,000.

Nature : Money.

Procedure : Regular.

H. E. WIJESURIYA of Panadura *Plaintiff**vs.*THE ATTORNEY-GENERAL *Defendant.*

10

JOURNAL.

The 11th day of February, 1944:

Messrs. Julius & Creasy file appointment and plaint.

Plaint accepted and summons ordered for 10-3-44.

(Signed) M. W. H. DE SILVA,
Adtl. District Judge.

21-2-44. Summons issued with precept.

10-3-44. Summons served on the defendant.

31-3-44. Mr. John Wilson for defendant.
Answer.20 Issue Deposit Order for Rs. 6,000.
Answer 4th April.

Intld. R. F. D.

31-3-44. Issued Deposit note No. 38699 for Rs. 6,000.

4-4-44. Mr. John Wilson for defendant.
Answer filed.
Await Kachcheri Receipt.
Trial 12th October.

Intld. R. F. D.

Kachcheri Receipt No. 170/52118 of 3-4-44 for Rs. 6,000 filed.

3014-4-44. Proctor for defendant moves to file Kachcheri Receipt for
Rs. 6,000.

No. 1
Journal
Entries
11-2-44 to
16-2-45
—continued.

- 9-9-44. Proctors for plaintiff move under section 102 of the Civil Procedure Code for an Order requiring the defendant to declare by affidavit within 14 days of service of notice all the documents which are or have been in his possession or power relating to the subject matter of this action.

They also move for leave of Court to serve the notice on Mr. John Wilson the Proctor for the defendant.

They move that the 22nd September, 1944, be fixed for the returnable date of the notice. Proctor for defendant received notice.

10

Notice for 20th September.

Intld. R. F. D.

- 9-9-44. Proctors for plaintiff move under section 103 of the Civil Procedure Code that the Court be pleased to order the production by the defendant to the plaintiff's Proctors of all the documents in his possession or power relating to the subject-matter of this action.

They also move for leave of Court to serve the notice on Mr. John Wilson the Proctor for the defendant.

They move that the 22nd September, 1944, be fixed for the 20 returnable date of the notice. Proctor for defendant received notice.

Notice 20th September.

Intld. R. F. D.

- 13-9-44. Notices issued on defendant, to be served on his Proctors.

- 14-9-44. (a) Proctor for defendant moves under section 102 of the Civil Procedure Code for an order requiring the plaintiff to declare by affidavit within 14 days of service of notice all the documents which are or have been in his possession or power relating to the subject-matter of this action.

30

(b) He also moves for leave of Court to serve the notice on Messrs. Julius & Creasy, the Proctors for the plaintiff. He further moves that 22nd September, 1944, be fixed for the returnable date of the notice.

Proctors for plaintiff received notice.

(a) Allowed for 22nd September.

Intld. R. F. D.

(b) Allowed for 22nd September.

Intld. R. F. D.

14-9-44. Proctor for defendant moves under section 103 of the Civil Procedure Code that the Court be pleased to order the production by the plaintiff to the defendants' Proctor of all the documents in his possession or power relating to the subject-matter of this action. No. 1
Journal
Entries
11-2-44 to
16-2-45
—continued.

He also moves for leave of Court to serve the notice on Messrs. Julius & Creasy, Proctors for the plaintiff.

He moves that the 22nd September, 1944, be fixed for the returnable date of the notice.

10 Proctors for plaintiff received notice.

(a) Allowed for 22nd September.

(b) Allowed.

Intld. R. F. D.

20-9-44. Notices issued on plaintiff's Proctors.

22-9-44. Messrs. Julius & Creasy for plaintiff.
Mr. John Wilson for defendant.

1. Notices under sections 102 and 103 Civil Procedure Code served on defendant.

20 2. Notices under sections 102 and 103 Civil Procedure Code served on Proctors for plaintiff.

Advocate Mr. R. R. Crosette Thambiah, Crown Counsel, for the defendant says that the contention of the Crown is that the Crown cannot be compelled to submit to discovery but he says that without prejudices to the rights of the Crown to raise the question in a proper case the defendant has no objection to grant the plaintiff discovery and inspection asked for this case. Mr. Crosette Thambiah says the plaintiff's Proctor can at any reasonable time obtain the information he wants from the Crown Proctor.

Advocate Mr. Gratiaen with Advocate Mr. D. W. Fernando for the 30 plaintiff.

Intld. R. F. D.

26-9-44. Proctor for defendant files list of witnesses.
Proctor for plaintiff received notice.

Allowed.

Intld. R. F. D.

28-9-44. Proctor for defendant files additional list of witnesses.
Proctor for plaintiff received notice.

30-9-44. Summons issued on ten witnesses of defendant.

No. 1
Journal
Entries
11-2-44 to
16-2-45
—continued.

- 6-10-44. Proctors for plaintiff file list of witnesses and move for summons on 1, 2, 3, 4 and 5.
1. Obtain certified copies *re* 2, 3 and 4.
 2. No summons on witnesses 2, 3 and 4 unless proctor states that it is necessary, subject to this allowed.
- 7-10-44. Proctors for plaintiff move to file plaintiffs' further additional list of witnesses in this case and move for leave of Court to issue subpoenas on them.
- Mr. Billimoria sees me. He wants the witnesses.
Allowed. Intld. R. F. D. 10
- 9-10-44. Proctor for plaintiff sees me. He says the defendant has produced the originals. He does not want witnesses 2 and 3. Issue summons to produce or cause to be produced. He wants 4 to attend. Issue summonses.
- 9-10-44. Proctors for plaintiff file additional list of witnesses and move for summons on them.
Allowed. Intld. R. F. D.
- 9-10-44. Summons issued on three witnesses by plaintiff. 20
Summons on four witnesses by plaintiff.
- 10-10-44. Proctors for plaintiff tender herewith an affidavit from the plaintiff declaring all the documents which are or have been in his possession or power relating to the subject-matter of this action.
File. Intld. R. F. D.
- 12-10-44. Case called. *Vide* proceedings filed.
Case for tomorrow. Intld. R. F. D. 30
- 13-10-44. Case called. Plaintiff's list of witnesses filed. *Vide* proceedings filed.
Further hearing on Monday.
- 16-10-44. Case called. *Vide* proceedings filed.
Further hearing for tomorrow.
- 17-10-44. Case called. *Vide* proceedings filed.
Case for tomorrow.

18-10-44. Case called. *Vide* proceedings filed.
Further hearing for tomorrow.

No. 1
Journal
Entries
11-2-44 to
16-2-45
—continued.

19-10-44. Case called. *Vide* proceedings filed.
Further hearing tomorrow.

20-10-44. Case called. *Vide* proceedings filed.
C. A. V.

Intld. R. F. D.

26-10-44. Notify proctors that judgment will be delivered on 3-11-44.

Intld. R. F. D.

District Judge

10

27-10-44. Proctors noticed.

27-10-44. Proctors for plaintiff tender plaintiff's documents. P1 to P35
produced at the trial.

1. Deficiency due.
2. Documents not certified. Notice proctors.

27-10-44. Proctor for defendant tenders defendant's documents. D1 to
D9 produced at the trial.

20 2-11-44. Deficiency Rs. 20 stamp paid. Stamps affixed and can-
celled.

Check and file.

Intld. R. F. D.

3-11-44. Judgment pronounced in open Court in the presence of the
proctors for the parties. Enter judgment for the plaintiff in
a sum of Rs. 49,800 and for the sum of Rs. 6,000 with interest
thereon at 5 per cent. per annum on the Rs. 6,000 from 15th
March, 1943, till date of decree and thereafter on the aggregate
amount of the decree at the same rate till payment in full.
The defendant will pay to the plaintiff the costs of this action.

30

I find that the plaintiff has produced the originals of several
documents from official files *Vide* inter partes order dated
22-9-44. The effect of that order was that after the plaintiff
had obtained inspection he should have proceeded to obtain
certified copies of these documents after paying the proper fees.
I direct the plaintiff to return the originals to the Crown re-
taining proper certified copies of the documents in which the
originals have been produced with the exception of document
P13 which will remain in Court, as the original may be required
if this case goes higher.

Intld. R. F. D.

D. J.

No. 1
Journal
Entries
11-2-44 to
16-2-45
—continued.

13-11-44. Mr. John Wilson, Proctor for defendant, files Petition of Appeal of the defendant-appellant the Attorney-General against the judgment of this Court dated 3-11-44.

1. Accept.
2. Issue notice of appeal for 16-2.

Intld. R. F. D.

13-11-44. Proctor for defendant-appellant tenders application for typewritten copies of the record and moves for two copies on behalf of the Attorney-General. Issue.

14-11-44. The Petition of Appeal of the defendant-appellant having been 10 filed under section 764 of the Civil Procedure Code, Proctor for defendant-appellant moves that the same be accepted.

Proctors for plaintiff-respondent receive notice.

File.

Intld. R. F. D.

21-12-44. Proctors for respondent apply for typewritten copies and move for a paying in voucher for Rs. 50.

Paying in voucher No. 2215 issued for Rs. 50.

16-2-45. Notice of appeal served. Forward record to Supreme Court.

Intld. R. F. D. 20

No. 2
Plaint
of the
Plaintiff
11-2-44

No. 2.

Plaint of the Plaintiff.

IN THE DISTRICT COURT OF COLOMBO

H. E. WIJESURIYA of "Wijegiri," Mahawilla, Panadura*Plaintiff*

No. 15,380. Vs.

THE ATTORNEY-GENERAL of Ceylon *Defendant.*

This 11th day of February, 1944.

The Plaintiff of the plaintiff abovenamed appearing by Oscar Percy Mount, Geoffrey Thomas Hale and Frederick Claude Rowan, carrying on business in partnership in Colombo under the name, style and firm of 30 Julius & Creasy and their Assistants Patrick Merle Duggan, Joseph Francis

Martyn, Henric Theodore Perera, Alexander Nereus Wiratunga, John Peter Edmund Gregory, James Arelupar Naidoo, Alexander Richard Neville de Fonseka and Beram Kaikhushroo Billimoria, Proctors, states as follows :—

No. 2
Plaint
of the
Plaintiff
11-2-44
—continued.

1. The plaintiff resides at Panadure and the defendant resides and holds office at Colombo within the local limits of the jurisdiction of this Court.

2. The defendant is His Majesty's Attorney-General for the Island of Ceylon and is sued in this action as representing the Crown.

10 3. On or about the 5th day of March, 1943, the Government Agent, Uva Province, acting for and on behalf of the Crown agreed to lease to the plaintiff the right to tap and take the produce of the rubber trees on certain allotments of Crown land situated in the Badulla District sometimes referred to as Keenapitiya Crown Rubber Lands and depicted as Lots 127 and 136 in Final Village Plan No. 317 and Lot 1 in Final Village Plan No. 318 for a period of four years and two and a half months from 15th March, 1943, at a rental of Rs. 6,000 per annum and to place the plaintiff in possession of the said allotments of land on the 15th day of March, 1943.

20 4. In pursuance of the said agreement the plaintiff on or about the said 5th day of March, 1943, deposited with the said Government Agent of Uva Province at his request a sum of Rs. 6,000 being the rent for the first year of the said lease.

5. The Government Agent, Uva Province, in breach of his said agreement has failed and neglected to grant to the plaintiff a lease as aforesaid or to place him in possession of the said allotments of land and the plaintiff has in consequence suffered damages in a sum of Rs. 75,000.

6. By reason of the premises the plaintiff has also become entitled to claim from the defendant as representing the Crown the return of the 30 said sum of Rs. 6,000 with interest thereon at 9 per cent. per annum from 15th day of March, 1943.

7. Notice of this action in terms of Section 451 of the Civil Procedure Code was delivered to the defendant on the 29th day of December, 1943.

Wherefore the plaintiff prays for judgment in his favour against the defendant as representing the Crown :

- (1) for the said sum of Rs. 75,000 as damages ;
- (2) for the said sum of Rs. 6,000 with interest thereon at 9 per cent. per annum from 15th March, 1943, till date of decree and thereafter on the aggregate amount of the decree at the same rate till payment in full ;
- 40 (3) for costs ; and

No. 2
Plaint
of the
Plaintiff
11-2-44
—continued.

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

(Sgd.) JULIUS & CREASY,
Proctors for Plaintiff.

Settled by :
E. F. N. GRATIAEN,
Advocate.

No. 3
Answer
of the
Defendant
4th April '44

No. 3.

Answer of the Defendant.

IN THE DISTRICT COURT OF COLOMBO

10

H. E. WIJESURIYA of " Wijegiri," Mahawilla, Panadure.....*Plaintiff*

No. 15380/M

Vs.

THE ATTORNEY-GENERAL of Ceylon.....*Defendant.*

This 4th day of April, 1944.

The answer of the defendant abovenamed appearing by John Wilson, his Proctor, states as follows :—

1. The defendant admits the averments in paragraphs 1, 2 and 7 of the plaint.

2. Save as hereinafter admitted, the defendant denies all and singular the allegations in paragraphs 3, 4, 5 and 6 of the plaint and especially 20 denies that there was any agreement, whether oral or otherwise, as alleged in paragraph 3 of the plaint.

3. Further answering the defendant states :

(i.) that a sum of Rs. 6,000 was placed in deposit by the plaintiff on March 5, 1943, at the Kachcheri, Badulla, in anticipation of his obtaining a lease of the lands referred to in paragraph 3 of the plaint (hereinafter referred to as " the lands ") if and when they were vacated by one K. Sabapathypillai who had been given notice by the Government Agent, Uva Province (hereinafter referred to as " the Government Agent ") to quit the lands on March 15, 1943. 30

(ii.) that the said notice to quit was cancelled by the Government Agent on March 11, 1943, who further made order on March 12, 1943, that the said sum of Rs. 6,000 deposited by the plaintiff should be returned to him.

(iii.) that the said sum deposited by the plaintiff could have been withdrawn by him at any time but that, no application for such withdrawal having been made, the Government Agent on December 14, 1943, prior

to the receipt of the notice of action in this case, sent to the plaintiff a requisition enabling him to withdraw the said sum, that this requisition has neither been presented for payment nor returned to the Government Agent up to the date of this answer.

No. 3
Answer
of the
Defendant
4th April '44
—continued.

(iv.) that the said sum of Rs. 6,000 is brought into Court by the defendant with this answer.

4. As matters of law, the defendant states that, assuming but not conceding that there was an agreement as alleged in paragraph 3 of the 10 of the provisions of :

- (a) The Prevention of Frauds Ordinance ;
- (b) The Land Sale Regulations

Wherefore the defendant prays :

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

JOHN WILSON,
Proctor for Defendant.

No. 4.

Plaintif's Affidavit.

No. 4
Plaintiff's
Affidavit
5-10-44

20

IN THE DISTRICT COURT OF COLOMBO

H. E. WIJESURIYA of Panadure..... *Plaintiff*

No. 15380/M Vs.

THE ATTORNEY-GENERAL of Ceylon *Defendant.*

I, Henry Edmund Wijesuriya of Panadure not being a Christian do solemnly, sincerely and truly declare, affirm and say as follows :—

- 1. I am the plaintiff in the above-styled action.
- 2. The following are the documents relating to my claim which are and have been in my possession :
 - 30 (1) Letter from the Chena Survey Mohandiram, Badulla, dated 6th March, 1943.
 - (2) Letter from the Chena Survey Mohandiram, Badulla, dated 13th March, 1943.
 - (3) An extract from the Ceylon Government Gazette No. 8851 dated January 23, 1942,

No. 4
Plaintiff's
Affidavit
5-10-44
—continued.

- (4) Bank of Ceylon Cheque No. A 44794 dated the 4th March, 1943, in favour of the Government Agent, Uva, for Rs. 6,000.
- (5) Receipt for Rs. 6,000 dated 5th March, 1943, issued by the Government Agent, Uva Province.
- (6) Copy of letter addressed to the Hon'ble the Minister for Agriculture and Lands dated 23rd March, 1943.
- (7) Reply from the Hon'ble the Minister for Agriculture and Lands dated 4th May, 1943.
- (8) Copy of letter addressed to the Government Agent, Uva Province, Badulla, dated 13th June, 1943. 10
- (9) Letter from the Government Agent, Uva, dated 5th July, 1943.
- (10) Copy of letter addressed to the Hon'ble the Attorney-General, Colombo, dated 28th December, 1943.
- (11) Letter from the Government Agent, Uva, dated 14th December, 1943.
- (12) Letter from the Attorney-General, Colombo, dated 29th December, 1943.
- (13) Letter from the Attorney-General, Colombo, dated 27th January, 1944.
- (14) Copy letter to the Hon'ble the Attorney-General, dated 28th 20 January, 1944.
- (15) Earlier leases dated 10th May, 1940, and 7th November, 1939.

(Sgd.) H. E. WIJESURIYA.

Signed and affirmed to at
Colombo, on this 5th day of
October, 1944.

Before me :

(Sgd.).....
J. P. U. M.

No. 5.

No. 5
Issues
Framed
12-10-44

Issues Framed.

12-10-44.

ADVOCATE GRATIAEN, with ADVOCATE VANGEYZEL, for the Plaintiff.
ADVOCATE MERVYN FONSEKA, K.C., Solicitor-General, with ADVOCATE H. H. BASNAYAKA, Crown Counsel, for defendant.

Mr. Gratiaen opens his case and suggests the following issues :—

- (1) Was there an agreement between the Government Agent, Uva Province, acting for and on behalf of the Crown and the plaintiff as alleged in paragraph 3 of the plaint ?

(2) Did the Government Agent, Uva, commit a breach of the said agreement ?

(3) If so, (a) is the plaintiff entitled to a return of the sum of Rs. 6,000 deposited by him on the 5th March, 1943, with legal interest thereon from 15th March, 1943 ; (b) is plaintiff entitled to recover damages for breach of the said agreement ; and (c) if so, in what sum ?

The Solicitor-General hands to the Court a paper containing issues. By agreement of parties the following issue is substituted for Mr. Gratiaen's issue No. 1.

10 Did the Government Agent, Uva, on or about 5th March, 1943, acting for and on behalf of the Crown enter into the agreement pleaded in paragraph 3 of the plaint ?

Mr. Gratiaen admits that the agreement in question was not notarially attested but he denies that a notarial attestation is required for its validity.

The Solicitor-General suggests :

(4) Can the plaintiff enforce the agreement pleaded in paragraph 3 of the plaint in view of the fact it was not notarially attested ?

(5) Was the agreement pleaded in paragraph 3 of the plaint contrary to the Land Sale Regulations of Government ?

20 (6) If issue 5 is answered in the affirmative is the said agreement invalid and unenforceable at law ?

Mr. Gratiaen objects to issue 5 in this form. Mr. Gratiaen says that the issue is too vague and should particularise the Land Sale Regulations.

The Solicitor-General refers to the Imperial Statute Crown Revenue (Colonies) 185-15 and 16 Victoria, Chapter 139 to the Letters Patent issued to the Governor and the Land Sale Regulations and he states one of the defences of the Crown will be that even if the Court holds with the case for the plaintiff on the facts as established, that the officers concerned were acting beyond the scope of their authority if they made the agree-
30 ment alleged.

Mr. Gratiaen submits that this should be the subject of a specific issue. The Solicitor-General says it is caught up in issue 1 and also in issue 5.

Mr. Gratiaen therefore raises the specific issue :—

(7) Did the Government Agent, Uva, act without authority in entering into the agreement pleaded in paragraph 3 of the plaint ?

The Solicitor-General objects to this issue. He says that it assumes that the Government Agent entered into an agreement. Mr. Gratiaen therefore amends his issue :

40 (7) If the Government Agent entered into the agreement pleaded in paragraph 3 of the plaint was he acting without authority ?

The Solicitor-General accepts the issue,

Mr. Gratiaen also frames :

No. 5
Issues
Framed
12-10-44
—continued.

(8) Is the Crown entitled to rely on an alleged breach of Land Sale Regulations by the Government Agent.

The Solicitor-General objects to the issue. He says it is covered by issue 5.

I think the issue should be allowed to stand. I accept all issues.

No. 6.

No. 6
Plaintiff's
Evidence
Wijesooriya
examination

Plaintiff's Evidence.

MR. GRATIAEN calls :

H. E. WIJESOORIYA—Affirmed, 34 years.

I am a landed proprietor and a man of means. I have some experience as a rubber planter. At present I am in possession of certain Crown lands under certain terms to tap and take the produce of the rubber trees. Those lands are in the Uva Province. In 1942 and even up to date I am in the fortunate position of not having any difficulty in regard to obtaining labour to run my rubber estates. I am making a profit on the Crown lands which I am tapping.

I produce marked P1 the Government Gazette No. 8851 dated 23rd January, 1942, in which the Land Commissioner advertised that the Government Agent of the Uva Province would auction the lease of the right to tap and take the produce of the rubber trees in certain Crown property. The auction was fixed for 7th March, 1942, at 10 a.m. at the Badulla Kachcheri. Before that day I visited the land. As stated in P1 there were about 170 acres in rubber and the trees were 15 to 17 years old. They had not been tapped at all before. I formed the opinion that a good profit could be made by tapping those trees. I expected to get from those trees about 500 to 600 lbs. of rubber per acre. The fact that they were virgin trees influenced my mind. It was necessary to clear some of the land. To clear the land it would have cost about Rs. 20 an acre.

There were a number of bidders at the auction. At Rs. 30,000 every-body except myself and a man called Sabapathy Pillai had dropped out. I bid up to Rs. 43,950 and Sabapathy Pillai bid up to Rs. 44,000 and the lease was knocked down to him. I was aware that 1/5th of the rent that is the equivalent of one year's rent had to be paid immediately by the highest bidder. I am aware that Sabapathy Pillai did not make that deposit.

I produce P2 dated 2nd April, 1942, being the copy of a letter from the Assistant Government Agent to the Land Commissioner. This copy was handed to my lawyers by the Crown proctor.

I produce P3 dated 6th April, 1942, copy of the Land Commissioner's reply to the Government Agent, Uva.

(To Court :

The air raid over Ceylon took place on the 5th April, 1942.)

(Mr. Gratiaen wants me to note that by agreement of parties he is putting in copies of documents of which inspection has been given by the Crown to the plaintiff and copies furnished.)

No. 6
Plaintiff's
Evidence
Wijesooriya
examination
—continued.

In P3 the Land Commissioner had inquired from the Government Agent whether the second highest bidder, that is myself, was prepared to take over the lease. He was asked to recommend and report. I produce P4 the Government Agent's reply to the Land Commissioner. In P4 the Assistant Government Agent says that I informed him that I am not prepared to take the lease at Rs. 43,950 and that I am prepared to take it at Rs. 30,000. Between the 6th of April and the 17th April I had met the Assistant Government Agent. I am well known to him and on some occasions I have stayed in his bungalow. The Assistant Government Agent was Mr. Chandrasoma.

In response to P3 Mr. Chandrasoma discussed with me the question as to whether I was prepared to take over the lease and I told him the terms on which I was willing to take the lease.

At that time in April, 1942, owing to war conditions properties in Ceylon were fetching less, I mean that there was a certain amount of unrest—nervousness in the money market.

I produce P5 dated 25th April, 1942, in which the Land Commissioner approved of the Government Agent's recommendation in paragraph 3 of P4.

(To Court :

That letter was not shown to me. Until I got inspection I did not know about that letter).

Mr. Chandrasoma, the Assistant Government Agent, informed me of what the Land Commissioner had decided in connection with my offer to take the lease for Rs. 30,000, he told me that it had been approved by the Land Commissioner. What was it that happened to prevent the transaction going through? The next day I was again informed.....

(In answer to me I am informed that Mr. Chandrasoma is a witness.) He told me that it was approved but that again an extension of time had been given to Sabapathy Pillai to deposit the money. That was his initial deposit. At this time the Government Agent of Uva was Mr. C. Kumaraswamy and Mr. Chandrasoma was the Assistant Government Agent.

I produce P6 dated 10th August, 1942, the permit signed by the Assistant Government Agent, Uva, in favour of Sabapathy.

Towards the end of 1942 I ascertained that Sabapathy Pillai and his partner Karunatileke were having trouble in connection with this lease. This was a well-known fact and I knew about it and a'so there was litigation between the two of them in Badulla.

No. 6
Plaintiff's
Evidence
Wijesooriya
examination
—continued.

Q. Did you then have any discussion with anybody in the Government Agent's Office about the question of your taking over the lease—about the end of 1942 or early 1943? **A.** No, not at that time. I first discussed the matter again when I heard that Sabapathy had made an application to have the permit transferred to Mr. Wijesekere or somebody of Mount Lavinia and then I thought I had a better claim to it than Wijesekere and I decided to go and interview the Land Commissioner. I did not interview anybody in the Government Agent's Office at that time. I came to Kegalle and I retained Mr. E. A. P. Wijeratne to see the Land Commissioner on my behalf. I went to Mr. Wijeratne's bunga- 10
low and gave him instructions to interview Mr. Jansz, the Land Commissioner.

Q. What did Mr. Wijeratne tell you?

(Mr. Gratiaen says Mr. Wijeratne will be called.)

A. On 23rd January I went to Wijeratne's bungalow and asked him to interview the Land Commissioner. He saw the Land Commissioner on the 27th and having seen him he told me that Mr. Jansz had made order that I should be given the lease on the basis of Rs. 30,000 for five years.

Q. That is to say that you were to be given the lease for Rs. 30,000 on the terms recommended by the Government Agent in paragraph 3 of 20 P3? **A.** Yes.

(Mr. Gratiaen says he has summoned the Land Commissioner to produce all correspondence between him and the Government Agent in connection with this transaction.)

Mr. Gratiaen calls for the first letter written by the Land Commissioner to the Government Agent, Uva, after 27th January, 1943.

The Solicitor-General objects. He says that the plaintiff himself does not know what documents he wants. The Court refers to section 127 of the Civil Procedure Code and sections 139 and 162 of the Evidence Ordinance. I ask Mr. Gratiaen what is the document the witness has been 80
summoned to produce.

Mr. Gratiaen states he desires to have the document by which the Land Commissioner wrote to the Government Agent or the Assistant Government Agent, Uva, on a date between 27th January and 31st January, 1943.

In answer to the Court Mr. Arupragasam, Assistant Land Commissioner, states that there is such a document in his file.

Mr. Gratiaen asks him to produce it.

The Solicitor-General says that Mr. Arupragasam is here by accident and that he is not the person authorised to produce any documents. 40

Mr. Gratiaen says that Mr. Jansz and the Solicitor-General discussed the matter with him as to whether he had any objection to Mr. Jansz going back to his office until the time for giving evidence arose. He

states he stated that he had no objection provided Mr. Jansz left his file which he had summoned him to produce in the hands of another officer of the department.

No. 6
Plaintiff's
Evidence
Wijesooriya
examination
—continued.

Mr. Arupragasam says he has not the authority of the Land Commissioner to produce the file, nor is he familiar with the file.

ORDER

The trouble has arisen owing to parties obliging busy officials. The law is that a party summoned to produce a document can while a party's case is going on be called into Court and asked to produce the document. That is what Mr. Gratiaen is asking for now. Mr. Jansz apparently has been excused from attendance and I think the best thing to do now, as it is 1-15 p.m. to adjourn the case and ask Mr. Jansz to be in attendance at 2 o'clock.

R. F. DIAS,
District Judge.

Luncheon interval.

Intld. District Judge.

(Counsel informs me that the Land Commissioner has no objection to disclosing the document. Mr. H. E. Jansz the Land Commissioner is in Court. Copies of documents are handed over to counsel for the plaintiff.)

H. E. WIJESURIYA :

I now produce from the custody of the Land Commissioner P7 dated 21st January, 1943, letter from the Government Agent to the Land Commissioner. P7 refers to P8 application dated 7th January, 1943, from Sabapathipillai to the Land Commissioner through the Government Agent. I am an experienced rubber planter and I am financially sound. I produce from the custody of the Land Commissioner P9 the Land Commissioner's reply dated 28th January, 1943. Mr. Wijeratne gave me the information that the Land Commissioner had made order that I should be given the lease. I thereafter went back to Badulla. I had no discussion with anybody in the Kachcheri at that time. I produce P10 dated 28th March, 1943, from the Assistant Government Agent to Sabapathipillai cancelling his permit.

Q. Had you seen anybody in the Kachcheri between 27th January and 2nd March? A. No.

I knew that I was going to get the lease. I was waiting to carry out the directions of the Land Commissioner. After the 2nd March I went and saw the Land Clerk at the Badulla Kachcheri. He said that they have now instructions to give the lease to me, at Rs. 30,000 and that he had been asked by the Assistant Government Agent or Government Agent to ascertain from me whether I was willing to deposit Rs. 6,000 being the

No. 6
Plaintiff's
Evidence
Wijesooriya
examination
—continued.

annual rent in order to give me the lease. Then I went to the Assistant Government Agent's Office. That was on the same day the 4th March. Mr. Chandrasoma said he had already instructed the Land Clerk to ascertain from me whether I was willing to deposit the money and if I did so that I would be given the lease. It was agreed that it was to be on the same terms—the period was to be five years. The other conditions were also to be the same. I agreed to take it on those terms. P10 instructed Sabapathypillai to give up possession on 15th March, 1943.

(To Court :

I did not confirm in writing the conversation I had with Mr. Chandra- 10
soma. He also did not confirm it in writing.)

Immediately I went to the Assistant Government Agent's room and he confirmed the Land Clerk's story I came out to the Land Department and drew out a cheque. I produce the receipt P11 which bears the date 5th March. I was also promised possession on the 15-3-43. My cheque in favour of the Government Agent, Uva, I have obtained from my bank. I produce it P12. I produce P13 the Government Agent's minute to the chena surveyor Muhandiram informing that the lease had been given to me and instructing him to put me in possession. I considered the whole matter was finally concluded when I gave the cheque and got the receipt. 20 I was told that the cancellation of Sabapathipillai's lease was finally decided. When I left I left under the belief that P10 was final as far as Sabapathypillai was concerned. Paragraph 3 (1) of the answer put to witness. It is not correct that the lease was to be given to me if and when the premises were vacated by Sabapathipillai. There was no such condition. I produce P14 letter dated 6th March received by me from the chena Muhandiram. He says there that he had been instructed to put me in possession on the 15th March. I then made the necessary arrangements to take the land over on 15th March. I was anxious to start tapping as soon as I took possession. I instructed the conductor on one of my lease lands at 30 Wellawaya to have the men ready and meet me on the 15th on the land. I am quite certain that I could have got all the necessary labour for the purpose of starting tapping. On 14th March I received P15 dated 13th March, 1943, from the Chena Muhandiram informing me that the notice P10 served on Sabapathy had been cancelled and informing me that he could not put me in possession of the land. That caused me very considerable surprise. The next letter I have written is P16 on the 13th June, 1943, to the Government Agent. Before that date I thought of representing matters to the Minister of Agriculture and Lands. I represented matters to him. I wrote to the Minister. I produce that petition dated 40 23rd March, 1943, P17. The statements in my petition are correct. The Land Commissioner I thought was under that Ministry. The date 5th I took from the receipt. The information was given to me on the 4th. To that letter I received no reply till 4th May, 1943, which I produce marked P18. On the 13th June I wrote P16. In the meantime apart from the letter P15 which I had received from the Chena Muhandiram I had no letter whatsoever from the Kachcheri explaining their change of attitude.

On 5th July, 1943, I received P19 in reply to P16. That letter stated that they were awaiting instructions from the Land Commissioner. I was not even offered the return of the money which I paid. There was no denial of the statements that the leases had been promised to me. I received no communication from the Government Agent till 14th December 1943, P20. By this time Sabapathipillai and Karunatillaka were litigating in Colombo. They had some litigation in Badulla and some in Colombo. On receipt of P20 I came to Colombo and consulted my lawyers. I produce P21 the notice of action dated 28th December, 1943. I produce P22 dated 29th December, 1943, my proctor's reply to P20. I produce P23 the Attorney-General's reply to the notice of action. I produce P24 dated 28th January my proctor's reply to the Attorney-General. The Rs. 6,000 which I paid as rent on 4th March, 1943, is still with the Crown.

No. 6
Plaintiff's
Evidence
Wijesooriya
examination
—continued.

(I point out to counsel that the Rs. 6,000 is deposited in Court.)

In answer to me Mr. Solicitor says that the Crown has no objection to the plaintiff drawing that money at any time.

Mr. Gratiaen says that the copy of the answer served on the plaintiff does not contain paragraph 3 (4) in which the payment into Court is stated. He says this affects the question of interest). I produce P25 the copy of the answer served on me. In my plaint I claim damages representing the loss of profits. I could have earned from 15th March, 1943, until the termination of the lease which had been promised to me. I claim that I should have possession for 4 years and 2½ months representing the unexpired period of the lease which had originally been given to Sabapathy. In March, 1943, the cost of production in that district according to my experience would be about 30 cents per lb. In 1943 the price of rubber was 71 or 72 cents per lb. The profit would be about 41 or 42 cents per lb. In October, 1943, the price went up to 84 cents. When it went to 84 cents the cost of production was about 36 cents. From the 1st April, 1944, the price went up to Rs. 1.05. The cost of production then was 40 to 45 cents. The extent was 170 acres on which I could reasonably have expected 500 to 600 lbs. per acre for the year. The initial cost of clearing would be about Rs. 20 to Rs. 25 per acre. In addition to the cost of production I would have had to pay Rs. 6,000 a year for the lease. My estimates include the cost of transport. There is no proper centre of the Rubber Commissioner there. The estimate of 45 cents includes cost of transport also.

WIJESOORIYA—cross-examination.

I live at Panadure with my mother. I am not married. I go to Badulla generally once a month sometimes twice a month. Very often I stay more than 10 days in Badulla. I stay about 2 to 3 weeks at Badulla at a time. I am not only at Badulla. I also go to Kurunegala. I am more out at Kurunegala and Badulla than at home. I come to Colombo occasionally. One of my sisters is married to Mr. Kuruppu, the State Councillor. Another sister is married to Albert Perera of Perera & Sons, the bakers. When I am in Colombo I stay very often with my friends. I do stay at my sister's also. I have got a lease of two other Crown lands

No. 6
Plaintiff's
Evidence
Wijesooriya
Cross-
examination

No. 6
Plaintiff's
Evidence
Wijesooriya
Cross-
examination
—continued.

in Badulla, one is Batuwaya and the other is Ranawarawa. The extent of the first land is 88 acres the other is 28 acres. It is because of those lands that I go very often to Badulla. I travel by car. I am in category A. These lands—the Keenapitiya lands—are about 37 miles from Badulla. I have been to these lands once. In connection with my lands I go often to the Badulla Kachcheri.

I do not go daily to the Kachcheri when I am in Badulla. I go to the Kachcheri to see a friend sometimes, sometimes on business. I do not go often to the Kachcheri. I go frequently to the Kachcheri. Mr. C. Coomaraswamy was the Government Agent. I knew him. I used to go to his bungalow. I had no discussion with Mr. Coomaraswamy about the Keenapitiya lands. I wrote a letter to the Government Agent. That was somewhere in June, 1943. I am referring to P16. I remember the Chief Land Clerk of the Badulla Kachcheri, Ranasinghe. He was a good friend of mine. I thought Mr. Fernando was the land clerk and I thought Attanayaka was acting because Mr. Fernando was doing some emergency work in the Food Control. I thought Attanayaka was acting for Fernando. I knew Attanayaka fairly well. I have been to his house. The assistant land clerk was Mr. Dias. I saw in the Gazette about the Keenapitiya land. I read the Gazette. When I went to Badulla I went to the Kach- 20 cheri. I can't remember to whom I spoke. I did go to make enquiries about the land. When I go to Badulla I stay in the resthouse. Letters addressed to me are addressed to the resthouse. I know Mr. Chandrasoma the Assistant Government Agent. He is a particular friend of mine. He has left Badulla now. I know where he is. He is now in Gampaha as Emergency Assistant Government Agent. I have not been in contact with him so much as I did in those days. That is because there is nothing to take me that way. There is no necessity for me to go to Gampaha. As far as I am concerned there is no rupture between him and me. Although the letters were addressed to me at the resthouse I lived for some 30 time with Mr. Chandrasoma. I stayed at the resthouse sometimes and sometimes I stayed with Chandrasoma. For a period it was the rule that I stayed with him. It ended when he left Badulla. That is when I no longer had a chance of staying there.

(To Court :

I started staying with him at the latter stages. At the start I went to the resthouse then until he left I stayed with Chandrasoma. He is not related to me.)

I visited the Keenapitiya lands once. I went there with the assistant land clerk, Mr. Dias. I did not remunerate him. I called him because 40 I did not know where the land was. I asked him whether he could point out the land. He said he could. The Keenapitiya land was pointed out by Mr. Dias. I went over the whole land. It must have taken about 3 or 3½ hours. By evening we got back. I think it was a Saturday, Sunday or holiday. That was prior to the auction. It was between the Gazette and the 7th March. I was well known in the Land Department of the Kachcheri. I never went to the Kachcheri with the idea of getting in-

formation. I do not know whether even as a friend they would have given me any information officially. I never had the occasion to ask them. I remember Mr. Attanayaka speaking to me about those lands on 4th March, 1943. I happened to be there in the Kachcheri that day casually. I was going to see the Assistant Government Agent. I had to pass the Land Department to go to the Assistant Government Agent's Office. If the Assistant Government Agent wanted to ask me a question he could have asked me direct. I got into a conversation with Mr. Attanayaka.

No. 6
Plaintiff's
Evidence
Wijesooriya
Cross-
examination
—continued.

Q. Will you tell us what Attanayaka told you ?

10 (In answer to Mr. Gratiaen Mr. Solicitor says he is calling Mr. Attanayaka.)

He said that they have now instructions from the Land Commissioner to give me the lease on the basis of Rs. 30,000 for 5 years and asked me whether I was now willing to deposit the sum of Rs. 6,000 in order to give me the lease. I cannot remember whether he went back to his desk but I went to the Assistant Government Agent's Office. As I went I spoke to him then he confirmed the story given by Mr. Attanayaka. The Assistant Government Agent told me the same thing that Attanayaka told me. Then I came back to the Land Department and drew out a cheque.

20 Q. Did Attanayaka tell you that Chandrasoma had written anything to him ? A. He only said they had instructions.

Q. To do what ? A. To give the lease on the basis of Rs. 30,000.

Mr. Attanayaka told me about the Rs. 6,000 and Mr. Chandrasoma also told me that. I do not know Mr. Attanayaka's handwriting. This was definitely on the 4th March. That was the day before the receipt. This was on the evening of the 4th. As a matter of fact the receipt was not given to me on the 5th. I did not go to the Kachcheri on the 5th. I can't say when I got the receipt. It was given on a subsequent occasion. I asked Mr. Attanayaka for the receipt. When I went to the Kachcheri 30 on the 4th March I was staying with Mr. Chandrasoma. I never discussed with Mr. Chandrasoma this matter in the bungalow. I never discussed with him any official matters in the bungalow. I thought if I did talk about official matters I would be taking an advantage of his friendship.

(Mr. Gratiaen objects—cross-examination irrelevant.

Mr. Solicitor says he is impeaching the credit of the witness.

Mr. Gratiaen says if it is to credit then the answers of the witness binds the Court.)

Q. Did you discuss the question of the lease with Mr. Chandrasoma on any subsequent occasion—after the 4th March ? A. I did not.

40 Q. Did you discuss the subject-matter of this lease with anybody in the Kachcheri after the 4th March ? A. No.

Q. Did you make any attempt to go to the Kachcheri and find out what the trouble was about getting you this land ? A. No.

Q. How did you know that you should go and petition the Minister ?
A. I had the letter from the Chena Muhandiram,

No. 6
Plaintiff's
Evidence
Wijesooriya
Cross-
examination
—continued.

Q. Did you go and tell your friend Dias you have promised me a lease. I have given Rs. 6,000? A. Mr. Dias was not in the Kachcheri. I did not go to Attanayaka. I thought it was up to them to inform me having taken my money.

Q. Did you think it was improper for you to ask them? A. No. I waited till they informed me. I did not write to them till the letter of 13th June. In the interval I had no quarrel with anybody in the Kachcheri.

Q. Why this reticence on your part? A. I waited till they wrote to me because they promised to give me the lease; they took my money 10 and I waited till they informed me of any steps they were going to take.

(To Court :

Q. You had been promised this on the 15th March you had got ready, then like a bolt from the blue came the letter from the Chena Muhandiram on the 13th March? A. Yes.

Q. So you did not go on the 15th March? A. I wired to my man at Wellawaya.

Q. Why did you petition the Minister instead of writing to the Government Agent? A. I could not understand when the letter of the Chena Muhandiram came what they were about. 20

Q. The very reason—why did you not write to the Government Agent? A. I thought I must represent things to the Minister. I thought as I had no reply from him—nothing whatsoever—that it was best for me to represent matters to the Minister.)

Q. Beyond the letter from the Chena Muhandiram had you any other source of information? A. No. Nobody told me.

Q. Did you go to the Land Commissioner's Office? A. No.

Q. So you took the Chena Muhandiram's letter as final? A. Not final. He would not have written to me unless he had been asked not to give me possession. 30

Q. Why did you not ask Mr. Chandrasoma? A. I thought it was up to them to write to me officially. When they did not write to me officially I did not want to discuss any matter in his bungalow. I never did. If I had any business in the Kachcheri I went to the Kachcheri and then discussed.

Q. Did you discuss any business with Mr. Chandrasoma in the Kachcheri? A. Perhaps if he was free to have a chat with me.

Q. Did you discuss business with him in the Kachcheri? A. On this subject I did not discuss.

Q. Was this the only occasion when you had any discussion with 40 Mr. Chandrasoma about the lease? A. Earlier he asked me whether I was willing to take the lease at Rs. 43,950.

(To Court :

Q. After the 4th March did you stay at Chandrasoma's house? A. Yes.

Q. You never discussed this matter with him? A. No.)

I said I was not willing to take it at Rs, 43,950, but I was only prepared to take it at Rs. 30,000 at which point the genuine bidders dropped out. That was a discussion in the Kachcheri.

No. 6
Plaintiff's
Evidence
Wijesooriya
Cross-
examination
—continued.

Q. On no occasion did you discuss anything about these leases with Mr. Chandrasoma in his bungalow? A. No.

Mr. Chandrasoma left Badulla somewhere in October or November, 1943. I went very often to Badulla after that. I stayed in his house. I did not ask him why I was suddenly deprived of the lease. I thought it was up to him to tell me if there was anything.

Q. Were you at all interested as to what happened afterwards? Did you enquire from anybody? A. I did not take any advice. I represented matters to the Minister and awaited his reply. That was somewhere in May.

I wrote to the Government Agent after I received a reply from the Minister. That was the first and only occasion I wrote to the Government Agent. I did not consult any lawyers before I wrote that letter.

Q. Will you tell us why you have headed this letter without prejudice? A. I have had a few letters like that from other people so I thought I would add these words. The impression that was created in my mind was that I would not commit myself if I headed the letter with these words.

Q. The words without prejudice were inserted by you? A. Yes.

Q. Without anybody else instructing you or advising you to do so? A. Yes. I put those words because I had letters like that from other people and I had an impression that once you added those words you did not commit yourself because there I said in case there were any difficulties I was prepared to discuss with a view to an amicable settlement.

Q. Why did you not ask for an amicable settlement before that? A. I waited till they wrote to me.

The letter was from the Minister. From the Government Agent I had no letter about this matter. Mr. E. A. P. Wijeratne saw Mr. Jansz about this matter on 27th January.

Q. Did you go with Mr. Wijeratne? A. I did not go to the Office. I did not go to the Land Commissioner.

Mr. Wijeratne was accompanied by my brother-in-law, Mr. Kuruppu.

Q. When they went there they found that Mr. Jansz had already disposed of the matter? A. I could not say that. He said that he saw Mr. Jansz and Mr. Jansz was convinced that this man had flagrantly violated the conditions of the lease and that he had made order that it should be given to me.

Q. After you wrote the letter on 13th June you wrote no other letter? A. I did not write.

Q. When you wrote P16 you received a reply P19? A. Yes.

No. 6
Plaintiff's
Evidence
Wijesooriya
Cross-
examination
—continued.

Q. The next letter that you got was from the Government Agent, the letter P20 sending you a requisition for Rs. 6,000? A. That is correct.

Q. In the interval of 5 months did you make any endeavour to ascertain what really had happened? A. No sir. I did not know what had happened.

Q. You knew nothing? A. No.

Q. Did you make any attempt to find out? A. No.

(To Court :

Q. At this time was Chandrasoma in Badulla? A. Yes.

Q. You were still going? A. Yes.

10

Q. You were staying with him? A. Yes.)

Q. When you got the requisition for Rs. 6,000 you did not reply to it? A. No.

Q. What has happened to the requisition? A. I handed it to Mr. Hale of Julius & Creasy.

Q. You did not make any attempt to cash that requisition or realise your money? A. No. I had handed the matter to Mr. Hale by that time.

Q. You immediately went to Julius & Creasy and said they are returning the Rs. 6,000 and I do not know what happened—I have not endeavoured to find out? A. I can't quite remember whether I posted it to Julius & Creasy.

(To Court :

Q. When did you consult your Proctors first? A. I consulted them a considerable length of time before this.)

Q. When you received this letter from the Government Agent you went to your lawyers? A. I went again. I can't say whether I took it personally or posted it.

Q. Your lawyers Messrs. Julius & Creasy wrote to the Attorney-General giving notice of action by P21 on the 28th December? A. I think so.

Q. Was that after you had handed the requisition and letter of 14th December to them? A. I can't exactly remember that.

Q. Why? A. Because very often I do not get these letters immediately they are sent on to me. At times I am in Colombo when the letters are sent to me to Badulla. I can't say exactly when I received the letter.

Q. Do you know in their notice of action which they gave on behalf of you they claimed the refund of Rs. 6,000 and made no mention that you have received the requisition? A. I can't say that.

40

Q. Can you explain why in the notice of action Messrs. Julius & Creasy claimed the refund of Rs. 6,000 although you had handed to them

the requisition and the letter of the Government Agent? *A.* I can't explain because once I handed over the letter with the requisition I did not worry about it after that. I expected my lawyers to do the needful.

Q. That was on the 28th December? *A.* May be so.

Q. This requisition is with your lawyers? *A.* I believe so.

Q. Were you asked any questions about this requisition later by your lawyers?

(Mr. Gratiaen objects.)

I disallow that question. I think it is encroaching on professional privilege.)

Q. I put it to you straight that you never showed Messrs. Julius & Creasy this requisition you received from the Government Agent? *A.* I did show the letter with the requisition to Messrs. Julius & Creasy.

Q. Do you know that you can't eject a lessee who refused to be ejected without going to Court? *A.* I do not know that.

Q. You know that no Government lessee is put in possession unless he has paid the rent of the first year? *A.* I do not know that as a rule. I have had several leases and it is only on payment of the annual rent that I was put in possession. I do not know whether they had any exceptions to that.

Q. You know you received the document of lease much later sometimes? *A.* Yes. After I am put in possession. Sometimes I do not get any lease at all.

Q. I want to go back to the incidents of 4th March when you met Attanayaka? You know very well that you wanted to get into possession as quickly as possible? *A.* Yes.

Q. And Attanayaka told you if you wanted to get into possession at once the lease money must be paid? *A.* That is not exactly the way he told me. He said you deposit a sum of Rs. 6,000 the lease will be given to you and further added that I would be put in possession on the 15th.

(To Court :

He did not say that I will be put in possession provided they are able to get Sabapathy out of the place.)

I knew Sabapathy was in occupation.

Q. You knew also that Sabapathy was litigating with Karunatileke? *A.* Yes.

Q. Who told you that? *A.* That was the talk in Badulla.

Q. Did you discuss this matter with Chandrasoma? *A.* No.

Q. Or with anybody in the Kachcheri? *A.* No. It was well known in Badulla.

Q. Do you know the reason why Sabapathy's lease was to be terminated? *A.* I know that now.

No. 6
Plaintiff's
Evidence
Wijesooriya
Cross-
examination
—continued.

Q. Who told you that? A. I heard it from Mr. Jansz through Mr. Wijeratne. Mr. Wijeratne said that this man had violated the conditions of the lease.

Q. You did not hear it from anybody in the Kachcheri? A. No.

Q. Beyond this general talk you had heard in Badulla you had no authentic information as to what was happening on the Keenapitiya land?
A. No.

Q. Did you make any attempt to find out? A. No.

Q. On the 15th March having paid your money you were prepared to go into occupation and get possession? A. Yes. 10

Q. Before that you received this letter from the chena Muhandiram?
A. Yes.

Q. Did you go to the Chena Muhandiram? A. No.

Q. You know him well? A. To a certain extent. I have been to his house. I might have had a drink with him. The whole of Badulla knows me and they are all my friends.

Q. How long before the 15th had you sent the telegram to your man? On the 4th March you were in Badulla? A. Yes.

Q. After the 4th March did you remain in Badulla? A. I can't say whether I stayed there from that day till the 15th. I know for a certainty I went after the 4th to Wellawaya to make arrangements with my conductor. I have a number of men who can get labour for me.

Q. Including this conductor of yours? A. Yes.

Q. You anticipating that you would be put in possession of Keenapitiya you asked your conductor to bring some men? A. Yes.

Q. The men he was to bring were the labourers of your estate? A. No. If I took the men from Ranawara then Ranawara will not be tapped.

Q. They were an entirely new set of labourers? A. Yes.

Q. Did you know from where he was getting them? A. I do not know. 30

(To Court :

Q. This part of the world is rather the back of beyond? A. Yes.

He is a man from the Ratnapura district. He gets people from Ratnapura to Ranawara.

We will house them by putting up sheds. We feed them to the best of our ability. If we can supplement the ration we do so otherwise. Even in these hard times I could have got labour.)

The rubber is in one stretch in one area. About 30 to 35 tappers would have been necessary. Other coolies about 3 or 4. The maximum labour force would be about 40 for this land. When I inspected Keenapitiya before the auction in 1942 there were no labourers' lines there. I expected to house 40 labourers in some of the buildings which I presumed had come up between the auction of the land and the time they promised

to give me the lease. They held the auction on 7-3-42. In between I had come to know there were a number of lines. I knew they were tapping the land so that the man would have been housed there. I had no access to the land. I got ready with various other things such as acid coconut shells. I immediately wrote to Kurunegala to have the coconut shells ready. I had a stock of acid at that time because I had collected acid. I presumed they had the rollers there at that time. Failing that I thought I would get it rolled in the adjoining estate. I again presumed they would have had a smoke room to run the estate for a number of 10 months. I had no chance of going to the land and even if there were any shortcomings I thought I would get them up in no time. Somebody else was in possession at the time.

No. 6
Plaintiff's
Evidence
Wijesooriya
Cross-
examination
—continued..

Q. Did you expect to start work on the 15th? A. I would not have tapped on that very day. At least the day after I could have started the work.

On the 13th I received the letter P15. I got it on the 14th. I immediately sent a wire to my man that he need not come with the men as arranged earlier.

Q. Were you going there yourself? A. I was going to take possession. I was to be met by the conductor and the additional labourers. I had not despatched coconut shells or acid to the land. There would have been coconut shells to start work. If Sabapathy took the coconut shells I would have supplemented them because I had already written for coconut shells to Kurunegala. I did not say that I would not be allowed to enter the land.

Q. Had you any apprehension that you would be thrown out? A. I did not want to go to the land because he was the man in possession and he would have thought that because of me he had to leave the land and therefore I did not want to go to the land.

30 I thought he would not be friendly disposed towards me. I expected to get the coconut shells on payment. It is so troublesome to carry the coconut shells away. I did not write to him and say that I was going to enter into possession on the 15th. I did not write to him and ask for the coconut shells. I did not want to write to him, I thought I would go to the land on the 15th and if I met anybody who was in charge of the place I would arrange to get anything that was available. It was a chance I was taking. On the other hand I could not delay also. I sent a telegram immediately on receipt of the letter.

(To Court :

40 I did not try to get a copy of that telegram.)

The conductor is D. H. Kulasekere who is on Ranawara Estate, Wellawaya.

(To Court :

He is not a witness for me today.)

No. 6
Plaintiff's
Evidence
Wijesooriya
Cross-
examination
—continued.

He is still in my employ. By that day I presumed the conductor had engaged the labourers. He said he had to inform them not to come. I can't say when I next went to Badulla after the 15th March. I presumed I was at Badulla at that time. I must have been in Badulla when I got the chena Muhandiram's letter. I was staying with Mr. Chandrasoma. I was surprised to get that letter from the chena Muhandiram. I did not ask Mr. Chandrasoma because I expected him to tell me if there was anything.

(To Court :

Q. Why this reticence? A. I did not discuss anything official in 10 his bungalow and I thought if I did question him he would misunderstand me and think that I was taking advantage of the fact that he was a friend and my staying with him.)

Q. When you paid the Rs. 6,000 did not Attanayaka make it clear to you that the Rs. 6,000 was to be placed in deposit at the Kachcheri? A. I cannot remember any such thing.

R. F. DIAS,
District Judge.

For want of time case postponed for tomorrow.

R. F. DIAS, 20
District Judge.

13th October, 1944.

Appearances as before.

(Advocate Mr. Gratiaen states that Mr. Chandrasoma is a witness for the Crown and not for the plaintiff. Mr. Gratiaen says that Mr. Chandrasoma is not his witness.)

H. E. WIJESURIYA—affirmed.

Q. In the beginning of March, 1943, can you remember you were in the Kachcheri on the 4th? A. Yes.

Q. Was that the first day on which you came to Badulla in that 30 month? A. I must have been there a few days.

Q. Staying with Mr. Chandrasoma? A. Yes.

Q. Did you go to the Kachcheri before that day? A. I cannot remember.

Q. Do you know that Mr. Dias was not there? A. I knew on the 4th that he was not there.

Q. As he had been transferred? A. I did not know that he had been transferred at that time. He was not in the Kachcheri.

Q. The person whom you knew in the Land Department is Mr. Attanayaka? A. There were several others as well.

Q. Will you please take your mind to the 4th March? A. Yes.

Q. You went to the Kachcheri on that occasion? A. Yes.

Q. You went first to the clerk's room? A. I was going past the land department.

Q. When Mr. Attanayake spoke to you? A. Yes.

Q. What did he say? A. He said that they have now instructions to give the lease to me on the basis of Rs. 30,000 for 5 years that if I deposited the sum of Rs. 6,000 I will be given the lease and further added that if I did so I would be put in possession on the 15th March.

10 Q. He made this formal announcement to you at his desk? A. I do not think it was at his desk. It was inside the Kachcheri premises.

Q. Did he have any document with him? A. I did not see him with any document when he spoke to me.

Q. Did he have a file in his hand? A. No.

Q. When he said: "We have instructions" what did you understand? A. I thought the Land Commissioner's instructions had reached them.

Q. What made you go back to the instructions of the Land Commissioner? A. Because Mr. E. A. P. Wijeratne told me that the Land
20 Commissioner would instruct the Government Agent.

Q. Mr. E. A. P. Wijeratne saw the Land Commissioner in January? A. That is correct.

Q. Had you made any previous enquiry as to whether the Land Commissioner's instructions had arrived? A. I made no enquiries at the Kachcheri.

Q. Do you mean you made enquiries elsewhere? A. I made no enquiries anywhere.

Q. You made no enquiries at all? A. That is correct.

Q. After Mr. Wijeratne interviewed Mr. Jansz the Land Commis-
80 sioner that is correct? A. Yes.

Q. Until Attanayaka came to you on the 4th March? A. Yes.

(To Court :

I met Mr. Wijeratne again and told him that I have so far not received any instructions.

Q. With Government between the 23rd January and 4th March you took no steps to get into communication? A. No.

Q. Why? A. I thought no sooner they got instructions from the Land Commissioner they will put it to me.)

Q. As a matter of fact you know that the Land Commissioner replied
40 to the Government Agent on 28th January by P9? A. Yes.

No. 6
Plaintiff's
Evidence
Wijesooriya
Cross-
examination
—continued.

Q. Did you not think it was necessary to go and ask what is this delay? A. I did not make it a point to go to the Kachcheri to enquire but I went and told Mr. Wijeratne.

Q. So that Mr. Attanayaka met you casually and told you this long story about the 5 years and Rs. 30,000? A. It was in the land department.

Q. Did you accept his word for it? A. Having accepted his word.

Q. Say yes or no? A. I thought that was correct.

Q. Did Mr. Attanayaka show you any file on that occasion? A. 10
He showed me no file.

Q. Did you see the file on any subsequent occasion? A. No.

Q. So that up to the present you have seen no endorsement or no minutes with regard to this transaction? A. No.

Q. What did you do then? A. I went into the Assistant Government Agent's Office.

Q. That was Mr. Chandrasoma's office? A. Yes.

Q. Did you ask Mr. Chandrasoma before you came to the Kachcheri "has any reply been received from the Land Commissioner"? A. No
sir, I did not. 20

Q. When you went to Mr. Chandrasoma's room what did he tell you? A. As I entered the room he said he had instructed the land clerk to ascertain from me whether I was now willing to deposit the sum of Rs. 6,000.

Q. He also repeated the formula? A. He said it is for the balance period of 5 years.

Q. You were willing to deposit what? A. To deposit Rs. 6,000 and take the lease.

Q. What did you say? A. I said I was willing.

Q. You expressed your willingness to Mr. Attanayaka and then to 30
Mr. Chandrasoma? A. Yes.

Q. What else did you do? A. Then I came back to the land department.

Q. After that? A. I drew out a cheque.

Shown D1 endorsement dated 4th March at the back of P13.

(In answer to Mr. Gratiaen, Mr. Solicitor says the people who made the minutes will be called and the document will be proved.

Mr. Gratiaen therefore says he does not object.)

Shown P12. This is my cheque. It is dated 4th March.

Q. To whom did you hand this cheque? A. I handed the cheque 40
to the land clerk.

Q. Mr. Attanayaka? A. Yes.

(To Court :

Q. On the evening of the 4th March ? A. Yes.)

Q. Mr. Chandrasoma denies this incident. A. I am sorry to hear that.

Q. Do you know that Mr. Chandrasoma says he has no knowledge of your coming to see him on the 4th or 5th March ? A. That is wrong.

Q. And that your conversation was with Mr. Attanayaka only ? A. That is not correct.

Q. You suggest now after you have read these minutes this elaborate process of correspondence should have been carried on if in fact you went and saw Mr. Chandrasoma ? Did Mr. Chandrasoma call for the file when you were with him ? A. No.

(To Court :

Q. Or for Attanayaka ? A. No.

Q. While you were with him ? A. No.)

Q. When he said that he had given instructions about this lease to you did he say that he had given written instructions to Attanayaka ? A. He did not say whether he had written or anything like that he said he had instructed the land clerk to ascertain whether I was willing.

Q. He told you he had instructed the land clerk to ascertain from you whether you were willing ? A. Yes.

(To Court :

Q. At that time you were staying with him in his house ? A. That is correct.)

Q. You went to his room for confirmation of what the land clerk had told you ? A. Yes.

Q. Did he tell you anything else ? A. Nothing else.

Q. Did he tell you that you are going to get the lease for 5 years ? A. For the balance period of 5 years.

Q. That is 5 years reckoned from Mr. Sabapathy's lease ? A. Yes.

Q. At a rental of Rs. 30,000 ? A. Yes.

Q. He mentioned all that to you ? A. Yes.

Q. Anything else ? A. He had instructed that in case I deposit the money to put me in possession on 15th.

Q. The relationship between you and Mr. Chandrasoma seems to be very formal—he reads out the terms of a lease ? A. He told me the terms of the lease.

Q. You want to bring Mr. Chandrasoma into this because you have pleaded that the Government Agent.....? A. That is not correct.

Q. Your dealings in the matter were with the clerks in the Kach-cheri ? A. No sir.

No. 6
Plaintiff's
Evidence
Wijesooriya
Cross-
examination
—continued.

Q. Can you say that Mr. Chandrasoma gave you all this information in the Kachcheri? A. Yes.

Q. You said no further words to him but went back and signed your cheque? A. Yes.

Q. Do you know what is the meaning of deposit at the Kachcheri? A. As far as I know the money was taken over by Kachcheri.

Q. Do you know that if you deposit money at the Kachcheri you can withdraw it at any time without reference to Government? A. I do not know that.

Q. Did Attanayaka tell you distinctly that if you could not get 10 possession on the 15th that you could have your money back? A. That was never mentioned.

Q. Attanayaka made no explanation to you about the meaning of the word deposit? A. No.

Q. He only gave the same formula that is for the balance period at Rs. 30,000? A. That is correct.

Q. You said I am willing? A. Yes.

Q. Did you tell him anything else? A. I did not tell him anything else.

Q. On the second occasion when you met him you handed the cheque? 20 A. On the same day.

Q. What did he say? A. He said I will be put in possession of the land on the 15th. The chena Muhandiram will be written to and he will get in touch with me. That is the chena Surveyor Muhandiram.

Q. What time was this? A. Rather late.

Q. Roughly? A. About 4 o'clock.

Q. Do you know that in all Government offices financial business is closed at 3 o'clock? A. Yes, sir.

Q. So that Attanayaka could not send in your cheque on the same day? A. I believe so. 30

Q. Do you mean he would have to keep it? A. That is my impression.

Q. From that day you considered you were going to get a lease of this place? A. That is right.

Q. So that is the agreement to which you refer when you say that the Government Agent agreed to lease this land to you? A. Yes, sir.

(To Court :

Q. This is the agreement the Crown has broken? A. That is right.)

Q. From the 4th March until you received the chena Muhandiram's 40 letter P14 dated 6th March you were in Badulla? A. Yes.

Q. Your correspondence although you lived with Mr. Chandrasoma was addressed to the resthouse? A. Yes,

Q. Why? A. That is because I had been staying in the rest house for a long time before I went to Mr. Chandrasoma's.

Q. When did you go to Chandrasoma's for the first time? A. Roughly somewhere in 1942.

(To Court :

I did not want to change that arrangement because it was quite easy for me to collect the letters at the resthouse because I have to come to town every day. Every morning in going to Batuwayawa Estate I have to go through the town and it is very easy to collect my letters.)

10 Q. How did the chena Muhandiram know that you were in the resthouse? Did you give your address as the resthouse to the chena Muhandiram? A. I did not give.

Q. But you collected this letter at the resthouse? A. Yes.

Q. You did not know the chena Muhandiram knew you were at the resthouse? I did not know.

(To Court :

Q. As a matter of fact you were not at the resthouse you were with Mr. Chandrasoma? A. That is so.)

Q. Irrespective of the fact that you stayed with Mr. Chandrasoma 20 you had your correspondence addressed to the resthouse? A. Yes.

Q. Do you say that it was not on your instructions? A. I had given my instructions earlier and they remained like that.

Q. How earlier? A. Before I went to Chandrasoma's.

Q. Which was several months earlier? A. Yes.

Q. The old practice of addressing correspondence to the resthouse continued? A. Yes.

Q. You had not booked a room there? A. No.

Q. Was it a matter of favour to you that the resthouse-keeper collected these letters for you? A. As I stayed there for a long time the 30 resthouse-keeper was obliging and accommodating.

Q. P14 is dated the 6th? Did it come by post? A. I can't remember.

Q. You did not go back to Colombo? A. After the 6th.

Q. After the 6th March you did not leave immediately for Colombo? A. No.

Q. You continued to stay in Badulla? A. Yes.

I went and saw Kulasekere.

Shown P15. It is dated 13th March and is written to me by the chena Muhandiram and addressed to me at the resthouse. (Letter read).

40 Q. On that day also you were in Badulla? A. Yes.

(To Court :

Q. And staying at Chandrasoma's? A. Yes.

No. 6
Plaintiff's
Evidence
Wijesooriya
Cross-
examination
—continued.

Q Can you remember what time of the day you got this letter?
On what date first of all? A. I can't exactly remember which date.

Q. You got that letter at the resthouse? A. Yes.

Q. Morning or afternoon? A. I can't remember.

Q. You said you despatched a telegram? A. Yes.

Q. Cancelling the arrangements you had made? A. Asking him
not to meet me as arranged.

Q. Did you complain to anybody and say what is the meaning of
this? A. Not at Badulla.

(To Court :

10

Q. You did not ask even your friend Chandrasoma? A. No.)

Q. Did you know why this lease had been cancelled? Did you know
on the 14th why this lease had been cancelled? Mr. Sabapathy was the
lessee—you got a letter from the chena Muhandiram—did you know on
the 14th why it was cancelled? A. I did not know. In fact I do
not know up to date.

Q. Do you know that Sabapathy had protested against the can-
cellation? A. No, sir, I did not know.

Q. You knew that Sabapathy was the lessee? A. I knew that.

Q. You knew that he had entered into some sort of agreement with 20
Mr. Karunatillaka to work the land? A. I knew that.

Q. You knew there was friction between the two? A. Yes.

Q. You knew also that there was trouble between Mr. Karunatilleke
and the Government Agent or chena Muhandiram? A. I knew that
they had trouble.

Q. You knew that the chena Muhandiram had tried to go there and
was resisted by Karunatilleke? A. I did not know that.

Q. You say to Court that you did not know that the matter went to
Court? A. I did not know.

Q. Do you know that Karunatilleke had paid money to war funds? 30
A. I knew that.

Q. For what? A. For felling Crown timber.

Q. Who told you that? A. That was also well known in Badulla.

Q. Who told you that? Did Chandrasoma tell you that? A. No.

Q. Did Attanayaka tell you that? A. No.

Q. Did you hear it from any official source? A. No.

Q. You know that there was a very serious assault on some Govern-
ment officers that went there? A. I do not know that.

Q. That was not talked in Badulla? A. No.

Q. You meet this chena Muhandiram frequently? A. No. 40

Q. Is he not the same chena Muhandiram for your lands? A.
He is,

Q. You did not meet him? A. I did meet him.

Q. Did he ever tell you anything about this? Did you discuss this matter with him? A. No.

Q. Never? A. No.

Q. You said that you knew that Sabapathy and Karunatileke were having friction between them? A. Yes.

Q. You knew that Karunatileke would not even allow Sabapathy to come to the land? A. I did not know that

Q. Do you know that Karunatileke had an armed gang on that 10 land? A. No.

Q. Did you talk to anybody at Badulla about this so-called failure of the Crown to put you in possession on the 15th? A. I did not discuss it with anybody.

Q. What was the next step you took? A. I returned to Colombo.

Q. When? A. I can't remember the date. That was after the receipt of the chena Muhandiram's letter.

(To Court :

Q. Before the 15th? A. I could not say that exactly.)

Q. Did you stay a week after that? A. I can't say that.

20 Q. What did you do when you came to Colombo? A. I discussed the matter. I explained the case to my brother-in-law Mr. Gilbert Perera.

Q. Who is an advocate? A. Yes.

Q. As a result of what he told you what did you do? A. I represented matters to the Minister of Agriculture & Lands.

Q. You sent the petition P17 to the Minister of Agriculture? A. Mr. Gilbert Perera saw Mr. Senanayaka with the petition.

Q. Did you see any other State Councillor about this matter? A. I met Mr. Bernard Aluvihare. Q. And mentioned the matter to him? A. Yes.

30 Q. Was that before—what time? A. About the same time.

Q. Until you petitioned the Minister on the 23rd March—that is the next step you took? A. Yes.

Q. Did you petition anybody else? A. We circularised a petition to the other members of the Executive Committee.

Q. When? A. That was also about the same time.

Q. Was it before? A. I would not say whether it was before or after—it was the same time.

Q. When you returned from Badulla you went to Panadure? A. I did not go to Panadure.

40 Q. Your petition is sent from Panadure? A. I addressed it from Panadure because my native place is Panadure.

No. 6
Plaintiff's
Evidence
Wijesooriya
Cross-
examination
—continued.

Q. You addressed a petition first of all to the Executive Committee?
A. That is correct.

(Mr. Fonseka marks the petition dated 18th March D2.)

Q. That is your signature? A. Yes.

Q. It is addressed to the Executive Committee of Agriculture & Lands? A. Yes.

Q. On the 23rd March you addressed P17 a petition to the Minister?
A. That is correct.

Q. It was the same petition? A. It was altered by Gilbert Perera. I drafted the petition to the Executive Committee. The petition to the Minister was drafted by Mr. Gilbert Perera.

Q. From the date of your petition to the Minister that is on the 23rd March until the date of your "without prejudice" letter that is 13th June you have not written to anybody? A. No, sir.

Q. You told us a little while ago that you did not know that Sabapathy had protested against the cancellation of the lease? A. Yes, sir.

Q. And in your petition to the Minister and in your petition to the Executive Committee you say nothing about the chena Muhandiram's letter? A. I do not think I mentioned that.

Q. I put it to you that you were anxious if possible to have the 20 matter reconsidered? A. By the Minister.

Q. By anybody? A. Not the matter reconsidered. I said that I was promised the lease that I was not given the lease. I put my grievances before the Minister. My grievance was that I was not put in possession although my money was taken and I was promised the lease.

D2 read. Q. When you sent that letter you had already received the chena Muhandiram's second letter P15? A. Yes.

Q. In which he told you that the notice to quit given to Sabapathy was cancelled? A. Yes.

Q. You made no mention in the petition to the Minister that there was an existing lease? A. I thought I had explained the whole case.

(To Court :

I do not seem to have included that in my petition.)

Q. I will take you back a few days before you received the chena Muhandiram's letter—you were at Badulla? A. Yes.

Q. You said just now that you did not know that Sabapathy had raised objection to the cancellation of the lease? A. Yes.

Q. And that you did not know therefore that possession could not have been given to you on the 15th March?

(Mr. Gratiaen objects to the question. Mr. Solicitor puts it in a different form.)

(To Court :

Q. Had you any knowledge on the date you got the chena Muhandiram's letter that there was any impediment in the way of the Crown putting you in possession? A. I did not know.

Q. Did your friends in the Kachcheri not tell you? A. No.

Q. Did Mr. Attanayaka tell you? A. No.)

I did not ask. Nor did I anticipate that there would be trouble.

(To Court :

Q. Were you paying Chandrasoma anything for board and lodging?

10 A. No, sir.

(Mr. Fonseka wishes to mark a minute dated 11th March to Government Agent by Attanayaka.

Mr. Gratiaen objects. He says this is not a document of which discovery was given to the plaintiff.

Mr. Solicitor says he does not want to put the document to the witness.)

Q. You have read the answer that has been filed by the Crown?

A. I have had a look at it.

Shown paragraph 3 (1) you read that? A. Yes.

20 Q. Did you know that on 12-3-43 the Government Agent had ordered the Rs. 6,000 to be returned to you? A. I did not know.

Q. I put it to you that you knew this fact very well? A. I did not.

Q. You did not want to withdraw the Rs. 6,000 because you could use your influence in Colombo and get the order rescinded again? A. That is not correct.

Q. Anyway up to the date of P16 that is your without prejudice letter you thought that there was yet room for negotiations? A. After the Minister's reply I was consulting lawyers and getting opinions ready to 30 take my legal remedy.

Q. After the Minister's letter which was in May? A. Not immediately after.

Q. After you received the Minister's letter declining to intervene you consulted your lawyers? A. Not immediately after, some time after.

Q. That is not the question I am putting to you—was this letter which you wrote to the Government Agent P16 written on the advice of your lawyers? A. No.

Q. On 13-6-41 when you wrote P16 you thought that the matter was open to negotiation? A. I thought they will still consider and give 40 me the lease.

Q. What do you mean by giving you the lease? A. Put me in possession.

Q. Did you know then that Sabapathy was still in possession? A. I knew he was continuing to be the lessee.

No. 6
Plaintiff's
Evidence
Wijesooriya
Cross-
examination
—continued.

Q. Do you know that he refused to vacate the land? A. I did not know that.

Q. Do you now know that you cannot expel a lessee from a land unless you get a decree of Court? A. I do not know that.

Q. Did you ask for your Rs. 6,000? A. I never did.

Q. Why not? A. I was not going to be satisfied with just taking my money back after their having promised me the lease.

Q. You wanted damages? Exactly.

Q. Did you demand those damages in P16? A. I did not claim damages there. 10

Q. Do you now know that Karunatileke and Sabapathy have a case in the District Court of Colombo? A. I know that.

Q. When did you first come to hear about that? A. Some time back I cannot remember exactly the date.

Q. Roughly how long ago? A. Some months ago.

Q. Before December, 1943? A. I can't remember that.

Q. It was some months ago? A. Yes.

Q. Five months? A. I can't say.

Q. Try and fix some rough date—before you went to your lawyers? A. I can't say. It was after the letter P16. 20

Q. Was it before you saw Julius & Creasy? A. I can't remember that.

Q. Did you make any attempt to find out what the litigation was? A. No. I was not concerned about their litigation.

Q. Even today you do not know what that litigation is? A. I do not know the details of that litigation.

Q. Do you know what it is about? A. I do not know.

Q. You have made no attempt to find out? A. No.

Q. Did you know that there was an agreement between Sabapathy and Karunatileke? A. That I know. 30

Q. Do you know that Karunatileke found the money for Sabapathy? A. Yes. I know Karunatileke deposited the money for Sabapathy.

Q. And the reason for the agreement was that Karunatileke should work the lands? A. I do not know the exact.....

Q. That is the general meaning of the thing? That they work the lands. A. I do not know who was to work the lands but they were to share the profits.

Q. How did you know that much? A. There are several people who know about this matter in Badulla.

Q. This is also general talk in Badulla? A. This is not common talk but there are people who knew about this matter. 40

Q. Was it known in Badulla that you were to be given the lease? A. I did not hear that.

Q. You know also that Karunatilleke was in possession of these lands? A. I did not go into that.

Q. Do you know Karunatilleke personally? A. I do not know him.

Q. Do you know Sabapathy? A. I do not know him.

Q. Never spoken to them? A. Never.

Q. At the date you wrote the without prejudice letter the position then was that you had been promised this lease and the promise was made that you would be put in possession on the 15th March? A. Yes.

10 Q. The Rs. 6,000 had been taken from you? A. Yes.

Q. You knew the Crown was not in a position to put you in possession because Sabapathy and Karunatilleke were in possession and they themselves were having a row among themselves? A. No, sir. Q. What is "no, sir"? A. I knew the 15th March was promised because they wanted to have Sabapathy and Karunatilleke to vacate the land and from that date I would be put in possession.

Q. That being so why did you not go to Chandrasoma and ask him about this? A. As I told you I did not discuss anything about this matter with Chandrasoma in his bungalow as he may think I was trying
20 to extract information.

Q. You did not think it right to do that? A. I did not want to do it. Even Attanayaka I did not speak to him, he spoke to me.

Q. You only speak to people when you are spoken to? A. Unless I have something particular to ask.

Q. Attanayaka was a friend of yours? A. But I was not going to ask them because they were my friends.

Q. You say the chena Muhandiram's letter came as a bolt from the blue? A. Yes.

Q. And you made no attempt to find out? A. I did not make
30 any attempt there. I expected them to inform me.

(To Court :

Q. At that time you were staying with Chandrasoma as a guest?
A. Yes.)

Q. They told you that the notice given to Sabapathy was cancelled and therefore you cannot be put in possession? A. My agreement was not with the chena Muhandiram.

Q. Having received the letter what is the objection to asking Chandrasoma? A. I did not ask him. I waited till he told me.

Q. Did you think it was wrong to question Chandrasoma? A.
40 That is the impression I had.

Q. Did you think it was wrong to go to the Kachcheri and ask him?
A. I thought so.

No. 6
Plaintiff's
Evidence
Wijesooriya
Cross-
examination
—continued.

Q. Why did you not seek an interview with Mr. Coomaraswamy?
A. I thought it was Mr. Coomaraswamy's duty to inform me. I did not go and ask him. The whole time as far as I was concerned the agreement was complete.

(To Court :

Q. The chena Muhandiram's letter shows that the Crown was going to commit a breach of the agreement? A. As far as I was concerned I had deposited the money. It was up to them to inform me if there was any trouble about it. That is how I looked at it.)

Q. The chena Muhandiram informed you that he could not put you in possession? A. Yes.

Q. What more did you want? You wanted Mr. Coomaraswamy to write to you? A. He had to write to me because he had taken my money, he had promised to put me in possession on the 15th.

Q. Who had promised? A. Assistant Government Agent on behalf of the Government Agent.

Q. Mr. Chandrasoma? A. Yes.

Q. You have no notarial document about this transaction? A. No.

Q. You never applied in writing for this lease? A. No. 20

Q. You never received any letter or document relating to this lease from the Kachcheri? A. Except the Kachcheri receipt.

Q. For the money you deposited? A. Yes.

Q. You say that is an intimation you have been given the lease?
A. It is clearly stated there.

Q. You say this conversation you had with Chandrasoma was an agreement to lease the lands to you? A. Yes.

Q. From when? A. From 15th March, 1943.

(To Court :

Q. There is another point on which you rely on that is Mr. E. A. P. 30 Wijeratne's information after interviewing the Land Commissioner? A. Yes.)

No. 6
Plaintiff's
Evidence
Wijesooriya
Re-
examination

Re-examination.

Q. In your petition P17 to the Minister and in your earlier petition D2 to the Executive Committee you complain specifically that you have paid the money that you were promised possession on the 15th March and you ask the assistance of the Minister and his Committee to give you possession as soon as possible? A. That is correct.

Q. It was suggested to you that you delayed that you did not go to the Government Agent or Assistant Government Agent—at the time you saw Mr. Attanayaka and Mr. Chandrasoma in the Kachcheri on the 4th March you are aware that a letter had already been sent to Sabapathy on the 2nd March P10 cancelling the lease? A. Yes. 40

Q. After the payment and promises were made that you would be given possession you got the letter dated 6th March from the chena Muhandiram confirming that you would be given possession? A. Yes.

Q. Thereafter you got P15 dated 13th March informing you that the notice to quit P10 had been cancelled? A. That is correct.

Q. It was suggested to you that Sabapathy was refusing to go and therefore you could not be given possession on 15th March? A. Yes.

Q. If the notice to quit P10 had not been cancelled by the Government Agent would you if Sabapathy refused to give up possession have 10 sued him as a trespasser? A. Yes.

Q. Is it your complaint that after taking your money and promising you a lease from the 15th March the Government Agent thereafter continued to allow them possession of the land? A. That is my complaint.

Q. On receipt of P15 did you feel that the public officers who had taken your money had let you down? A. Yes, sir.

Q. In less than a week you had consulted Mr. Gilbert Perera in Colombo and on his advice addressed the Executive Committee and the Ministers? A. Yes.

Q. Did you hope that the politicians will help you when the executive 20 had let you down? A. I expected them to go into the matter and give me redress.

Q. Thereafter did you consider it was necessary that you should wait for a reply? A. Yes.

Q. That did not come till the 4th May? A. Yes.

Q. On the 13th June you wrote to the Government Agent? A. Yes.

Q. Were you still anxious without having litigation to get possession of the land? A. I was very anxious that should happen. I am still anxious.

Q. Did you intend to be conciliatory when you wrote the letter P16? 80 A. That is so.

Q. You offered to see the Government Agent with a view to an amicable settlement? A. Yes.

Q. When he replied by P19 did he suggest to you that you should take back your Rs. 6,000? A. No, sir, not a word about it.

Q. Did he notify you that he had already made a minute on the 12th March that the money should be sent to you? A. Nothing like that was mentioned.

Q. You were asked why in P16 you did not claim damages? A. 40 In that letter I said if there was no settlement I would have to seek my legal remedy. Up to that date I had not consulted my lawyers.

R. F. DIAS,
District Judge.

Court adjourned for lunch.

R. F. DIAS,
District Judge.

No. 6
Plaintiff's
Evidence
Wijesooriya
Re-
examination
—continued.

In D16 I asked the Government Agent to send me a definite reply by the end of the following week. I waited till the end of that week and nothing happened. Ultimately I received P19 in which he promised to send me a further reply later. I received no such reply. In fact I got no reply until 14-12. P20. Shortly after P19 I decided that it was necessary to consult a lawyer. The first lawyers whom I consulted were not Julius & Creasy but another proctor and it was decided to take in the first instance legal opinion from Mr. L. M. D. de Silva, K.C. He had the papers with him for some time and I have in Court Counsel's opinion dated..... (Mr. Gratiaen explains this is merely to fix certain dates). 10 (Shown a document). It took some months to get his opinion. After getting his opinion I retained Messrs. Julius & Creasy to institute proceedings against the Crown. That was long before I received the requisition dated 14th December. Papers were sent to counsel for drafting on 1-11-43.

(Mr. Gratiaen says from his place at the Bar that the papers were sent to him to settle the pleadings and notice of action on 1-11-43.

(Mr. Gratiaen says he is instructed by his proctor to state that the requisition and letter of 14th December P 20 were in Mr. Hale's hands at the time Messrs. Julius & Creasy sent the notice of action P21.) 20

That requisition has never come back from Messrs. Julius & Creasy.

(Mr. Gratiaen says that the requisition is still in the hands of the Proctors.)

In my letters to the Minister and the Government Agent and also in the plaint the date of the promise to give me a lease is given as 5th March. At that time the only document I had in my possession to refresh my memory was the receipt for the money P11. Since then I have obtained the cheque from the bank dated the 4th. I took my cheque with me to the Kachcheri. I always had it with me. It is my practice to keep my cheque book on my person. I always have a sum like Rs. 6,000 in funds 30 and sometimes more. I did not take my cheque book to the Kachcheri on 4th March for the reason that I thought that I would have to draw a cheque.

Q. In view of the suggestion that your story of your conversation with Mr. Chandrasoma is false I want you to tell the Court on 4th March when you went to the Kachcheri in whose car did you go? A. I had borrowed Mr. Chandrasoma's car. I went to the Kachcheri and picked him up at the end of the day's work so that both of us could return to his house. After I saw Mr. Chandrasoma and had the conversation with him which I have referred to I went out and wrote out the cheque and handed it to 40 Mr. Attanayaka. Thereafter I went back to Mr. Chandrasoma's office and waited till 4-30 till he finished his work and we drove back together.

(The Solicitor-General objects to Mr. Gratiaen re-examining on the question of damages. I wish to record that many of the questions which the learned Solicitor-General might have put the Court put, such as getting lines on the land and getting acid and coconut shells and as regards the

rollers and the smoke room. So I think Mr. Gratiaen should be allowed to re-examine on that. The Solicitor-General can cross-examine further if necessary.

No. 6
Plaintiff's
Evidence
Wijesooriya
Re-
examination
—continued.

Mr. Gratiaen now says he has no questions further to put in view of the Solicitor-General's statement.

The Solicitor-General wishes me to record that he put no questions on damages in view of the suggestion that was made by the Court that the question of damages would be referred to some outsider and that the formal questions would be put to him and that the question would be
10 reconsidered later.

The Solicitor-General asks that he be allowed now to cross-examine the witness on the question of damages. Mr. Gratiaen objects.

I allow the application. No harm is done the witness is still in the box.)

Cross-examined by the Solicitor-General.

I claim Rs. 75,000 as damages in this case. In addition I claim Rs. 6,000 being the first year's rental deposited by me. Altogether I claim Rs. 81,000 and interest on the Rs. 6,000. This is the loss that I sustained by the failure of the Crown to implement the promise which I
20 alleged in paragraph 3 of the plaint.

No. 6
Plaintiff's
Evidence
Wijesooriya
Further
Cross-
examination

Q. What was the unexpired period of the lease? A. 4 years and 2½ months. For the 4 years and 2½ months the total amount of profit I would have made was Rs. 75,000. The Rs. 75,000 does not include the Rs. 6,000. The Rs. 75,000 I claim is damages as the profit I would make.

Q. Inclusive of the payment of rent? A. Yes.

Q. You have taken that into account? A. Yes.

Q. That is the rent for 4 years and 2½ months? A. Yes.

Q. Then the Rs. 6,000 on what ground do you ask for that money?

A. We have deducted the Rs. 6,000 from the Rs. 81,000 and claimed
30 that separately.

For the first year I had to pay Rs. 6,000 and for the 4 years and 2½ months I would have had to pay as rent Rs. 24,000 plus the 2½ months' rent. The Rs. 6,000 represents the first year's rent.

Q. So that your figure of Rs. 75,000 is exclusive of the first year's rent? A. Yes.

Q. And you say that Rs. 75,000 represents the amount of your damages for 4 years and 2½ months after making allowance for the rental that you have paid for that period? A. Yes.

Q. Have you got any figures that you have worked out to show how
40 you get the Rs. 75,000? A. I worked it out. I do not have the figures here.

In March, 1942, when the first auction was held I bid up to Rs. 43,950 for the lease. That is for the five years. That would work out at Rs. 8,800 per year.

No. 6
Plaintiff's
Evidence
Wijesooriya
Further
Cross-
examination
—continued.

Q. At that time would you have made the same profit? A. Not the same profit that I would be making today.

Q. On the basis of the prices then obtaining you would have made considerably less profit? A. Yes.

Q. And the cost would have been more because the rental was higher? A. Yes. but the cost of production does not include the rent, it would include the transport, etc.

(To Court :

Q. When you work out the cost of production you take into account everything you have to spend to produce that? A. No you treat that 10 as capital. The rent is not taken into the cost of production.)

Q. Have you included the rental in the expenses? A. I have deducted the rental. I would have paid and worked out the Rs. 75,000.

In estimating the Rs. 75,000 I have deducted three years and two and a half months' rent.

Q. Why? A. Because I have included the Rs. 6,000 here.

Q. So that in the event of your getting damages you are not entitled to the Rs. 6,000 as well?

(Mr. Gratiaen objects, says it is a question of law. I do not see why the witness should not be put the question.) 20

A. I am expecting in this case to get Rs. 75,000 plus Rs. 6,000.

Q. In 1942 you congratulated yourself that you did not succeed in getting this lease? A. No I was quite disappointed.

Q. When the air raid occurred did you not say I am happy I did not take that lease? A. After the air raid I thought so.

(To Court :

Q. Lots of people were thinking that Ceylon would be overrun by the Japanese? A. Yes.

Q. So you were glad you had not taken the lease? A. Yes that was after the raid. 30

Q. The present rental that you say you were to pay was Rs. 30,000? A. Yes.

Q. Or for your unexpired portion at the rate of Rs. 6,000 a year? A. Yes.

Q. Which is Rs. 2,800 less than what you previously offered? A. Yes.

Q. But the rubber position has considerably improved? A. Yes.

Q. Since 1943? A. Yes.

Q. And the expenses of production have also increased? A. Yes.

In 1942 the price of rubber was 55, 56 and 58 cents and 61 cents at 40 times.

Q. Did you make allowance on the money you expected to make for the expenses that you would incur on the coolie lines? A. Yes.

Q. What else? A. I have made a good allowance for any expenses that I had to meet.

Q. You are not producing any document showing how you computed this figure of Rs. 75,000? A. No documents.

Q. Nor have you given any particulars of how you compute it? A. No.

Q. Your estimate was based on the production of how many acres of rubber? A. I based it on the basis that I was able to tap 135 to 140 acres in full bearing.

10 Q. And on a yield of how much per month? A. I expected to get a yield of at least 60,000 lbs. of rubber a year at the minimum.

(To Court :

I have got other rubber lands in the same province. Besides the Government contract I have 130 acres of rubber in Ratnapura. That is also a lease. I have no rubber lands of my own. I have coconut land. I have 75 acres in Kurunegala. Also some other small properties. The bulk of the land I am working is the land I have leased. I was calculating at 450 lbs. per acre per year.

Q. Which is a very high yield for the Uva District? A. For a good property it is not at all high.

Q. What is the yield that you got from your other lands Batuyala for instance? A. I got over 400 lbs. of rubber per acre per annum I paid a rental of Rs. 3,900 per year. The extent of that is 88 acres but the whole 88 acres are not in bearing. 45 acres are in bearing. I have not brought any books to support that statement of mine. I am not producing any books with regard to Ranawara estate.

Q. Do you know that the Crown estimate is Rs. 2,500 per annum? A. I do not know.

I went round the whole estate before the auction. I paid no other visit to the land. I have not been there since that date. There was 30 jungle but not thick jungle. I went on a day between 23-1-42 and the date of the sale 7th March. It may have been towards the end of January.

Q. Your estimate is on a guess? A. No I did not make an estimate before the sale of the land and that is why I bid up to Rs. 43,950. Since then I did not send anyone to the land.

Re-examined.

When I bid up to just below Rs. 44,000 in 1942, it was after a careful inspection of the land. At that time I worked out what it would cost me to clear the jungle and so on. If I was put in possession in March, 1943, 40 that expense would not have been necessary.

Q. But when you bid nearly Rs. 44,000 did you form your opinion with your experience and knowledge of that district that after bidding nearly Rs. 44,000 and after incurring the necessary expenditure for clearing jungle and putting up lines you would still make a substantial profit? A. Yes that was my opinion then,

No. 6
Plaintiff's
Evidence
Wijesooriya
Further
Cross-
examination
—continued.

No. 6
Plaintiff's
Evidence
Wijesooriya
Further
Re-
examination

No. 6
Plaintiff's
Evidence
Wijesooriya
Further
Re-
examination
—continued.

The Crown has given me inspection of certain documents for this case. One of them is the document which I produced dated 8-3-43 P26 .

(Mr. Gratiaen is putting to the witness a document written by Karunatileke to the Government Agent stating a certain amount was spent. The Solicitor-General objects. I think the document must be rejected it may be in the possession of the Crown but it contains something that Karunatileke said and he is not before the Court.)

(To Court :

Q. Have you summoned either Sabapathy or Karunatileke to come and assist you by saying how much their profit is? A. No.) 10

Q. Would it have been possible for Karunatileke or Sabapathy to continue to work the rubber without clearing the jungle? A. No. You must clear the jungle to tap. It is also essential to put up lines to accommodate the labour. I have worked rubber lands in that area now for six years.

Q. The rubber on this land was it better or worse so far as the condition of the trees went than the other lands you have worked? A. The rubber on this land was very good. It was virgin untapped rubber and it was my opinion that I could get a better yield per acre than the other lands I worked. If Sabapathy and Karunatileke had done nothing 20 to clear the jungle up to March, 1943, or construct lines I would have had to spend about Rs. 25 to Rs. 20 per acre to clear the jungle, and it would have taken at the most a month. Within that month I could have also put up sufficient accommodation for the labour force. The Government gives special facilities to people working on rubber estates such as timber and so on.

In April, 1943, after the air raid I was not prepared to offer more than Rs. 30,000 for this lease. Between that date and March, 1943, the position had very considerably improved the price of rubber lands had gone up and the prices of rubber had gone up. The price of rubber had 30 gone up to Rs. 1.05 this year. When I went to the land to see the place before the auction I ascertained that the rubber had been planted by a well known European firm and it was very well planted rubber.

In April, 1942, I offered Rs. 30,000. As a matter of fact in January, 1943, I would have been willing to pay more than Rs. 30,000.

Q. What was the cost of production of well managed European or Company estates? A. Even today it does not go up to even 50 cents on company owned estates with visiting agents and superintendents and so on. On Ceylonese estates which do not have all that, the cost is much less I put it down to 40 to 45 cents. With regard to the working of this 40 estate I would have been my own visiting agent and so on. The other two lands which I am in possession of are in the same district.

Q. When you were given possession of other Crown lands were you given any notarially attested document? A. No. I have two documents which I got about six years ago and I am holding those leases again

and I am in possession without even permits only the money was deposited. I do not have any permits with me. I had two permits they are not with me here.

I was cross-examined on an agreement entered into between Karunatileke and Sabapathy in regard to this land. I produce P26 dated 9th June.

(The Solicitor-General objects to the agreement between Karunatileke and Sabapathy being put in. Mr. Gratiaen says that the witness has been cross-examined. I do not think the document is relevant but as there has been cross-examination I let it go in. I do not think anything turns on it. The Solicitor-General says he wants P26 proved.)

Q. Did you ask for any favours or any unfair assistance from Mr. Chandrasoma or anyone else attached to the Kachcheri? **A.** No. But I am known to Mr. Chandrasoma and a number of other Civil Servants.

R. F. DIAS,
District Judge.

Mr. Gratiaen says he has other documents but in view of the statement that Chandrasoma is coming he closes his case putting in P1 to P26.

The Solicitor-General says that there is one issue of law which would dispose of this case. He refers to issue 4. He refers to section 147 of the Civil Procedure Code and asks for the leave of the Court to argue this issue of law only at this stage.

Mr. Gratiaen strenuously objects to this and says that the time for attempting to convince the Court that a preliminary issue of law should be dealt with first has long since passed. He says that section 147 applies before the trial begins. He refers to the first page of the record. States the procedure suggested would prejudice the plaintiff. Submits the question is not of law alone but a mixed question of law and fact. Plaintiff has been fully cross-examined.

30

ORDER

The question I have to decide is as to the stage at which an issue of law under section 147 of the Civil Procedure Code in a case where issues of law and fact arise should be considered by the Court. The learned Solicitor-General argues that at any stage of the action the Court can stop the rest of trial and take up an issue of law which the Court is of opinion can be disposed of on the issue of law alone. Mr. Gratiaen strenuously opposes that submission and says that the clear meaning of section 147 is that at the beginning of the trial the Court should make up its mind after hearing counsel whether or not it takes up an issue of law to be decided first. There is no authority on the subject. The cases reported in 2 New Law Reports, 17 and 15 New Law Reports 339 do not deal with this question. Looking at the sections in the Chapter the first thing the Court has to do is to frame the issues. If the parties are agreed the

No. 6
Plaintiff's
Evidence
Wijesooriya
Further
Re-
examination
continued.

No. 6
Plaintiff's
Evidence
Wijesooriya
Further
Re-
examination
—continued.

Court will accept their issues and if they are not agreed the Court will frame the issues. After the framing of the issues the party having the right to begin begins the trial and I think that section 147 is intended to apply to a case where the Court decides to deal with an issue of law which goes to the root of the case before any further evidence is led. I do not think the trial can be stopped midway while an issue of law is argued. I have not known of such a case and I can conceive of a situation which might be extremely prejudicial to one or both sides. Besides no inconvenience will be caused by hearing the whole case. Questions of law and fact have arisen and one of the issues of law will be, granting the truth of 10 the whole of plaintiff's story, whether he could recover in the absence of a notarial agreement. I do not see any reason why the main trial should be stopped while this point which is as important as several other questions raised by the defence can be considered. I therefore think that the whole trial should proceed and the learned Solicitor-General can raise his question of law amongst his other points at the proper time and the Court will very attentively consider them.

At this stage the trial is postponed for Monday.

R. F. DIAS,
District Judge. 20

16-10-44.

Counsel as before.

Mr. Gratiaen wants me to record that the Solicitor-General agreed to the plaintiff's statement as to what Mr. E. A. P. Wijeratne told him after the interview with the Land Commissioner on 27-1-43 being accepted without Mr. Wijeratne being called.

The Solicitor-General agrees to this.

Mr. Gratiaen draws attention to a clerical error in the record—the reference to cheque should be cheque book.

No. 7. Defendant's Evidence

30

No. 7
Defendant's
Evidence
Kumara-
swamy
examination
(also spelt as
Coomara-
swamy)

The Solicitor-General opens his case and calls :

C. CUMARASWAMY.—Affirmed.

Government Agent, Northern Province. From 15-6-42 to 18-5-44 I was the Government Agent of Uva, that is during the period covered by this case I was Government Agent of Uva. I am an officer in Grade 1 Class 1 of the Civil Service. I have put in 35 years service under Government and I have held numerous posts judicial and administrative. I have been more a judicial officer than administrative. I have also been Registrar-General and Deputy Food Controller, and District Judge at various Courts including Kurunegalle, Batticaloa and Jaffna. 40

I know the lands in question. I have been once to see these lands. At the present moment they have been leased to one Sabapathy Pillai for a period of five years on a rental of Rs. 8,800 per acre. Shortly before I assumed duties as Government Agent, Uva, I did not know about Sabapathy Pillai's lease. The first time I came to know about this land was when troubles arose between Sabapathy and Karunatileke. I was not aware at that time that Sabapathy was having some difficulty in finding funds—that happened before I went there. Subsequently I came to know that and that Karunatileke had come to his rescue.

No. 7
Defendant's
Evidence
Kumara-
swamy
examination
(also spelt as
Coomara-
swamy)
—continued.

10 Q. What was the difficulty that came to your knowledge?

(Mr. Gratiaen objects—hearsay evidence).

I know the plaintiff in this case.

Q. Did he ever see you on any occasion about these lands? A. Never.

Q. Did he ever make application to you with regard to these lands? A. No.

I have the Kachcheri file with me. There is a file for this land.

Q. Will you look into your file under the date 11-3-43? A. Yes.

Mr. Attanayaka is the land clerk of the Kachcheri. He put up a 20 minute to me dated 11-3-43. The minute is D3 dated 11-3-43 and on the 12th I made order "Yes" D3A. On that same document appears another minute dated 10-3-43 D3b by me "Vide telegram from Land Commissioner received today. Cancel notice for the present saying it is done under instructions from Land Commissioner. That is the notice issued to Sabapathy Pillai terminating the lease. I believe no lease has been given to Wijesuriya yet. Is this correct." In answer to that the land clerk made the minute dated 11th March which I read just now D3.

Reference is made in my minute to a telegram I received from the Land Commissioner, it is dated 10th March D4. Following that telegram 30 I received a letter as stated there in D5, dated the same date.

Q. According to D3A you made order that the sum of Rs. 6,000 should be refunded to the plaintiff? A. Yes.

Q. Was that done? A. No, not for some time.

I know what is meant by a deposit in the Kachcheri. It is not money permanently credited to revenue but money placed on deposit in the Kachcheri pending final orders as to its disposal. If the plaintiff wanted to withdraw his Rs. 6,000 it could have been done at any time. I received a letter dated 13-6-43 P16 sent to me by the plaintiff. That letter is marked without prejudice. That letter was not submitted to me but I 40 saw it later.

(To Court :

Q. Is that correct, is there anything wrong in that? A. Urgent matters are usually disposed of by the Assistant Government Agent. I should have liked to see this myself when it was received. The Assistant Government Agent has dealt with it).

No. 7
Defendant's
Evidence
Kumara-
swamy
examination
(also spelt as
Coomara-
swamy)
—continued.

I was not sure whether I was in the office on that day or gone on circuit. I saw Sabapathy Pillai later and also Karunatilleke. They both met in order to settle their differences. I made a record in my file of what happened at that interview on 17-8-43. I produce it. (The Solicitor-General wishes to put in a copy of the record made by the Government Agent about this interview. Mr. Gratiaen objects. Says it is a record of statements made by certain other people who are not witnesses. He objects unless Sabapathy and Karunatilleke are called. Mr. Gratiaen points out that none of the documents from D3 onwards have been shown to plaintiff although inspection was agreed to. 10

The Solicitor-General withdraws the document).

Q. What was the result of that conference? A. I sent a letter to the Land Commissioner with regard to Sabapathy and Karunatilleke. It is the letter dated 18-8-43 D6.

(Mr. Gratiaen while not objecting to D6 says that any portions of D6 which records hearsay evidence would not be evidence in this case).

The reference there to plaintiff's letter to me is the letter P16 written without prejudice.

On 14th December by my letter P20 I sent the plaintiff a requisition for Rs. 6,000. 20

Q. Was that requisition presented at the Kachcheri? A. Not to my knowledge.

After that notice of action was given and I sent in my statement of facts to the Attorney-General. I received letter P22 dated 29th December from Messrs. Julius and Creasy in reply to the letter of 14th December P20. I am aware that there are Land Sale Regulations of Government.

Q. Has the Government Agent got the power to lease lands?

(Mr. Gratiaen objects to the question—pure question of law.

I think the question can be put-of course the final decision of the matter is with the court). 30

Q. In your experience as a Public Servant what are the powers of the Government Agent to lease under the Land Sale Regulations? A. We issued permits for periods of only one year. That is how I have construed the Land Sale Regulations.

No. 7
Kumara-
swamy
Cross-
examination

Cross-examined :

(Shown P27—Mr. Gratiaen wants me to note that this document has been produced from the custody of Mr. Hale).

This is the requisition I sent on 14-12.

Q. Does it require to be signed by you? A. It has been signed by one of my assistants. The Government Agent or Assistant Govern- 40
ment signs it.

Q. But no one has signed this in fact? A. Yes it is not signed.

I was not the Government Agent of Uva at the time of the auction held on 7-3-42. The Government Agent then was Mr. J. R. Walters. Chandrasoma was the Assistant Government Agent for a long time before that. Even at the time of the sale and I think it was he who really conducted the auction on behalf of the Government Agent.

No. 7
Defendant's
Evidence
Kumara-
swamy
(also spelt as
Coomara-
swamy)
Cross-
examination
—continued.

Q. In point of fact all matters relating to this particular land are dealt with either by you or by the Assistant Government Agent on behalf of the Government? A. Yes.

Q. For instance that particular letter P16 was dealt with by Mr. Chandrasoma and he replied by P19 of 5th July and signed the document for the Government Agent, Uva? A. Yes.

Q. He was perfectly entitled to do so? A. Yes, ordinarily he would have done so. He was entitled to deal with the correspondence but in important matters he should have consulted me.

Q. It was perhaps necessary to have consulted you but that is really a matter that he should decide whether he needs your advice or not? A. Yes. I did not see it till after the reply had gone.

Q. Did Mr. Chandrasoma ever make any minute for your information as to what had happened on 4th March or 5th March, 1943? A. Not specifically for my information.

Q. Is it the fact that Mr. Chandrasoma as Assistant Government Agent dealt with all land matters? A. He is practically in charge of all land matters under the supervision of the Government Agent.

Q. Would you look at your letter of 21-1-43 P7 in that letter you were making certain specific recommendations to the Land Commissioner? A. Yes.

Q. Where does the Land Commissioner come into these transactions? A. He is the Head of the department dealing with all Crown lands. He is above the Government Agent and he directs the Government Agent as to what should be done in disposing of Crown lands.

Q. Is it to the Land Commissioner that the Governor has delegated all functions in connection with the land policy? A. Under the new constitution it may be the Minister.

Q. From a practical point of view it is the Land Commissioner to whom you look for guidance and instructions? A. Yes.

Q. And I suppose when you receive instructions from the Land Commissioner in regard to any matter which might require higher authority say of the Governor, you would presume when you receive directions that that higher authority had been obtained? A. Well, on the fact of it if it was in order I would presume that he had got the authority required in that particular case.

Q. In fact you would rely on the presumption of regularity? A. Yes. Unless there was something to show there was some mistake or something.

No. 7
Defendant's
Evidence
Kumara-
swamy
(also spelt as
Coomara-
swamy)
Cross-
examination
—continued.

Q. At the date you wrote the minute of 21-1-43 your department had no end of trouble from Sabapathy and Karunatileke? A. Yes.

Q. Apart from whether it was correct that they had damaged the rubber trees you had to deal with Karunatileke on more than one occasion for actual offences? A. Yes.

Q. Unauthorised felling of timber? A. Yes.

Q. And you had compounded at least one case by a payment to certain war charities? A. Yes.

Q. You had also seen this document P26? A. Yes.

Q. Under which Karunatileke and Sabapathy had agreed to determine their rights? A. Yes.

Q. You formed the opinion that that document P26 was a violation of the terms and conditions of the permit? A. Yes.

Q. You recommended that Sabapathy's permit should be cancelled in view of P26 among other grounds? A. Yes.

(Shown paragraph 9 of P7).

Q. In April, 1942 the Land Commissioner had instructed you to offer the lease to the plaintiff Wijesuriya for Rs. 30,000? A. Yes.

Q. Or rather to accept his offer of Rs. 30,000? A. Yes, the records show that.

20

Q. But thereafter Sabapathy had been given a further indulgence in regard to the payment of certain dues and as a result of that the Rs. 30,000 offer had to be withdrawn by you? A. Yes and it was given back to Sabapathy. On 25-4-42 the land Commissioner Mr. Wickremesinghe had written P5 approving of the proposal to give Wijesuriya the land for Rs. 30,000.

Q. According to para 9 of P7, two days after you got P5, you got another letter which apparently made it necessary for you to change your plans? A. Yes.

I produce that letter of 27th April from the Land Commissioner 30 to me P28.

(Shown P7 paragraph 9). This letter was drafted by my assistant Mr. Chandrasoma. I gave my mind to the matter and I agreed with the draft and signed it.

Q. You and Chandrasoma by this time, January, 1943, came to the conclusion that if your recommendation to cancel Sabapathy's permit was granted then it would only be fair to the plaintiff that he should be given the lease on those old terms? A. I looked more to the interests of the Government.

Q. And you thought that the interests of Government would not be 40 in any way prejudiced by Wijesuriya the plaintiff being given the lease in terms of the earlier offer? A. Yes as I understood the situation from Chandrasoma at the time.

Q. It was only fair to the plaintiff and it would not prejudice the Crown, that is what you felt? A. Yes.

Q. And you felt that at that time Sabapathy had been given more indulgence than he really deserved? A. Yes.

Q. You then received from the Land Commissioner P9 dated 28-1-43? A. Yes.

Q. Did you then agree that the conditions of the permit had been flagrantly violated? A. I thought they had been violated. P9 was dealt with by me.

10 Q. I suggest that you construed this as a very definite direction that Sabapathy's permit should be cancelled? A. Yes.

Q. And a further direction that plaintiff was to be given the lease on the old terms which you had yourself recommended in P7? A. Yes. I received P9 on 28-1-43.

Q. The next document shows that you did not in fact write to Sabapathy cancelling his permit till P10 of 2nd March? A. Yes.

Q. An interval of about five weeks? A. Yes.

Q. Why? A. Because I wanted to refer the matter to the Land Commissioner again. On receipt of P9 I wanted to refer the matter again 20 to the Land Commissioner before taking action on his directions.

Q. When is that letter dated?

(The Solicitor-General objects. Says he does not know what the letter is. Looks at the letter. Objection withdrawn).

(Questions repeated). It is dated 2-2-43. Marked P29.

Q. You thought that legal advice should be obtained as to whether the Crown would be within its rights in cancelling Sabapathy's permit? A. Yes.

Q. I take it the Land Commissioner did take the legal advice as suggested by you? A. Yes, I think so.

80 Q. Having taken the legal advice he wrote to you again? A. Yes. That document contains the opinion of the Attorney-General. (I think the question of profession privilege applies in this case). That document is dated 25-2-43. The Land Commissioner sent me the opinion of the Attorney-General. It was forwarded separately.

Q. Is there any objection to my seeing the covering letter?

(The Solicitor-General has no objection to that letter being produced. He objects to the annexure Letter produced P30).

Luncheon Interval.

R. F. DIAS,
District Judge.

No. 7 16th October, 1944.

Defendant's
Evidence
Kumara-
swamy
(also spelt as
Coomara-
swamy)
Cross-
examination
—continued.

C. COOMARASWAMY—Affirmed :

Shown P30. Q. When you received this letter the position was that the Land Commissioner had after consulting the Attorney-General agreed that you should take action as originally instructed? A. Yes.

Q. The clerk Attanayaka has made an endorsement on P30 asking you whether notice show now be served on Mr. Sabapathy? A. Yes.

Q. Mr. Chandrasoma passed the matter to you for your instructions? A. Yes.

Q. You made a minute on the 1st confirming ordering that notice 10 should be served on Sabapathy and affix on the land itself? A. Yes.

(To Court :

Q. Were you acting under any authority in making that order? A. I was using my discretion. I do not think there was any ordinance in regard to affixing notices. I wanted to give Karunatilleke also a kind of notice as I knew there was friction between Karunatilleke and Sabapathy).

Q. You were carrying out as you thought fit and proper the directions which you had received from the Land Commissioner? A. Yes.

Q. Did you have any conversation with Mr. Chandrasoma on the 1st March? A. Not likely. 20

Q. Instructions given by the Land Commissioner were considered by you to be quite clear and explicit? A. Yes.

Shown P10. Q. P10 was signed by Mr. Chandrasoma, Assistant Government Agent for Government Agent, Uva? A. Yes.

Q. That letter had your full authority? A. Yes.

Q. When did you first see this endorsement P13 of 4th March? A. This is the clerk's writing.

Q. When did you first see that minute P13? A. I cannot tell you. I must have seen it long after. I do not think it came up to me about that time. 30

Q. On the 10th March you received a telegram from the Land Commissioner cancelling his previous instructions? A. Yes.

Q. This must have come as a great surprise to the officials in the Kachcheri? A. We knew that this man was dealing with the Land Commissioner and the Minister.

Q. Did D4 come as a surprise? A. I was not surprised.

Q. This must have been somewhat embarrassing because some action had been definitely taken on the original instructions and before D4 arrived? A. I do not think I was aware to what extent the order was carried out. 40

Q. I take it that you must have sent for the file to see what had happened? A. I have said "Take action accordingly," etc.

Q. Is it not possible that at that time you must have looked at P13? A. It is not likely.

Q. In D3B you asked the question "I believe no lease has been granted to Wijesuria"—by lease do you mean actual document? A. No permit.

Q. What you wanted to know was whether a permit had been actually issued in favour of Wijesuriya? A. That is what it comes to.

Q. Attanayaka informed you in D3 that the chena muhandiram had been instructed to put Wijesuriya in possession when the lessee vacates it in terms of the Land Commissioner's order? That is to say on the 15th March? A. Yes.

Q. The clerk did not tell you of the endorsement P13 at that time? A. No.

Q. That was not brought to your notice? A. No.

Q. Did you have any conversation then with Chandrasoma about that time? A. I do not think so.

Q. Did you reply to the Land Commissioner after you received P30 telling him what action had been taken on his instructions—what is the date of your first letter to the Land Commissioner after the receipt of P30 of 25-2-43? I will put it like this you received P30 dated 25th February and thereafter you received the telegram D4 on the 10th March cancelling the original instructions—had you communicated with the Land Commissioner between those two dates? A. I do not think so.

Q. On the same day as D4 the Land Commissioner wrote this covering letter D5 explaining why he had changed his mind? A. Yes.

Q. On receipt of this telegram you must have sent a report to the Land Commissioner of the action you had taken? A. I did not think there was any need. I do not think we did.

Q. Am I to understand that the next correspondence you had with the Land Commissioner was on the 21-6-43? A. I got a letter from the Land Commissioner.

Q. To which you replied by D6? A. Yes.

Q. Is that the first letter which passed between you and the Land Commissioner after the 10th March? A. Yes.

(Mr. Gratiaen asks the witness to produce the letter to which D6 is the Government Agent's reply.

Mr. Solicitor has no objection to that letter being produced but not the legal opinion which was attached to it. It is put in marked P 31.)

P31 read.

Q. May I have your letter of 13th to which P31 is the reply? A. It was a personal letter and I do not think I kept a copy of it.

(Mr. Gratiaen now calls for the original of the Government Agent, Uva's letter to the Land Commissioner dated 13-6-43 to which P31 is a reply. He says notice has been issued to the Land Commissioner to produce all documents.

No. 7
Defendant's
Evidence
Kumara-
swamy
(also spelt as
Coomara-
swamy)
Cross-
examination
—continued.

The Land Commissioner produced the document. It is marked P32).

Q. Apparently you have had some conversation with the Land Commissioner prior to the writing of P32? A. Yes.

(Note : P32 is an original and is a public document. Certified copies must be filed by the plaintiff).

Q. Would you now turn to the letter dated 13th June P16 from the plaintiff? A. Yes. That was received in the Kachcheri on the 14th.

Q. Your correspondence P32 I take it indicates fairly clearly that the officials were not happy about what was going on—you sensed trouble?

A. I thought there might be trouble. 10

Q. One of the things that you did not exclude from your mind was a claim by Wijesuriya? A. I believe I was more concerned with a claim from Karunatilleke and Sabapathy than with a claim from Wijesuriya.

Q. But they were in possession of the land? A. Yes. I thought there might be trouble if the permit was cancelled.

Q. On the 13th June you appear to have seen the Land Commissioner who was in another town? A. Yes.

Q. You took the files with you? A. Yes.

Q. You must have gone through the entries in the files to see.....? A. Yes. 20

Q. Did you not see by that time Mr. Chandrasoma's minute of the 4th March "the lease has now been given to Mr. Wijesuriya"? A. I cannot recollect. At that time the question of Wijesuriya's claim was not raised.

Q. The day after P32 was written by you to Mr. Jansz P16 was received in your office? A. I believe that was the first time we thought that he would give trouble.

Q. I think you said in examination in chief that you had in the first instance not dealt with that letter? A. That is so.

Q. About how long afterwards did you first see it? A. This 30 letter was received in my absence on the 14th. Mr. Chandrasoma had stated acknowledge and state that the matter is awaiting the instructions of the Land Commissioner, etc.

(Mr. Chandrasoma's minute is marked P16a).

Q. Mr. Chandrasoma made the minute of the 14th June indicating what form of reply was to be sent and also that the matter was to be submitted to you on your return from circuit? A. Yes.

Q. Is there anything in the file which would indicate when you returned from circuit? A. I do not think it was submitted to me. The letter to Mr. Wijesuriya was sent on the 5th July on the orders of 40 Mr. Chandrasoma.

Q. Would you have seen this letter by the 5th July? A. I do not think so.

(To Court :

I would have raised a query at once about the delay).

Q. When Chandrasoma the first time he met you after the 13th June came up to you and complained that Wijesuriya was making an allegation in writing that he had been promised the lease—did Chandrasoma tell you that that allegation was untrue? A. He did not tell me so.

Q. Nor has anyone made an endorsement or a minute in the original of P16 denying the allegation that a lease had been promised? A. No.

(To Court :

10 Q. In P16 Wijesuriya is making certain statements of fact? A. Yes.

Q. Can you tell me when you first saw that letter? A. I am sorry I cannot tell).

Q. Although Chandrasoma had ordered the papers to be submitted to you on your return from circuit you can say they were not submitted to you? A. Not until the reply was sent P19.

(To Court :

Q. Who drafted the letter P19? A. That was on the orders of Mr. Chandrasoma, the clerk must have drafted it. I am not the draftsman 20 of that letter).

Q. The letter is exactly in the language of Chandrasoma in his minute P16a? A. Yes.

Q. Chandrasoma signed it? A. Yes.

(To Court :

Q. Chandrasoma did not come and show it to you even at that time? A. I do not think).

Q. Did your department write to the Land Commissioner stating that the plaintiff had threatened to seek his legal remedy if he did not get a satisfactory reply within a week? A. Mr. Wijesuriya's claim was 30 not taken too seriously.

Q. Are you stating that as a fact or as an inference from the absence of minutes in the file? A. Because there are no minutes.

(To Court :

It was not taken too seriously by me and by the Assistant Government Agent when we came to discuss the matter later.)

Q. When Chandrasoma received P16 he did not tell you that plaintiff was making a false allegation regarding this promise? A. No.

Q. When did he first make any statement to you denying that he had made a promise? Or has he yet made a statement denying? A. 40 Apart from what appears in the papers I do not think he specifically stated that he had made no promise. We discussed the matter and he said there was no promise.

No. 7
Defendant's
Evidence
Kumara-
swamy
(also spelt as
Coomara-
swamy)
Cross-
examination
—continued.

No. 7
Defendant's
Evidence
Kumara-
swamy
(also spelt as
Coomara-
swamy)
Cross-
examination
—continued.

Q. When the matter was brought to your notice did you ask him whether he made the promise? A. I did and he denied having made the promise.

Q. Can you say when? A. I can't say when.

Q. You as a public servant if you received a written allegation that you had made a promise which you never made would you not have immediately repudiated that allegation?

(I tell Mr. Gratiaen this is comment.)

Q. Did you advise Chandrasoma to deny the allegation of a promise? A. No. If he had made a promise I would not have advised 10 him to deny it.

Q. As Chandrasoma was denying the promise did you not advise him to deny the false allegation? A. I do not think so.

Q. You replied to Mr. Jansz's letter of the 21st June on the 18th August, 1943? A. Yes.

Q. By the time you wrote this letter the question of Wijesuriya making a claim was in fact seriously considered by you? At that time you must have seen that letter and realised that Wijesuriya was seriously making a claim? A. The possibility of his making a claim.

You thought that in the interests of the Crown which you wished to 20 protect would be further safeguarded if the Sabapathy lease was allowed to run? A. Yes.

Q. In this letter you were at some pains to satisfy Mr. Jansz in regard to the propriety of the action taken by your department in connection with the proposed lease to Wijesuriya? A. Yes.

Q. You had understood the letter of the Commissioner's original instructions as meaning that the cancellation of the permit in favour of Sabapathy and the new permit in favour of Wijesuriya should be contemporaneous transactions to take place on the 15th March? A. That was the arrangement made by the office—the Assistant Government Agent. 30

Q. In paragraph 4 of D6 you were justifying that action? A. Probably I must have discussed the matter with Chandrasoma.

Q. You must have been convinced that Chandrasoma had acted rightly? A. Yes.

(To Court :

Q. Did he help you to draft the letter? A. I believe that letter was drafted by myself.)

Q. This letter does not state that there was nothing to fear as regards Wijesuriya's claim because no promise of a lease had been made—that is not mentioned in your letter? A. No. The department rightly or 40 wrongly did not anticipate that Sabapathy would insist on remaining in possession after the cancellation of his permit? A. Yes.

(Counsel reads the letter "so when your letter dated 28th January was received, etc.")

Q. It is a fact that what was contemplated in your department was that the Land Commissioner had given the necessary authority to your department to give a permit to Wijesuriya and place him in possession of the land on the 15th March, 1943? A. Those were the preliminary steps to be taken. I was not actually aware of it at that time.

Q. But when you came to know of it you justified the conduct of the Assistant Government Agent? A. Yes.

Q. Did you know in March that Rs. 6,000 had been paid by Wijesuriya? A. Not at that time.

10 Q. In D6 on the 18th August you indicate that you were prepared to now send the Rs. 6,000 back to the plaintiff? A. Yes.

Q. I was wondering whether there is any explanation for a further delay of another four months? A. That must have been lost sight of.

Q. In August you found that the clerk had not carried out the instructions you gave on the 12th March about the returning of the money? A. Yes.

Q. In August you decided to rectify the position? A. Yes.

Q. Again there was another four months' delay? A. I think I wrote a letter to the Land Commissioner saying that no further action will
20 be taken until we received instructions from him.

Q. The Land Commissioner had advised you that Wijesuriya was to be allowed a refund of Rs. 6,000 only on his accepting the money unconditionally? A. Yes.

Q. Your instructions were that the money was not to be given to Wijesuriya unless he accepted it unconditionally? A. That is correct.

Q. Original instructions were received prior to the 4th March, 1943, from the Land Commissioner? A. Yes.

Q. The price of the proposed new lease in favour of Wijesuriya was fixed? A. Yes.

30 Q. The period was fixed? A. Yes.

Q. The date on which it was to commence was fixed as between yourself and the Land Commissioner? A. Of the proposed lease. I visited the land with Mr. Boyd Moss shortly before writing D6.

Q. You were satisfied that Karunatileke had spent a good deal of money on the land for the purpose of tapping the rubber? A. From what Mr. Boyd Moss said and from my observation I thought he had spent a lot of money. He had put money for putting up accommodation for the tappers.

Q. There were lines on the land? A. Yes.

40 Q. His tappers were there? A. Yes.

Q. He had cleared over a 100 acres of the rubber portion? A. Yes.

Q. And tapping was in progress in over a 100 acres? A. Yes.

No. 7
Defendant's
Evidence
Kumara-
swamy
(also spelt as
Coomara-
swamy)
Cross-
examination
—continued.

(To Court :

Q. Was there a smoke room on the land ? A. I do not remember seeing it.

Q. Did you see rollers on the land ? A. I have no recollection.)

Q. There must have been made rubber ? A. I think at that time there was no rubber.

Q. Of course now I understand the position is that the unfortunate permit holder Sabapathy is not allowed to go near the land by Karunatileke ? A. Yes.

Q. Sabapathy has not got possession, plaintiff has not got possession, 10 Karunatileke has possession ? A. Yes, I believe there is a case.

Q. The case is estimated to continue beyond the period of the permit I understand ? A. I do not know.

Q. These payments of rent are required to be paid before the lessee goes into possession ? A. Yes.

Q. But after the lease is fixed ? A. Oh, yes.

Q. Have you as a Government Agent ever come across a case where a man who had deposited Rs. 6,000 representing one year's rent except in pursuance of an arrangement that he was shortly to go into possession ?

A. You must take the peculiar circumstances of this case. 20

Q. Have you come across any other case ? A. No.

Q. Rs. 6,000 is a large sum of money ? A. Yes. Even the first lessee was allowed time and that was the cause of so much trouble.

Q. He was never called up to make payments before he was given the lease ? A. I did not deal with the matter—it was Chandrasoma.

Q. In Uva there were other lands which were given out to people with tapping rights ? A. They were dealt with by the Assistant Government Agent.

Q. I take it that the distribution of the work between yourself, the Government Agent and Chandrasoma as Assistant Government Agent was 30 largely a matter of arrangement between the two of you ? A. I carried on as it was before I went.

Q. When you arrived there you found the division of work was the Assistant Government Agent attending to land matters on behalf of the Government Agent ? A. Yes.

Q. When you assumed duties you approved of those arrangements continuing ? A. Yes.

Re-examination.

No. 7
Defendant's
Evidence
Kumara-
swamy
(also spelt as
Coomara-
swamy)
Re-
examination

Shown P31. Q. Do you know on what grounds it was proposed to 40 cancel Sabapathy's lease ? A. Because it was considered that he had committed a breach of the conditions.

Q. And in particular can you remember what were the conditions he had committed a breach of ? A. By entering into an agreement with Karunatileke,

Q. Anything else? (Mr. Solicitor reads the letter P31). A. And not keeping the land in its proper condition. The damage was caused by Karunatilleke's people.

Q. Was that visit which you paid to the land as a result of this letter? A. Yes.

Q. That was the only time you went to the land? A. Yes.

Q. You took Mr. Boyd Moss with you? A. Yes.

Q. You received a written report from him? A. Yes.

Q. Apart from Mr. Boyd Moss' report was there any serious damage done to the rubber trees? A. No.

Q. Did you think it was justifiable to cancel the lease on that ground? A. No.

Q. The other ground was that he had entered into an agreement with Karunatilleke? A. Yes.

Q. That agreement with Karunatilleke P26 is dated 9-6-42? A. Yes.

Q. The permit to Sabapathy issued by the Crown after he had entered into occupation is dated 10-8-42? A. Yes.

Q. That document is P6? A. Yes.

Q. So that the agreement which Sabapathy made with Karunatilleke was prior to the issue to him of the permit? A. Yes.

Q. Will you look at the copy of the original permit? A. Yes.

Q. In that permit does it say about sub-letting? A. This permit is personal to the permit-holder. (Clause 3).

Q. When Sabapathy and Karunatilleke appeared before you with a view to the settlement of their claim on the 17th August was it agreed that the agreement between the two of them should be cancelled? A. Yes.

Q. As a result of that conference you had with Sabapathy and Karunatilleke it was agreed that P26 should be cancelled? A. Yes.

Q. In point of fact did they cancel it? A. No.

Q. And litigation is going on? A. Yes.

Paragraph 2c read to the witness. Q. You could not give possession to Wijesuriya until you had ejected Sabapathy? A. Yes.

Q. Sabapathy did not consent to leaving the land? A. No.

(To Court :

Q. At this time you knew nothing about it? A. Yes.

Q. The Land Commissioner expressly authorised you to put Wijesuriya into the land after you had resumed possession from Sabapathy? A. Yes.

No. 7
Defendant's
Evidence
Kumara-
swamy
(also spelt as
Coomara-
swamy)
Re-
examination
—continued.

No. 7
Defendant's
Evidence
Kumara-
swamy
(also spelt as
Coomara-
swamy)
Re-
examination
—continued.

Q. You did not get possession? A. Yes.

Q. And you could not therefore put him in possession? A. Yes.

Q. This money which Wijesuriya deposited? A. It was conditional on his getting the lease. I am stating what Chandrasoma told me.

Q. When you went to this land is there a cart road right up to the land? A. We went walking.

Q. A considerable distance? A. 3 or 3½ miles.

Q. From the main road? A. Yes.

R. F. DIAS,
District Judge. 10

No. 7
Defendant's
Evidence
Attanayaka
examination

H. B. ATTANAYAKA—affirmed.

Clerk, Class II., Badulla Kachcheri. I am the chief land clerk. I was the chief land clerk in March, 1943. I know the assistant land clerk Dias. He left Badulla Kachcheri at the end of February, 1943. He was in charge of leases. There are ten other clerks in the land department now. In 1943 March there were about six. Some were taken on by the Food Control Department.

Shown D1. The first minute I wrote was "We may accept a year's rent and place it in deposit until Mr. Wijesuriya is in possession of the land. When he is in possession the money can be credited to revenue".²⁰ I addressed it to the Assistant Government Agent Mr. Chandrasoma. Mr. Chandrasoma's reply is "Yes, please inform Mr. Wijesuriya to let me know whether he is agreeable". This document forms part of the ordinary file of my office. That minute is also dated 4-3-43.

Q. The Land Department of the Badulla Kachcheri has two entrances? A. Yes.

Q. One on the resthouse side and the other on the Assistant Government Agent's Office side? A. Yes.

Q. If you want to get to the Assistant Government Agent's Office you got to pass through the land department? A. That is if one comes from the resthouse.

Q. I want you to try and recollect the incidents which happened on the 4th March? A. Yes.

Q. Do you remember Mr. Wijesuriya coming to the Kachcheri? A. Yes.

Q. From what side did he come? A. He came from the resthouse side.

Q. So that normally he would have to pass your department and then proceed to the room of the Assistant Government Agent? A. Yes.

Q. Had you these directions to ascertain from him whether he was willing and to inform Mr. Chandrasoma? A. Yes.

Q. Then you saw Mr. Wijesuriya coming there? A. Yes. I saw him going along the land department verandah from the resthouse side.

Q. Did you speak to him? A. I called him.

Q. Tell the Court exactly what happened? A. I told him that we had instructions from the Land Commissioner to issue notice of cancellation to Mr. Sabapathy and to offer the lease to him and that we have since issued a notice of cancellation on Sabapathy and that if he would agree to deposit the first year's payment we could put him in possession of the land in the event of Sabapathy vacating the land.

Q. You are sure you told him that? A. Yes.

Q. You wanted him to deposit Rs. 6,000? A. Yes.

10 Q. You are aware of the rule of Government that he must deposit the year's rent before you are in possession? A. Yes.

Q. Did Mr. Wijesuriya agree? A. Yes.

Q. Did you explain to him what the deposit was? A. I told him that the money will be placed in deposit and it would be refunded to him if he is not put in possession of the land.

(To Court :

Q. Can you tell me the Financial Regulations which governs that?
A. In the case of deposits the Government Agent acts as the bank. I am sorry I can't tell the number of the Financial Regulations.)

20 Q. What did you mean by deposit? Did you explain to him what a deposit meant? A. I told him the money could be refunded to him if he is not put in possession of the land.

Q. Did you tell him the lease was for the balance 5 years? A. I told him that we are recovering the first year's rent from him.

Q. Did you tell him that it was to be for the balance period of 5 years? A. Yes. I told him the balance period provided he is to be put in possession of the land.

Q. What did Wijesuriya do? A. He agreed to deposit Rs. 6,000.

Q. What did he do after that? A. He gave a cheque for Rs. 6,000

30 Q. At once? A. Yes.

Q. He sat down and wrote a cheque? A. Yes.

Q. Had he come into the Land Department? A. Yes.

Q. I thought you said something about the verandah? A. I called him into the Land Department.

Q. I suppose you were all seated down there? A. Yes.

Q. He drew his cheque book and gave you the cheque for Rs. 6,000?
A. Yes.

Q. Did Wijesuriya go anywhere before he wrote that cheque? A.
No.

40 Q. As soon as you told this to him he wrote the cheque and agreed to pay this deposit? A. Yes.

Q. Did he go and see Chandrasoma? A. No.

No. 7
Defendant's
Evidence
Attanayaka
examination
—continued.

Q. You are certain? A. Yes. When I explained to him the position he gave this cheque to me.

Q. What did you do with the cheque? A. I wrote out a paying in slip and sent it to the accounts department.

Q. Which is in charge of the shroff? A. In charge of the chief clerk.

Q. Having received his cheque what happened to Mr. Wijesuriya?
A. He went away.

(To Court :

Q. Where did he go? A. That I cannot say. 10

Q. When you first saw him he was coming from the resthouse direction? A. Yes.

Q. He was going somewhere? A. Yes.

Q. You called him? A. Yes.

Q. Then this transaction took place? A. Yes.

Q. After that where did Wijesuriya go? A. I can't remember.

Q. How does the Assistant Government Agent go home in the evening? A. By car.

Q. Whose car? A. His car.

Q. Where was plaintiff staying at this time? A. I do not know 20 exactly where he stays. He stays at the resthouse. I do not know where else he stays.

Q. Do you know whether the Assistant Government Agent went alone that evening or with anyone else? A. I do not know.)

Q. On the 5th March you have made another minute on the same document? A. Yes.

Q. What had you said there? A. Yes, he agreed.

Q. On the same day did you receive the file back? A. Yes.

Q. You sent this file with this endorsement to Mr. Chandrasoma?
A. Yes. 80

Q. Did you get it back? A. Yes, saying "do so please".

Q. On the same day? A. Yes, 5th March.

R. F. DIAS,
District Judge.

Case postponed for tomorrow.

R. F. DIAS,
District Judge.

Counsel as before.

H. B. ATTANAYAKA—affirmed.

(Shown D3). This is my handwriting. The Government Agent wrote 40 D3A on my minute and after that the file came back to me and it was sent to the subject clerk for necessary action. (Shown P27—requisition).

This is in my handwriting. A requisition order is the normal method by which we refund money in deposit. It is not signed by the Government Agent prior to despatch. These requisition orders are despatched to the payee and when they are received by the payee on a 6-cent stamp and returned to the Kachcheri then we submit the requisition with the connected papers to a staff officer to be certified, that is to be signed.

No. 7
Defendant's
Evidence
Attanayaka
examination
— continued.

(To Court :

Q. Is there any Financial Regulation on this point? A. There is no financial regulation specifying that detail.

10 Q. When you received it back in the Kachcheri after it had been received by the payee what do you do? A. We submit it to the staff officer along with the connected papers to be certified. The Office Assistant or Assistant Government Agent signs it when it is submitted. Payment cannot be made until it is signed.

(To Court :

When it is received and brought back to the Kachcheri we send it to the Accounts' Department for payment and payment is then made. I have written witnesses (1) (2). They are the witnesses to the payee's signature. I have also written for Government Agent, Uva, and I have
20 put my initials below that.)

Cross-examined.

This requisition P27 is in my handwriting. Q. When you told the Court just now what you understood to be the practice regarding requisitions were you speaking of any procedure laid down in any regulation? A. No details are specified in the Financial Regulations as regards the signature.

No. 7
Attanayaka
Cross-
exami

Q. The practice you have laid down is not laid down in any financial regulation? A. No.

Q. Is it laid down in any Standing Orders at the Badulla Kachcheri?
30 A. No.

Q. Do you suggest that the Government Agent, Mr. Cumaraswamy, never signed a requisition till it had been returned by the payee with his signature? A. Yes.

Q. Are you aware the Government Agent when he gave evidence yesterday was very surprised when he found there was no signature? A. I do not know that. The initials under the words Government Agent Uva are mine.

Q. Is it not the common practice for the clerk who prepares a document to put his initials under the designation of the senior officer who is
40 expected to sign the document? A. Yes, and I have initialled it.

Q. I put it to you you put that initial because it was intended to go to the Government Agent immediately for his signature? A. No the letter is signed by the staff officer.

No. 7
Defendant's
Evidence
Attanayaka
Cross-
examination
—continued.

Q. You told the Court yesterday that you did not know where the plaintiff was staying in March, 1943? **A.** I said he was staying in the resthouse.

Q. And you said you did not know where else he stays. I suggest to you that you knew very well that the plaintiff was staying in the house of his friend Mr. Chandrasoma? **A.** I have not gone to the Assistant Government Agent's bungalow and I do not know. I have heard he was staying in the Assistant Government Agent's bungalow but I have not seen him there.

Q. I suggest to you that you professed ignorance as to where else the plaintiff was staying because you thought that by professing ignorance you would be shielding Mr. Chandrasoma? **A.** No I have not seen him there and I could not definitely say he was there.

Q. Have you ever seen plaintiff and Mr. Chandrasoma together in Mr. Chandrasoma's motor car? **A.** Yes I have seen them I may have seen them leaving the Kachcheri together in Chandrasoma's car.

(Shown original of letter of 2nd March sent to Sabapathy cancelling his permit P10). I drafted this letter. I submitted it to Mr. Chandrasoma for his signature and I also prepared the information copies which were sent to Karunatilleke and the Government officials. That was prepared on 2nd March. Before that letter was drafted I probably discussed it with Mr. Chandrasoma.

Q. Is it not the fact that everybody in the Kachcheri at that time assumed that Sabapathy would hand over possession on the cancellation of his permit?

Before answering that question I will put to you what Mr. Kumaraswamy said he said that the department did not expect that Sabapathy would insist on remaining in possession after the cancellation of his permit, do you agree with that? **A.** Yes.

Q. That is to say your impression was that on 15th March Sabapathy would hand over possession to the chena survey Muhandiram? **A.** Yes.

Q. And therefore that the chena survey Muhandiram would not have the slightest difficulty in carrying out Mr. Chandrasoma's order to give possession to plaintiff? **A.** Yes.

Q. So your impression was that everything would be completed on the morning of 15-3-43? **A.** Yes, provided Sabapathy vacated it.

Q. And you thought that he would not give any trouble about that? **A.** Yes.

Q. If you thought that Sabapathy would give trouble refused possession and kept the plaintiff out of possession for a considerable period of time would you have asked the plaintiff to deposit the Rs. 6,000 on 4th March? **A.** Even otherwise I would have asked for that deposit because before we give possession we must have that deposit.

Q. But have you ever had a case of calling upon a man to pay a year's rent before going into possession if you thought that he might not

be able to get possession for a year? *A.* We have had instances where we recovered the rent and deposited it but the people could not get possession.

Q. What is the longest period between payment of the rent and placing in possession? *A.* There are cases where lessees have never got into possession.

Q. And you have taken the money? *A.* No we refunded it.

Q. Have you taken rent without fixing the date for giving possession. I can quite understand that subsequent events make it impossible to give possession but have you taken the rent in advance before arranging the date the man should go into possession? *A.* I cannot remember any.

Q. Apart from the minute you wrote suggesting to the Assistant Government Agent on 4th March that you should take Rs. 6,000 as rent had you received any oral instructions on 4th March from Mr. Chandrasoma? *A.* No.

Q. So it was you who first put up the suggestion to Mr. Chandrasoma that the rent should be taken? *A.* Yes.

Q. At what time of the day did you put up that minute? *A.* I cannot remember it may have been in the afternoon.

Q. Had you got any instructions from Mr. Chandrasoma orally after the letter P10 on 2nd March was drafted? *A.* I cannot remember.

Q. On 4th March the only instructions you received from Mr. Chandrasoma were in writing? *A.* Yes.

Q. Who told you to give Mr. Wijesuriya, the plaintiff detailed information about the full amount of the rent? *A.* There is the Assistant Government Agent's order of 4th March D1.

Q. The only written order addressed to you by Mr. Chandrasoma was merely the words "Yes, please request Mr. Wijesuriya to let me know he will agree"? *A.* Yes.

Q. Where are the written instructions to give him detailed information about the terms of the lease? *A.* It was my duty to give him the conditions because it says "if he agreed".

Q. Those words were in reference to the deposit? *A.* Yes.

Q. Why had you to tell him about the Rs. 30,000 to be paid and that he would be given the lease for the unexpired period of Sabapathy's lease? *A.* I had to tell him that the first one year's rent was Rs. 6,000 and I had to explain to him about the deposit.

Q. Why had you to explain about the Rs. 30,000 and balance period and so on? *A.* I did not say about the balance period.

Q. Did you say anything about the balance period? *A.* Yes I told him.

Q. Why did you say, you did not just now? *A.* I could not quite follow.

No. 7
Defendant's
Evidence
Attanayaka
Cross-
examination
—continued.

Q. You also told him that the full amount to be paid was Rs. 30,000 ?

A. I may have told him.

(Shown D1). You have made this minute on a piece of paper immediately below the office copy of Mr. Chandrasoma's letter to the chena survey Muhandiram ? A. Yes.

Q. Did you draft that letter P13 to the chena survey Muhandiram ?

A. Yes.

Q. That was on the 4th ? A. It was I think in the morning.

Q. Or it may be in the afternoon ? A. I cannot say. That letter was made in draft submitted to Mr. Chandrasoma and approved by him. 10 That draft was prepared it may be before I saw Mr. Wijesuriya on 4th March. It may be after.

Q. You cannot deny that it was after ? A. I cannot.

Q. In your own draft in paragraph 2 of P13 you have used the words —lease is now given to Mr. Wijesuriya ? A. Yes.

Q. Can you possibly have prepared the draft making that statement until you had seen Wijesuriya that day ? A. I think it was before I saw him.

Q. Then P13 was prepared by you and signed by Chandrasoma before Wijesuriya had agreed to take possession of the property ? A. 20 I cannot remember exactly.

Q. Apart from the document could you have correctly stated that the lease had been given to plaintiff at a time before you had seen him and got his acceptance of the offer of this lease ? A. I could not have made such a statement before I had seen him. The lease was accepted by Mr. Wijesuriya for the first time when he saw me at the Kachcheri that day.

Q. It must have been after that that you made this minute ? A. Yes.

Q. Do you think that D1 was submitted to Mr. Chandrasoma after 30 he had signed P13 drafted by you ? A. I cannot exactly say.

Q. Before Chandrasoma signed P13 which you had drafted you must have told Mr. Chandrasoma that Wijesuriya had agreed to take the lease otherwise how could he know whether what you said in the draft was true or not ? A. It is possible.

(To Court :

I work in the office and Mr. Chandrasoma has his own room. I send the files to him. The peon takes them and brings them back. When I wrote D1 the file was with me.

Q. Can you say whether P13 had been taken to Chandrasoma and 40 returned signed by him when you wrote D1 ? A. I cannot remember.)

Q. I take it when your draft of P13 was sent to Chandrasoma for his signature the file must have been sent with it ? A. Yes papers go with the file.

Q. When Chandrasoma signed P13 the file must have been returned to me with the signature on P13? A. Yes.

Q. That is, that must have been after your conversation with the plaintiff? A. Yes.

Q. You have not made any minute of your original conversation with Wijesuriya on 4th March? A. I have said yes, he agrees.

Q. That was with regard to the suggestion you had made to him after P13 was prepared but you have not made anywhere a minute of your full conversation with him regarding the fact that he agreed to take
10 the lease? A. No.

Q. You have never made any minute of the fact that you explained to him that he could only have the lease if and when Sabapathy gave up possession? A. I have made no minute.

Q. Nor have you any minute of the fact that you explained to him that he could only get possession provided Sabapathy gave the lease up?
A. I have made a minute. My only minute is D1.

Q. Your minute in D1 is a suggestion that the money should be placed in deposit until Wijesuriya is put in possession of the land. You have already told me that at that time your understanding was that the
20 date when he was certain to get possession of the land was 15th March?
A. Yes.

Q. You never told the plaintiff in your opinion that Sabapathy was likely to give trouble? A. I did not definitely tell him that he would give up possession on the 15th. Because I cannot tell him definitely he would be given possession so long as the other man was on the land.

Q. At that time you knew exactly what was in all the correspondence between the Kachcheri and the Land Commissioner? A. Yes.

Q. You knew that the Government Agent in spite of the fact that he had received instructions on 28th January from the Land Commissioner
30 to cancel the permit in favour of Sabapathy had taken the precaution of suggesting that before that was done the Attorney-General's opinion should be obtained? A. Yes.

Q. You knew that having taken that opinion the Land Commissioner had confirmed his original instructions? A. Yes.

Q. So that so far as the decision of the Government officers to cancel the permit was concerned you regarded the matter as final? A. Yes.

Q. You never dreamt that a few days later the Land Commissioner would change his mind? A. No.

Q. That must have come as a great surprise to you? A. Yes.

40 Q. You had definitely told the plaintiff that the letter cancelling the permit to Sabapathy with effect from 15th March had been sent to Sabapathy? A. Yes.

Q. Everything you had told Wijesuriya that day was exactly as instructed by Chandrasoma? A. I had no oral conversation with Mr, Chandrasoma,

No. 7
 Defendant's
 Evidence
 Attanayaka
 Cross-
 examination
 —continued.

Q. How then did you have a conversation as a result of which you wrote P13? **A.** When he had agreed I would have suggested this and sent it to the Assistant Government Agent for signature if approved.

Q. But you must have had a conversation with Wijesuriya before you wrote P13, on whose instructions did you have the conversation with plaintiff before drafting P13? **A.** On the Assistant Government Agent's order I spoke to the plaintiff and then I must have seen the other letter. When the plaintiff deposited the money I would have sent the letter P13 for the Assistant Government Agent's signature if approved.

Q. Plaintiff could not have paid you the Rs. 6,000 before you wrote 10 that minute D1? **A.** Immediately after my conversation with him, he gave me the cheque.

Q. You think that what happened was that he gave you the cheque for Rs. 6,000 before you sent Chandrasoma the minute D1? **A.** No after D1 was written and the Assistant Government Agent approved my minute that I got the cheque.

Q. I understood you to say you must have had a conversation with plaintiff before you sent D1? **A.** No, before D1 I had no conversation with plaintiff.

Q. So that after Chandrasoma made his endorsement on D1 you had 20 your first conversation with plaintiff? **A.** Yes.

Q. Then you say you must have prepared the draft P13 after that conversation? **A.** Yes.

Q. So that a little space must have been left on the top of the page for the draft of P13? **No answer.**

Q. Do you admit that your draft of P13 in your own writing must have been made on that paper before you wrote your first minute D1? **A.** I cannot remember which was written first P13 or D1.

Q. Are you in the habit particularly during a time when paper restriction is so necessary to start writing minutes on the middle of the 30 page? **A.** Wherever we find space we write—I cannot exactly remember.

I made my minute on the original office copy and this is the original office copy. The original office copy is written "Signed etc. Chandrasoma for Government Agent.

Q. And when you prepared that copy the signature must have been on the original? **A.** This endorsement was not sent to Sabapathy but to the chena survey Muhandiram. The original copy was sent to the Divisional Revenue Officer and one was sent to the chena survey Muhandiram later. That was on the 4th. The original was sent on the 2nd. 40

Q. I am talking about what was sent to the chena survey Muhandiram on the 4th, you prepared that copy from the original endorsement sent to the chena survey Muhandiram? **A.** We would have got a copy from this copy which was in my file.

(To Court :

Only two copies of P13 were made and one went to the chena survey Muhandiram and one remained in the file and in that copy left behind are my minutes.)

My minutes were written after I had prepared the office copy of P13.

I must have received the cheque for Rs. 6,000 in the afternoon. If it had been received that morning we would have accounted for it that day itself.

I must have received it after the shroff's department had closed their 10 accounts for the day. That would be after 3 o'clock.

Q. It might have been at 4 o'clock? A. Yes. I cannot say. I took the cheque and wrote a paying-in-slip and sent it to the Accounts Department. I cannot say whether the paying-in-slip is in the file. It will be with the shroff. I sent the paying-in-slip on the 4th itself.

Q. What did you tell Wijesuriya would be done with his receipt?
A. That it would be posted.

Q. Did you tell the chief clerk to post it? A. No.

Q. You now know that the receipt was never posted? A. Yes.

Q. You now know that later Wijesuriya asked for the receipt and 20 your Kachcheri gave him a certified copy of it which is P11? A. Yes.

The receipt would have been one of the Government yellow receipts. That receipt book is in foil and counterfoil.

Q. What happened to the original yellow receipt? A. The original receipt had been given to the subject clerk he had not posted it.

Q. Although the receipt was still in the Kachcheri the plaintiff was given a certified copy and not the original? A. Applications for copies go to the Shroff's Department and he must have issued it. The original is still in the file.

Q. You mean it is the carelessness of the subject clerk? A. Yes.

30 Q. Are you quite sure that you explained quite carefully to Wijesuriya that he could come at any time and take this money away? A. Yes if he is not put in possession of the land he could have done that.

Q. Not put in possession as a result of Sabapathy refusing to go?
A. Yes.

Q. Have you made a minute of that entry? A. No—not beyond D1.

Q. On 12th March the Government Agent told you to refund the money to plaintiff? A. Yes.

Q. You had explained to Wijesuriya that he could come at any time 40 and take his money but here is the Head of your department ordering you to send the money back to Wijesuriya? A. Yes.

Q. Why did you not comply with that order? It is an omission on the part of the subject clerk? Not yours? A. No.

Although he ordered me all the correspondence is attended to by the subject clerk.

(To Court :

The subject clerk had this file. I am the land clerk.

Q. What exactly is the duty of the subject clerk and what is the duty of the land clerk in regard to this matter? A. At this time Mr. Perera the subject clerk had just come to the Land Department.

Q. I am asking you generally what is the difference between the land clerk's duties and the subject clerk's duties? A. The land clerk's duty is supervision to see whether all minutes are correct, etc.) 10

It was the subject clerk's duty to carry out the order D3 A.

Q. Then as the supervising clerk was it not your duty to see that that order was carried out? A. I remember I reminded him once or twice. I reminded him within what period I cannot say.

Q. How long after the 12th March do you think you first reminded him? A. I think within a fortnight or so. I did not remind him to send the yellow receipt it was his duty to send receipts to the payees. When I reminded him he said he would send a letter to the plaintiff.

Q. Did you not ask him why have you delayed this matter, there is a clear order? A. He said he would send it. 20

Q. How long after that day did you again remind him? A. It may be a day or two later.

(To Court :

There is a chief clerk. He is in charge of the Accounts Department. I am the chief clerk and I am over the subject clerk who is in charge of this file.)

Q. When you found that a specific order of the Government Agent had been overlooked although you had reminded him twice with a period of two or three weeks did you not take the matter up? A. No.

Q. That was gross carelessness, was it not on the part of the subject clerk? A. Yes. 30

Q. What steps then did you take to rectify that? A. In the Land Department sometimes there are long delays.

Q. You thought this is the usual delay that is to be expected from Government departments? No answer.

I drafted the terms of that receipt for the Rs. 6,000. Not the yellow receipt, but the paying-in-slip. The yellow receipt is left in the Shroff's department. It is written from the paying-in-slip.

(Mr. Gratiaen marks P11 A the yellow receipt which is handed to him by the defence.) 40

The words " Rent on Keenapitiya rubber estate pending issue of lease " are mine.

Q. Do you suggest that those words pending issue of a lease was intended to convey the impression that it was possible that the lease might never be issued? A. Yes may or may not be issued.

Q. Pending issue of the lease was intended to mean if and when a lease is given? A. Yes.

Q. Although you were certain the lease was to be given on the 15th? A. I was not quite sure.

Q. You thought that the Land Commissioner might cancel his instructions? A. Sabapathy may not have given it up.

10 Q. In point of fact before the 15th your department had cancelled the previous lease? A. Yes.

Q. So that Sabapathy was given express permission by the Government Agent to remain in possession after the 15th? A. Yes. And he was entitled to be there because of what the Government Agent had done? A. Yes.

Q. Did you not then suggest to Mr. Chandrasoma that a letter should be written immediately to the plaintiff saying that there had been an unexpected development as a result of subsequent instructions received from the Land Commissioner? A. No I did not.

20 Q. You gave the plaintiff every reason to hope that he would be placed in possession by the 15th? A. I would not say every hope I said if Sabapathy left he would be given.

Q. It was not suggested that Sabapathy would be asked by your department to remain in possession? A. No.

Q. The only thing you feared might happen was that Sabapathy might give trouble in spite of the cancellation of the permit? A. Yes.

Q. Did you meet Wijesuriya or see him after the 11th or 12th? A. No.

(To Court :

80 (Shown D3). When the Land Commissioner decided to allow Sabapathy to continue I wrote D3 and the Government Agent said " Yes ".

Q. Was the plaintiff written to then? A. The subject clerk had not carried out the order. I admit the plaintiff should immediately have been told.)

I have been the land clerk for two years.

Q. Have you ever before in your experience come across a case where a man could not be given a lease because the previous cancellation of a permit had been subsequently revoked? A. No.

Q. This was a unique case in your experience as a land clerk? A. 40 Yes.

Q. You told us when the Government Agent instructed that the money should be refunded to the plaintiff on 12th March you thought that would be dealt with in the ordinary course of business by the subject clerk? A. Yes.

No. 7
Defendant's
Evidence
Attanayaka
Cross-
examination
—continued.

Q. Did you report to the Government Agent or the Assistant Government Agent subsequently that you found that the subject clerk had not carried out the orders? A. No.

Q. Did you meet the plaintiff after that date? A. No I do not remember. Even if I did see him I did not tell him that something had gone astray.

(Shown P16). Letters are opened by the Office Assistant and he distributes them and they go into the files. In the ordinary course this document would have come to me within a day or two of its arrival. I have not made any minute on it. Mr. Chandrasoma has made a minute 10 on it.

Q. P16 A was an instruction that when the Government Agent returned from circuit he was to be shown the letters? A. Yes.

Q. There was also an instruction that a reply should be sent to the plaintiff that the department was awaiting instructions from the Land Commissioner? A. Yes.

(Shown reply P19 of 5th July). This was typed by Mr. Perera and drafted by the subject clerk.

Q. When you read P16 did you notice that the plaintiff was definitely alleging that a lease had been promised to him? A. Yes. 20

Q. Is he saying something there which you did not tell him? A. Yes.

Q. And if what you told the Court is true the only person in the Kachcheri he had any conversation with about the lease was yourself? A. Yes so far as I know.

Q. Did you not then immediately go up to Chandrasoma and tell him that this allegation was not true? A. I did not.

Q. In spite of the fact that the letter threatened legal remedy if no satisfactory reply was received in a week? A. The Assistant Government Agent had seen this. 30

Q. You did know that he was threatening to seek legal remedy within a week? A. Yes.

Q. Did Chandrasoma then say to you : Did you make such a promise to plaintiff you are the only person who spoke to him at all? A. He did not ask me.

(To Court :

(Shown P16 A). Q. Chandrasoma made an order there that this letter was to be shown to the Government Agent on his return from circuit? A. Yes.

Q. Was that done? The Government Agent says he did not know 40 about it till long after? A. It is the fault of the subject clerk.

Q. What is the land clerk doing? A. The land clerk cannot look into every paper.)

Q. The receipt is in your words " pending issue of lease ". Does not the word lease mean in that context pending issue of the written permit?
 A. Lease or permit is almost the same thing.

Q. That is the document permitting him to go on the land?
 Yes.

Q. When did you find that in spite of the Assistant Government Agent's orders the subject clerk had not put P16 before the Government Agent?
 A. I cannot remember.

(To Court :

10 Q. You realised when you got P16 apart from the legal merits of plaintiff's claim that he was going to create trouble?
 A. I did not think he was going so far as to file action.

Q. For your own interests did you not think that this matter should be put down on record somewhere and kept straight?
 A. I did not think so.)

Q. Did you not go to the subject clerk even then and ask him whether he had sent back the Rs. 6,000 as ordered by the Government Agent?
 A. I do not remember whether I asked him or not.

20 Q. At that date did you know that the Government Agent's order regarding the refund had not been carried out?
 A. On that day it did not strike me to ask him. I did not know whether it had been refunded or not.

Q. When your department undertakes to send a further reply in due course do you make some minute so that you can remember that a letter has to be sent?
 A.* Yes it is booked for a further date.

(To Court :

According to the Turner system we have a diary in which it is booked. On the morning the subject clerk would have known what he had to do.)

(Shown P19). Q. Was a note made fixing the date for writing further 30 as promised?
 A. May have been. Should have been. It is the subject clerk's job. Mr. Kumaraswamy called me and asked me to send a requisition on 14th December.

Q. Up to 14th December had anybody asked you to make a statement giving details of your conversation with plaintiff on 4th March?
 A. No.

40 Q. When did you first make a statement or did you make a statement at any time to the Government Agent or Assistant Government Agent as to the nature of your conversation with plaintiff?
 A. Mr. Kumarsingham asked me to make a statement. It was after the requisition was sent. At the time I made the statement Mr. Chandrasoma was not there. He may have been in his office. My statement was made in writing to Mr. Kumaraswamy. I stayed in his office and wrote it. I cannot say whether that was after notice of action had been received by the Government Agent. I do not know whether Chandrasoma made a statement in writing.

No. 7
Defendant's
Evidence
Attanayaka
Cross-
examination
—continued.

(Mr. Gratiaen asks for that statement. The Solicitor-General hands it over. Marked P33).

This statement though it bears the date 27-3-43 was in fact prepared in 1944. P33 is the statement I made before the Land Commissioner. This is not the statement I made before the Government Agent. P33 has the language of a senior officer who took down my statement. The one I gave the Government Agent was written in my own hand.

Q. You have told the Court in examination-in-chief everything that you in fact told the plaintiff on 4-3-43? A. Yes. So far as I remember I have left out nothing. 10

Q. You never told officer "that the acceptance of the deposit would not bind the Crown" you did not use language like that when you spoke to him? A. I would not in ordinary conversation make a statement like that.

Q. But you have signed a document with the words "I definitely made him to understand that the acceptance of the deposit did not in any way bind the Crown, etc."? A. I did not use that language but I made him understand that in other words. I did not mean that the Crown would change its mind.

Q. You never dreamt that the Land Commissioner would change his mind after giving definite instructions in January? A. No. 20

(Mr. Gratiaen calls for the statement made by the witness to the Government Agent. The Solicitor-General says he has no notice to produce such a document and Mr. Gratiaen is not entitled to call for it. But as one statement has already been given he has no objection to giving him this too.)

(Mr. Gratiaen marks the statement P34—Mr. Gratiaen reads P34.)

Q. The position is that you were asked nearly a year afterwards to make a statement and you wanted to make it clear that you were only speaking to the best of your recollection because you were not clear about what had happened? A. The file was not with me at the time. 30

Q. So that you were speaking to the best of your recollection? A. Yes.

(To Court :

Q. Is that statement correct? A. Yes.

I wrote generally everything I could remember without having the file before me.

Q. The position was this the chena Muhandiram had been definitely instructed to take over possession from Sabapathy on 15th March and on the same day at the same time to put plaintiff in possession? A. Yes. 40

Q. But the rule was that before the man is put in possession as lessee his rent had to be recovered in advance? A. Yes.

Q. It was therefore necessary to see that before Wijesuriya was put in possession on the 15th the money representing one year's rent was in the Kachcheri? A. Yes.

Q. Till he was given possession the money was to be kept by the Kachcheri in deposit? A. Yes.

Q. After he was given possession the money was to be credited to revenue. In P33 you say that the notice P10 dated 2-3-43 was only a preliminary notice what does that mean? A. A formal notice that was sent.

Q. Did you think that P10 might subsequently be cancelled. You thought it was a final notice did you at that time? A. I thought so.

Q. It is said that the Government Agent had given directions that the lease was to be issued to Wijesuriya at Rs. 6,000 a year if the land was given over? A. Yes.

Q. Those are the Land Commissioner's instructions. You say that the Government Agent had directed what does that mean? A. I meant that Mr. Kumaraswamy had ordered a lease to be given.

Q. Had he authorised a lease to be given to plaintiff? A. The Assistant Government Agent gives orders on behalf of the Government Agent. I intended to refer to instructions given by the Assistant Government Agent on behalf of the Government Agent.

I have said "He took the money with the paying-in voucher and deposited the money with the shroff". It might have been taken by a peon. It is not correct that the plaintiff did that.

(To Court :

Q. What was the inquiry the Land Commissioner was holding? A. He was holding an inquiry in regard to the matter. It was not a disciplinary proceeding against me.)

Q. Did you know that the Government Agent in August had given another direction to refund the money to plaintiff? A. I did not know. D3, D3 A and D3 B are written on the back of a letter. That letter may have been received from Sabapathy.

80 (A question now arises between counsel as to whether the reverse of D3, D3 A and D3 B namely, Sabapathy's letter should be marked. Both sides have no objection to the document being marked but Mr. Gratiaen says he does not wish letters like this to be put in if the truth of what they contain are to be assumed by the Court, subject to this he has no objection to marking the document, but he is not prepared to mark it as one of his documents.)

The subject clerk has submitted that letter to the Assistant Government Agent and the Assistant Government Agent has made an endorsement on it.

40 (Mr. Gratiaen marks the endorsement P35 dated 10th March.)

Q. Are you aware of the fact that a letter had also been received from Karunatileke? A. No.

(The Solicitor-General objects. Plaintiff's case closed.)

(Shown a document.) Witness reads the document.

No. 7
Defendant's
Evidence
Attanayaka
Cross-
examination
—continued.

Q. Is it not the fact that Karunatileke made a request that the time..... (Counsel in his question is trying to get the contents of the document but I think that is open to objection.

Mr. Gratiaen then asks for the original of the document and he says he wants to put the letter from Karunatileke in not to prove the truth of Karunatileke's statement but to prove the fact that Karunatileke made a certain request.

The Solicitor-General is heard. Plaintiff's case closed—Karunatileke could have been called. Not called and document not proved.

I think the objection should be upheld.) (Shown D1.) 10

Q. On 4th March you were instructed in writing by Mr. Chandrasoma to request the plaintiff to let Chandrasoma know whether the plaintiff agreed to the proposals regarding the deposit of Rs. 6,000 did you convey that request to the plaintiff? **A.** I did not tell the plaintiff that it was Mr. Chandrasoma who asked for the information.

No. 7
Attanayaka
Re-
examination

Re-examined.

D3, D3 A and D3 B are on the back of a letter from Sabapathy dated..... (Mr. Gratiaen now objects to Sabapathy's letter being put in for the same reasons.

Mr. Solicitor-General points out that earlier Mr. Gratiaen although he 20 objected to marking the document himself had no objection to the defence marking it. I allow the document to go in. I express no opinion on its evidential value.)

(The Solicitor-General marks it D7 dated 5th March.)

This is a letter from Sabapathy to the Government Agent, Uva. P34 is a statement made by me to the Government Agent on 9-2-44 and P33 is a similar statement by me to the Land Commissioner on 27-3-44.

Mr. A. P. Perera came to the Badulla Kachcheri after Dias left. He was in charge of all leases. His subject was leases. I am the head clerk of that department and my general subject is lands. I had nine clerks 30 under me. Their files went through me to the senior officers.

R. F. DIAS,
District Judge.

No. 7
Chandra-
soma
examination

N. CHANDRASOMA—Affirmed.

I am a member of the Ceylon Civil Service. I have held various posts under Government, as Cadet, Kandy; Office Assistant, Kegalle; Office Assistant, Puttalam; Office Assistant, Badulla; and then Assistant Government Agent, Badulla. I am at present Assistant Government Agent, Emergency, Gampaha. I stood for the examination in England at London. I am a Graduate of the London University. I know the Badulla Kachcheri 40 well both as Office Assistant for sometime and later as Assistant Government

Agent. I know the Keenapitiya lands. I have not been to the lands. I know the plaintiff. I am not related to him. He was not so frequent at the Kachcheri but he used to be in the Badulla town often.

No. 7
Defendant's
Evidence
Chandra-
soma
examination
—continued.

I first went to Badulla in 1940 and left in November, 1943. Between those dates I was continuously in Badulla. I met plaintiff often towards the latter part of my stay there. He used to stay with me whenever he was in Badulla towards the end of my stay there. He used to be with me except when I was out on circuit. He was the lessee of Crown lands in the Badulla District I learnt. I produce the two leases he held—the first lease is made by His Excellency M. Wedderburn in his favour dated 16-11-39 D8 and the second is D9 an indenture of lease by Sir Andrew Caldecott in his favour dated 10-5-40. I remember the time that a lease of these lands in question we put up for auction. It was on 7-3-43. The highest bidder was Sabapathy. I held that sale. The second highest was the plaintiff who put in a bid of Rs. 43,950. Thereafter Sabapathy did not get into possession until 1-6-42 because he could not find the necessary money to pay the first year's rent. One G. H. Karunatileke came to his rescue and the rent was paid at the end of May and Sabapathy was put into possession.

20 In April, 1942, there was an air raid in Ceylon by the Japanese and there was some little difficulty in the money market and Sabapathy was put in possession with the permission of the Land Commissioner who gave him the indulgence of an extension of time for the payment of his first year's rent. Later Karunatileke entered into possession on the same lease given to Sabapathy—I understood so later. I know that Karunatileke was in possession. Mr. Attanayaka was the chief clerk of the land department since about 1942 and he was so in March, 1943, and one of the clerks who was there one Dias had just been transferred and his place was taken by Perera.

30 (Shown D1). On 4th March Mr. Attanayaka submitted to me an endorsement suggesting that Wijesuriya deposited Rs. 6,000 in respect of this lease. I minuted to that "Yes please request Mr. Wijesuriya to let me know whether he will agree". On the next day I received the file back again and Attanayaka said "Yes he agrees", I said "Do so please".

In the interval between 4th and 5th March Mr. Attanayaka did not see me in connection with this matter.

Q. Did plaintiff see you? A. I must have seen him but not in this connection.

Q. Plaintiff says that on 4th March after speaking to Attanayaka he 40 came into your room in the Kachcheri? A. No.

(To Court :

Q. Did you and plaintiff go home together that day in the car? A. I cannot say definitely.

Q. He says he did, can you contradict that? A. I could not because I cannot remember how I went that day. I have sometimes left the Kachcheri with the plaintiff in the car. If plaintiff says that on this

No. 7
Defendant's
Evidence
Chandra-
soma
examination
—continued.

day both of us went together I cannot say so today. When he drops me in the Kachcheri he goes away and he comes back in the car and sometimes before he comes back he rings me up and asks me if I am ready. He very occasionally comes to my room.

Sometimes he does and then you both go together? *A.* Yes, but the general practice is I joined him in the car. On this day I am certain he did not come into the office and see me.)

Q. Are you absolutely certain on that point? *A.* Yes, for the reason that if he came I would not have written that minute in that way, I would have consulted him myself. 10

Q. Did you at any time discuss this matter with him? *A.* No, not after this. But before I discussed it with him once in 1942.

Q. Was that the only occasion? *A.* Yes.

(Shown P4). This is my letter to the Land Commissioner dated 17-4-42. Before this letter I had discussed the matter with plaintiff and I did not discuss it with him after that.

Q. It is now stated that you made some promise to plaintiff about these lands, is that correct? *A.* Incorrect.

As Office Assistant and as Assistant Government Agent I know the practice of the Badulla Kachcheri regarding requisitions. 20

(Shown P27). When we send out a requisition to a payee we do not sign that requisition.

Q. Is that a practice peculiar to Badulla or is it general? *A.* I think it is the practice in most Kachcheries. I could speak to three Kachcheries. That is the practice in those Kachcheries. It is not laid down in Financial Regulations but it is a departmental procedure. This requisition was initialled by the clerk. It is then sent to the payee who receipts it and witnesses it and sends it back. When it is receipted and witnessed and returned we certify and if the payee is present in person we hand it to him to present it to the shroff and get his money. If he is 30 not present we post it to him and he can collect the money through his bank. We sign it and send it to him. The officers who can sign a requisition are the staff officers and also the Office Assistant and Extra Office Assistant.

Luncheon interval.

R. F. DIAS,
District Judge.

17th October, 1944.

N. CHANDRASOMA—Cross-examination.

No. 7
Chandra-
soma
Cross-
examination.

Q. For how many years have you known the plaintiff? *A.* About 40 3 or 4 years.

Q. And during that period you became very friendly? *A.* Yes.

Q. You regarded him as a gentleman of means, an experienced planter? *A.* Yes. I have no personal knowledge of his planting capacity.

Q. You know he had previous transactions in regard to Crown lands and he carried out his obligations in those transactions to the satisfaction of the Crown? A. I understood that later.

Q. You regard him as a truthful and honourable person? A. Yes.

Q. P7 is Mr. Coomaraswamy's letter dated 21-1-43—Mr. Coomaraswamy said you had drafted it and he approved of it and signed it? A. I did not draft that letter. It was drafted by the clerk and was passed by me.

Q. It had gone through your hands before it reached the Government Agent? A. Yes.

Q. In paragraph 9 you say "Mr. Wijesuriya is I understand an experienced rubber planter, financially sound, etc." That was the view the Kachcheri had of Mr. Wijesuriya? A. Yes.

Q. You accept that as correct? A. Yes.

Q. Mr. Wijesuriya tells us that during the time he was staying as your guest in your bungalow he deliberately refrained from discussing business matters with you? A. That is correct.

Q. You also I take it thought if there was any official matter which had to be discussed it should not be discussed in your bungalow? A. That is right.

Q. The first suggestion that the lease should be given to Mr. Wijesuriya as Sabapathy was giving trouble came from the Land Commissioner in 1942 P3 6-4-42? A. But I do not think the Land Commissioner knew.

Q. But that was the first occasion on which the question came up of giving the lease to the second highest bidder? A. Yes.

Q. These are all matters in which you looked to the Land Commissioner for guidance and instruction? A. Yes.

Q. As the senior public officer in the Island dealing with all matters relating to Crown land? A. Yes.

Shown P4 letter of 17th April. Q. Before you wrote P4 you had officially asked the plaintiff whether he would take over the lease? A. Yes.

Q. On that occasion you did not rest content with giving directions for Attanayaka or any land clerk to approach the plaintiff? A. As a matter of fact I knew he was in town at that time. I got him up and asked him because that was the most expeditious way of dealing with it.

Q. He was willing to accept all the conditions of the Crown in the permit except the question of the price? A. Yes.

Q. He made a counter offer that he should be given the lease for Rs. 30,000? A. That is correct.

Q. For the full period of Sabapathy's permit? A. Yes.

Q. You recommended the acceptance by the Crown of that offer? A. I suggested it.

No. 7
Defendant's
Evidence
Chandra-
soma
Cross-
examination
—continued.

Q. It is more than a suggestion it is a recommendation? A. The recommendation was regarding the granting of a time.

Q. Whether it was suggestion or recommendation the Land Commissioner wrote P5 on the 25-4-42 approving of what he described as your recommendations in regard to Mr. Wijesuriya? A. Yes.

Q. Did you then inform Mr. Wijesuriya that the Land Commissioner had approved giving him the lease for Rs. 30,000? A. I do not think so. I would not have done it till the expiration of the time granted. Time was also granted at the same time.

Shown letter of 23-1-43 P7. Q. There was no withdrawal. What 10 happened was that after the Land Commissioner had written to you P5 he wrote a later letter, agreeing to a further extension of time being given to Sabapathy? A. Yes, sir, but on this letter I was given time till the end of April.

Q. Which letter? A. I recommended definitely the lessee be given time. "Withdraw" appears to be incorrect.

Q. What would be the more correct words? A. He should have said "I had no occasion to give the lease at all". The position is plain because I had recommended time till 30th April. Till 30th April the lease would not have been offered to Mr. Wijesuriya. I believe I used an 20 incorrect word there.

Q. Your first recommendation had been that Sabapathy should be given time till 30th April? A. Yes.

Q. And if he did not pay Wijesuriya should be given the lease at Rs. 30,000? A. Yes.

Q. Later Sabapathy was given time beyond 30th April? A. Yes.

Q. Is that correct? A. Yes.

Q. Then I take it whether the correct word is "withdraw" or not you must have told Mr. Wijesuriya that the Crown had decided to give a further extension of time.....? A. I did not tell him. 30

Q. Did you communicate with him at that time? A. I did not. I did not tell anyone except the people in the office who knew.

Q. Why did you not speak to the plaintiff? A. I meant to speak to him on 1st May. I got the papers on the 1st May to inform Mr. Wijesuriya. I asked "Has he paid" that is Sabapathy but I found he had been given time till 31st May.

Q. You were dealing with a member of the public who had made a concrete offer and in the ordinary course you would have informed him? A. The proper time would be after the other man defaulted but he did not default. 40

Q. You did not tell him whether his offer was accepted or not? A. No, because the other man paid his money.

Q. By January, 1943, the view in the Kachcheri was that Sabapathy and Karunatileke had given far too much trouble—you were all fed up? A. That is what it comes to.

Q. You then by P7 made the definite recommendation that the previous offer of Wijesuriya should now be accepted? A. Yes.

Q. You received the letter P9 dated 20-1-43 approving that recommendation? A. Yes.

Shown P29. Q. Did you discuss the matter with Mr. Coomaraswamy before he wrote P29 to the Land Commissioner? A. I did.

Q. You and Mr. Coomaraswamy were anxious that before any steps could be taken against Sabapathy and before the lease was finally given to Wijesuriya that the law officers of the Crown should be consulted?
10 A. Yes.

(To Court :

Q. Mr. Wijesuriya was a gentleman who had spent most of his life in the judicial side? A. Yes.

Q. He said in his evidence that he was unfamiliar with land matters?
A. Yes.

Q. He consulted you considerably? A. Yes.)

Q. On 25-2-43 you received the letter P30? A. Yes.

Q. Mr. Coomaraswamy had made the endorsement that Sabapathy should be given notice of the cancellation of his permit? A. Yes.

20 Q. Would you please look again at P7. At that time you and the Government Agent knew that the person actually in possession was Karunatileke? A. Yes.

Q. Claiming to be an agent of Sabapathy? A. Yes. I am not certain of the legal term he used. Manager, I think.

Q. As a person claiming under the permit-holder Sabapathy? A. Yes.

Q. And the view which you and Mr. Coomaraswamy held as shown in that letter was that Karunatileke would not vacate the land unless his principal's permit was cancelled? A. Yes.

30 Q. That is what you recommended that there should be a formal cancellation of the permit in favour of Sabapathy? A. Yes.

Q. As far as the Kachcheri was concerned at that time the Kachcheri did not anticipate any trouble from Sabapathy? A. We could not be certain.

Q. But you did not in fact anticipate? A. Because he was not in physical possession.

Q. Sabapathy was not in physical possession and therefore trouble from him was not anticipated? A. Yes. As a matter of fact he had fallen out.....

40 (To Court :

Q. When the Manager is in possession the principal is in possession is it not? A. I believe so.)

No. 7
Defendant's
evidence
Chandra-
soma
Cross-
examination
—continued.

I thought there would be no trouble from the manager if the principal's permit was taken away.

(To Court :

The land was possessed by somebody.)

Q. You never dreamt that the Land Commissioner between the 2nd March and 15th March would change his mind? A. I cannot express an opinion on that.

Q. Did the possibility of the Land Commissioner changing his mind between the 2nd and 15th March cross your mind? A. It did not cross my mind but there have been other instances too where what I did 10 not anticipate has been directed by the Land Commissioner.

Q. You then decided steps should be taken to carry out the Land Commissioner's directions? A. Yes.

Q. Since the 4th March, 1943, when did you first have occasion to take your mind back to the events of that date in order to recollect what happened? A. Not till much later.

(To Court :

Q. Have you made a statement about this matter? A. Yes.)

Q. How long ago? A. That was after I came to Gampaha.

(To Court :

Q. How many statements have you made? A. One.)

To the Land Commissioner.

Q. Did you make any statement to the Government Agent, Mr. Coomaraswamy? A. Apart from my minutes which cannot be considered as statements.

Q. Apart from your minutes you have no recollection of the events of the 4th March? A. Yes.

Q. You came to Gampaha when? A. November, 1943.

Q. Would it be correct to say that at that distance of time you could not have given a very clear record of what happened on the 4th March 30 without the assistance of the minutes? A. That is correct.

Q. So that before making a statement to the Land Commissioner you asked to see the minutes? A. Yes.

Q. And to the best of your ability you constructed the events of 4th March with the assistance of your minutes? A. Once I saw the minutes I could remember fairly accurately in respect of official matters.

Shown D1. Q. In April, 1942, when the question of giving a lease to Wijesuriya arose you decided officially to discuss the matter with him direct? A. Yes.

Q. Was there any special reason why you did not decide to adopt 40 the same procedure on this occasion? A. Yes. When I wrote the minute I expected it would go in the form of a letter to Mr. Wijesuriya

telling him of the conditions whether he would agree to make this deposit under the conditions stated by us. I thought the position would be much clearer if a letter went out.

I did not discuss the matter unofficially with the plaintiff.

Q. What was the objection to discussing? A. The normal procedure is to send out a letter. The main difficulty was I was busy and a minute would have been much easier for me to write.

Q. It is the fact that he frequently borrowed your car? A. That is correct.

10 Q. And you borrowed his car? A. Yes.

Q. On dates when he borrowed your car he always called on you?
A. Yes.

Q. I suppose your work on a normal day would be over by 4-30?
A. Not necessarily.

Q. But round about that time? A. Rather nearer 5-30 than 4-30.

Q. Usually when he had to call for you he used to telephone and ask whether you were ready? A. Yes.

Q. Or ask at what time he was to call for you? A. Yes.

20 Q. Whether he telephoned to you on this occasion you cannot remember? A. I cannot remember.

Q. You are now aware as a fact that Mr. Wijesuriya was in the Kachcheri on the afternoon of the 4th? A. I am.

Q. And after 3 o'clock? A. I am not certain.

Q. You agree it would be a natural thing for him to call in at your office? A. I do not think so.

Q. There is nothing wrong in it? A. He would certainly have objected to staying an hour in my office.

Q. Do you agree that it would be the obvious thing for him to find out?
80 A. The natural thing would be for him to go to C. V. Jayasuriya's house—another Civil servant—which is adjoining the Kachcheri and wait for me.

Q. He would be in office? A. Yes.

If I was busy he would be doing nothing. In an office he would not be able to do anything. He would be able to play the gramophone in Mr. Jayasuriya's house. He could have stayed there but if he stayed in my office he would have considered that he was disturbing me.

Q. Would it not be natural for him to drop in and find out how soon you would be ready to go out? A. Yes.

Q. Mr. Attanayaka's table is how far from your office room?
40 A. At the other end about the distance of the corridor.

Q. A person coming from the resthouse to your room would have to pass the land clerk's office? A. Yes, that is if he came by the resthouse entrance.

No. 7
Defendant's
Evidence
Chandra-
soma
Cross-
examination
—continued.

Q. Plaintiff's evidence is that on this day he was coming to give you a lift home when certain things happened. His evidence was that both of you went home together? **A.** If he came to give me a lift home the likelihood was that he would have found the Kachcheri closed because practically on every occasion I work in the Kachcheri I work late.

Q. I understood your evidence this morning to be.....? **A.** But if he came in order to give me a lift he may not have found Attanayaka because I work late.

Q. Have you never finished at 4-30? **A.** The point is the tappal comes late. I look at the tappal before lunch and after lunch I go in at 10 3 or 3-30.

The tappal is opened by the Office Assistant and my portion is passed on to me.

Q. You have given written instructions to Mr. Attanayaka showing that you wanted some information to be given to you by Mr. Wijesuriya?

A. He usually writes me instead of the Government Agent.

Q. But it is quite clear that what you wanted was that the information should be given to you or the Government Agent by Mr. Wijesuriya?

A. I expected a letter to go out and a letter to come back.

Q. The letter would be drafted by Attanayaka and sent to you for 20 signature? **A.** Not necessarily by me.

Q. That letter having gone you would normally wait for a reply to know whether Wijesuriya was prepared to take the lease? **A.** Yes. whether he would agree to let the money remain in deposit.

Q. Did you intend that the letter should ascertain whether he was prepared to take the lease at all? **A.** If he agreed to deposit the money that would have been an agreement to take the lease too.

Q. You agree with me that there can be no question of taking a deposit representing one year's rent except from a man who was willing to take the lease if given to him? **A.** Yes. 30

Q. In April the previous year Wijesuriya said he offered Rs. 30,000 for the lease? **A.** Yes.

Q. Whether he had changed his mind whether he had purchased any other properties you had not the slightest idea? **A.** No.

Q. Why did you not instruct Attanayaka to write a letter directly asking him whether he was still prepared to take the lease at Rs. 30,000 and if so whether he was willing to deposit the money? **A.** If he was prepared to deposit the money it would be even more than an agreement. It would have been a guarantee of his *bona fides*.

Q. What the deposit was to be the terms of the lease the period of 40 the lease? **A.** I expected Attanayaka to draft a proper letter.

Q. You realised that until you received a written reply to the letter from the plaintiff you had no means of knowing what his attitude was going to be? **A.** Yes.

Q. You now know that Attanayaka instead of writing the letter had an oral conversation with Wijesuriya? A. Yes.

Q. And Mr. Attanayaka on the 4th March gave you the reply which he had orally received from Mr. Wijesuriya? A. No.

Q. On the 4th you had no conversation with Attanayaka? A. No.

Q. On the 5th morning you knew for the first time that Wijesuriya was agreeable to make the deposit? A. Yes.

Q. Who told you that? A. The papers were submitted to me
10 with Mr. Attanayaka's minute.

Q. Did you think the agreement had been made on the 5th March or did you understand the agreement was given the day before? A. I can't say I thought about it. It may have been any time between the 4th and 5th morning.

Q. Certainly when the word "he agrees" came to you did you know at that time whether the cheque had been handed to Attanayaka? A. I did not.

Q. Your next minute "do so please" indicates that you wanted Attanayaka to get the cheque from Wijesuriya? A. Yes.

Q. The lease was in fact not given to Wijesuriya in any sense of the
20 term on the 4th? A. We were concerned with the deposit.

Q. That was the only matter which was in your mind? A. Yes.

Q. Would you look at the letter P13—at the time you signed that letter can you say whether it was in the morning or evening? A. I can't say.

Q. Are you quite certain that before you signed the letter you had not spoken to Wijesuriya? A. I am certain.

Q. You are equally certain that before you wrote the letter you had not spoken to Mr. Attanayaka about the intention of Wijesuriya? A.
30 Yes.

Q. Would you kindly explain the words "the lease is now given to Mr. Wijesuriya?" A. That really means that the lease after Sabapathy vacated possession would be given to Mr. Wijesuriya. I admit that the language is a bit incorrect again.

Q. What you really meant to convey to the chena Muhandiram was that the lease was going to be given to Wijesuriya if Sabapathy gave possession, secondly if Wijesuriya was prepared to take the lease? A.
Yes.

Q. You had in fact not the foggiest idea in your mind whether Wije-
40 suriya would accept the lease? A. No, but we did not expect he would refuse.

Q. Nor did you know whether he would agree to pay Rs. 6,000 or not? A. No. I did not think anyone would refuse.....mainly because Wijesuriya had told me earlier.

No. 7
Defendant's
evidence
Chandra-
soma
Cross-
examination
—continued.

Q. One year ago? A. Yes.

Q. And the rubber price had improved since April, 1942. Is it not possible that because the rubber price had improved that he might have invested his money elsewhere? A. Quite possible.

Q. You had not only on the 4th March signed a letter with the words "the lease is given to Mr. Wijesuriya" but you gave definite instructions to the chena surveyor on the 4th March to put Mr. Wijesuriya in possession of the land when Sabapathy vacated it? A. Yes.

Q. That was also on the expectation of the offer being accepted by Wijesuriya? A. Yes. I had no doubt that he would accept it. 10

Q. If by any chance Mr. Wijesuriya did not accept it you would have to write another letter to the chena Muhandiram cancelling your instructions? A. If he was not willing to accept the chena Muhandiram would have written to me.

Q. If the 5th March minute was he does not agree you would have to write another letter? A. That is so.

Q. I suggest to you that your recollection of what happened on the 4th March is entirely at fault having regard to you as a Civil Servant and a member of the London University? How many years are you in the Civil Service? A. 7 years. 20

Q. You hold an honour's degree from the University? A. No, general London.

Q. I suggest to you with your Civil Service experience the words the lease is now given to Wijesuriya makes it clear? A. The second sentence amplifies it.

Q. What is the contradiction? A. Notice had been served. He could vacate at any time between the notice and the 15th.

Q. Whose English is that letter? A. Mr. Attanayaka's.

Q. It is a graduate's signature? A. Yes. I accept responsibility for it. 30

Q. Does it frequently happen that one permit-holder is turned out and another is in possession? A. Yes, but endorsements to the chena surveyor Muhandiram are numerous.

Q. You say that this story that he was definitely promised the lease on the 4th March is quite untrue? A. He was asked whether he would make a deposit.

Q. Nothing else? A. Nothing else.

Q. Not even asked whether he would take the lease? A. Naturally it follows if he was prepared to pay Rs. 6,000 he would be prepared to accept the lease. 40

Q. Were you surprised when the telegram arrived from the Land Commissioner cancelling the granting of a lease to Wijesuriya? A. Yes.

Q. You then realised that what was intended by the parties could not be carried out? A. Yes, on the telegram I decided to wait for the Land Commissioner's further instructions. That is to withdraw the cancellation.

Q. That is an entirely unexpected turn of events? A. It was to me.

Q. You were then under the impression that Mr. Wijesuriya had agreed to take the lease and agreed to take possession on the 15th March? A. Yes. Not 15th March but when the lessee vacated it.

10 Q. When the permit-holder vacated as ordered to vacate it by your letter of 2nd March? A. Yes.

Q. You were under the impression that was the definite arrangement he had arrived at with Mr. Attanayaka? A. I did not question Mr. Attanayaka what he had said but I had enough confidence in his experience that he would explain what the deposit was.

Q. Did you not then think it your duty to write to Mr. Wijesuriya explaining the change of developments and that in view of the Land Commissioner's changed view you were not able to put him in possession on the 15th March or any other date? A. It should have been done.

20 Q. Why was it not done? A. I cannot say.

Q. You had formed the opinion very definitely that Sabapathy was not entitled to any reconsideration of the cancellation of his permit? That was your personal opinion? A. Yes, after the Attorney-General expressed his view.

Q. D7 was a letter which the Crown has now put in asking for a reconsideration of the earlier letter of 2nd March? A. Yes.

Q. You made an endorsement P35 to the Government Agent on that letter? A. Yes.

Q. You made that on 10th March? A. Yes.

30 Q. Your view was that P10 should stand? A. Yes.

Q. But before the Government Agent could deal with your recommendation the wire came D4? A. Yes.

Shown P16. I read that letter. I have made a minute on it on 14-6-43.

Q. Was Mr. Wijesuriya staying with you at that time? A. I cannot say.

Q. But he certainly had not embarrassed you by discussing the matter with you personally? A. Yes.

Q. The address seems to indicate that he was at Panadure. Anyhow 40 he stayed with you after March? A. Yes.

Q. I believe that until you left he used to come and stay with you? A. Yes. He used to be with me about 10 or 12 days in the month.

Q. Did you know that up to this time the money had not been refunded? A. I did not know of it.

No. 7
Defendant's
Evidence
Chandra-
soma
Cross-
examination
—continued.

Q. When did you first discover it? A. I can't say but one day when I went through the papers I found the money had not been refunded.

Q. What did you do? A. I questioned the clerks.

Q. Did you get the omission rectified? A. A requisition was sent afterwards.

Q. You left in November, 1943? A. Yes.

Q. The requisition did not go till about a month after you left Badulla? A. Yes.

Q. Was this not going beyond a joke? A. Actually when the Government Agent's minute came back I was not in office and I had not seen the minute until I accidentally saw the minute later. Even when I saw it I thought it had been refunded. I had no occasion to question it.

Q. But you later found out? A. Yes.

Q. Then when you discovered it why did you not see the Government Agent's order carried out? A. I remember I asked the clerk to attend to it.

Q. When you read P16 you realised that there was a threat of an action? A. Yes.

Q. That is why you made a minute that this file should be placed before the Government Agent as soon as he returned from circuit? A. 20 Yes.

Q. You realised that there was a definite allegation that a lease had been promised to Mr. Wijesuriya? A. Yes, that was Mr. Wijesuriya's view.

(To Court :

Q. Why did you not write at once to the plaintiff demi-officially? A. I did not think it wise. In official matters I would much rather talk to the Government Agent.)

Q. You realised that Mr. Wijesuriya whom you had permitted to come to your house was making a written allegation which you knew to be false? A. I could not express an opinion on that.

Q. It was certainly false as far as you were concerned?

(To Court :

Q. In that letter P16 there is a false statement of fact? A. Yes.

Q. This man was not a stranger he was your friend staying in your house why did you not write? A. It did not occur to me at all.

Q. You knew the most senior official in the Kachcheri who had dealt with the matter was yourself and not Mr. Coomaraswamy? A. Yes, sir.)

Q. You had no reason to think that Mr. Coomaraswamy had made the promise? A. No, sir, but without discussing the matter with the Government Agent I did not want to take any action in view of the tone of the letter.

Q. You realised that this friend of yours was making a false allegation of fact? A. I did not think of it in that manner at all. All the implications did not strike me. The first thing I decided was that the Government Agent should see the papers.

Q. You signed the letter with an incorrect statement of fact—here your friend is writing that a promise had been given surely this is not a matter to discuss did it not strike you as a false statement of fact? Did you not when you received this letter from him who was your guest and continued to be your guest was making a false statement of fact? A. Yes, it did not strike me in that way.

Q. He continued to live with you as a guest after that date? A. Yes.

Q. He was very welcome to your house after that? A. Yes. The Government Agent returned from circuit in due course.

(To Court :

Q. When the plaintiff next came to your house did you not discuss the matter with him? A. Unless he mentioned it I would not have. That had nothing to do with my private relations.)

Q. How long after the 16th March the plaintiff continued to stay in your house? A. I cannot say exactly. Till November, 1943, he used to come off and on and stay with me.

Q. At the time you left Badulla you knew the matter had gone beyond.....? A. Yes.

Q. You knew there was going to be an action against the Crown? A. Yes.

Q. Yet he was staying in your house? A. I would have considered it not my business to ask him.

Q. As long as everything is above board I can quite appreciate this conspiracy of silence in your house on grounds of delicacy but the moment when the man makes a deliberately false statement and threatens to bring an action on the basis of that untrue statement did you not feel the time had arrived for you to tax him with his conduct? A. It did not strike me in that way.

Q. He continued to move about with you in the same social circle? A. Yes.

Q. You and the other young Civil Servants there were very friendly? A. Yes.

Q. In spite of having had that letter P16 you continued to regard him as a suitable person to be a guest in the house of a young Ceylon Civil Servant? A. I did not think about it at all.

(To Court :

Q. Did the Government Agent know that the man who was going to sue the Crown was staying in your house as a guest? A. I think he knew but I am not sure.

No. 7
Defendant's
Evidence
Chandra-
soma
Cross-
examination
—continued.

I did not discuss the matter with this plaintiff. This was just one case out of numerous cases)

Q The Government Agent was on circuit about a week at most. He must have returned to Badulla about 20-6-43? A. Yes.

Q. That is if he left the very morning the letter arrived? A. Yes.

Q. Having sort of decided not to give a thought to this matter in his absence did you discuss the matter with him on his return? A. No. Why, I cannot say. Possibly I was out. I can't say why I did not discuss the matter.

Q. You look upon Mr. Coomaraswamy as a father? A. Yes. 10

Mr. Coomaraswamy junior was in Badulla during my time not when his father was there.

Q. Did it not occur to you to go to Mr. Coomaraswamy not only as your senior officer but as a friend and put the whole facts before him and say that Mr. Wijesuriya was making a false statement in an official letter addressed to the department? No answer.

Q. Did you not think it right to break off relations with the man? A. It did not strike me in that manner. I wanted to go and speak to the Government Agent with the papers. I do not seem to have done so. It seems to have escaped my mind. I may have been on circuit when the 20 Government Agent returned.

Shown P19 of 5th July—who signed it? A. This was signed by Mr. Paramanathan the Extra Office Assistant and chief clerk.

Q Did you know a letter had gone in those terms? A. As a matter of fact I drafted it.

Q. That was signed long after Mr. Coomaraswamy had returned from circuit? A. Yes.

(To Court :

Q. Did you know that your order that it should be shown to the Government Agent had not been carried out? A. I did not know. 80

Q. When did you come to know of it? A. P19 was dictated on the same day I wrote P16 A. I gave the wording of the letter and I say re-submit on Government Agent's return from circuit. By re-submit I meant that it should be sent to me if I was in office otherwise it should go direct. P19 is a very belated carrying out of my order of the 14th June.

Q. On the belated occasion on which P16 A was carried out your order that it should go to the Government Agent was not carried out? A. I did not see the papers on the occasion of P19.

Q. When was P16 shown to Mr. Coomaraswamy? A. I cannot say.) 40

I never discussed the letter P16 with Mr. Coomaraswamy. I may have discussed it later—long afterwards.

Q. On the day that P16 arrived you drafted the reply? A. Yes.

Q. What was the point of replying that you would reply later to Mr. Wijesuriya after getting instructions from the Land Commissioner if the true position was that there was no promise which your department had to implement at all? Your position now is that there was no promise made by your department which required to be implemented at all? No answer.

No. 7
Defendant's
Evidence
Chandra-
soma
Cross-
examination
—continued.

(To Court :

Q. Do you mean to tell me that your letter P19 is merely carrying out P16a? A. Yes.

10 Q. Did you at once query the clerk and say I made an order on 14th June why are you submitting it to me on 5th July? A. I did not see it on the 5th July.)

Q. Why did you draft a letter in those terms if there was no promise for your department to implement at all? A. This was merely an interim reply so that I could consult the matter with the Government Agent and send him a reply. He had asked for a reply within a week so I thought I would send him an interim reply.

Q. Did you ask Attanayaka whether he had made a promise? A. I did not speak to anyone.

20 Q. Did you say you had not made a promise? A. I did not speak to anyone.

Q. The matter of giving Wijesuriya had not been finally decided. The matter of giving a lease to him was still under contemplation? A. The decision in regard to the lease was not finally decided.

Q. One of the alternatives was a question of giving the lease to Wijesuriya? A. I do not think.

Q. What was the point of awaiting instructions from the Land Commissioner when the final instructions could not be given by the Land Commissioner? A. That is so. This was in the nature of an interim
30 reply.

(To Court :

It was grossly delayed in the office and it was sent out to a promoted clerk for signature.)

Q. On 14th July you decided that no reply should be sent to P16 till you had got instructions from the Land Commissioner? A. Yes.

Q. Did you take the trouble to write to the Land Commissioner sending him a copy of P16 and asking him for instructions? A. No. What I meant by instructions from the Land Commissioner was instructions on the general question.

40 Q. Which could not possibly involve Mr. Wijesuriya? You now know that no further letter was sent except the forwarding of the requisition so late as the 14-12-43? A. Yes,

No. 7
Defendant's
Evidence
Chandra-
soma
Cross-
examination
—continued.

(To Court :

Q. Has any step been taken to punish the people who from your point of view were grossly negligent in regard to this matter? A. I do not know.)

Q. Was it brought to your notice that the Land Commissioner was taking a view that your department had no right to accept Rs. 6,000 from Wijesuriya on 4th March? A. Yes.

Q. What was your view in regard to the matter? A. My view was that we acted within our rights.

(Shown D6. Q. Did Mr. Coomaraswamy show you this letter before 10 he sent it to Mr. Jansz? A. He did not show it to me but I saw it when it passed through in the file.

Q. You approved of it? That was a justification of the Kachcheri's action in taking the money? A. I wish to verify my answer to the last question. There was one letter that I had not seen until it went. I cannot definitely say whether I saw D6. I believe I have seen this before.

Shown paragraph 2c of P31 Q. Are the views expressed by Mr. Coomaraswamy in D6 replying to paragraph 2c of P31 with your views on the subject? A. Yes. 20

Q. Nowhere was it stated in D6 that the deposit was made on the basis of the payment being conditional on Sabapathy giving over the lease? A. I do not think so.

Q. The Land Commissioner who gave you the original instructions to cancel the lease and give the lease to Wijesuriya was Mr. H. E. Jansz? A. Yes.

Q. The Land Commissioner who cancelled those instructions was another officer? A. I believe so.

Shown D5. D5 was written by Mr. C. L. Wickramasinghe. Certainly till you left Badulla in November, 1943, you had made no minute or any 30 statement to anybody taking up the position that the rent had been accepted on the basis that it was conditional on Sabapathy agreeing to give up possession—or is there any written statement by you? A. I cannot say definitely.

Q. I understood you to tell me that the first time you made any written statement was after you come to Gampaha after you went to the Land Commissioner? A. That is correct. I can't speak to minutes because I made a host of minutes.

Q. The file is in Court and no doubt the Crown will produce any such minutes if they exist? 40

Re-examination.

Q. The night mail from Colombo reaches Badulla at what time?
 A. After 10 a.m. But it usually comes late.

Q. What would be the normal time at which the tappal is attended to in the office?
 A. It comes at 11-30 or 12.

Q. But when there is delay in the arrival of the tappal your work really commences after the arrival of the tappal?
 A. Yes.

Q. Officers in Badulla have to work longer than usual to attend to the mail?
 A. Yes.

10 Shown D5. In that document which is signed by C. L. Wickramasinghe reasons are given and will you read to the Court the second paragraph of that letter. (Witness does so).

(To Court :

P6 is not a printed form. It is a type-written form.

Q. Is this issued under any Ordinance or authority?
 A. I do not know. We got instructions from the Land Commissioner in respect of the form.

Q. In dealing with the plaintiff you were not dealing under the Land Development Ordinance?
 A. No.)

20 Q. This is a permit supposed to be for 5 years?
 A. Yes.

Q. It is signed by you as Assistant Government Agent?
 A. Yes.

Q. Did you look into the question of your authority to sign a permit of this nature?
 A. No.

Q. Do you now know?
 A. I know now that a lease for over 1 year has got to get the sanction of the Governor.

Cross-examination (with permission).

Q. Sabapathy or Mr. Karunatileke continued to be in possession having originally got into possession under that permit?
 A. Yes, 30 until I left.

Q. That permit was issued to him under instructions from the Land Commissioner?
 A. Yes.

The Solicitor-General says his case is concluded excepting for calling two witnesses on the question of damages.

He says one witness has been served but that the returns were not available to the Crown Proctor. The returns have now been found and it appears that Karunatileke has been served and Mr. Bowie the other witness has not been served.

40 With regard to Karunatileke the Solicitor-General says that he has sent a medical certificate to the Crown Proctor. A telegram was sent by the Crown Proctor saying that he must come. The Solicitor-General says the telegram has been returned saying the house is closed.

No. 7
 Defendant's
 Evidence
 Chandra-
 soma
 Re-
 examination

No. 7
 Chandra-
 soma
 Further
 Cross-
 examination

No. 7
Defendant's
Evidence
Chandra-
soma
Further
Cross-
examination
—continued.

He therefore says that he is closing the case reading in evidence D1 to D9.

R. F. DIAS,
District Judge.

For want of time case postponed for tomorrow.

(Intld.). R. F. D.,
District Judge.
18-x-44.

Counsel as before.

Of consent a copy of the Land Sale Regulations, Appendix K, in the 10 5th Edition of the General Orders is put in by the defendant D10 as amended by correction slip 389 dated 27-3-1930.

Note.—The Land Sale Regulations are also referred to in Chapter 15 of the General Orders commencing from General Orders 683 and those that follow.

No. 8
Addresses
to Court

No. 8.
Addresses to Court.

The Solicitor-General addresses :

State Council Order in Council Article 39.
Page 9 of the Manual of Procedure. 20
Articles 32, 24 and 72 of the Order in Council.
Article 6 of Letters Patent.
Land Sale Regulation 58 and 1 and 2 also 22, 24, 29, 31, 32 and 49.
20 New Law Reports 1 at 4.
6 Supreme Court Circular 22.
25 New Law Reports 334.
Interpretation Ordinance Chapter 2 Section 3.
15 New Law Reports 204 at 207.
Ramanathan Reports 1843-55 141 at 144.
3 Balasingham Reports 209. 30
2 Ceylon Weekly Reporter 250.
27 New Law Reports 385, 387.
3 New Law Reports 227 at 228.
Wille 3rd Edition 1.
4 Ceylon Weekly Reporter 140.

Luncheon interval.

The Solicitor-General continues his address :

30 New Law Reports 328.
8 Supreme Court Circular 21.
Volume 11 British Empire Digest 523. 40

Wille on Landlord and Tenant 3rd Edition 125.
 20 New Law Reports 230.
 3 New Law Reports 248.
 23 New Law Reports 193 at 198.
 (1934) All India Reporter, Bombay, 434.

No. 8
 Addresses
 to Court
 —continued.

The Solicitor-General in the course of his address asks me in the course of my judgment to make some reference as to how certain documents produced by the plaintiff came to be produced.

10 (1942) Appeal Cases 624.
 30 New Law Reports 129 at 133.
 Section 91 of the Evidence Ordinance.
 3 Ceylon Law Recorder 159.
 36 New Law Reports 358.
 15 Law Recorder 244.
 40 New Law Reports 539.
 20 New Law Reports 1.
 South African Law Reports (1929) T. P. D. 508.

Case postponed for tomorrow.

20 R. F. DIAS,
District Judge.

19th October, 1944.

Appearance as before.

Mr. Fonseka addresses Court :

30 3 Ceylon Law Recorder 159.
 Ordinance 18 of 1944 came into force on 16-6-44 Gazette 9285.
 Ordinance 17 of 1944.
 192 of Civil Procedure Code.
 2 Ceylon Law Reports 191.
 3 Ceylon Law Weekly 56.
 McKerron 93.

Mr. Gratiaen says in starting his address that he has not been able to read certain documents P27 to P35.

He now moves to formally read them in. Of consent this is allowed.

Mr. Gratiaen addresses Court

92 Law Journal Privy Council 1085.
 1931 100 Law Journal Privy Council 183 at 187.
 110 Law Journal King's Bench 344 at 346.
 1942 Appeal Cases 624 at 642 and 643.

40 R. F. DIAS,
District Judge.

After lunch.

Mr. Gratiaen continues his address :

I propose to make an order with regard to the original documents which have been produced in this case in my judgment subject to what Counsel may have to say, but pending that I think all documents that have been produced should be handed into the Court irrespective of whether they are stamped or not. They can be stamped in due course.

Further hearing tomorrow.

R. F. DIAS,

District Judge.

10
20th October, 1944.

Appearances as before.

Mr. Gratiaen continues his address :—

16th Edition Anson 352 and 349.

Bracegirdle XXXI.

Maasdorp Vol. 2 page 2.

6 Supreme Court Circular.

20 New Law Reports 289 at 297.

30 New Law Reports 328.

32 New Law Reports 306.

4 Ceylon Weekly Recorder 140.

20

R. F. DIAS,

District Judge.

Luncheon interval.

(Intld.) R. F. D.,
District Judge.

Mr. Gratiaen continues his address :

Cites Boustead on Agency Article 33.

In the course of his address Mr. Gratiaen wants to mark certain documents a letter from the Crown Proctor to plaintiff's Proctor, plaintiff's 30 Proctor's letter to the Record Office and the reply of the Record Office.

I ask the Solicitor-General what he has to say.

The Solicitor-General objects—submits this is not the stage to put in documents. Case closed. Submits Land Sale Regulations were put in of consent and refers to the record.

Mr. Gratiaen is heard.

ORDER

I think the documents should not be allowed to go in. What happened was this : On 17-x-44 late in the evening the Solicitor-General closed his case. Before addressing the case was adjourned for the next day. 40 On the following day Mr. Gratiaen, senior Counsel for the plaintiff, was absent on public duty. In his absence before the Solicitor-General started

his address of consent the Land Sale Regulations were put in. That should have been the time too in order to put these documents in. I am however prepared in my judgment to proceed on the assumption that Mr. Gratiaen's client did try to get from the Record Office a copy of the Land Sales Regulations and that he was unable to obtain a copy and that at the trial the Crown Proctor supplied the legal advisers of the plaintiff with a copy of the Land Sales Regulations.

No. 8
Addresses
to Court
—continued.

Mr. Gratiaen cites (1937) Wille on Principles of South African Law 351, 352.

10 Maarsdorp Vol. 111 4th Edition 135-136.
30 New Law Reports 109.

R. F. DIAS,
District Judge.

C. A. V.

No. 9.
Judgment of the District Court.

JUDGMENT.

No. 9
Judgment
of the
District
Court
3-11-44

This is an action against the Attorney-General of Ceylon representing the Crown to recover Rs. 75,000 for an alleged breach of contract and for the return of a sum of Rs. 6,000 with interest said to have been paid by the plaintiff by way of advance rent.

The defendant in the answer denies the plaintiff's claim in *toto*. It is denied that any binding or enforceable contract was ever made with the plaintiff. It is asserted that the plaintiff deposited a sum of Rs. 6,000 in the Badulla Kachcheri "in anticipation of his obtaining a lease of the lands referred to in paragraph 3 of the plaint.....if and when they were vacated by one Sabapathypillai", and that it was open to the plaintiff at any time to have withdrawn his deposit. It is pleaded that prior to the receipt of notice of action, a requisition to draw that money had been sent to the plaintiff who neither cashed it nor returned it. The defendant, therefore, brings the money into Court, and denies any liability to pay interest. In the prayer to the answer the defendant asks that the plaintiff's action should be dismissed. It was stated during the trial that the Crown had no objection to the plaintiff drawing out the Rs. 6,000 but any liability to pay interest (except such interest as this money may have earned while it was lying in deposit to the credit of this case) is denied.

Questions of fact and law arise for decision. I shall first deal with the questions of fact.

In paragraph 3 of the plaint the first cause of action is described as follows: "That on or about 5-3-1943 the Government Agent, Uva Province, acting for and on behalf of the Crown" entered into the agreement in question. On the proof led however, there is a divergence between the pleadings and the evidence. The plaintiff's case is that the alleged agree-

No. 9
Judgment
of the
District
Court
3-11-44
—continued.

ment, if made at all, was entered into on 4-3-43. More serious still—if the alleged agreement was entered into, it was between the Assistant Government Agent, Uva Province, Mr. Chandrasoma, and not with the Government Agent, Mr. C. Coomaraswamy. The learned Solicitor-General has argued that on this latter ground alone the plaintiff's action ought to be dismissed, because issue 1 as it stands permits the Court to answer it only in the negative, and, therefore, the plaintiff's main cause of action goes by the board, unless there is an amendment of the pleadings and the issues.

I am, however, not prepared to take such a narrow view of my¹⁰ jurisdiction in this matter. I do not see why an action should be dismissed simply because there is a divergence between the pleadings and the issues on the one hand and the proof on the other. The judgment of the Privy Council in 20 New Law Reports at page 297 shows that the trial Judge is vested with ample powers to prevent such a result ensuing by reason of some technical defect of this kind. I am, therefore, not prepared to accede to this argument. If necessary, I am prepared to amend issue 1 to read : “ Did the Assistant Government Agent, Uva Province, on or about 4-3-1943 acting for and on behalf of the Crown enter into the agreement pleaded in paragraph 3 of the plaint ? ” No prejudice²⁰ could possibly be caused to the defendant by so doing.

The crucial question is whether the facts asserted in the above issue have been proved ? The onus is on the plaintiff, as the truth of those facts is denied by the defendant. The points on which the parties are at issue can be further narrowed down. On the afternoon of 4-3-1943 did the plaintiff after being spoken to by the Land Clerk Attanayaka see Mr. Chandrasoma, the Assistant Government Agent in his room at the Kachcheri ? If so, did Mr. Chandrasoma, on behalf of the Crown then enter into the alleged agreement ? In consequence, did the plaintiff then and there return to the clerk Attanayaka and draw out and hand to the³⁰ latter the cheque for Rs. 6,000—P12 ? Is this story a fabrication by the plaintiff ? There is a conflict of evidence between the plaintiff on the one hand and Mr. Chandrasoma and the clerk Attanayaka on the other. Mr. Chandrasoma denies that on this day the plaintiff ever came to his room at the Kachcheri or that he made any promise to him. The case for the defence is that the plaintiff having heard something unofficially from the clerk, and believing or anticipating that by making the deposit he could secure the lease without seeing Mr. Chandrasoma voluntarily deposited the Rs. 6,000 and that all the time the plaintiff knew and had been told by the clerk that he could only have the lease if and when Sabapathipillai⁴⁰ vacated the land.

The defence admits that the plaintiff is a respectable gentleman of good antecedents and character. Nothing is known or has been proved to his discredit. He is already the holder of two Crown leases in this district and, therefore, had occasion frequently to visit the Badulla Kachcheri on legitimate business. He cannot be described as an eavesdropper who visits Government offices in order to ferret out confidential informa-

tion from subordinates. The facts render such a suggestion improbable. He was the personal friend of Mr. Chandrasoma the Assistant Government Agent. It is common ground that whenever the plaintiff happened to be at Badulla—which was often—he used to stay at the residence of Mr. Chandrasoma as his guest. This relationship continued right down to November, 1943 (*i.e.* long after 4-3-43) when Chandrasoma was transferred to some other post. In other words, even up to November when it was known that the plaintiff was falsely alleging that Chandrasoma had on behalf of the Crown entered into an agreement with the plaintiff, he
 10 allowed him to stay at his house and enjoy his hospitality. On the other hand, Mr. Chandrasoma is a gentleman and an officer of the Ceylon Civil Service holding responsible official position. Nothing has been proved against him, and everyone speaks as highly of him as they do of the plaintiff. Yet both these gentlemen cannot be stating what is true. It will be the duty of the Court to find whose evidence is correct. Counsel on both sides are agreed that there is no escape from this position. The Court must, of course, hesitate long before recording a finding adverse to the credit of persons like these witnesses particularly when, as in the case of Mr. Chandrasoma and Mr. Attanayaka, they are unrepresented by
 20 Counsel. The task however unpleasant has to be faced.

When the Court is faced with opposing witnesses who are on the same plane of credibility, the matter is not to be decided upon the personal testimony of either alone, but on that testimony viewed in the light of the circumstances of the case, and the general probabilities that one or the other's stories is or is not correct; the corroboration by personal evidence or documents, and the consistency or otherwise of prior or subsequent conduct in relation to the account given by the opposing witnesses as to the facts on which they are at issue. Having considered the matter in the light of these principles, I am forced to the conclusion that the
 30 evidence of the plaintiff is correct. The reasons for this finding appear in this judgment.

On 23-1-1942 Mr. C. L. Wickramasinghe, the Land Commissioner published the notice P1 in the Government Gazette intimating to the public that the Government Agent, Uva Province, would on 7-3-42 at the Badulla Kachcheri put up to auction "the lease of the right to tap and take the produce of the rubber trees" on the Crown lands referred to in the notification. This lease was to be for a period of five years from the date the lessee was placed in possession. The highest bidder was required immediately after the sale to pay 1/5th of the rent (*i.e.* one year's
 40 rent in advance) and the balance by four instalments. The kind of lease, licence, or permit which would be issued to the highest bidder can be judged from the document P6. It really amounts to a license by the Crown to the holder to tap the rubber trees on the land for latex in consideration of a money payment. What was transferred was not the land or even the trees, but only "the right to tap and take the produce of the rubber trees". The Crown remained the owner and retained its rights as owner to exercise all the powers of ownership, save and except the few rights which it had parted with under the licence, namely the right to make

No. 9
Judgment
of the
District
Court
8-11-44
—continued.

incisions in the bark of the rubber trees, to collect the latex, and, perhaps, to coagulate roll and smoke the rubber on the land so as to produce rubber sheets for export. All other rights remained in the Crown.

The auction duly took place. The plaintiff and Sabapathipillai were the final bidders. The plaintiff bid Rs. 43,950 but Sabapathipillai having bid Rs. 44,000 was declared the purchaser. Thereafter the plaintiff lost interest in the matter. It was the servants of the Crown who first formed the idea of giving him the lease when Sabapathipillai defaulted. Sabapathipillai from the outset found himself in difficulties. He could not even make the full initial deposit of 1/5th after the purchase. Mr. Chandra-10 soma who held the sale, instead of declaring the proceeding void and re-selling, decided to give him time—see letter P2 dated 2-4-42 from him to the Land Commissioner. Before the Land Commissioner could reply the Japanese air raid on Ceylon took place on 5-4-1942. The immediate threat of enemy action and the prospect of invasion and of Ceylon becoming a theatre of war, completely altered the value of lands in general and of rubber lands in particular. Therefore, if Sabapathipillai defaulted, and the right to tap had to be resold, it was problematical whether anything like Rs. 44,000 would be realized. Mr. H. E. Jansz who was acting as Land Commissioner replied to P2 by his letter P3. In asking Mr. Cnandra-20 soma for definite recommendations, he threw out the suggestion whether the second highest bidder (plaintiff) would be prepared to comply with the conditions stipulated in the sale notice P1? The suggestion therefore, first came from the Land Commissioner. He as the official superior gave Chandrasoma authority on behalf of Government to approach the plaintiff. By P4 dated 17-4-42 Chandrasoma, having communicated with the plaintiff wrote P4. He suggested that Sabapathipillai should be given a final time limit within which to pay the balance of the advance rent, and reported that plaintiff stated that if Sabapathipillai was ruled out, he was prepared to take the lease for Rs. 30,000. Mr. Chandrasoma also stated that if the 30 lease was given him at that figure the plaintiff was prepared to comply with all the conditions of the sale notice. Mr. Chandrasoma, therefore, recommended that if Sabapathipillai defaulted, the lease should be given to the plaintiff for Rs. 30,000 as advertisement in the Gazette would take time, and he doubted whether Rs. 30,000 would be realised on a resale.

It is to be remembered that during this period and thereafter whenever the plaintiff was in Badulla he stayed with Chandrasoma as his guest. Both the plaintiff and Chandrasoma, however, are agreed that they never discussed official matters outside the Kachcheri. I believe that evidence. Therefore, P4 proves that somewhere about 17-4-42 Chandrasoma as the 40 mouthpiece of the Land Commissioner officially asked the plaintiff whether he was prepared to take the lease in the event of Sabapathipillai defaulting. The plaintiff agreed to do so for Rs. 30,000. This is not a concluded agreement. It was merely an offer by the plaintiff. His case is that thereafter on 4-3-1943 there was an unqualified acceptance of that offer, that is to say that he could on depositing Rs. 6,000 have the lease on a certain date. He denies that what he was told is that he could have the lease "if and when" Sabapathipillai vacated the land.

The correspondence shows what happened. It was mostly official between the Assistant Government Agent and the Land Commissioner and of which this plaintiff could have had, and, in fact, did not have any knowledge. The suggestion that plaintiff obtained official information from Kachcheri clerks I reject out of hand. If the plaintiff wanted information he could have asked his friend and host Mr. Chandrasoma. Both are agreed that no such thing ever took place between them. I doubt whether such a man would go obtaining information from subordinates. Why should he? He was in no need to take this land. He
10 already had two Crown leases in this district and was a man of substance.

P28 dated 30-5-42 shows that Sabapathipillai had succeeded in paying the balance of the initial deposit. Therefore the necessity for finding another buyer ceased to exist. The fact of the matter, however, is that Sabapathipillai was in dire straits, and the money was found for him by the intervention of a third party. P28 makes this clear, for Chandrasoma enquires from the Land Commissioner whether Sabapathipillai would be entitled to give a sub-lease of his rights to a third party who would agree to the conditions of the lease? Before a reply was received to P28, Sabapathipillai was placed on the land on 1-6-42 and the matter should
20 have terminated there. Sabapathipillai however, on 9-6-42 proceeded to commit a breach of his lease by entering into the agreement P26, which is "a business agreement" with one Karunatileke, presumably his financier, in regard to his licence. From the document P7 it appears that on 21-7-42 the Land Commissioner disallowed Sabapathipillai's application to sub-lease. On 10-8-42 the licence or permit P6 was issued to Sabapathipillai giving him the right to tap the trees up to 31-5-47. Condition 3 of P6 shows that the licence was personal to the permit-holder, who was prohibited from dealing with or disposing of his interests and rights under the permit in any manner whatsoever. The agreement P26 was, there-
30 fore, a violation by Sabapathipillai of the terms of his licence which would have justified the Crown in cancelling the licence and taking steps to eject him from the land. Sabapathipillai and Karunatileke having entered into a business agreement then fell out. The plaintiff's evidence is that this was well-known in Badulla town. It is common ground that Karunatileke, who is not the Crown licensee, is now on the land. Whether steps have been taken by the Crown to eject him and his manager Karunatileke from the land is not very clear. I agree with the Solicitor-General that under our law a decree of Court would be necessary to eject them.

By P8 dated 7-1-1943 Sabapathipillai requested permission from the
40 Land Commissioner to transfer his licence to one Wickramasekere and he sent an information copy of this letter to the Government Agent, Badulla. On 21-1-43 the Government Agent, Badulla, wrote the letter P7 to the Land Commissioner. The history of the transaction is reviewed, and Mr. Coomaraswamy expressed a doubt whether Karunatileke would leave the land unless the lease P6 is terminated. He, therefore, suggested that if the Land Commissioner was prepared to cancel the permit, the licence should be given to the plaintiff "as I had to withdraw this offer once in view of your letter No. A. 4161 of 27-4-42". That letter has not been

No. 9
Judgment
of the
District
Court
8-11-44
—continued.

put in. Therefore, an offer had been made to the plaintiff and withdrawn. The Government Agent continues "Mr. H. E. Wijesuriya, I understand, is an experienced rubber planter and financially sound. He already holds two such leases in this Province which are being worked satisfactorily". It will, therefore, be seen that it was not only the plaintiff who was anxious to take the lease but the servants of the Crown were also desirous of making him the lessee.

It is clear that the plaintiff was ignorant of this correspondence between the Government Agent and the Land Commissioner and Sabapathipillai. Between the 23rd and 27th January, 1943, Mr. E. A. P. Wijeratne, 10 Advocate, and the plaintiff's brother-in-law, Mr. Kuruppu, who is a State Councillor, interviewed the Land Commissioner whose head office is at Kegalle. Neither of these gentlemen has been called, but without objection from the Crown the plaintiff was allowed to say that in consequence of that interview, the Land Commissioner had definitely stated that Sabapathipillai's lease was to be cancelled, that plaintiff would be given the lease at Rs. 30,000 and that the Government Agent, Uva, would be informed accordingly. P9 dated 28-1-43 is the Land Commissioner's letter to the Government Agent, Uva. He states that the conditions of the permit P6 had been "flagrantly violated". The Government Agent was 20 directed to cancel the permit forthwith and take possession of the land on behalf of the Crown. "You may thereafter issue a permit to Mr. H. E. Wijesuriya to take the produce of the plantations on the land for the balance period of 5 years at the rental approved by my letter" P5. The terms of this letter could not have been known by the plaintiff. On 2-2-43 Mr. Cocmaraswamy, who is an officer with considerable judicial experience, wrote the letter P29 to the Land Commissioner stating that in the event of the matter going to Court, the Law Officers of the Crown would have to support the action. He, therefore, suggested that before taking action as directed in P9, the Attorney-General should be consulted on the question 30 whether the conditions of the lease had been violated and whether a cancellation of the permit could be justified. On 25-2-1943 a copy of the Attorney-General's reply was forwarded by the Land Commissioner to the Government Agent for his information see P30. The Crown, while producing P30 objected, as they were entitled to do, to the Attorney-General's legal opinion being produced. It was a confidential communication passing between a legal adviser and his client.

In view of the definite attitude adopted by the Crown at the trial of this case, namely, that the action of the Land Commissioner and the Government Agent was irregular and *ultra vires* in as much as they had 40 no power under the Land Sale Regulations of Government to enter into such a lease as P6 or to promise to give such a lease to the plaintiff, it is difficult to understand the action taken thereafter.

On 2-3-1943 by P10 Mr. Chandrasoma, Assistant Government Agent, informed Sabapathipillai that P26 was a contravention of clause 3 of P6. Sabapathipillai was told that "in terms of clause 7 of the permit the lease granted to you is cancelled for breach of conditions 3 and 5 and you

are hereby requested to deliver peaceful possession of the above lots to the Divisional Revenue Officer, Wellawaya on the 15th March, 1943, at 9-30 a.m. and vacate the land immediately thereafter". An information copy of this letter was sent to Karunatilleke. Therefore, on that day Mr. Chandrasoma believed that on the 15-3-43 the land would be vacated by Sabapathipillai and his manager Karunatilleke. The idea that Karunatilleke would not leave the land never for an instant crossed Mr. Chandrasoma's mind. In approaching the events of 4-3-1943 these facts must be borne in mind as forming the background of the events of that day. The Land Commissioner had informed the plaintiff that steps would be taken to terminate the permit in favour of Sabapathipillai and thereafter the lease would be given to him at Rs. 30,000. The plaintiff was unaware of the subsequent official correspondence. On 2-3-1943 we find Mr. Chandrasoma giving definite directions that Sabapathipillai and his manager should leave the land on the 15-3-1943 and Sabapathipillai and Karunatilleke were so informed. I hold as a fact that on 4-3-1943 Mr. Chandrasoma and the chief clerk of the land department, Mr. Attanayaka, who handled this transaction had not a shadow of doubt in their minds that the land would be vacated on 15-3-1943 and that there was no legal or practical impediment in the way of giving the lease to this plaintiff.

I, therefore, believe the plaintiff when he says that on the evening of the 4-3-1943 he came to the Kachcheri in order to take Mr. Chandrasoma home as the plaintiff was living in Chandrasoma's house and was using Chandrasoma's car. He came from the direction of the Badulla resthouse and had to pass the land department, whereupon Mr. Attanayaka, who was the chief clerk of the land department, spoke to him and informed him that if he deposited Rs. 6,000 that is 1/5th of Rs. 30,000 he would be placed in possession on 15-3-43. The plaintiff says he agreed and that he went into the room of Mr. Chandrasoma who confirmed what Attanayaka had told him. Thereupon, the plaintiff immediately went back to the land department. He had his cheque book with him, he drew out a cheque for Rs. 6,000 and Attanayaka took possession of it, and as it was after 3 p.m. when the shroff's department is closed, the money was deposited on the following day and the receipt P11A was issued on the following day.

At this point it becomes necessary to examine the original of the document P13. It is a quarter sheet of paper containing certain official minutes. Minute No. 117, *i.e.* P13, which is the office copy of a communication to the chena surveyor Muhandiram reads as follows :—

40 " C. S. M. (Chena Surveyor Muhandiram.)

Forwarded for your information. Please accompany the D. R. O. (Divisional Revenue Officer) and point out the land to him.

2. The lease is now given to Mr. E. Wijesuriya. You should put him in possession of the land as soon as the present lessee vacates it.

Sgd. M. CHANDRASOMA,
for G. A., U. P.,

Below that is the minute D1 of the same date which reads as follows:—
“ G. A., U. P.

We may accept an year's rent and place it in deposit until Mr. Wijesuriya is put in possession of the land. When he is put in possession the money can be credited to revenue.

Sgd. ATTANAYAKE.
4-3.”

Then comes Chandrasoma's minute.

“ Please request Mr. W. to let me know whether he will agree.

Sgd. M. C. 10
4-3.”

Attanayaka's minutes :

“ He agrees ” 5/3, and Chandrasoma writes.
“ Do so please. 5/3”

There is also the further minute “ Rs. 6,000 deposited. 5/3.”

Now this document is extremely important. It appears on the back of the office copy of P10 which bears the serial minute No. 116. P13 is minute No. 117. If therefore as suggested D1 was written before P13, one would expect the No. 117 to be attached to D1 and not to P13. Furthermore, why should the next minute be written in the middle of a 20 sheet of paper with the top half blank, particularly in these days of shortage of paper. I am of opinion that the documents were written in the order in which they appear in the sheet, namely, on 4-3-1943 it having been agreed between the Assistant Government Agent, Uva, and the plaintiff the latter should have the lease, the office copy of a letter to the chena surveyor Muhandiram was written on the back of the office copy P10 intimating to that officer that “ the lease is now given to the plaintiff ”. After this letter was despatched Attanayaka apparently had some doubt as to the manner in which the Rs. 6,000 for which a cheque had been given should be dealt with. He, therefore, addressed the minute D1 back to 30 Chandrasoma inquiring whether the money should be deposited in the Kachcheri until the plaintiff was put in possession after which the money could be credited to Revenue. Chandrasoma then approved of this suggestion but added “ Please request Mr. W. to let me know whether he will agree ” that is about the deposit. Attanayaka having ascertained that fact made the minute on the following day “ Yes, he agrees ” and Chandrasoma said “ Do so, please ” that is that the money should be deposited at the Kachcheri and not credited to Revenue until Mr. Wijesuriya was placed in possession. The granting of the lease however was an accomplished fact. If the minutes D1 and those subsequent were pre-40 liminary discussions, then they lasted from the 4th to 5th March as the dates of the minutes will show, whereas P13 is dated 4th March and shows that a concluded agreement had been reached on that date. Therefore, this suggestion will not hold water. There are contradictions between

the evidence of Chandrasoma and Attanayaka about this matter. I am of opinion that the documents P13 and D1 strongly corroborate the case for the plaintiff.

No. 9
Judgment
of the
District
Court
3-11-44
—continued.

The evidence proves that the plaintiff was in Badulla on this day, that he was living in the house of Chandrasoma and was using his car and at or about the time the plaintiff says this transaction took place, he would normally have come to the Kachcheri in order to take Mr. Chandrasoma home. It is impossible for me on the fact to hold that what was told the plaintiff on this date was that he could have the lease "if and when" Sabapathy vacated the land. P13 is in the teeth of such a suggestion. We find action consistent with the plaintiff's evidence being taken by these public servants. Sabapathipillai and Karunatileke are told to vacate the land on the 15th March by P13; the chena surveyor Muhandiram is informed that the lease is now given to the plaintiff and he is told to give plaintiff possession as soon as the present lessee vacates it, and on 6-3-1943 the chena surveyor Muhandiram writes P14 to the plaintiff saying that he had been instructed by the Government Agent to put him in possession of the land "as soon as the present lessee vacates it on the 15th inst. as the lease has now been given to you". The chena surveyor Muhandiram requested the plaintiff to meet him at a certain place on the 15th March so that he might be placed in possession.

On 5-3-43 Sabapathipillai wrote D7 to the Government Agent that he had cause to show why his lease should not be cancelled, and why he is not in a position to deliver peaceful possession on the 15th March, 1943. He, therefore, asked for an extension so as to prove his claim. On this there is a minute P35 dated 10th March :

" G. A.

For orders please. A letter from Karunatileke is submitted in file herewith. It is not necessary to call for reasons nor is it necessary to give notice to the lessee."

That is written by Chandrasoma.

The case for the plaintiff is that up to this point the conduct of the officers at the Badulla Kachcheri was above board, but from this point it is alleged that they swerved from the straight and narrow path of rectitude. This was caused by the receipt of a telegram (D4) dated 10-3-1943 confirmed by the letter D5 which was received at the Kachcheri, and upset all the arrangements which had been made on the 4th March. The Land Commissioner wired by D4 asking the Kachcheri to defer action pending the receipt of his covering letter. In D5 the Land Commissioner, Mr. C. L. Wickramasinghe, criticised the conduct of his office. With regard to P9 the Land Commissioner said :

" I regret my instructions therein cannot be justified for the reasons given. On the other hand the issue of a preferential lease now to the second highest bidder (plaintiff) at an auction held an year ago at a reduced rent does not appear to be in order. If the order of the

No. 9
Judgment
of the
District
Court
8-11-44
—continued.

cancellation of the existing permit is not varied after consideration by me of the representations received the proper course would be to sell the right by auction and public tender.”

The effect of this letter was to vary and nullify all the previous action taken in the Badulla Kachcheri. Therefore, we find the endorsement D3B dated 10th March on the back of D7 which reads as follows :—

“ *Vide* telegram from L. C. received today, Cancel notice for the present saying that it is done on instructions from L. C. I believe no lease has been given to Wijesuriya yet. *Is this correct?* ”

What that means is the Government Agent who had not handled this 10 matter on receipt of D4 was instructing his officers to cancel the notice given to Sabapathipillai cancelling his permit and asking him to vacate the land, and the Government Agent being doubtful whether a concluded agreement had been reached between the plaintiff and the Kachcheri officers on behalf of the Crown was enquiring whether it was so. To this Attanayaka in the absence of Mr. Chandrasoma replied by D3 dated 11th March as follows :—

“ We instructed C. S. M. to put Mr. Wijesuriya in possession when the present lessee vacates in terms of L. C.’s letter of 28-1-43. We got a deposit from him as rent for one year. This can now be re- 20 funded to him.”

It will be observed that Attanayaka does not directly answer the Government Agent’s query. The Government Agent then started to write some order but he crossed it out and merely endorsed the “ Yes ” on 12-3-43. I take it that this means that the Government Agent wanted the deposit returned to the plaintiff. It is admitted by the Crown that in spite of a definite order by the Government Agent, the subordinate officers took no action to return it to the plaintiff.

On 13-3-1943 the chena surveyor Muhandiram referring to his letter P14 intimated to plaintiff that the notice served on Sabapathipillai to 30 vacate the land had been cancelled and that, in consequence, he would not be able to put the plaintiff in possession on the 15-3-43 as arranged. At this date the plaintiff says he was at Badulla and was living in the house of Chandrasoma. The plaintiff further contends that if the cancellation of Sabapathipillai’s lease had not been cancelled by the Crown, the plaintiff would have been in a position to have sued Sabapathipillai, but that after having promised to give him the lease they worsened the plaintiff’s position by cancelling the cancellation of Sabapathipillai’s lease. It is also strange that the Government Agent’s office wrote no letter to the plaintiff intimating to him what the position of affairs was. In view 40 of the minutes P13 and D1 I can only characterise this as strange conduct on the part of a Government department dealing in a commercial matter with a member of the public.

On 18-3-1943 the plaintiff submitted the petition D2 to the Executive Committee for Agriculture. There he definitely states as a fact that his offer was accepted by the Crown and that he was promised he would be

put in possession on the 15th March. He followed this up with the petition P17 to the Minister for Agriculture and Lands. In the reply P18 dated 4-5-1943 the Minister says he is not prepared to intervene but none of the statements of fact made by the plaintiff in his memorial has been denied. I take it that before the Minister replied to P17 the papers were forwarded through the proper channels to the Land Commissioner and to the Badulla Kachcheri. If, therefore, the plaintiff was asserting something that was not true why was that fact not pointed out to the Minister who, I am sure, in the interests of truth would have pointed out that the plaintiff's statements were incorrect.

No. 9
Judgment
of the
District
Court
3-11-44
—continued.

Having obtained no redress, the plaintiff on 13-6-43 wrote the letter P16 to the Government Agent marking his letter "without prejudice". He pointed out that he was incurring heavy losses owing to the failure to give him the lease. He, therefore, threatens that unless a reply was received he would be compelled to seek his legal remedy, but he added that he was prepared to discuss the matter with the Government Agent with a view to an amicable settlement. P16A is the Assistant Government Agent's minute. The actual reply that went to the plaintiff is P19 dated 5-7-1943 in which the plaintiff is informed that the matter is awaiting the instructions of the Land Commissioner. Counsel for the plaintiff points out that in P19 there is no denial by the public servants concerned of the plaintiff's statement that he was daily incurring losses. What is more the Government Agent in giving evidence stated that Chandrasoma never told him that the plaintiff's allegations were false. As a matter of fact, at this time the plaintiff and Chandrasoma were living together whenever the plaintiff came to Badulla. On 21-6-43 the letter P31 was written by the Land Commissioner to the Government Agent. Apparently these public officers sensed trouble and a conference was held at the Attorney-General's Chambers. The Government Agent was instructed to try and induce Sabapathipillai and Karunatileke to cancel their agreement P26. The Land Commissioner further said "As the acceptance of a deposit of Rs. 6,000 from Mr. Wijesuriya was in contravention of my directions in my letter of 22nd January, 1943 (no exhibit bearing that date has been produced) namely, that you may issue a lease to Mr. Wijesuriya only after you resumed possession of the land from Mr. Sabapathipillai, steps be taken to refund the Rs. 6,000 to Mr. Wijesuriya and to obtain his unconditional acceptance thereof". The Land Commissioner also suggested that till a final decision was reached the file should be retained in Mr. Coomaraswamy's personal custody. On 5-7-1943 the Government Agent wrote P19 to plaintiff with reference to his letter P16. It is admitted by Chandrasoma that although he did not sign P19 he dictated it.

It is said that on the 17-8-1943 the Government Agent, Badulla, met Sabapathipillai and Karunatileke, in consequence of which the Government Agent wrote the letter D6 dated 18-8-43 to the Land Commissioner. The Government Agent says that he did not think that the acceptance of Rs. 6,000 from Wijesuriya was a contravention of the Land Commissioner's letter of 28-1-1943 that is P9. He says that no difficulty was anticipated in cancelling Sabapathipillai's lease and giving the lease to the plaintiff,

No. 9
Judgment
of the
District
Court
3-11-44
—continued.

The Government Agent says that P9 was taken by the Kachcheri authorities as sanctioning the cancellation of Sabapathipillai's permit and issuing another in favour of the plaintiff. Before giving possession to plaintiff, however, it was necessary to accept the deposit of Rs. 6,000. It was not clear that there was any point at that time in the Government Agent taking possession of the land from Sabapathipillai on behalf of the Crown and retaining it for any length of time before issuing the permit to the plaintiff. He points out that "although he made order that the Rs. 6,000 should be refunded to Wijesuriya, the clerk who was attending to the matter did not take action on this, thinking that that might be done after 10 the matter had been finally decided". He forwarded P16 to the Land Commissioner and stated that he proposed informing the plaintiff that on further consideration it had been decided not to cancel Sabapathipillai's permit and to forward a payment order in favour of the plaintiff for the refund of the Rs. 6,000. It will be observed that in this letter it is not stated that the plaintiff's contention that he had been definitely promised to be put in possession on the 15th March was untrue.

In November, 1943, Mr. Chandrasoma was transferred from the Badulla Kachcheri as Assistant Government Agent (Emergency) Gampaha. On 14-12-1943, that is 5 months after the letter P19, and 9 months after 20 order had been made for its refund, an unsigned requisition P27 was sent with the covering letter P20 to the plaintiff informing him that the consideration of the grant of the lease had to await the result of the case instituted by Sabapathipillai against Karunatileke. As this may take a considerable time plaintiff was requested to cash the requisition. Why was it not stated in P20 that the money had only been deposited by the plaintiff in anticipation of his obtaining a lease if and when the land was vacated by Sabapathipillai and that he had no grievance against the Crown?

I am prepared to accept the evidence that requisitions from Kach- 80 cheries are sent to the payees without the signature of the Staff Officer which would be appended to the requisition after it was receipted and signed by the payee and returned to the Kachcheri for payment. On the 28-12-43 notice of action P21 was served on the Attorney-General. Comment has been made of the fact that a claim for Rs. 6,000 was included at a time when an unsigned requisition for that sum was in the hands of the plaintiff and his lawyers. Counsel for the plaintiff has stated that the claim was properly made as the requisition, even if it was a proper requisition, was not a tender of the plaintiff's claim which included interest. On 29-12-1943 the plaintiff's proctors wrote P22 to the Government Agent 40 in regard to the requisition. On 27-1-1944 by P23 the Attorney-General informed the plaintiff's proctors that an action, if instituted against the Crown, would be defended, and it was pointed out that a requisition for Rs. 6,000 had been forwarded to the plaintiff. To this the plaintiff's proctors replied by P24 of 28-1-1944 claiming interest on the sum of Rs. 6,000. On 9-2-1944 Attanayaka's statement P34 was taken by Mr. Coomaraswamy at the Badulla Kachcheri. The evidence of Attanayaka should be tested in the light of this statement. I am unable to accept

Attanayaka's statement in P34 that he verbally informed the plaintiff of the position and that he agreed to deposit the money pending delivery of possession. I have given my reasons for forming this view. On 11-2-1944 this action was filed. On 27-3-1944 the Land Commissioner took the statement P33. Comparing P33 with P34 it seems clear that P34 was obtained in answer to questions, P34 was written by the witness himself at Badulla ; P33 was taken in the Land Commissioner's office, I believe at Colombo.

No. 9
Judgment
of the
District
Court
3 11-44
—continued.

I have viewed the evidence of the three witnesses involved not only alone, but on their testimony as viewed in the light of the circumstances of the case, the general probabilities and the corroboration of the testimony by the other evidence and the documents, the consistency or otherwise of their prior or subsequent conduct in relation to the facts in issue and I think that the evidence of the plaintiff should be accepted.

Summarising my conclusions of fact, therefore, I find as follows :—
The plaintiff was unaware of the official correspondence that was passing between the Land Commissioner and the Badulla Kachcheri. I cannot find that he was an eaves-dropper or a person who was in the habit of surreptitiously obtaining information from clerks. On 4-3-1943 he was definitely told by the clerk Attanayaka as he was passing the land department on his way to give Mr. Chandrasoma a lift home that the lease was to be given to him from the 15-3-1942. The plaintiff went to Mr. Chandrasoma's room and Mr. Chandrasoma, as the staff officer in charge of this transaction confirmed that statement, in consequence of which the plaintiff then and there went back to the land department and issued the cheque for Rs. 6,000 as advance rent for this lease. This promise was implemented by the Badulla Kachcheri writing to Sabapathipillai and Karunatileke cancelling the lease and directing them to give vacant possession on the 15th March, and the chena surveyor Muhandiram was directed to put the plaintiff in possession and the chena surveyor Muhandiram actually took the requisite action. Then, owing to something which caused the Land Commissioner to send the telegram cancelling the arrangements, the Kachcheri officials found they were not in a position to carry out the promise they made to the plaintiff.

The next question is whether the Crown is bound in the circumstances of this case. Public servants are all fellow servants of the Crown. Although for administrative and disciplinary purposes one public officer may be under the direct supervision or control of another public servant, so far as the Crown is concerned they are all fellow servants of the Crown, see McKerron on the Law of Delict, page 93. Ordinarily, where a servant acting within the scope of his duties makes a promise on behalf of his master the maxim respondeat superior would apply and the master would be responsible civilly for a promise made by his servant for good consideration. To this rule there is an exception that when a public servant acts *ultra vires*, the Crown is not liable. This question was directly in issue in the case reported in 25 New Law Reports 333. There, a postmaster in violation of a post office rule which laid down that parcels to Bangkok

No. 9
 Judgment
 of the
 District
 Court
 8-11-44
 —continued.

could not be insured under the postal rules, insured a parcel addressed to Bangkok tendered by the plaintiff and accepted a fee. The parcel was lost in the post and in an action by the plaintiff against the Crown it was held that it was incumbent on the plaintiff to show that the agent of the Crown acted within the scope of his authority, in entering into the contract. It was held that as the postmaster had acted *ultra vires* although in ignorance the Crown was not liable. In 6 Supreme Court Circular 22, the Government Agent gave one Kira a licence to possess certain Crown land. Thereafter the Governor issued a Crown grant in favour of the plaintiff in regard to the same land. In an action by the plaintiff against Kira it¹⁰ was held that the Government Agent acted *ultra vires* as he had no power to grant the permit or licence to Kira and that the onus was on Kira to establish that the Government Agent acted within his powers. Kira was not able to do so and lost the day. Burnside, Chief Justice, said : " The right to alienate or encumber the property of the Crown vests in the Governor as representative of the Sovereign alone, and if it is contended that that right has been delegated to others the burden of proving it rests on the party asserting it ". Dias, J., said : " a Government Agent as such possesses no authority either express or implied to alienate Crown property, and if by the licence and the commutation the Government Agent pur-²⁰ ported to convey to the defendant the right which he claims, the Government Agent acted *ultra vires* and his act is not binding on the Crown." In the Indian case reported in (1934) All India Report, Bombay 434 it was laid down that if a public servant acts *ultra vires* by mistake it is not binding on the Crown as no estoppel could be pleaded against the Crown. Based on these principles the learned Solicitor-General has developed an interesting argument on the history of the law relating to the alienation of Crown lands in Ceylon. He points out that Crown lands in Ceylon are vested in the Sovereign and by an Imperial Statute the Crown has waived the revenue derivable from such lands which are now appropriated by the³⁰ local Government. Nevertheless, the Crown is the owner of Crown land in Ceylon. He points out that the Crown in a ceded Colony like Ceylon legislates in regard to its own prerogatives by means of Letters Patent. He has drawn attention to the Letters Patent appearing at page 94 of the Ceylon Manual of Procedure, and particularly to Article 6 by which the King has delegated to the Governor in his name and on his behalf to make and execute under the public seal of the land *grants* and *dispositions* in lands which may lawfully be granted or disposed of by the King within the Island, provided that every such grant or disposition is made in conformity either with some law in force in the Island or instructions addressed⁴⁰ to the Governor under the King's sign manual and signet, or through one of his principal Secretaries of State or with some regulation in force in the Island. It is the duty of the public service in Ceylon in the course of its administrative functions to carry out this direction of His Majesty the King. The Solicitor-General points out that in regard to Crown lands the official links are : His Majesty the King, the Governor of Ceylon, the Minister for Agriculture, the Land Commissioner and the Government Agent. He submits that the Land Sale Regulations D10 are instructions

issued in terms of Article 6 of the Letters Patent by the Secretary of State for the Colonies. He admits that the Land Commissioner and the officers at the Badulla Kachcheri have acted in violation of these land sale regulations and in particular in regard to 1, 2, 22 (b), 24, 29, 31, 32 and 49. He argues that a lease is a disposition within the meaning of Article 6 of the Letters Patent and that therefore nobody had the power to dispose of Crown land except the Governor although a Government Agent is authorised to lease Crown lands for a term not exceeding one year. Counsel for the plaintiff rejoins that if that is so then the promise to give the plaintiff the lease, assuming it to be *ultra vires* of the land sales regulations, should at least be allowed to operate for one year as that was *intra vires* of the powers of the Kachcheri officials.

No. 9
Judgment
of the
District
Court
3-11-44
—continued.

The Solicitor-General argues that as there have been these breaches of the land sales regulations, therefore, the Land Commissioner and the Kachcheri officials acted *ultra vires* and that the Crown is not liable. Counsel for the plaintiff asks whether officers of the status of the Land Commissioner and the Government Agent who were continually in communication with the law advisers of the Crown would have acted *ultra vires* by giving to Sabapathipillai and others illegal documents like P6? It is further submitted that what was given to Sabapathipillai on P6 and what was promised to the plaintiff on the 4th March, 1943 was not a grant disposition or a lease but merely a licence or permit to tap Crown rubber trees for latex. It is submitted that this does not amount to the promise of a grant or disposition within the meaning of Article 6 of the Letters Patent, and is not caught up within the provisions of the Land Sale Regulations which refer to grants and leases or settlement of Crown land. Mr. Gratiaen points out that even up to date under a transaction irregularly entered into by the Crown according to their own admission, an outsider Karunatileke has been allowed to remain on this land. Mr. Gratiaen draws attention to the provisions of the Land Development Ordinance Chapter 320 (Vol. 6 pages 611, 612). Under section 3 (1) (b) of that Ordinance the Governor is required to appoint a Land Commissioner. Sub-section 3 (1) (b) provides that amongst the Land Commissioner's duties are "the general supervision and control of Government Agents and land officers in the administration of Crown land and in the exercise and discharge of the powers and duties conferred and imposed upon them by this Ordinance". Mr. Gratiaen says that the meaning of that provision is that the Land Commissioner not only performs duties under the Land Development Ordinance, Chapter 320, but has also been vested with general powers of supervision and control on behalf of the Governor or Government Agents in the administration of Crown land. Therefore, the Land Commissioner had power to give directions and orders to the Government Agent, Badulla, in regard to the granting of a licence to tap rubber trees on this land. He submits this is the administration of Crown land and not its disposition or alienation. He asks how is a Crown rubber land to be administered in time of war except by getting the trees tapped. He points out that owing to the situation rubber was urgently needed for the war effort, and he submits that the Land Commissioner in acting as

No. 9
Judgment
of the
District
Court
3-11-44
—continued.

he did and in giving the orders which he did, and the Government Agent in carrying out those directions were acting *intra vires* and not *ultra vires* and therefore their acts must and should bind the Crown. I agree with learned Counsel for the plaintiff. I, therefore, think that the submission that the Crown is not bound because the servants of the Crown were acting *ultra vires* cannot be sustained. The maxim *respondet superior* applies to this case.

It is argued by the Crown that as a licence to tap for latex refers to an interest in land, therefore such an agreement would have no force or avail in law unless notarially executed in accordance with the provisions 10 of section 2 of the Frauds and Perjuries Ordinance, Chapter 57. Section 2 applies to "land or other immovable property". The right to tap for latex obviously is not "land", but I think it comes within the words "other immovable property" see 2 Maasdorp, page 2. "Immovable property" is the genus and "land" is a species of immovable property. In 4 Ceylon Weekly Reporter 140 it was held that the right to collect plantains needed notarial attestation. I do not refer to the case reported in 30 New Law Reports 328 as it was overruled by the Privy Council in 32 New Law Reports 306 which in effect held that the case had been decided on a wrong principle. Ordinarily, therefore, the plaintiff would 20 have no cause of action as the agreement on which his cause of action is founded being one relating to immovable property, would have no force or avail in law as it was not notarially executed. But the plaintiff points to section 17 of the same Ordinance which provides that none of the foregoing provisions shall be taken as applying to any grants, sales or other conveyances of land or other immovable property from or to Government, etc. The plaintiff submits that if once the agreement has been proved, and the agreement is one with the Crown and is otherwise a good agreement, section 2 of the Frauds and Perjuries Ordinance is ousted by virtue of the provisions of section 17. The learned Solicitor-General, 30 however, submits that the Crown can take advantage of a Statute, in this case section 2 of the Frauds Ordinance, although not named in the Statute, and the cases reported in Ram (43-55) at page 144, 3 Balasingham 209 and 15 New Law Reports 204 have been cited in support of this proposition. It is submitted that although section 17 does not apply to this agreement, section 2 does, and that, therefore, the Crown can take advantage of section 2.

Section 3 of the Interpretation Ordinance Chapter 2 says that no enactment shall in any manner affect the right of the Crown unless it is therein expressly stated or unless it appears by necessary implication that 40 the Crown is bound thereby. Section 17 of the Frauds Ordinance shows that it is expressly provided that the Crown is not bound by the provisions of Chapter 57. But is it open to the Crown when an agreement of this kind has been proved against it, to turn round and say that they take advantage of the provisions of section 2 in order to defeat the claim of the plaintiff? An agreement is a bilateral contract and two parties are required in order to bring it into existence. The Statute of Frauds creates

obligations from which the Crown is exempted. How can the Crown insist on an obligation in such circumstances to avoid a commercial transaction? If the law says the Crown is not bound, how can the Crown take advantage of such a Statute? I do not think the contention of the Crown ought to prevail.

No. 9
Judgment
of the
District
Court
3-11-44
—continued.

The agreement was made by Mr. Chandrasoma, but all that he did was done on behalf of the Government Agent, Mr. Coomaraswamy, and was later approved of by him—see D6. Rs. 6,000 was not paid as arrah, earnest or deposit but as advance rent. The documents make this quite clear. If for any reason the tenancy fails to materialise the rent paid in advance must be returned—Wille on South African Law pages 351-352.

I do not think it is necessary for me to discuss the case in 20 New Law Reports 1, and the subsequent cases in view of this finding.

The next question is whether the plaintiff is entitled to claim interest, and if so at what rate, and up to what date? The law with regard to interest is plain and well settled. Interest can be claimed either where the law allows it or where the parties have agreed that interest should be paid—36 New Law Reports 358, 15 Ceylon Law Recorder 244, 42 New Law Reports 348. I am of opinion that this case falls under the former category. The law allows interest where there is mora or delay. The Government Agent ordered the deposit to be returned but owing to the negligence of the Kachcheri authorities the deposit was withheld. An unsigned requisition was sent and even when the money was paid into Court the provisions of section 410 of the Civil Procedure Code were not complied with—see Maasdorp page 135-136 and Wille page 267. The learned Solicitor-General argued that the claim for interest was in the nature of an action for tort against the Crown and that therefore the Crown was not liable. I do not think this argument is sound. The cause of action of the plaintiff for interest is not founded on tort but on a breach of contract. In my opinion the Crown was in mora as and from the 15th March and is liable to pay interest.

The law relating to the legal rate of interest was amended by Ordinance No. 17 of 1944 which reduced the rate from 9 per cent. to 5. This Ordinance became law on 23-6-1944. The plaintiff's counsel stated that if he is entitled to interest he does not demand anything more than 5 per cent. The earliest date on which the right to claim interest ceased would be the 14-12-1943 (P20) but I agree with counsel for the plaintiff that the defendant had no right to send a requisition with a condition attached to it see P22, P24, P31. I agree with Mr. Gratiaen that the forwarding of the requisition was not a proper tender as it was not a full tender, there being 9 months' interest due. On the 3rd April, 1944, the money was paid into Court but without notice to plaintiff. The facts of the case reported in 30 New Law Reports 109 are clearly distinguishable from the facts of this case as plaintiff's proctor was unaware of the deposit. I am, therefore, of opinion that the liability to pay interest continued from the 15th March until the date of action at 5 per cent.

No. 9
Judgment
of the
District
Court
8-11-44
—continued.

The question of damages remains. The onus is on the plaintiff. He has called no expert evidence. The best witness to prove his damages would be Karunatileke who, admittedly, is on the land today, and Karunatileke's books, if produced, would show what the gross and nett income from the land is. The reasons given by the plaintiff for not calling Karunatileke are unconvincing. It is not for a party to judge whether a material witness is worthy of credit or not. Plaintiff himself is an expert rubber planter and has given evidence with regard to his damages. There is no evidence to the contrary led on behalf of the Crown. Plaintiff undoubtedly is entitled to damages. The only evidence before me is the uncontradicted 10 evidence given by the plaintiff who on the showing of the defendant's own witnesses is an expert rubber planter. According to him from the 15th March, 1943, to October 15, 1943, the ruling price of rubber could be taken at 71 cents a lb. and the cost of production at 30 cents per lb. The land consists of 170 acres producing 500 lbs. per acre per annum or 85,000 lbs. per annum. This would amount to 49,000 lbs. for the period 15th March to 15th October or Rs. 19,600 at 40 cents a lb. For the period 15th October, 1943, to 11-2-44 (date of the plaint) the yield would be 28,000 lbs. The price per lb. is 84 cents and the cost of production 36 cents and at 45 cents profit per lb. a sum of Rs. 12,600 could be expected 20 for that period. From the 12-2-1944 to 1-4-1944 the sum would be Rs. 4,500 and from 2-4-1944 to 15-10-1944 Rs. 29,750 producing a grand total of Rs. 61,450. His expenses for clearing the land has been placed at Rs. 4,250 and the rent at Rs. 12,000 or a total of Rs. 16,250. The profit to the plaintiff therefore would be Rs. 45,200. In regard to the future half of this sum has been claimed on a purely speculative basis, namely Rs. 22,600 and a further sum of Rs. 18,000 would have to be deducted as rent for that period thus making Rs. 49,800 as plaintiff's damages together with the sum of Rs. 6,000 and interest from the 15th March, 1942, up to date of action at 5 per cent. and thereafter at the 30 same rate. Plaintiff will be entitled to be issued a payment order for the money lying to the credit of the case together with accrued interest but the interest drawn by him will be set off against the interest payable under this decree.

I accordingly answer the issues as follows :—

1. Yes.
2. Yes.
3. (a) Yes, at 5 per cent.
(b) Yes.
(c) Rs. 49,800.
4. Yes.
5. No.
6. Does not arise. The agreement is valid and enforceable at law.
7. No.
8. There was no breach of the Land Sale Regulations.

I therefore enter judgment for the plaintiff in a sum of Rs. 49,800 and for the sum of Rs. 6,000 with interest thereon at 5 per cent. per annum on the Rs. 6,000 from the 15th March, 1943, till the date of decree and thereafter on the aggregate amount of the decree at the same rate till payment in full. The defendant will pay to the plaintiff the costs of this action.

No. 9
Judgment
of the
District
Court
3-11-44
—continued.

R. F. DIAS,
District Judge.

3-11-44.

10 Pronounced in open Court in the presence of the Proctors for the parties.

R. F. DIAS,
District Judge.

No. 10.
Decree of the District Court.

DECREE.

No. 10
Decree
of the
District
Court
3-11-44

IN THE DISTRICT COURT OF COLOMBO.

HENRY EDMUND WIJESURIYA of "Wijegiri," Mahavilla
Panadura (c/o Messrs. Perera & Sons Ltd. Colombo)..... *Plaintiff.*

20 No. 15398/M. *vs.*

THE ATTORNEY-GENERAL of Ceylon.....*Defendant.*

This action coming on for final disposal before Dr. Reginald Felix Dias, Esquire, District Judge of Colombo, on the 3rd day of November, 1944, and the plaintiff appearing by Mr. Advocate E. F. N. Gratiaen with Mr. Advocate F. C. W. van Geyzel instructed by Messrs. Julius & Creasy, Proctors, and the defendant appearing by Mr. Mervyn Fonseka, King's Counsel, Solicitor-General of Ceylon, with Mr. H. H. Basnayake, Crown Counsel, instructed by Mr. John Wilson, Crown Proctor.

30 It is ordered and decreed that the defendant do pay to the plaintiff the sum of Rs. 49,800 and the sum of Rs. 6,000 with interest thereon at 5 per cent. per annum from the 15th March, 1943, to the date of this decree and thereafter upon the aggregate amount of this decree at the same rate until payment in full.

It is further ordered and decreed that the plaintiff is entitled to have issued to him an order of payment for the amount lying to the credit of these proceedings together with accrued interest but the amount so drawn including such interest shall be set off against the said sum of Rs. 6,000 and interest payable in terms of this decree.

No. 10
Deeree
of the
District
Court
3-11-44
—continued.

It is further ordered and decreed that the defendant do pay to the plaintiff the costs of this action.

Sgd. R. F. DIAS,
District Judge.

The 3rd day of November, 1944.

No. 11
Petition of
Appeal of
Defendant
to Supreme
Court
11-11-44

No. 11.

Petition of Appeal of Defendant to Supreme Court.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

H. E. WIJESURIYA of " Wijegiri ", Mahavilla, Panadura.....*Plaintiff.*

D. C. Colombo No. 15380/M. *vs.* 10

THE ATTORNEY-GENERAL of Ceylon*Defendant.*

THE ATTORNEY-GENERAL of Ceylon.....*Appellant.*

vs.

H. E. WIJESURIYA of " Wijegiri ", Mahavilla, Panadura.....*Respondent.*

To

HIS LORDSHIP THE CHIEF JUSTICE AND OTHER JUSTICES OF THE
HONOURABLE THE SUPREME COURT OF THE ISLAND OF CEYLON.

This 11th day of November, 1944.

The Petition of Appeal of the Attorney-General, defendant-appellant, appearing by his Proctor, John Wilson, sheweth as follows :— 20

1. The Plaintiff-Respondent instituted this action against the defendant appellant for an alleged breach of agreement to lease to the plaintiff the right to tap and take the produce of rubber trees on certain allotments of Crown land called and known as the Keenapitiya Crown rubber lands situated in the Badulla District of the Uva Province.

2. The plaintiff-respondent sought to recover from the Crown—

(a) a sum of Rs. 75,000 being damages alleged to have been suffered by him ; and

(b) a sum of Rs. 6,000 alleged to have been deposited by him with the Government Agent, Uva Province, at the Government Agent's request, with interest thereon at 9% per annum from 15th March, 1943, till date of decree and thereafter on the aggregate amount of the decree at the same rate till payment in full.

3. The defendant-appellant admitted that the plaintiff-respondent was entitled to a refund of the sum of Rs. 6,000 and brought the said sum into Court stating that the said sum of Rs. 6,000 was at all times available to the plaintiff-respondent on demand but denied—

No. 11
Petition of
Appeal of
Defendant
to Supreme
Court
11-11-44
—continued.

(a) that there was a binding agreement as alleged by the plaintiff-respondent ; and

(b) that the plaintiff was entitled to any damages or to interest on the said sum of Rs. 6,000.

4. The following eight issues were tried by the learned District Judge :—

(i.) Was there an agreement between the Government Agent, Uva Province, acting for and on behalf of the Crown and the plaintiff as alleged in paragraph 3 of the plaint ?

(ii.) Did the Government Agent, Uva Province, commit a breach of the said agreement ?

(iii.) If so—

(a) Is the plaintiff entitled to a return of the sum of Rs. 6,000 deposited by him on the 5th March, 1943, with legal interest thereon from 15th March, 1943 ?

20 (b) Is the plaintiff entitled to recover damages for breach of the said agreement ?

(c) If so, in what sum ?

(iv.) Can the plaintiff enforce the agreement pleaded in paragraph 3 of the plaint in view of the fact that it was not notarially attested ?

(v.) Was the agreement pleaded in paragraph 3 of the plaint, contrary to the Land Sale Regulations of Government ?

(vi.) If issue (v.) is answered in the affirmative, is the said agreement invalid and unenforceable in law ?

30 (vii.) If the Government Agent entered into the agreement pleaded in paragraph 3 of the plaint, was he acting without authority ?

(viii.) Is the Crown entitled to rely on an alleged breach of Land Sale Regulations by the Government Agent ?

5. The learned District Judge, after trial, held against the defendant-appellant on all the issues and gave judgment for the plaintiff-respondent

(a) in a sum of Rs. 49,800 by way of damages ; and

(b) for the sum of Rs. 6,000 with interest thereon at 5% per annum from the 15th March, 1943, till the date of decree and thereafter on the aggregate amount of the decree at the same rate till payment in full ; and

40 (c) for costs of action.

No. 11
Petition of
Appeal of
Defendant
to Supreme
Court
11-11-44
—continued.

6. Being aggrieved by the said judgment, the defendant-appellant appeals to Your Lordships' Court on the following among other grounds that may be urged at the hearing of the appeal :—

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

(ii.) The learned District Judge has misdirected himself with regard to the oral and documentary evidence led in the case ;

(iii.) The learned District Judge is wrong in holding—

(a) that there was a concluded agreement between the Assistant Government Agent, Uva Province, and the plaintiff-respondent and 10 that such agreement was binding on the Crown ;

(b) that the plaintiff-respondent is entitled to payment of interest at 5% per annum from the 15th March, 1943, on the sum of Rs. 6,000 ;

(c) that an oral agreement with the Crown relating to immovable property is enforceable against the Crown ;

(d) that the alleged agreement to give a lease of the said land to the plaintiff-respondent was not contrary to the Land Sale Regulations ;

(e) that the Land Sale Regulations did not apply in the circumstances of this case ;

(f) that the provisions of the Land Development Ordinance were 20 applicable in this case ;

(g) that the dispute between the plaintiff-respondent and the Crown was in regard to a right to tap rubber and not to a lease of land ;

(h) that the right which the plaintiff-respondent sought to enforce did not fall within the ambit of the words " grant or disposition " in Article VI. of the Letters Patent constituting the office of Governor and Commander-in-Chief of the Island of Ceylon.

(iv.) The plaintiff-respondent has failed to establish his claim for damages ?

(v.) The learned District Judge was mistaken in referring to the Land 30 Development Ordinance to ascertain whether the officers concerned were acting within the scope of their duties as the alleged lease was not one contemplated under the said Ordinance.

Wherefore the defendant-appellant prays that Your Lordships' Court will be pleased to set aside the said judgment of the learned District Judge and dismiss the plaintiff's action with costs.

JOHN WILSON,
Proctor for Defendant-Appellant.

Cross-Appeal of Plaintiff to the Supreme Court.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

THE ATTORNEY-GENERAL of Ceylon..... *Defendant-Appellant.*
S. C. 205 (F)

D. C. Colombo Case No. 15380. vs.

H. E. WIJESURIYA of " Wijegiri ", Mahavilla, Panadura..... *Plaintiff-Respondent.*

This 22nd day of October, 1945.

No. 12
Cross-
Appeal of
Plaintiff
to the
Supreme
Court
22-10-45
—continued.

10 To

THE HON'BLE THE CHIEF JUSTICE AND THE OTHER JUSTICES OF
THE SUPREME COURT OF THE ISLAND OF CEYLON.

The Cross Objections of the Plaintiff-Respondent abovenamed appearing by Geoffrey Thomas Hale, Frederick Claude Rowan and Joseph Francis Martyn, carrying on business in partnership in Colombo under the name, style and firm of Julius & Creasy, and their Assistants Henric Theodore Perera, Alexander Nereus Wiratunga, John Peter Edmund Gregory, James Arelupar Naidoo, Alexander Richard Neville de Fonseka and Beram Kaikhushroo Billimoria, Proctors, states as follows :—

20 1. The plaintiff is dissatisfied with that part of the judgment of the learned District Judge which awards him a sum of Rs. 49,000 only as damages for the following among other reasons that may be urged by Counsel at the hearing of this appeal :—

(1) The learned District Judge has accepted the uncontradicted evidence of the plaintiff regarding the profits which he could have earned if he had been placed in possession of the premises. The Crown led no evidence on the issue of damages although the Crown's list of witnesses included the names of expert rubber planters.

30 (b) The learned District Judge has rightly accepted the plaintiff's estimate that the potential yield from the estate was 85,000 pounds per annum and that the potential profit per pound at the time that the plaintiff gave evidence was approximately 55 cents per pound. On this basis the learned District Judge has correctly awarded the plaintiff damages in a sum of Rs. 45,000 for the period ending 15th October, 1944.

(c) With regard to the balance unexpired period of the lease, *i.e.* 31 months, Counsel for the plaintiff submitted that on a conservative basis, the plaintiff should be awarded damages on the assumption that the potential rate of profit per pound would be half the rate estimated for the period immediately prior to 15th October, 1944.

40 (d) The learned District Judge in his judgment accepted the submissions made on behalf of the plaintiff but his computation of the future profits on this basis was erroneous.

(e) Having regard to the findings of fact arrived at by the learned District Judge regarding damages, the learned Judge should have awarded

No. 12
Cross-
Appeal of
Plaintiff
to the
Supreme
Court
22-10-45
—continued.

damages in respect of the balance period of the lease (31 months) for 220,000 pounds at a minimum estimated profit of 25 cents per pound, *i.e.* Rs. 55,000 from which the balance rent of Rs. 18,000 would have to be deducted leaving a net profit of Rs. 37,000. It is respectfully submitted that the learned District Judge has through an oversight deducted the rental of Rs. 18,000 twice over in making his estimate of the future potential profits of the leased premises.

(f) On the basis indicated above the damages sustained by the plaintiff amounted to Rs. 82,000 and in the circumstances judgment should have been entered in favour of the plaintiff for Rs. 75,000 (to which amount his claim was restricted in the plaint) in addition to the other relief prayed for and granted by the learned District Judge.

(g) It is submitted that events in the rubber industry subsequent to the date of the judgment have proved that the rate of profits asked for by the plaintiff's Counsel in respect of the unexpired period of the lease was conservative.

Wherefore the plaintiff prays that the judgment and decree of the learned District Judge be varied and that judgment be entered in favour of the plaintiff in a sum of Rs. 75,000 as damages in addition to the other relief awarded by the learned District Judge, and for such other and further relief in the premises as to Your Lordships' Court shall seem meet.

Sgd. JULIUS & CREASY,
Proctors for Plaintiff-Respondent.

Settled by :

E. F. N. GRATIAEN,
Advocate.

No. 13.

Judgment of the Supreme Court.

S. C. No. 205 M.

D. C. (F) Colombo No. 15380.

Present : SOERTSZ, S.P.J., and CANNON, J.

80

Argued on : 1st March, 1946.

Counsel : H. H. BASNAYAKE, Acting Attorney-General, with H. W. R. WEERASOORIYA, Crown Counsel, for Crown-appellant.

H. V. PERERA, K.C., with F. C. W. VAN GEYZEL, for respondent.

Delivered on : 22nd August, 1946.

SOERTSZ, A.C.J.

The plaintiff brought this action against the Attorney-General, in virtue of section 456 of the Civil Procedure Code, to recover from the Crown two sums of money Rs. 75,000 and Rs. 6,000, with interest on the 40

No. 13
Judgment
of the
Supreme
Court
22-8-46

latter sum. He claimed the first sum as damages the Crown was liable to pay to him in consequence of the failure of the Government Agent of Uva, who, he averred, was, "acting for and on behalf of the Crown" to fulfil a contract which that officer had entered into with him on the 4th/5th of March, 1943, undertaking to "lease to him, for a period of four years and two and a half months, the right to tap and take the produce of the rubber trees on certain allotments of land.....referred to as the Keenapitiya Crown rubber lands.....and to place the plaintiff in possession of the said allotments of land on the 15th of March, 1943". These allotments comprised an area of about 280 acres. The second sum the plaintiff claimed as due to be refunded to him with interest because he had deposited the Rs. 6,000 at the request of the Government Agent, as part of the consideration for the lease, and the lease failed owing to the default of the Government Agent.

The question now is whether the Crown was so involved in all that took place between the plaintiff on the one side and the Land Commissioner and the Government Agent on the other as to be liable to make amends to the plaintiff by paying him the damages he claimed or any damages at all, and refunding the deposit the plaintiff had made together with interest. The Attorney-General, in the answer he filed on behalf of the Crown, repudiated the claim for damages on the ground that there was "no agreement whether oral or otherwise" as alleged in paragraph 3 of the plaint. In regard to the Rs. 6,000 claimed, his answer was that the plaintiff deposited that sum "in anticipation of his obtaining a lease of the lands referred to.....if and when they were vacated by one Sabapathpillai who had been given notice.....to quit the lands on March 15th, 1943", but that when that notice was cancelled and the contemplated lease fell through, the plaintiff could have withdrawn this sum at any time but did not choose to do so. The Crown was not, therefore, liable to pay interest and he accordingly brought the sum of Rs. 6,000 into Court. The Attorney-General further pleaded that, even assuming such a contract, in fact, as the plaintiff set up, the plaintiff could not maintain his action upon it, in law, by reason of the provisions of the Land Sales Regulations, and of the Frauds and Forgeries Ordinance.

In regard to the question of fact, that is to say whether there was such an agreement as is pleaded in paragraph 3 of the plaint, with which I propose to deal first, a brief statement of the facts from which this litigation arose is necessary. In January, 1942, the Land Commissioner advertised that he would, on the 7th March, 1942, put up to auction "the lease of the right to tap and take the produce of the rubber trees" on the Crown lands referred to in the advertisement for a period of five years. At the sale, the plaintiff and one Sabapathipillai were the final bidders, and the latter was declared the purchaser on his bid of Rs. 44,000 as against the plaintiff's bid of Rs. 43,950, and a "permit" was issued to him. Sabapathipillai, however, found himself in difficulties in regard to the payment of the first annual instalment of rent, and in consequence of negotiations between the Government Agent and the Land Commissioner on the one side, and the plaintiff on the other, the plaintiff offered to take

No. 13
Judgment
of the
Supreme
Court
22-8-46
—continued.

the lease for Rs. 30,000 if Sabapathipillai made default. This offer did not materialise, because these Government officers came to some arrangement with Sabapathipillai in regard to the first instalment. But Sabapathipillai was soon involved in other difficulties. He violated, or it was said that he had violated another term of his contract by entering into an agreement with a third party, one Karunatileke, concerning the subject matter of his lease, and the Land Commissioner and the Government Agent in consultation with each other, decided to cancel his permit. The Land Commissioner wrote letter P9 of 28-1-43 to the Government Agent saying :

10

“ The conditions of the Permit dated 10-8-42 have been flagrantly violated. You should cancel the Permit forthwith and take possession of the land on behalf of the Crown. You may, thereafter, issue a Permit to Mr. H. E. Wijesuriya to take the produce of the plantation on the land for the balance period of five years at the rental approved by my letter.....of 25-4-42.”

Accordingly on the 2nd March, 1943, the Assistant Government Agent wrote P10 informing Sabapathipillai that his lease was cancelled and requesting him “ to deliver peaceful possession to the *Divisional Revenue Officer* on the 15th March, 1943, and to vacate the land immediately 20 thereafter ”.

It was in this state of things that the plaintiff says he saw the Land Clerk Attanayake and the Assistant Government Agent on the 4th of March, 1943. The plaintiff's version of what happened on the 4th of March is that on that day he first saw the Land Clerk Attanayake who told him that if he deposited Rs. 6,000 he would be placed in possession on the 15th of March, and that he then went and saw the Assistant Government Agent in his office room and that the Assistant Government Agent repeated or confirmed what the Land Clerk had told him. The Assistant Government Agent denies that the plaintiff saw him on that day in his 30 office room or elsewhere in regard to this matter and he denies that he told the plaintiff that if he deposited Rs. 6,000 he would be placed in possession on the 15th of March. Attanayake admits that the plaintiff saw him on that date but he says that what he told the plaintiff was that there were instructions from the Land Commissioner to issue notice of cancellation to Sabapathipillai and to offer the lease to him and that notice of cancellation had been issued to Sabapathipillai, and that if the plaintiff would agree to deposit the first year's rent he would be put in possession of the land in the event of Sabapathipillai vacating the land. He says he told the plaintiff that the money would be placed in deposit 40 and it would be refunded to him if he is not put in possession of the land. Attanayake says that he pointed out to the plaintiff that according to a rule of the Government such a deposit is necessary before possession could be given. The plaintiff, on his part, would, I suppose agree gladly to make the deposit in order to consolidate his position. He feared for instance, that one Weerasekere was endeavouring to get the lease as Sabapathipillai's nominee.

Chm

P 13

235

1. Forwarded for your information please accompany the S.R.O. and point out the land to him.

2. The lease is now given to Mr. E. Wijesinghe. You should put him in possession of the land as soon as the present lease vacates it.

Sgo. Mr. Chandrasom
H. J. P. M. S.

4/8/43

DI

DI

Subst

We may accept a year's rent & place it in deposit until Mr. W. is put in possession of the land. When he is put in possession, the money can be credited to revenue.

Asst. Secy. Dept.
1/11/43

1/11/43

Yes. He
deposits
1/11/43

Yes.
It is just now
to let the land which
he will agree.

4/8/43

Copy forwarded to G.H.Karunatilleke.

for G.A.Uva.

No. L.R.7889
Badulla Kachcheri,
2nd March, 1943.

From the Government Agent, Uva.
To Mr. E. Sabapathypilly, Lemastota Estate, Koslanda.

Lease of Lots 127 & 136 in F.V.P.317 and Lot 1
in F.V.P.318.

This is to inform you that the private agreement entered into by you with Mr. Karunatilleke is a contravention of clause 3 of the permit issued to you in respect of the above lease.

2. It is further reported that the rubber trees tapped have been damaged. This is a violation of clause 5 of the permit.

3. In terms of clause 7 of the permit, the lease granted to you is cancelled for breach of conditions 3 and 5 and you are hereby requested to deliver peaceful possession of the above lots to the Divisional Revenue Officer, Wellawaya, on the 15th March, 1943, at 9.30 A.M. and vacate the land immediately thereafter.

Asst. Govt. Agent,
for Government Agent, Uva.

D.R.O., Wellawaya.

Copy forwarded for your information and necessary action. You should attend to this matter personally. The annexed copy of the notice should be posted up at a conspicuous place on the estate.

for G.A.Uva.

2. 3. 43.

In this conflict of evidence the questions that arise are whether the plaintiff saw the Assistant Government Agent on that day or only Attanayake and whether the plaintiff was given an assurance amounting to a warranty that if he deposited the full year's rent he would be given possession on the 15th of March, or only a promise dependent on the resumption of possession of these lands. I would say at once that, after careful consideration, I prefer the evidence of the Assistant Government Agent and of Attanayake to that of the plaintiff. I feel the less deterred from expressing disagreement with the trial Judge's findings on facts because, as he says, his findings are not based on matters like the demeanour and reliability of these witnesses but "on their testimony, viewed in the light of the circumstances of the case". It is precisely in that way that I myself have examined their evidence and reached the conclusions to which I have come. As far as the Assistant Government Agent is concerned his denial that he met the plaintiff or spoke to him in his office on the 4th of March is, in my opinion, strongly supported by the terms of the document D1. Attanayake after his meeting with the plaintiff put up to the Assistant Government Agent as follows:—

20 "We may accept a year's rent and place it in deposit until Mr. W. is put in possession of the land. When he is put in possession the money can be credited to revenue"

and the Assistant Government Agent's minute is :

"Please request Mr. W. to let me know whether he will agree."

This document, I regard as clinching the point in dispute. If, as the plaintiff says, Attanayake had told him definitely that if he paid the first year's rent he would be placed in possession on the 15th of March and, if again as the plaintiff says, the Assistant Government Agent had repeated or confirmed what Attanayake had already told him, it is difficult to understand why the Assistant Government Agent should want to know whether the plaintiff agrees to his money being placed in deposit, the Assistant Government Agent himself having already told him if he deposited the first year's rent, he would be placed in possession on the 15th of March, and the plaintiff not having demurred to that in any way at all. If the plaintiff's version is the true one, the answer one would have expected from the Assistant Government Agent to Attanayake's query would have been either "Yes" or "the lease having now been given to Mr. W., let the deposit be credited to revenue", depending on the view the Assistant Government Agent took of the transaction that is to say whether a lease had been warranted, or a conditional one promised. Likewise, so far as Attanayake is concerned, if, as the plaintiff states, the lease was given him on the 4th March to take effect on the 15th of March and he was requested to pay the first year's rent, it is as difficult to understand why Attanayake should suggest a temporary deposit in the Kachcheri and a crediting to revenue after possession has been given. The trial Judge says that on the 4th of March Mr. Chandrasoma (that is the Assistant Government Agent) "believed that on 15-3-43 that land would be vacated by Sabapathipillai and his manager, Karunatilleke. The idea that Karuna-

tilleke would not leave the land never for an instant crossed Mr. Chandrasoma's mind", but if the Assistant Government Agent entertained such a sanguine expectation that everything would go according to plan, that would be precisely the case in which I should have thought he would have regarded the lease as good as given, and would have directed the Rs. 6,000 to be credited to revenue without being held in suspense at all. It appears to me to be abundantly clear that the Government officers were by no means certain that they would be able to deliver possession on the 15th of March and it was quite natural that Attanayake fully aware as he was of the Land Commissioner's instructions in P9 written a fortnight earlier would have explained to the plaintiff as he says he did that the money would lie in deposit and would be credited to revenue or refunded to him according as he was put in possession or not. Attanayake's evidence receives support from the qualified terms of the receipt P2 given to the plaintiff by the Kachcheri Shroff acknowledging the receipt of rent "pending issue of lease". Much importance cannot be attached to the Assistant Government Agent's statement in P13 that "the lease is now given to Mr. E. Wijesuriya" especially as that is followed by the statement "You should put him in possession as soon as the present lessee vacates". On a proper interpretation in its true context this statement means that the Land Commissioner had *decided* to put the plaintiff in possession on Sabapathipillai vacating the land, and not that he had *agreed* unconditionally to do so. Not only do the documents bear out the Assistant Government Agent's and Attanayake's evidence but also, in my view, their evidence gives what I think is the more probable version. The plaintiff says that it was well known that Sabapathipillai and Karunatileke had fallen out and it was quite a serious question whether even if Sabapathipillai vacated the lands, Karunatileke would not create trouble, and it was most improbable that, in those circumstances, the Assistant Government Agent or Attanayake would give the plaintiff an unconditional undertaking. If these findings of mine are correct, the plaintiff's action fails for the reason that there was no contract between the Government Agent and him as alleged in paragraph 3. But, the trial Judge, for reasons which are not too clear to me, preferred the plaintiff's evidence and he held that the plaintiff saw the Assistant Government Agent and that that officer confirmed what Attanayake had told the plaintiff, according to the plaintiff's version, namely, that if he paid the first year's rent, he would be given the lease of these lands on the 15th of March. I would therefore, examine this case to see how it stands on the finding of the trial Judge.

40

On that finding, we have an agreement by the Assistant Government Agent with the plaintiff, by which the Assistant Government Agent offered to give him a lease and to put him in possession on the 15th of March if he paid down a year's rent, and an acceptance of that offer by the plaintiff when he paid in the year's rent. It might have been necessary to consider whether, in the circumstances of the case, this contract although apparently unconditional, should not be construed as containing an implied condition that its fulfilment would depend on the Government officers concerned

being able to recover possession of the lands leased. That question might have arisen if those officers had persisted with the proposed cancellation of Sabapathipillai's lease, and found it impossible to recover possession, for in that event, the question of frustration of the contract would have arisen. But, as things turned out, before the 15th of March, the Land Commissioner decided to cancel the notice to quit given to Sabapathipillai and there was no attempt made to recover possession from him and to deliver it to the plaintiff. The question of frustration does not, therefore, arise. The question that does arise in these circumstances is whether the Assistant Government Agent was competent by entering into the agreement found by the trial Judge, to bind the Crown, or perhaps I should say, to bind the Land Commissioner and through him the Crown. The plaintiff's case is that it was competent for the Land Commissioner to lease the right to take the produce of the plantations on these lands for the period for which and in the manner in which it was proposed to lease that right, and that the Land Commissioner constituted the Government Agent and Assistant Government Agent, his agents for that purpose. Assuming that to be so, P9 shows the scope of the authority the Land Commissioner entrusted to his agent was "To take possession of the land on behalf of the Crown" and "*thereafter*, issue a permit to Mr. Wijesuriya to take the produce of the plantation.....for the balance period of five years"..... It is clear from these terms that the resumption of possession on behalf of the Crown was made a condition precedent to the issue of a permit. I imagine that it would have been quite open to the Land Commissioner at any time before the permit was issued to the plaintiff to repent of the decision to issue it and to direct that no such permit shall issue, for the Land Commissioner made no promise to the plaintiff to issue a permit to him nor did he authorise his agent to make such a promise. He was only instructing his agent in regard to the course of action he should take. But, it is contended that the plaintiff was not aware of this limitation of the agent's authority and that the agent who had been held out to the plaintiff as the Land Commissioner's agent, bound the Land Commissioner although he acted in excess of his authority. As I have already observed, I have no doubt myself that the plaintiff was fully aware of the true state of things, but here again I will assume that, as found by the trial Judge, the plaintiff was not aware of any limitation of authority imposed on the Government Agent or Assistant Government Agent and I will examine the case on that footing. The plaintiff's case then stands at this : he is able to plead a contract between him and the Land Commissioner's agent by which the Land Commissioner was bound in fact, to give him a lease and to put him in possession on the 15th of March, and a default by the Land Commissioner in that he did not even make an attempt to fulfil the contract. The question then arises whether the Land Commissioner was himself competent to involve the Crown in liability by entering into that contract. To answer that question it is necessary to ascertain what in reality this contract amounted to in law. In my view, it was a lease of land for four years and two and a half months. It was in vain that the officers concerned sought, by a play upon words

No. 18
Judgment
of the
Supreme
Court
22-8-46
—continued.

and by describing the transactions as a “ permit ” or “ a licence ” to take the produce of the plantations on these lands or “ a lease of the right ” to tap and take the produce of the plantations, to pretend that the resulting transaction was what they called it and not what in essence, it was. Exhibit P1 read with P6 discloses a lease of land and nothing but a lease of land. Occupation of the lands is to be given along with the right to tap and take the produce of *all* the plantations on them for there were no plantations other than rubber. That occupation and that right are to be in force and to continue for the period of four years and two and half months provided, of course, the other party performed his covenants. 10 On the expiry of the period or the earlier determination of the contract, he is to surrender possession of the lands. Pending the expiry or determination of the right of occupation, any unauthorised person going on the land would undoubtedly be liable, at the instance of the occupier, as a trespasser. What does all this connote but a lease? It is true that the party who is to have occupation is prohibited from doing certain things on these lands, but prohibitions like those are very familiar features in deeds of lease. I, therefore, hold that the transaction contemplated in the contract pleaded by the plaintiff was a lease of land. If I am right, as I venture to think I am, then by regulation 2 of the “ Regulations 20 relating to sales and leases of Crown lands approved by the Secretary of State’s despatch of June 5th, 1926, it is laid down that :

“ every grant and every lease of land shall be under the signature of the Governor and the public seal of the Colony, except (a) leases of small lots leased annually which may be signed by the Revenue Officer ; (b) leases of road reservations which may be signed by the Controller of Revenue.”

The transaction cannot be brought within exception (a) and the Revenue Officer, the Land Commissioner in this case was not competent to enter into this contract or to bind the Crown by issuing such a permit as was 30 admittedly contemplated. The regulation I have referred to re-appears in the Letters Patent dated the 22nd April 1931, with the word “ disposition ” substituted for the word “ lease ”. Paragraph 6 says :

“ The Governor in Our name or on Our behalf may make and execute, under the public seal of the Island grants and dispositions of any lands which may lawfully be granted or disposed of within the Island ”

But, in the Ceylon Government Manual of Procedure (1940 Ed.) is published a statement of administrative procedure prescribed for transactions with which Officers of State are concerned, and in that statement we find 40 on page 12 that the grant of licences for produce is vested in the Executive Committee. It is that probably, that inspired the officers in this case to attempt to grant a lease by calling it a “ licence for produce ”. But as I have already observed this is much more than a licence. Mr. H. V. Perera for the respondent of this appeal sought to surmount the difficulty created by regulation 2 quoted above by contending that the agreement contemplated by the parties in this instance, at most created an interest

in land not amounting to a lease or a disposition of land and he went on to argue that it was only a grant or a lease or a disposition of land that required the Governor's intervention, and that it was competent for the Land Commissioner to enter into an agreement creating an interest in land other than a lease. I am unable to entertain that contention as I have already ventured to say I find the contemplated transaction to be, in reality, a lease and as such, a disposition of land and not any lesser interest in land. But even assuming that what was being created was an "interest in land" less than a lease, even so I have not been referred to
 10 any rule or regulation empowering the Land Commissioner to create such an interest in land in the manner in which he proposed to act in this instance. The provisions of the Land Development Ordinance in my view have no application whatever here. Another difficulty in the way of the plaintiff is that the Land Commissioner had no power, in the event of a default such as was alleged on the part of Sabapathipillai rendering his permit or licence to take the produce liable to cancellation, to enter into an agreement, to give that right to the next highest bidder. He was bound in such an event by regulation 29 of the regulations to offer the right for sale again in open competition. D5 shows that the Land Com-
 20 missioner realised that the action contemplated by him, that is to say to choose the plaintiff for the giving of the right to tap was *ultra vires*. He writes to the Government Agent "an issue of a preferential lease now to the second highest bidder at an auction held an year ago at a reduced rent does not appear to be in order. If the order of cancellation of the existing permit is not varied after consideration by me on the representations received, the proper course would be to sell the right by auction or public tender". The result is that whether the transaction be regarded as a lease or something less than a lease, the Land Commissioner had not the power to render the Crown liable by acting as he did. If he had not
 30 that power he could not, of course, delegate such power to his agent.

As was stated in the opinion delivered in the Privy Council in the case of the *Collector of Masulapatam vs. Cavalry Veneata Narainapah* (8 Moore's Indian Appeals 554) ;

"The acts of a Government officer bind the Government only when he is acting in the discharge of a duty within the limits of his authority, or if he exceeds that authority, when the Government in fact or in law, directly or by implication ratifies the excess."

That is not, at all, the case here.

For these reasons, I hold that the Crown is not liable and I would set
 40 aside the decree entered in the Court below and dismiss the plaintiff's action for damages. In regard to the claim for Rs. 6,000 with interest, logically, that amount having been paid to a Government officer who had no power, in the circumstances already stated, to bind the Crown, the plaintiff's proper course would have been to sue that officer, for recovery of that amount. But, in view of the fact, that in such an action too the Attorney-General would have been the nominal defendant I would, disregard technicality and as the Attorney-General has brought the money

No. 18.
Judgment
of the
Supreme
Court
22-8-46
—continued.

into Court, I would direct that judgment be entered for the plaintiff for Rs. 6,000 with legal interest from the 10th March, 1943, till the 15th of December, 1943, the former date being that on which the notice given to Sabapathipillai was ordered to be cancelled, the latter being the date on which the plaintiff could have if he had chosen to do so withdrawn this sum (see P30). The plaintiff will pay the costs of the defendant here and below.

The cross-appeal does not arise. It is dismissed but without costs.

I would add a word to express my regret that this judgment has been delayed so long, and a word of explanation to say that this delay was, 10 mainly, due to the fact that soon after judgment had been reserved I came to be engaged on other public duties which devolved on me in pursuance of a Commission issued by His Excellency the Governor.

Sgd. F. J. SOERTSZ,
Acting Chief Justice.

CANNON, J.

Sgd. G. H. F. CANNON,
Puisne Justice.

No. 14
Decree of
the Supreme
Court
22-8-46

No. 14.

Decree of the Supreme Court.

20

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

H. E. WIJESURIYA*Plaintiff-Respondent*

D. C. (F) 205*Against*

THE ATTORNEY-GENERAL*Defendant-Appellant.*

Action No. 15380/M.

District Court of Colombo.

This cause coming on for hearing and determination on the 1st March and 22nd day of August, 1946, and on this day, upon an appeal preferred by the defendant before the Hon. Mr. Francis Joseph Soertsz, K.C., Senior Puisne Justice, and the Hon. Mr. George Harry Franklyn Cannon, Puisne Justice of this Court, in the presence of Counsel for the appellant and 30 respondent.

It is considered and adjudged that the Decree entered in this action by the District Court of Colombo and dated the 3rd day of November, 1944, be and the same is hereby set aside and the plaintiff's action for damages is dismissed. It is further directed that judgment be entered for the plaintiff for Rs. 6,000 with legal interest thereon from the 10th March, 1943, till the 15th December, 1943. The cross-appeal is also dismissed without costs.

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

No. 14
Decree of
the Supreme
Court
22-8-46

Witness the Hon. Mr. Francis Joseph Soertsz, K.C., Acting Chief Justice at Colombo, the 22nd day of August, in the year of our Lord One thousand Nine hundred and Forty-six, and of our Reign the Tenth.

—continued.

Sgd. N. NAVARATNAM,
Deputy Registrar, S. C.

No. 15.

10 Application for Conditional Leave to Appeal to Privy Council.

No. 15
Application
for Condi-
tional Leave
to Appeal
to Privy
Council
30-8-46

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

H. E. WIJESURIYA of "Wijegiri", Mahavilla, Panadura.....*Plaintiff*

vs.

THE ATTORNEY-GENERAL of Ceylon.....*Defendant.*

THE ATTORNEY-GENERAL of Ceylon.....*Defendant-Appellant*

S. C. No. 205 (F) *vs.*

D. C. Colombo No. 15380/M.

H. E. WIJESURIYA of "Wijegiri", Mahavilla, Panadura..... *Plaintiff-Respondent.*

To

20 THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUDGES OF
THE SUPREME COURT OF THE ISLAND OF CEYLON.

This 30th day of August, 1946.

The Petition of the plaintiff-respondent abovenamed appearing by Geoffrey Thomas Hale, Frederick Claude Rowan and Joseph Francis Martyn carrying on business in partnership in Colombo under the name style and firm of Julius & Creasy and their Assistants Henric Theodore Perera, Alexander Nereus Wiratunga, John Peter Edmund Gregory, James Arelupar Naidoo, Alexander Richard Neville de Fonseka and Beram Kaikhushroo Billimoria, Proctors, states as follows :—

30 1. That feeling aggrieved by the judgment and decree of this Honourable Court pronounced on the 22nd day of August, 1946, the plaintiff-respondent is desirous of appealing therefrom to His Majesty the King in Council.

No. 15
Application
for Conditional
Leave to Appeal
to Privy
Council
30-8-46
—continued.

2. That the said judgment is a final judgment and the matter in dispute amounts to or is of the value of upwards of Rs. 5,000.

Wherefore the plaintiff-respondent prays for Conditional Leave to Appeal against the said judgment of this Court pronounced on the 22nd day of August, 1946, to His Majesty the King in Council.

JULIUS & CREASY,
Proctors for Plaintiff-Respondent.

No. 16
Decree
Granting
Conditional
Leave to
Appeal to
Privy
Council
11-9-46

No. 16.

Decree Granting Conditional Leave to Appeal to Privy Council.

GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN, 10
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.

H. E. WIJESURIYA of "Wijegiri", Mahavilla, Panadura.....*Plaintiff-
Respondent (Petitioner)*

Against

THE ATTORNEY-GENERAL of Ceylon.....*Defendant-Appellant
(Respondent).*

Action No. 15380 (S. C. No. 205).

District Court of Colombo.

In the matter of an Application by the plaintiff abovenamed dated 20 30-8-46 for Conditional Leave to Appeal to His Majesty the King in Council against the Decree of this Court dated 22-8-46.

This matter coming on for hearing and determination on the 11th day of September, 1946, before the Hon. Mr. A. E. Keuneman, K.C., and the Hon. Mr. E. A. L. Wijeyewardene, K.C., Puisne Justices of this Court, in the presence of Counsel for the applicant.

It is considered and adjudged that this application be and the same is hereby allowed upon the condition that the applicant do within one month from this date :—

1. Deposit with the Registrar of the Supreme Court a sum of Rs. 3,000 30 and hypothecate the same by bond or such other security as the Court in terms of section 7 (1) of the Appellate Procedure (Privy Council) Order shall on application made after due notice to the other side approve.

2. Deposit in terms of the provisions of section 8 (a) of the Appellate Procedure (Privy Council) Order with the Registrar a sum of Rs. 300 in respect of fees mentioned in section 4 (b) and (c) of Ordinance No. 31 of 1909 (Chapter 85).

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

No. 16
Decree
Granting
Conditional
Leave to
Appeal to
Privy
Council
11-9-46
—continued.

Witness the Hon. Mr. Francis Joseph Soertsz, K.C., Acting Chief Justice, at Colombo, the 11th day of September, in the year of our Lord One thousand Nine hundred and Forty-six, and of our Reign the Tenth.

Sgd. N. NAVARATNAM,
Deputy Registrar, S. C.

10

No. 17.

Application for Final Leave to Appeal to Privy Council.

No. 17
Application
for Final
Leave to
Appeal to
Privy
Council
17-9-46

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

H. E. WIJESURIYA of " Wijegiri ", Mahavilla, Panadura.....*Plaintiff*

vs.

THE ATTORNEY-GENERAL of Ceylon.....*Defendant.*

THE ATTORNEY-GENERAL of Ceylon.....*Defendant-Appellant*

S. C. No. 205 (F). *vs.*

D. C. Colombo No. 15380/M.

H. E. WIJESURIYA of " Wijegiri ", Mahavilla, Panadura.....*Plaintiff-Respondent.*

20

H. E. WIJESURIYA of " Wijegiri ", Mahavilla, Panadura.....*Appellant.*

vs.

THE ATTORNEY-GENERAL of Ceylon*Respondent.*

To

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUDGES OF
THE HONOURABLE THE SUPREME COURT OF THE ISLAND
OF CEYLON.

On this 17th day of September, 1946.

The humble Petition of the plaintiff in District Court Colombo No. 15380/M, plaintiff-respondent in Supreme Court No. 205 (F) and

No. 17
Application
for Final
Leave to
Appeal to
Privy
Council
17-9-46
—continued.

appellant abovenamed appearing by Geoffrey Thomas Hale, Frederick Claude Rowan and Joseph Francis Martyn carrying on business in partnership in Colombo under the name, style and firm of Julius & Creasy and their Assistants Henric Theodore Perera, Alexander Nereus Wiratunga, John Peter Edmund Gregory, James Arelupar Naidoo, Alexander Richard Neville de Fonseka and Beram Kaikhushroo Billimoria, Proctors, states as follows :—

1. That the plaintiff in District Court Colombo No. 15380/M, plaintiff-respondent in Supreme Court No. 205 (F) and appellant abovenamed on the 11th day of September, 1946, obtained Conditional Leave ¹⁰ from this Honourable Court to appeal to His Majesty the King in Council against the judgment of this Court pronounced on the 22nd day of August, 1946.

2. That the plaintiff in District Court Colombo No. 15380/M, plaintiff-respondent in Supreme Court No. 205 (F) and appellant abovenamed has in compliance with the conditions on which such leave was granted deposited with the Registrar of this Court a sum of Rs. 3,000 on the 17th day of September, 1946, and has by bond dated the 17th day of September, 1946, mortgaged and hypothecated the said sum of Rs. 3,000 with the said Registrar. 20

3. The plaintiff in District Court Colombo No. 15380/M, plaintiff-respondent in Supreme Court No. 205 (F) and appellant abovenamed has further deposited with the said Registrar a sum of Rs. 300 in respect of fees.

4. The plaintiff in District Court Colombo No. 15380/M, plaintiff-respondent in Supreme Court No. 205 (F) and appellant abovenamed has given due notice to the defendant in District Court Colombo No. 15380/M, defendant-appellant in Supreme Court No. 205 (F) and respondent abovenamed of this application.

Wherefore the plaintiff in District Court Colombo No. 15380/M, ³⁰ plaintiff-respondent in Supreme Court No. 205 (F) and appellant abovenamed prays that he be granted final leave to appeal against the said judgment of this Court dated the 22nd day of August, 1946, to His Majesty the King in Council, and for such other and further relief in the premises as to Your Lordships' Court shall seem meet.

Sgd. JULIUS & CREASY,
Proctors for Plaintiff in D. C. Colombo, No. 15380/M,
Plaintiff-Respondent in S. C. No. 205 (F)
and Appellant to this Application.

Decree Granting Final Leave to Appeal to 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.

**H. E. WIJESURIYA of " Wijegiri ", Mahavilla, Panadura.....*Plaintiff*
*Respondent (Petitioner).***

Against

**10 THE ATTORNEY-GENERAL of Ceylon.....*Defendant-Appellant*
*(Respondent.)***

Action No. 15380 (S. C. No. 205)

District Court of Colombo.

In the matter of an application by the plaintiff abovenamed dated 17-9-46 for Final Leave to Appeal to His Majesty the King in Council from the judgment and decree of this Court dated 22-8-46.

This matter coming on for hearing and determination on the 25th day of September, 1946, before the Hon. Mr. A. E. Keuneman, K.C., and the Hon. Mr. E. G. P. Jayetilleke, K.C., Puisne Justices of this Court, in the presence of Counsel for the petitioner and respondent.

20 The applicant having complied with the conditions imposed on him by the Order of this Court dated 11th September, 1946, 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.

Witness the Hon. Mr. Francis Joseph Soertsz, K.C., Acting Chief Justice, at Colombo, the 25th day of September, in the year of our Lord One thousand Nine hundred and Forty-six, and of our Reign the Tenth.

Sgd. N. NAVARATNAM,

Registrar, S. C.

PART II.

EXHIBITS.

D 10.

GENERAL ORDERS (5th Edition)

Correction Slip No. 389

Pages 292 to 308

Delete existing Appendix K and *substitute* therefor the subjoined revised regulations.

By order,

Colonial Secretary's Office,
Colombo, March 27, 1930.

B. H. BOURDILLON, 10
Colonial Secretary.

APPENDIX K.

**Regulations relating to Sales and Leases of Crown Lands, approved
by the Secretary of State's Despatch of June 5, 1926.**

General

1. No Crown land, other than lands of small extent leased annually by the Revenue Officers, shall be disposed of otherwise than by grant, by lease, or by settlement under the Waste Lands Ordinance. No land likely to be required for a public purpose shall be alienated.
2. Every grant and every lease of land shall be under the signature 20 of the Governor and the Public Seal of the Colony, except (a) leases of small lots leased annually, which may be signed by the Revenue Officer; and (b) leases of road reservations, which may be signed by the Commissioner of Lands.
3. No grant or lease of any kind shall be made directly or indirectly to any public servants without the previous sanction of the Governor.
4. No grant or lease of land shall be made to any person against whom the Crown has any unsettled claim on account of land in his occupation.
5. No grant or lease of land shall be made to any person under 30 twenty-one years of age otherwise than through the medium of a guardian duly appointed under the law of the Colony.
6. (a) No land over 5,000 feet in elevation shall be alienated by sale outright, by lease, or in any other manner, unless such land is required for residential purposes, or is patana land suitable for fuel afforestation by estates, in which cases such land may be leased for such periods and on such conditions as the Governor may from time to time order.

(b) No land having a slope of 45° or more shall be alienated by sale outright, by lease, or in any other manner, unless such land forms a portion of a large block having generally a slope of under 45°. Such portion or portions if not contiguous to one another may be alienated at the discretion of the Government Agent, if the extent is two acres or under, and if he is satisfied that there is no risk of damage by excessive soil erosion.

Exhibits.
D 10
Land
General
Orders
—continued.

If, however, such portions of a large block—

- 10 (i.) exceed 2 acres in extent ; or
(ii.) contain any springs ; or
(iii.) are situated within two chains of a stream,

they may be alienated with the large block at the discretion of the Government Agent, but only on an express condition that they shall either be maintained in forest or be afforested to the satisfaction of the Government Agent.

If the Forest Department has recommended that no such land, or portion or portions thereof, should be alienated, and the Government Agent or Assistant Government Agent disagrees with such recommendation, the alienation, conditional or otherwise, shall not take place, except
20 after obtaining the orders of the Governor, through the Commissioner of Lands, on the matter.

(c) Land which may not be alienated under paragraphs (a) and (b) above, and land of any elevation whatsoever which should not be alienated in the opinion of a competent authority by reason of its situation on the crest or side of a hill, or at or around the source of a stream, or on the bank of a stream, or for any other cause whatever, shall be permanently reserved and marked in the plans and maps "Not to be sold or leased", with a statement of the reason for the decision and a reference to the papers in which it was arrived at. The Government Agent shall forthwith notify
30 such reservation to the Surveyor-General.

7. When any block or lot of land has been reserved as above, such block or lot shall not be brought forward for sale or lease at any future time, unless the conditions under which it was reserved have ceased to exist. The sanction of the Commissioner of Lands must in all cases be obtained.

8. Reservations on rivers or streams should be carefully demarcated and preserved, more especially when there is dependent paddy cultivation below. Land abutting on paddy fields in hilly country should not usually be sold or leased. Suitable reservations should be made round villages to
40 meet the wants of the inhabitants in forest produce, grazing, and so forth.

9. When land exposed for sale or lease at upset price has any standing timber or other forest produce upon it, it shall be optional for the Government on its own behalf to fell or remove it, or to sell all or part of such standing timber and produce to the purchaser,

Exhibits.
 D 10
 Land
 General
 Orders
 —continued.

10. Government Agents and officers of the Survey Department are enjoined, when dealing with applications, to be on their guard against attempts on the part of applicants to select the best of the land in separate blocks, or to obtain allotments in such positions as to detract from the value of neighbouring unsold or unleased land, and by rendering the latter inaccessible in the future to other applicants to obtain command of the market. To prevent deterioration of Crown property, frontage to routes of communication (roads, rivers, &c.) should be evenly distributed, means of access to all lots provided by suitable road reservations, and the land blocked out as the configuration of the ground, and not as the desire of 10 the applicant, dictates.

Isolated lots in the midst of Crown lands should not be advertised for sale or lease except under special circumstances, which should be specified by the Government Agent on the application form for the information of officers of the Survey Department.

11. Forests and woodland being of vital importance to the interests of the community, whether for the supply of material wants, for grazing, for assuring the water supply, for maintaining the balance of bird and insect life, or for preserving the beauty of the landscape, the Surveyor-General and Government Agents are held responsible that in bringing 20 forward lands for sale or lease due attention is paid to these important considerations.

12. No Crown land other than lands of small extent leased annually by the Revenue Officers, and such other lands regarding which special instructions shall have been given by Government, shall be sold or leased until it has been demarcated by landmarks by the Survey Department.

Applications to Purchase or Lease

13. Every application to acquire land by purchase or lease must be made in writing in the form prescribed or to a similar effect.* An application need not be tendered in person, but must be signed by the applicant 30 or applicants in full, or by his or their agent. Marks must be witnessed. A deposit, calculated at the rate of Rs. 3 per acre or portion of an acre, shall be made by the applicant with the Government Agent.

The deposit will not be returned until the land is finally sold or leased, or where occupation is allowed before the purchase amount or the rent becomes payable, until payment has been made of the full purchase amount or of the full premium, if any, and the rent for one year.

Provided, however, that if the Government fix the upset price of the land in the case of sale or lease at a higher rate per acre than the minimum upset price per acre in accordance with regulation 22 below, or order the 40 land for any reason to be reserved, or if the survey is not commenced within a period of one year after the receipt of the deposit, the deposit shall be returned to the depositor on his application.

* This form is under revision, and is therefore not printed in this Appendix as was done in former Editions of G. OO.

14. The Government Agent by whom an application is received shall see that it is duly numbered (the numbers being in consecutive order, commencing each year at No. 1), that the acknowledgment of its receipt is filled in and signed, and that the particulars required have been duly supplied.

Exhibits.
D 10
Land
General
Orders
—continued

The Government Agent shall, on receipt of the deposit required in regulation 13 above, cause the application to be reported on by the Chief Headman, and, if necessary, by the Forest Officer and by the Divisional Irrigation Engineer, in accordance with General Orders 691 and 699. The report of the Forest Officer must contain the particulars set out in Schedule A.

If the land applied for has already been surveyed by Government, and landmarked, and no fresh survey of it is necessary, the Government Agent shall in due course proceed to advertise it for sale or lease in manner hereinafter prescribed, if he sees no objection thereto.

15. Neither the lodging of an application nor the incurring of expense shall give the applicant any claim to the purchase or lease of the land applied for, and no right shall accrue to him until he shall have paid the whole price and all charges in respect of the sale or lease.

20 16. A register of applications shall be kept by the Government Agent, in which all the requisite particulars shall be entered when an application is received.

17. The applicant shall, if possible, definitely point out on the Government Agent's office map the position of the land applied for, and the Government Agent, when exhibiting the map, shall invariably draw the applicant's attention to the cardinal points. The applicant shall also initial all alterations or erasures made in the application.

18. A sketch based on the Government Agent's map shall, whenever possible, be furnished by the Government Agent.

30 19. The Government Agent, after receipt of the Chief Headman's report, and the Forest Officer's report (where it is required by G. O. 699), and the Divisional Irrigation Engineer's report (where it is required by G. O. 691), and after making such investigations as he may consider necessary into any claim disclosed in the Chief Headman's report, or otherwise brought to his notice by the claimant, shall decide whether the application shall be forwarded to the Surveyor-General or not.

40 20. Every application approved of by the Government Agent shall, when the Government Agent has satisfied himself that all requisite particulars are entered in it, including the sketch referred to in regulation 18 above, and that the applicant has made the deposit required by regulation 13, be forwarded to the Surveyor-General, together with the Chief Headman's report, Forest Officer's and Director of Irrigation's report, if any.

Applications for the survey of land situated in areas which have been closed in accordance with the survey closure system shall, however, be retained in the hands of the Government Agent until the area is re-opened (*vide* G. O. 693 (iii.)).

Exhibits.
 D 10
 Land
 General
 Orders
 —continued.

21. The land (if not already surveyed and demarcated) shall then be surveyed and demarcated at the earliest possible date, and a plan, with all particulars and descriptions necessary for insertion in the grant or lease, shall be furnished by the Surveyor-General to the Government Agent.

Sales and Leases

22. (a) Subject to the provisions for special sales hereinafter mentioned, lands shall be sold outright by public auction at an upset price which shall not be less than Rs. 20 per acre (including the consolidated fees for survey, &c.) except where the Commissioner of Lands is satisfied that the average value of the land is less than Rs. 20 an acre, owing to 10 the presence of rock, swamp, or some other cause; provided, moreover, that the Government Agent may, at his discretion, reduce the minimum upset price of land to Rs. 16 an acre (including the consolidated fees for survey, &c.) in the case of any land in outlying or undeveloped districts.

(b) The lease of lands shall also be sold by public auction, subject to the provisions for special leases hereinafter mentioned, at such upset premium as may be fixed by the Government Agent in pursuance of general or special instructions issued from time to time by the Governor. In the absence of any such instructions the upset premium shall be 6 per centum of the appraised value of the land, the minimum value at which the land 20 may be appraised being governed by the provisions of sub-section (a) above (*vide* G. O. 716A).

23. The Government Agents will make arrangements for bringing forward for sale or lease suitable blocks of land, which have been surveyed and demarcated, in such district or districts as the Government Agents may deem expedient.

In the case of any block of land or lands exceeding 50 acres in extent action should be taken as indicated in General Order 725.

24. Sales of land and of leases of land will be held from time to time at such place and on such date as the Government may by notification in 80 the *Government Gazette* appoint.

The advertisement of sales must appear in the *Government Gazette* at least six weeks before sale, except in the case of advertisements of sales of lands or of leases of lands over 250 acres in extent, which must appear at least three months before sale.

Care should be taken to prevent the days of important sales in the several Provinces from clashing with each other.

25. Lands for sale or lease shall be advertised in the *Gazette*, and advertisements may be inserted by the Surveyor-General in the local, Indian, or other papers, under such limitations as the Government may 40 from time to time appoint. The names of applicants for land over 50 acres in extent shall not be inserted in the advertisement.

26. (a) On the day and hour fixed by notice for the sale or sale of the lease of the land the proceedings are to be commenced by the Government Agent causing to be read aloud the articles and conditions of sale or lease. In holding the sale the presiding officer shall have full discretion to depart from the order in which the lots appear in the advertisement of sale or sale of lease, if such a course appears to him to be desirable

Exhibits.
D 10
Land
General
Orders
—continued.

(b) No land shall be put up for sale or lease at a lower price than the advertised upset price, nor on any condition other than those advertised.

Correction Slip No. 406.

10

Appendix K to the General Orders.

Add the following to Regulation 26 (b) :—

Provided that, in the case of settlements of occupied land and of preferential sales under regulation No. 37, the Government Agent or other officer holding the sale may, at his discretion, put the land up for sale at an upset price of not less than two-thirds of the advertised upset price.

By order,

Chief Secretary's Office,
Colombo, November 3, 1933.

W. E. WAIT,
Acting Chief Secretary.

27. Reasonable time is to be allowed for persons to make bids, and the Government Agent is to abstain from any attempt to induce offers or to stimulate the sale of any lot, otherwise than by replying to questions put with such information as can be afforded as to the position, extent, character, &c., of the land.

28. When the bidding for each lot has ceased, the lot, name and address of every purchaser, together with the price bid, are to be audibly declared by the Government Agent, when, if no question arises, all the names in full and the addresses are to be legibly entered in the sale list, and every purchaser or his agent shall be required to sign the conditions of sale and declare if the purchaser or any co-purchaser is a minor. Should he be unable to write, his marks are to be witnessed by some person present. Where no bid is made, the words "No bid" should be noted opposite the particulars of the lots in the sale list.

29. Except in cases of purchase by instalments hereinafter provided for 10 per cent. of the purchase amount of the sale or of the lease premium shall be paid on the day of sale; and should such payment not be made after the Government Agent has made a formal demand, the lot is to be again offered to competition in the same manner as in the original instance, except that the bid of the person so refusing to make such payment shall not be accepted for the lot in question. The balance of the purchase money shall be paid within one month from the day of sale, and in default of such payment the sale shall be considered void, the 10 per cent. and

Exhibits.
 D 10
 Land
 General
 Orders
 —continued.

the preliminary deposit made by the purchaser, if any, shall be forfeited, and the Government shall be at liberty to re-sell the land or the lease of the land in the same manner as in the original instance. At such re-sale no bid shall be accepted from, or on behalf of, the person who has failed to pay the balance of the purchase money in the manner hereinbefore required.

30. On payment of the 10 per cent. of the purchase amount as prescribed in the preceding rule the Government Agent shall give a receipt, and at the same time explain to the purchaser that the balance of the purchase amount must be paid within one month from the day of sale, 10 and that if this is not done the 10 per cent. and the preliminary deposit made by him, if any, already paid will be forfeited to the Crown, and the sale will be void and of no effect.

31. On the receipt of the purchase money in full the purchaser shall be entitled to be put in possession of the land. Provided that in the case of a lease the purchaser shall first sign a memorandum or an entry in a register embodying or referring to the conditions of the lease. Every lessee so signing shall be entitled as soon as practicable, pending the execution of a formal lease, to a certificate describing the land leased and summarizing or referring to the conditions of the lease. 20

32. The Government Agent will, in accordance with the standing instructions on the subject, apply to the Commissioner of Lands for a grant or lease, to which a title plan or lease plan prepared by the Surveyor-General shall be annexed. The grants will be made out in triplicate, and leases in quadruplicate. The original grant or lease, prepared as prescribed in regulation 2, will be delivered to the purchaser, the duplicate, with plan, will be lodged in the office of the Registrar of Lands, and the third copy, without plan, will be filed at the office of the Commissioner of Lands. In the cases of leases the fourth copy, with plan, will be filed at the Kachcheri.

Provided that if at any time after the sale or lease of the said land, 30 and before the issue of a grant or lease therefor, it appears to the Government Agent that the putting up of the said land for sale or lease was due to some mistake or oversight, but for which the same would not have been offered or put up for sale, or that there is pressing need for the retention of the said land by the Crown, the Government Agent may declare the said sale to be cancelled, and thereupon the purchaser shall be entitled to a refund of any deposit made by him, but to no compensation or other relief whatsoever.

33. As inconvenience may arise from the imperfect manner in which the names of purchasers are sometimes given and spelt, particular attention 40 is to be given to this matter by questioning the purchasers as to their exact names, and having them legibly written down in full in the sale list.

34. In the event of a purchase by a firm, all the names in full and the address of each member of such firm, together with the style of the firm, are to be stated.

In the event of a purchase by a corporation, the full name of the corporation, together with its registered address, and whether it was registered under the English or Ceylon Joint Stock Companies Ordinance or under any special act of corporation, is to be stated.

Exhibits.
D 10
Land
General
Orders
—continued.

Preferential Sales.

35. When in the opinion of the Government Agent a block of land, not exceeding either 50 acres or such area as the Commissioner of Lands may in special cases prescribe, is surrounded or almost entirely surrounded by the cultivated area of land belonging to one or more estates, and the configuration of the ground is such that it can be brought conveniently under cultivation only by such estate or estates, the Government Agent may sell such block of land to the owner of the estate at such price as the Government may fix in each case, or if there should be more than one estate, the Government Agent may put up such block to auction at such upset price as Government may determine, the bidding to be restricted to the owners of the said estates or their representatives. If any question arises as to whether any land surrounds or almost entirely surrounds such block, or whether any such land is an estate within the meaning of this regulation, the question shall be referred to the Commissioner of Lands.

20 In all such cases the provisions of regulation 29 as to payment shall apply, the "day of sale" in the case of sale to a single estate being taken as seven days from the date when the decision to sell is notified by the Government Agent to the owner of the estate or to this representative.

36. In the case of applications to purchase lands which are suitable for paddy cultivation or for residing gardens, *i.e.*, for the building of a house and cultivation of the surrounding area with coconuts, plantains, or similar village products, the Government Agent may sell such lands by public auction, in the manner hereinbefore provided, and may by the conditions of sale prescribe that the purchase money shall be payable by annual instalments extending over a period not exceeding ten years. The instalments shall be paid annually in advance, the first payment being made on the day of sale, and default in any of the payments shall render the sale liable to be declared void. The Government Agent may at his discretion restrict the bidding to persons already resident in the village or hamlet in which the land is situated.

37. The Government Agent may also sell, under the same conditions, but without competition, any such land to selected applicants who permanently reside in the village where the land is situated and do not own an extent of land sufficient to provide for the support of themselves and their families. In such case the purchase amount of the land shall be fixed by the Government Agent, subject to any general or special instructions issued by the Governor in that behalf.

38. In either of the above cases a grant shall be issued to the purchaser as soon as he completes the payment of his instalments of purchase money.

Exhibits.
 D 10
 Land
 General
 Orders
 —continued.

Note.—If there is any risk that the villagers who apply for preferential purchases of Crown lands will mortgage such lands for the repayment of their debts or borrowed capital, or that they will sell them to others at an enhanced price, Government Agents and Assistant Government Agents should grant preferential leases of them with strict conditions as to cultivation or occupation and with options of purchase only after a sufficient term of years, rather than sell them outright without competition. Or, as an alternative, Government Agents and Assistant Government Agents may dispose of such lands in accordance with general or special instructions laid down by Government for the encouragement of food production 10 locally and with a view to increasing the food supply of the Island.

Preferential Leases.

39. When a block of land, not exceeding either 50 acres or such area as the Commissioner of Lands may in special cases prescribe, is available for lease and is surrounded or almost entirely surrounded by the cultivated area of land leased from Government by one or more estates, and the configuration of the ground is such that it can be brought conveniently under cultivation only by such estate or estates, the Government Agent may sell the lease of the block to the estate or put it up to auction in the manner prescribed by regulation 35, and the provisions of that regulation 20 shall, so far as they are applicable, apply to leases sold under this regulation.

Leases of Lands for Agricultural Purposes.

40. When an application for lease of land over 50 acres in extent for agricultural purposes has been received, the Government Agent, as soon as he has decided after the survey of the land that there is no objection to the sale of the lease, shall publish a notice in the *Gazette* and in such newspapers, if any, as he considers desirable giving full particulars of the land to be leased, and shall in the notice fix a date by which he will receive and entertain other written applications for the lease of the said land. The names of the applicant or applicants shall not be inserted in the 30 notice. No such application shall be entertained unless the applicant gives his full name and address, and until he makes with the Government Agent a deposit calculated at the rate mentioned in regulation 13.

41. The sale of leases of land over 50 acres in extent for agricultural purposes shall take place in accordance with regulations 22 to 34, but the bidding shall be confined to the original applicant and those other applicants whose applications have been made in accordance with regulation 40.

Note.—The fact that some of the lots as surveyed in the plan are less than 50 acres in extent will not be a bar to the operation of regulations 40, 41 and 42, provided that they aggregate collectively over 50 acres in extent. 40

42. In the event of no applications, other than that of the original applicant, having been made as provided in regulation 40, the Government Agent may sell the lease to the original applicant at such premium as the Commissioner of Lands may approve.

43. Leases of land for agricultural purposes shall be for such prolonged period, not being less than thirty nor more than ninety-nine years, as may be agreed upon.

44. The rent shall be revised at every interval of thirty years, counting from the date of commencement of the lease, provided that in no case shall the rent be increased at any revision by more than 50 per cent. of the rent payable during the previous thirty years.

45. The annual rent for the first thirty years shall, as a general rule, be approximately 6 per cent. of the value of the land as appraised by the Government Agent, but it shall be open to the Government to fix a higher or lower rate of rent for that period. In all cases the rent to be charged for the first period of thirty years shall be distinctly stated in the advertisement of sale of the lease published under regulation 25.

46. For the first six years of the lease only one-third of the rent fixed under the provisions of regulation 45 shall be paid, the full rent being payable only in respect of the seventh and subsequent years.

47. The lessee shall be bound to plant the land with products specified in the lease and notified in the advertisement under regulation 25, or subsequently approved by the Government Agent, to the extent of one-tenth of the total area of the land leased in each of the first five years, and of a further one-fourth of the total area during the following five years.

48. In the event of the lessee failing from any cause to plant the land in terms of regulation 47, he shall be liable to pay to Government double the original rent fixed under regulation 45, or double the revised rent fixed under regulation 44, for the whole area of the land not already planted.

49. All rents shall be payable annually in advance, the first payment becoming due on the date of commencement of the lease, and subsequent payments at intervals of one year from that date.

50. Any rent that remains unpaid for more than one month from the date when it is payable shall be paid with interest at 9 per cent. per annum from the date when it is payable.

51. If any rent remains unpaid for a period of more than one year from the date when it is payable, it shall be competent to the Government Agent to declare the lease forfeited, and to re-sell it in accordance with the provisions of the preceding regulations.

52. In any case of default under regulation 47, it shall be competent for the lessee to elect to surrender the land to Government, if he prefers to do so, instead of paying the double rent provided by regulation 48. In such a case Government will consider on its merits an application for a new lease of the cultivated portion.

53. If the Government desire to resume for any public purpose any portion of land included in a lease for agricultural purposes, the compensation to be paid shall be a sum which shall bear the same proportion to the premium bid at the sale of the lease as the extent of the portion to

Exhibits.
 D 10
 Land
 General
 Orders
 —continued.

be acquired bears to the total extent of the land leased, together with, in the case of cultivated land only, 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. This latter sum shall, if the Government Agent and the lessee are unable to agree on its amount, be determined by two arbitrators to be nominated respectively by the Government Agent and the lessee, and, if they differ between themselves, by an umpire to be chosen by them before they proceed to determine the amount.

A proportionate reduction will also be made in the rent which will be 10 recovered after such resumption has taken place.

Note.—In the case of agricultural leases granted on special easy terms the covenant regarding the compensation payable on resumption of any portion of the premises will be subject to modification.

54. The lessee shall not erect on the leased land any buildings other than those which may be necessary for the proper cultivation of the land, such as factories, superintendent's bungalows, hospitals, dispensaries cooly lines, &c.

55. Should the lessee desire to construct buildings for purposes unconnected with the working of the estate on the land leased, he must 20 surrender the portion required for such purposes to Government, and take a new lease on such terms, suitable to land intended for building purposes, as may be agreed on between himself and the Government.

56. All transfers or assignments of the lease or of any interest therein shall be invalid unless made with the previous consent of the Government, and all such transfers or assignments to take effect upon the death of a lessee, and all forced sales of the lease or any interest therein, shall be subject to the consent of Government, but this consent will not be withheld except in order to prevent the subdivision of the land leased into portions too small, in the opinion of Government, to be of economic value, 30 or to prevent the transfer to assignees whom the Government may consider to be objectionable on grounds of public policy.

The Commissioner of Lands is authorized on behalf of the Government to grant the consent referred to in this regulation.

Leases of Town Lots.

57. Town lots suitable for building purposes shall be leased, unless the Commissioner of Lands in special cases allows a sale. These leases will be put up for public sale under such conditions as to rent, premium, term, and conditions as may in each case be prescribed by the Government Agent, with the approval of the Commissioner of Lands. 40

Special Grants or Leases.

Exhibits.

D 10

Land
General
Orders

—continued.

58. Any application for purchase or lease of land on exceptional terms shall be dealt with by the Governor, and the land applied for may be sold or leased in such manner as the Governor may determine, provided that no separate single area of land beyond 1,000 acres in extent, or over the value of Rs. 30,000, shall be so sold or leased without the sanction of the Secretary of State, and provided that in any case in which land is granted on exceptional terms for a specific object the deed of grant or lease shall contain a provision that the land shall be forfeited to and vest
10 in the Crown if at any time such land or any building thereon be applied, without the written consent of the Governor, to other purposes than those specified in the grant or lease, or if within reasonable time the necessary steps have not been taken to apply the land to the purpose for which it was granted or leased.

59. Every application for a grant or a lease to be made under regulation 58 shall, if the Government decide upon entertaining it, be published in the *Government Gazette*, and the purpose for which the land is required, as well as the grounds on which it is proposed to treat the case exception-
20 ally, shall be clearly notified in such publication. No grant or lease shall be made under regulation 58 until after the expiration of six weeks from the date of publication of the application.

60. Application may be made to Government for the issue of Crown Grants without money consideration in the following cases :—

- (a) For lands for dwellings for villagers in exchange for lands from which it is considered desirable to remove them owing to their unhealthy location ;
- (b) For lands in exchange for lands which have become submerged by the restoration or improvement of a Crown tank ;
- (c) For lands in consideration of earthwork performed in the restora-
30 tion of a Crown tank under a permit issued in accordance with the General Orders.

Exception.

61. These regulations shall not affect the disposal of lands under Sir Henry Ward's Minute of February 27, 1857.

SCHEDULE A.

Report on Valuation of Timber on Land to be Sold or Leased.

1. Name of land (also number of lot and of preliminary plan, if any) :
_____.

Exhibits.
 D 10
 Land
 General
 Orders
 —continued.

2. (a) Area : ———.
 - (b) Situation : ———.
 - (c) Altitude : ———.
 - (d) Slope (*vide* G. O. 699 and Land Sale and Lease Regulation 6) :
 ———.
 - (e) Proximity to existing estate : ———.
 - (f) Drainage of watershed : ———.
 - (g) Extent of forest reserves in the neighbourhood : ———.
 - (h) Existence of minerals or gems : ———.
 3. Whether it is, or forms part of, a reserved forest under section 5 of 10
 Ordinance No. 16 of 1907 : ———.
 4. Whether it is, or forms part of, a forest proposed to be reserved under
 section 5 of Ordinance No. 16 of 1907 : ———.
 5. Whether it is specially valuable for grazing or fuel requirements :
 ———.
 6. (a) Has the whole of the land applied for a slope of 45° or over?
 Or does it contain any portion or portions having such slope? ———.
 - (b) Do you recommend that the whole land, or any portion or por-
 tions of it, should not be alienated ? ———.
- N.B.*—If alienation is not recommended by the Forest Department, 20
 and the Government Agent or Assistant Government Agent disagrees with
 such recommendation, the matter should be referred to the Commissioner
 of Lands for decision, before an application for survey is sent to the
 Surveyor-General.
7. Does land adjoin streams, rivers, or roads, and what reservation
 should be maintained, if any ? ———.
 8. Does land consist of chena of over or under twenty years' growth ?
 ———.
 9. Can village requirements be adequately met from suitable areas in
 the vicinity ? ———. 30
 10. Would sale or lease involve depreciation of neighbouring Crown lands
 which are neither sold or leased ? ———.
 11. Are frontages to routes of communication secured ? ———.
 12. Market value of timber *in situ*, with details showing how assessment
 was arrived at : ———.
 13. Accessibility of timber or fuel to market : ———.
 14. Could Government profitably remove timber before sale or lease ?
 If so, in what time ? ———.
 15. Profit, if any, of timber or fuel likely to accrue to applicant : ———.
 16. Name of officer who assessed value of timber : ———. 40
 17. Date of receipt of application by valuing officer : ———.
 18. Date of report of valuing officer : ———.

19. Reasons for delay, if any : _____.
20. Date of receipt of valuation report by Conservator of Forests or Assistant Conservator of Forests : _____.
21. Reduction made by Conservator of Forests : _____.
22. Reduction recommended to Government : _____.
23. Date of forwarding valuation to Government Agent : _____.
24. Recommendation (if for reservation, full reasons should be stated) : _____.

Exhibits.

 D 10
 Land
 General
 Orders
 —continued.

Conditions of Outright Sale.

10 Conditions on which the hereinafter-mentioned land belonging to the Crown, that is to say, an allotment of Crown land, lot No. _____, in _____ plan No. _____, called _____, situated at _____ in _____, containing in extent acres _____, is put up for sale by public auction on _____, 19_____.

1. The said land shall be sold to the highest bidder, provided that the sum offered by him shall at the least amount to the upset price of rupees _____ per acre.

2. (a) No such bidding shall be finally accepted unless the person making the same shall, on being declared the highest bidder, immediately
 20 pay to the _____ a deposit of 10 per cent. on the purchase amount of the said land, whether he has made a previous deposit or not, and also unless the said person shall, on being declared the highest bidder as aforesaid, sign these Conditions of Sale.

Should such person fail either to pay the said sum of money or to sign these conditions, his bid shall be cancelled, any deposit made by him shall be forfeited, and the _____ shall be at liberty to re-sell the land in the same manner as in the original instance ; provided that no bid shall be accepted from the defaulting bidder.

(b) The officer conducting the sale may, before accepting any bid at
 30 the sale, satisfy himself as to the *bona fides* of the bidder and his ability to pay down the amount of deposit required, and in the event of his not being satisfied may refuse to accept such bid and shall continue the sale as if no such bid had been made.

The fact that the person offering the bid is in default in the payment of any sum due to the Crown may be held by such officer to denote an absence of *bona fides* on the part of such person which would justify him in refusing to accept his bid.

3. The purchaser shall pay to the _____ within one month from the day of sale the balance of the purchase money, and in failure thereof
 40 the purchase shall be considered void, and the deposit of 10 per cent. and the preliminary deposit, if any, shall be forfeited, and the _____ shall be at liberty to re-sell the land in the same manner as in the original instance ; provided that no bid shall be accepted from the defaulting bidder.

Exhibits.
 D 10
 Land
 General
 Orders
 — continued.

4. On payment to the _____ within the time specified of the purchase amount in full, the purchaser shall receive under the public seal of the Island a grant of the said land to be by him held in free and common soccage, yielding every year to His Majesty, His Heirs and Successors, a quit rent of a pepper-corn, **subject to the condition that the purchaser shall maintain in forest or afforest to the satisfaction of the Government Agent of the _____ Province in which the aforesaid allotment of land is situate such portion or portions as are indicated for maintenance in forest or for afforestation in the plan thereof,* and subject also to such regulations as now exist or which may hereafter be enacted relative to landed property in general 10 and also subject to the several rights of the Crown enumerated in the 12th clause of the minute of May 4, 1875, and subject also to the condition hereinafter mentioned : that is to say, the purchaser and his heirs, executors administrators and permitted assigns shall at their own expense keep the Crown landmarks which define the boundaries of the said land in good repair, and shall within three months from the date of the said grant cause the said boundaries to be defined in the following manner : that is to say, according to the limits laid down in the Crown survey, such boundaries to be 10 feet wide and cleared of all roots, trees, and brushwood, and, as far as possible, from all other impediments ; when the boundaries run along 20 open ground a small ditch, 1 foot in depth and 2 feet in width, is to be excavated, and such boundaries shall be further marked by occasional boundary pillars, posts, or stones at the principal angles of the land ; if in cultivated ground, by a fence, wall, paling, bank, or boundary posts ; and he or they shall maintain and preserve the boundaries so defined, and in failure of his or their defining the boundaries as aforesaid, or so maintaining and preserving them as aforesaid, the same shall be done by the Surveyor-General, and the costs and charges whereof shall be recoverable from the said purchaser, his heirs, executors, administrators, and permitted assigns.

30

5. On the purchaser having performed all the conditions in the preceding clause mentioned on his part to be done and performed in order to obtain a grant of the said land, he will be let into possession thereof. Provided that if at any time after the sale of the said land and before the issue of a grant therefor it appears to the _____ that the putting up for sale of the said land was due to some mistake or oversight, but for which the same would not have been offered or put up for sale, or that there is pressing need for the retention of the said land by the Crown, the _____ may declare the said sale cancelled, and thereupon the purchaser shall be entitled to a refund of any deposit made by him, but to no com- 40 pensation or other relief whatsoever.

6. Should it appear at any time before the execution and issue of the Crown grant that the actual extent of the said land is in excess of the extent given in these Conditions of Sale, the purchaser will be liable to pay the value of the excess extent at the same rate per acre as that at

* Retain or delete the italicized words in condition 4 according as there is necessity for their retention or deletion (*vide* Land Sale Regulation 6).

which he purchased the land. In the event of the extent of the said land being hereafter found to be less than the extent given in these Conditions of Sale, the purchaser will be entitled to claim a refund of a proportionate amount of the purchase price paid by him at the same rate per acre as that at which he purchased the land. Provided, however, that no recovery from, or refund to, the purchaser shall be made on account of the excessive or deficient extent unless the total sum involved exceeds Rs. 5, and provided also that he will not be entitled to claim any further amount as interest on the money paid by him or by way of compensation. In all 10 questions affecting the description and admeasurement of the land the decision of the Surveyor-General will be taken as final.

Exhibits.
D 10
Land
General
Orders
—continued.

7. The removal or disturbance of any Government trigonometrical station, or beacon, or boundary pillar, or marks will render the owner of the land in which such objects are situated liable to a fine for impeding the survey operations and all expenses incurred in re-fixing and restoring such objects.

8. All "antiquities" as defined in Ordinance No. 15 of 1900, section 2, sub-section (3), are expressly reserved from sale and reserved to the Crown.

20 9. This land is sold subject to the reservation to the Crown of all rights to mine for minerals, save with the express sanction in writing of the Governor for the time being, and subject to such payment and regulations as he may approve from time to time.

10. Should this land or any part of it be rendered irrigable by any irrigation work now constructed, in course of construction, or hereafter to be constructed, at the expense of the public revenue, it shall be liable to be made subject to an annual payment in perpetuity of such irrigation rate as may be lawfully imposed, which shall be variable by the Governor every five years.

30 I, _____, do hereby acknowledge to have this day purchased the above-mentioned land for the sum of rupees _____ on the conditions above specified, and hereby bind myself to perform the same.

Witnesses : _____.

_____,
Government Agent.

It is requested that the title deed may be drawn in favour of _____.

Conditions of Sale of Lease.

Conditions on which a lease of the hereinafter-mentioned land belonging to the Crown, that is to say, an allotment of Crown land, lot No. _____, in _____ plan No. _____, called _____, situated at _____ in

Exhibits. _____, containing in extent _____ acres _____ roods and _____
 D 10 perches, is put up for sale by public auction on the _____ day of _____,
 Land 19_____.
 General
 Orders

—continued.

1. *The bidding shall be confined to the original applicant for the lease and such other persons as have made applications for the same in accordance with the advertisement published in the *Government Gazette* dated the _____ day of _____, 19____.

2. (a) The lease shall be sold to the highest bidder, subject to the rents, covenants, and conditions set out in the form hereto annexed. Provided always that the sum offered shall at the least amount to the upset 10 premium of rupees _____ per acre.

(b) The officer conducting the sale may, before accepting any bid at the sale, satisfy himself as to the *bona fides* of the bidder and his ability to pay down the amount of deposit required, and in the event of his not being satisfied may refuse to accept such bid and shall continue the sale as if no such bid had been made.

The fact that the person offering the bid is in default in the payment of any sum due to the Crown may be held by such officer to denote an absence of *bona fides* on the part of such person which would justify him in refusing to accept his bid.

20

3. The person disclosed to be the highest bidder shall immediately on such declaration pay to the _____ a deposit of 10 per cent. of the purchase amount, whether he had made a previous deposit or not, and also sign these Conditions of Sale. Should such person fail either to pay the said sum of money or to sign these conditions his bid shall stand cancelled, any deposit made by him shall be forfeited, and the _____ shall be at liberty to re-sell the lease in the same manner as in the original instance ; provided that no bid shall be accepted from the defaulting bidder.

4. The purchaser shall pay to the _____, within one month from the day of sale, the balance of the purchase amount, and in failure thereof 30 the purchase shall be considered void, and the deposit of 10 per cent. and preliminary deposit, if any, shall be forfeited, and the _____ shall be at liberty to re-sell the lease in the same manner as in the original instance ; provided that no bid shall be accepted from the defaulting purchaser.

5. On payment to the _____ within the time specified of the purchase amount in full, the purchaser will be let into possession of the land and will receive an Indenture of Lease for the said land to be by him held subject to the rents, covenants, and conditions set out in these Conditions of Sale, and subject also to such regulations as now exist or which may hereafter be enacted relative to landed property in general, and also 40 subject to the several rights of the Crown enumerated in the 12th clause of the Minute of May 14, 1875, and subject further to the condition hereinafter mentioned : that is to say, the lessee and his heirs, executors, administrators, and permitted assigns shall at their own expense keep the

* Only for agricultural leases of over 50 acres in extent (*vide* Land Sale and Lease Regulation No. 40).

Crown landmarks which define the boundaries of the said land in good repair and shall within three months from the date of the said Indenture of Lease cause the boundaries of the said land to be defined in the following manner : that is to say, according to the limits laid down in the survey, such boundaries to be 10 feet wide and cleared of all roots, trees, and brushwood, and, as far as possible, from all other impediments ; when the boundaries run along open ground, a small ditch, 1 foot in depth and 2 feet in width, is to be excavated ; and such boundaries shall be further marked by occasional boundary pillars, posts, or stones at the principal angles of the land ; if in cultivated ground, by a fence, wall, paling, bank, or boundary posts ; and he and they shall maintain and preserve the boundaries so defined ; and in failure of his or their defining the boundaries as aforesaid or so maintaining or preserving them as aforesaid, the same shall be done by the Surveyor-General, and the costs and charges thereof shall be recoverable from the said purchaser, his heirs, executors, administrators, and permitted assigns.

Exhibits.
D 10
Land
General
Orders
—continued

6. If at any time after the sale of the lease, but before the issue of the Indenture of Lease, it appears to the ——— that the putting up for sale of the said lease was due to some mistake or oversight, but for which the same would not have been offered or put up for sale, or that there is pressing need for the retention of the said land by the Crown, the ——— may declare the said sale cancelled, and thereupon the purchaser shall be entitled to a refund of any deposit made by him, but to no compensation or any other relief whatsoever.

7. Should it appear at any time before the execution and issue of the said Indenture of Lease that the actual extent of the said land is in excess of the extent given in these Conditions of Sale, the purchaser will be liable to pay the value of the excess extent at the same rate per acre as that at which he purchased the lease. In the event of the extent of the said land being hereafter found to be less than the extent given in these Conditions of Sale, the purchaser will be entitled to claim a refund of a proportionate amount of the purchase price paid by him at the same rate per acre as that at which he purchased the lease. Provided, however, that no recovery from, or refund to, the purchaser shall be made on account of the excessive or deficient extent unless the total sum involved exceeds Rs. 5, and provided also that he will not be entitled to claim any further amount as interest on the money paid by him or by way of compensation. In all questions affecting the description and admeasurement of the land the decision of the Surveyor-General shall be taken as final.

8. *The purchaser will be required to maintain in forest or afforest to the satisfaction of the Government Agent of the ——— Province in which the aforesaid allotment of land is situate such portion or portions as are indicated for maintenance in forest or for afforestation in the plan thereof.

* Retain or delete this clause according as there is necessity for its retention or deletion (*vide* Land Sale and Lease Regulation 6).

Exhibits.
 D 10
 Land
 General
 Orders
 —continued.

9. Should the purchaser, or an attorney sufficiently authorised by him for the purpose, fail or neglect for any reason whatsoever to sign the Indenture of Lease within ten days of its being presented to him for signature, or of a notice in writing to present himself at a place and time to be specified therein to sign the said Indenture, the _____ Government Agent shall have the right to declare the sale cancelled, and to forfeit, as liquidated damages and not as a penalty, for failure to sign the Indenture of Lease, any sum of money which the purchaser may have paid, and the purchaser shall not be entitled to any refund of any sum so forfeited, nor to compensation for improvements or damages sustained, nor shall he 10 have a claim to any other relief whatsoever.

10. The removal or disturbance of any Government trigonometrical station, or beacon, or boundary pillar, or marks will render the lessee of the land in which such objects are situated liable to a fine for impeding the survey operations and all expenses incurred in refixing and restoring such objects.

11. All "antiquities," as defined in Ordinance No. 15 of 1900, section 2, sub-section (3), are expressly reserved to the Crown.

12. This lease is sold subject to the reservation to the Crown of all rights to mines and minerals in the said land. 20

13. Should this land be rendered irrigable by any irrigation work now constructed, in course of construction, or hereafter to be constructed, at the expense of the public revenue, and for which any payment may be levied by virtue of any Ordinance now in force or hereafter enacted, it shall be liable to payment of such irrigation rate per acre as may be lawfully imposed and as shall be variable by the Governor every five years.

14. The lease will be issued on Form G. A. _____.

I, _____, do hereby acknowledge to have this day purchased the above-mentioned lease for the sum of rupees _____ on the conditions above specified, and hereby bind myself to perform the same. 80

Witnesses :—

(1) _____,

Purchaser.

(2) _____.

It is requested that the lease indenture may be drawn in favour of _____.

Purchaser.

Note.—With a view to avoiding any misapprehension by prospective purchasers, the number of the relevant lease form containing the full 40 conditions of lease should be quoted in the *Gazette* notification.

D 8. Indenture of Lease.

D 8.

LEASE NO. 1048.

Exhibits.

D 8
Indenture of
Lease
7/16-11-39

THIS INDENTURE, made on the dates specified on page 5, between His Excellency Maxwell MacLagan Wedderburn, C.M.G., the Officer Administering the Government of the Island of Ceylon (hereinafter called "the Lessor", which expression shall include his successors in office for the time being) acting herein for and on behalf of His Majesty GEORGE VI by the Grace of God of Great Britain, Ireland and the British Dominions
10 beyond the Seas King, Defender of the Faith, Emperor of India, his Heirs and Successors, of the one part, and Henry Edmund Wijesuriya of 29, Mount Mary Road, Maradana, Colombo (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 rents hereinafter reserved and of the covenants on the lessee's part hereinafter contained, the lessor doth hereby let, lease and demise unto the lessee all the allotment of land described in the First Schedule hereto annexed (hereinafter referred to as "the demised premises") together with all rights, servitudes and appur-
20 tenances thereto belonging, subject however to the reservations in the Second Schedule hereto annexed.

TO HOLD the demised premises unto the lessee for the term mentioned in the Third Schedule hereto annexed yielding and paying the rent mentioned in the Fourth Schedule hereto annexed. And the lessee doth hereby covenant with the lessor as is expressed in the Fifth Schedule hereto annexed. And it is also agreed and declared by and between the said parties hereto as is expressed in the Sixth Schedule hereto annexed. And it is declared that the said Schedules shall be deemed part of these Presents and be read and construed accordingly.

80 IN WITNESS WHEREOF the parties hereto have set their hands to these Presents and to three others of the same tenor and date at the places and on the dates hereinafter mentioned.

The Schedules above referred to.

All that allotment of Crown land called Batuyaya in Ketakelegama Village, Soranatota Korale, Wiyaluwa Division, Badulla District, Province of Uva. Bounded as follows :—North by T. P. 319911 and an Estate path. East by T. Ps. 319911 and 319377 and reservation along the Kirindakandura. South by Kirindakandura and Angodakandura. West by Egodawelagama Village boundary and T. P. 319911. Containing in
40 extent Eighty-eight Acres and Fifteen Perches (88A. 0R. 15P.) and more particularly delineated and described in Lease Plan No. 3669, dated the 17th day of July, 1929, authenticated by A. H. G. Dawson, Esquire, Surveyor-General.

Exhibits.

Second Schedule—Reservations.

D 8
 Indenture of
 Lease
 7/16-11-39
 —continued.

1. The title to all minerals (which expression shall in this lease include precious stones) in or upon the demised premises, and the right to dig for, search for, work, and carry away any such minerals, are reserved to the Crown.

2. The lessee's rights to the demised premises are subject to any right of way or other servitude existing over the demised premises at the date of this lease.

Third Schedule—The Duration of the Lease.

The lessee shall hold the demised premises for a term of five years 10 commencing from the 1st day of January, 1939, subject to the termination of these Presents in the manner hereinafter provided, or, by one year's notice by either party.

Fourth Schedule—The Rent.

The rent for the entire term of the lease shall be Rupees Seven thousand Eight hundred and fifty (Rs. 7,850). The lessee shall pay this amount in five equal annual instalments to the Government Agent of the Uva Province at the Badulla Kachcheri, as follows :—

1st instalment Rupees one thousand five hundred and seventy (Rs. 1,570) on or before 31st January, 1939. 20

2nd instalment Rupees one thousand five hundred and seventy (Rs. 1,570) on or before 31st January, 1940.

3rd instalment Rupees one thousand five hundred and seventy (Rs. 1,570) on or before 31st January, 1941.

4th instalment Rupees one thousand five hundred and seventy (Rs. 1,570) on or before 31st January, 1942.

5th instalment Rupees one thousand five hundred and seventy (Rs. 1,570) on or before 31st January, 1943.

Fifth Schedule—Covenants.

1. The lessee shall pay the reserved rent on the days and in the 30 manner aforesaid.

2. The lessee shall pay all existing and future rates and taxes whatsoever in respect of the demised premises.

3. The lessee may take the produce of the rubber trees standing upon the demised premises at the date hereof, but shall not make any fresh plantations upon the said premises except with the permission of the Government Agent of the Uva Province (hereinafter referred to as "the Government Agent") previously obtained in writing.

4. The lessee shall not erect upon the demised premises any buildings, except with the permission of the Government Agent previously obtained in writing.

5. The lessee shall not fell or in any way damage, or allow to be felled or in any way damage any trees growing on the demised premises except with the permission of the Government Agent previously obtained in writing.

6. If the Government Agent considers that any works are necessary upon the demised premises in order to prevent surface erosion of the soil, the lessee shall at his own expense carry out such works to the satisfaction of the Government Agent.

7. The lessee shall maintain the rubber plantations on the demised premises to the satisfaction of the Government Agent.

8. The lessee shall keep the demised premises clean and in good condition to the satisfaction of the Government Agent.

9. The lessee shall not sell or dispose of any earth, cabook, clay, gravel or sand from the demised premises.

10. The lessee shall not dig for, search for, work and carry away minerals in or from the demised premises.

11. The lessee shall during the term of this lease keep the Crown landmarks which define the boundaries of the demised premises in good repair. He shall also keep the boundary line of the demised premises clearly defined to the satisfaction of the Government Agent.

12. 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 demised premises for the purpose of inspecting the condition thereof.

13. At the expiration or sooner determination of the said term the lessee shall yield up and surrender the demised premises to the lessor.

14. If the rent payable for any year is not paid in full on the date on which such rent falls due, the lessee shall pay interest at the rate of nine per centum per annum on any part of such rent that is then outstanding until such part is paid in full.

15. The lessee shall not have or make any claim for compensation against the lessor or His Majesty the KING, his Heirs and Successors, for or on account of any alleged expenses or on any account whatsoever, at any time.

Sixth Schedule—General Provisions.

1. If the demised premises or the interests of the lessee under this lease are seized or sold in execution of a decree against the lessee or if the lessee shall become bankrupt or compound with his creditors, then in any such case this lease shall forthwith terminate and the lessor may take possession of the demised premises and all improvements upon the demised premises without paying to the lessee or any other person any compensation whatsoever.

Exhibits.
D 8
Indenture of
Lease
7/16-11-39
—continued.

Exhibits.
D 8
Indenture of
Lease
7/16-11-89
—continued.

2. If the rent hereby reserved or any part thereof shall be in arrears and unpaid thirty days after it has become due (whether legally demanded or not) or if there shall be any breach or non-observance of the lessee's covenants herein contained, then and in any such case it shall be lawful for the lessor to cancel this lease by notice served upon the lessee and to enter upon the demised premises or any part thereof in the name of the whole, and to re-possess them without paying to the lessee any compensation or allowance in respect of improvements or on any other account whatsoever.

M. M. WEDDERBURN. 10

*Signature of His Excellency the Officer
Administering the Government.*

I certify that the above signature, attached by means of a stamp under the provisions of the Crown Grants (Authentication) Ordinance, has been so attached in my presence at Colombo, this Sixteenth day of November, One thousand Nine hundred and Thirty-nine.

J. W. H. O'REGAN,

*Private Secretary to the Officer
Administering the Government.* 20

By His Excellency's command,

A. ARULPIRAGASAM,

*(Countersigning Officer appointed under the
provisions of the Crown Grants (Authentication)
Ordinance.*

I certify in terms of Section 3 of the Crown Grants (Authentication) Ordinance that the above signature was attached by means of a stamp in my presence.

Sgd. C. NAGARATNAM,

*An Officer specially appointed by the
Countersigning Officer under Section 3 (3) of the
Crown Grants (Authentication) Ordinance.* 30

H. E. WIJESURIYA,

Signature of Lessee.

Witnesses to the signature of the lessee at Colombo this 7th day of November, One Thousand Nine hundred and Thirty-nine.

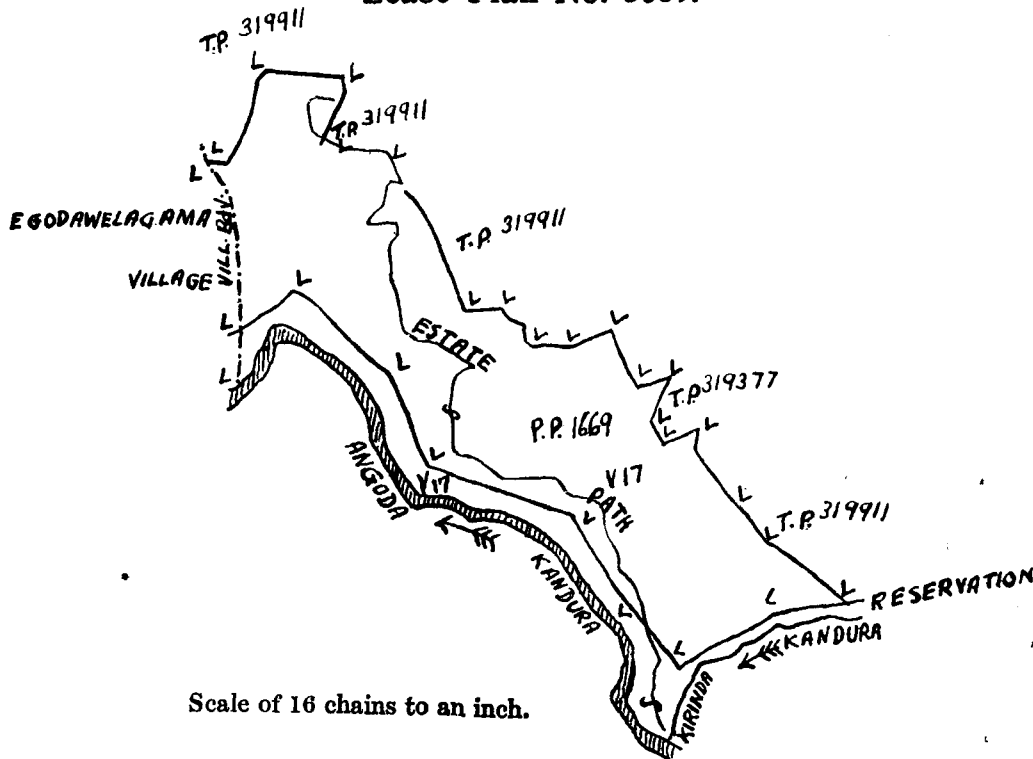
(1) Sgd.....

(2) Sgd.....

Lease Plan No. 3669.

Exhibits.

D 8
 Indenture of
 Lease
 7/16-11-89
 —continued.



Scale of 16 chains to an inch.

PLAN

of an allotment of land called Batuyaya in Ketakelegama Village,
 Soranatota Korale, Wiyaluwa Division, Badulla District,

PROVINCE OF UVA.

Bounded as follows :—

North by T. P. 319911 and an Estate path.

East by T. Ps. 319911 and 319377 and reservation along the Kirinda
 Kandura.

10 South by Kirinda Kandura and Angoda Kandura.

West by Egodawelagama Village boundary and T. P. 319911.

Containing in extent 88A. 0R. 15P., Acres Eighty-eight and Perches
 Fifteen.

Sgd. A. H. G. DAWSON,
Surveyor-General.

Surveyor-General's Office,
 Colombo, 17th July, 1929.

Applied for G. A's. 31/20-6-1929.

Exhibits.

D 9
 Indenture of
 Lease
 10-5-40

D 9. Indenture of Lease.

Lease No. 1058.

THIS INDENTURE, made on the dates specified on page 2, between His Excellency Sir Andrew Caldecott, K.C.M.G., C.B.E., Governor of Ceylon (hereinafter called "the Lessor", which expression shall include his successors in office for the time being), acting herein for and on behalf of His Majesty KING GEORGE VI., his Heirs and Successors, of the one part, and (1) Henry Edmund Wijesuriya, No. 39, Mount Mary Road, Maradana, and (2) Henry Wijesingha, Forest Bungalow, Kekirawa—10 (hereinafter called "the Lessees", which expression shall include their heirs, executors, administrators, and permitted assigns), of the other part.

WITNESSETH, that in consideration of the rents hereinafter reserved and of the Covenants on the part of the Lessees hereinafter contained, the Lessor doth hereby demise unto the Lessees in equal shares subject to such exceptions and reservations as are hereinafter contained all that allotment of Crown land called Ranawarawa in Randeniya Village, Wellawaya Korale, Wellawaya Division, in the District of Badulla, Uva Province, containing in extent Twenty-seven Acres Three Roods and Seven Perches (27A. 3R. 7P.), and more particularly described in the First Part 20 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 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, 30 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 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 thereafter 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 40 exercise of the right herein reserved; but provided that they shall be 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 the several exceptions and reservations. Provided further, and it is hereby expressly stipulated and agreed to by and between the parties that, should the land hereby demised be rendered irrigable by any irrigation work, now constructed, in course of construction, or hereafter to be constructed, at the expense of the public revenue the lessees and their aforewritten shall become liable to payment of such irrigation rate as may be lawfully imposed and as shall be variable by the Governor every five years.

Exhibits.
D 9
Indenture of
Lease
10-5-40
—continued.

10 TO HOLD the said premises unto the lessees in equal shares 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 lessees doth hereby covenant with the lessor as in the Fourth Part of the said Schedule is expressed. And the lessor doth hereby covenant with the lessees as in the Fifth Part of the said Schedule is expressed. And it is also agreed and declared by and between the said parties hereto as in the Sixth Part 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.

20

A. CALDECOTT,

Signature of His Excellency the Governor.

I certify that the above signature, attached by means of a stamp under the provisions Ordinance the Crown Grants (Authentication) in my presence at Nuwara Eliya, this Tenth day of May, One thousand Nine hundred and Forty.

J. W. H. O'REGAN,

Private Secretary to the Governor.

By His Excellency's command,

A. ARULPIRAGASAM,

30

*(Counter-signing Officer appointed under the Crown Grants (Authentication) Ordinance.***The Schedule above referred to.****PART I.—THE LAND DEMISED BY THE LEASE.**

All that allotment of Crown land called Ranawarawa in Randeniya Village, Wellawaya Korale, Wellawaya Division, Badulla District, Province of Uva. Bounded as follows:—North by Burutagoda of Ranawarawa and Burutagoda said to be Crown. East by Lot 1 in P. P. 1873 and Ranawarawa said to be Crown. South by a path and Ranawarawa said to be Crown. West by Ranawarawa said to be Crown and a stream.

Exhibits. containing in extent Twenty-seven Acres Three Roods and Seven Perches
 D 9 (27A. 3R. 7P.), and more particularly delineated and described in Lease
 Indenture of Plan No. 5648, dated the 16th day of August, 1934, authenticated by
 Lease G. K. Thornhill, Esquire, Surveyor-General.
 10-5-40
 —continued.

PART II.—DURATION OF LEASE.

The lessees shall hold the said Crown land for a period terminating on the 31st day of December, 1943, subject to the determination of these Presents in manner hereinafter provided or, by two months' notice by either party.

PART III.—THE RENT RESERVED BY THIS LEASE.

10

The rent payable for the entire term of this lease is Rupees Four thousand One hundred and Fifty (Rs. 4,150). The lessees having paid Rupees One thousand Six hundred and Sixty (Rs. 1,660) before the execution of these Presents, the balance shall be payable in three equal instalments on the following dates :—

January 31, 1941	...	(Rs. 830)
January 31, 1942	...	(Rs. 830)
January 31, 1943	...	(Rs. 830)

PART IV.—THE LESSEE'S COVENANTS.

1. The lessees and their aforewritten shall and will pay the said 20 annual rents at the rates and dates as hereinafter 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. (a) The lessees and their aforewritten may maintain the rubber trees growing upon the land at the date of the commencement of this lease, but shall not plant any fresh rubber in contravention of the provisions of any written law prohibiting or restricting planting of rubber.

(b) lessees and their aforewritten shall not without the written consent of the lessor or of the Government Agent of the Uva Province or otherwise than in accordance with the conditions of such consent, apply 30 the land to any other purpose than to the cultivation of rubber trees in conformity with the preceding clause. A certificate under the hand of the Government Agent that the said land has been used for any purpose other than that aforementioned, shall in all cases be final, conclusive and binding on all parties for the purpose of this lease.

3. The lessees and their aforewritten 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. Exhibits.

4. The lessees and their aforewritten shall not sublet, sell, donate, mortgage, or otherwise dispose of or deal with their interest in this lease, or any portion thereof, without the written consent of the lessor, or of the Land Commissioner 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 void. D 9
Indenture of
Lease
10-5-40
—continued.

5. The lessees and their aforewritten shall at their own expense keep 10 the Crown landmarks, which define the boundaries of the land hereby demised, in good repair and shall within three months from the date hereof cause the said boundaries to be defined in the following manner ; that is to say, according to the limits laid down in the Crown survey, such boundaries to be 10 feet wide and cleared of all roots, trees, and brushwood, and as far as possible, from all other impediments ; when the boundaries run along open ground a small ditch one foot in depth and two feet in width is to be excavated ; and such boundaries shall be further marked by occasional boundary pillars, posts, or stones at the principal angles of the land ; if in cultivated ground, by a fence, wall, paling, bank, or bound- 20 ary posts. And the lessees and their aforewritten shall maintain and preserve the boundaries so defined ; and, in failure of their or their aforewritten defining the boundaries aforesaid or so maintaining or preserving them as aforesaid, the same shall be done by the Surveyor-General and the costs and charges thereof shall be recoverable from the said lessees and their aforewritten.

6. The lessees and their aforewritten shall not remove or disturb any Government trigonometrical station, or beacon, or boundary pillar, or marks. Such disturbance or removal will render the lessees and their aforewritten liable to all expenses incurred in re-fixing and restoring such 30 objects.

7. The lessees and their aforewritten shall not have or make any claim for compensation against the lessor or our Sovereign Lord the King, his Heirs or Successors, for or on account of any alleged expenses or on any account whatsoever at any time.

8. The lessees shall whenever necessary take adequate measures to prevent silting of the adjoining land by means of silt traps, contour, drains or otherwise.

9. The lessees shall keep the land cleared of jungle growth and in good condition to the satisfaction of the Government Agent.

The lessees and their aforewritten paying the rent hereby reserved, and observing and performing all the covenants herein on their part contained, shall and may peaceably and quietly possess and enjoy the premises hereby demised without any interruption by the lessor or any person lawfully or equitably claiming from or under or in trust for him,

Exhibits.

PART VI.—GENERAL PROVISIONS.

D 9
 Indenture of
 Lease
 10-5-40
 —continued.

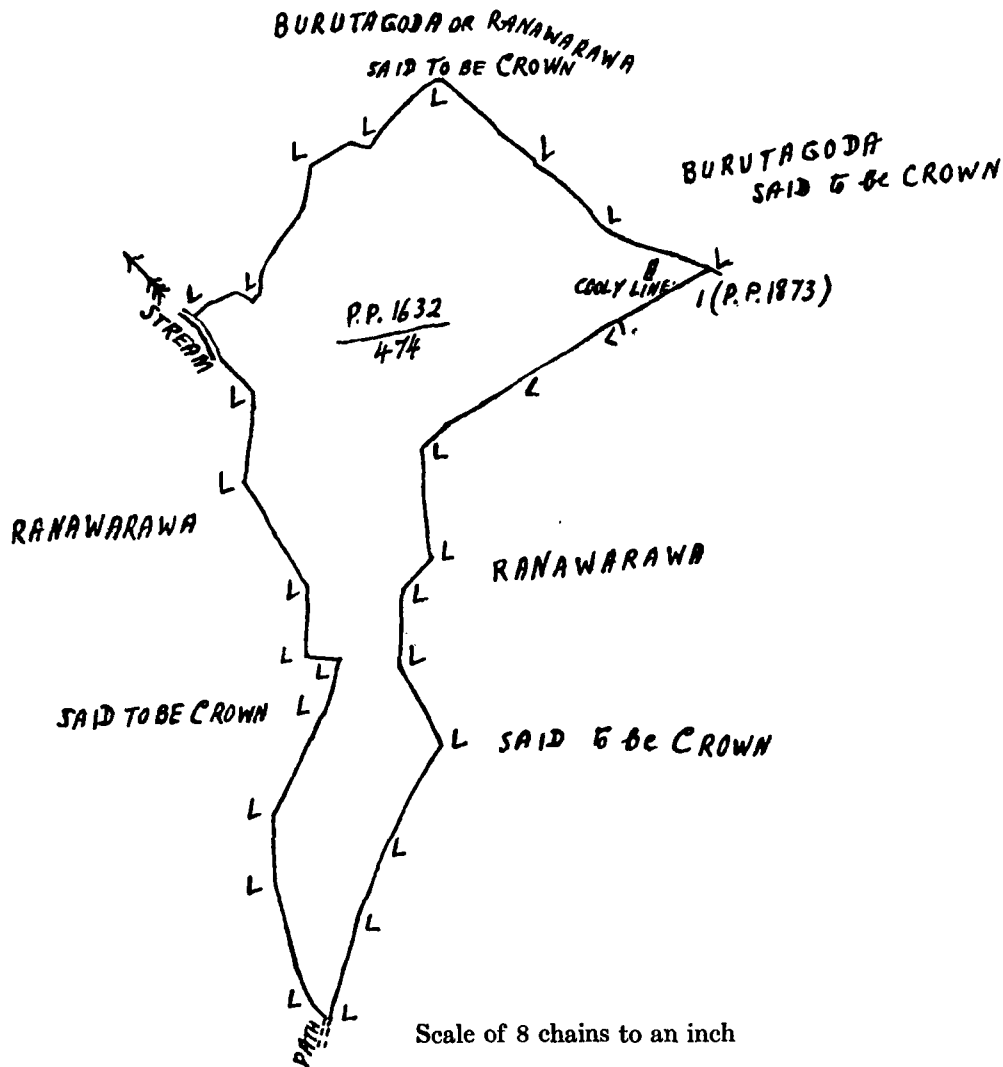
1. In the event of proceedings being taken under Ordinance No. 3 of 1876 for the acquisition of any portion of land included in this lease, it is specially agreed by and between the parties that the compensation to be paid shall be a sum which shall bear the same proportion to the premium paid at the 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 lessees and their afore-10 written. This latter sum, if the said Government Agent acting on behalf of the lessor and the lessees and their aforewritten are unable to agree on its amount, shall be determined by two arbitrators, to be nominated respectively by the Government Agent acting as aforesaid and the lessees and their aforewritten; 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 arrears for the space of three months, after the time hereby appointed for payment thereof, whether the same shall have been lawfully demanded or not, or if any breach shall be committed by the lessees and their afore-20 written of any of the Covenants herein on the lessee's part contained, or if the lessees and their aforewritten at any time shall abandon the said land or if the lessees and their aforewritten shall become bankrupt or compound with their creditors, or if the said land or the interests of the lessees and their aforewritten be sold in execution of a decree against them and their aforewritten, or, if the lessees and their aforewritten shall not at their own expense keep the Crown landmarks which define the boundaries of the land in good repair and shall not within three months from the date hereof cause the said boundaries to be defined in the following manner: that is to say, according to the limits laid down in the Crown 80 survey, such boundaries to be 10 feet wide and cleared of all roots, trees, and brushwood, and, as far as possible from all other impediments; when the boundaries run along open ground, a small ditch 1 foot in depth and 2 feet in width shall be excavated, and such boundaries shall be further marked by occasional boundary pillars, posts, or stones at the principal angles of the said land; if in cultivated ground by a fence, wall, paling, bank, or boundary posts; or shall not maintain or keep maintained the boundaries of the land in the manner aforesaid, 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 40 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 lessees and their aforewritten against the lessor for compensation on account of any improvements or otherwise howsoever.

Lease Plan No. 5648.

Exhibits.

D 9
Indenture of
Lease
10-5-40
—continued.



PLAN

of an allotment of land called Ranawarawa in Randeniya Village,
Wellawaya Korale, Wellawaya Division, Badulla District,
PROVINCE OF UVA.

Bounded as follows :—

- North by Burutagoda or Ranawarawa and Burutagoda said to be Crown.
 - East by Lot 1 in P. P. 1873 and Ranawarawa said to be Crown.
 - South by a path and Ranawarawa said to be Crown.
 - 10 West by Ranawarawa said to be Crown and a stream.
- Containing in extent 27A. 3R. 7P., Acres Twenty-seven, Roods Three and Perches Seven only.

Surveyor-General's Office,
Colombo, 16th August, 1934.
Applied for G. A's. 49/20-6-1934.

Sgd. G. K. THORNHILL,
Surveyor-General.

Exhibits.

P 1. Govt. Gazette.

P 1
Government
Gazette
28-1-42

Ceylon Government Gazette—January 23, 1942.

PART III.—(LANDS).

(Page 31)

Right to Tap Rubber Trees on Crown Lands.

The Government Agent, Province of Uva, will on Saturday, March 7, 1942, at 10 a.m. at his office in the Badulla Kachcheri, put up to auction the lease of the right to tap and take the produce of the rubber trees on the under mentioned Crown lands in accordance with the conditions appended 10 below, situated in the Wellawaya Division of the Badulla District of the Province of Uva.

Final Village Plan No. 317—Village : Kiriwanagama.

Claimant—Crown.

Lot	Name of Land	Name of Applicant	Description	Extent			Upset Annual Rent per acre
				A.	R.	P.	
127	Atmagahinna <i>alias</i> Madugahahinna, Wewelketiyahenna	—	Scrub jungle with approximately 60 acres in rubber	93	3	32	20 Rs. 15 per acre on the planted area of 170 acres
136	Keenapitiya Estate	—	Scrub jungle with approximately 30 acres in rubber	58	2	30	
Final Village Plan No. 318.							
Village—Tittamelgolla.							
1	Atmagahinna, Madugahahinna, Wewelketiyahenna	—	Scrub jungle with approximately 80 acres in rubber	125	3	39	30

CONDITIONS

1. The lease shall be for the right to tap and take the produce of the rubber trees for a period of five years from the date of being put into occupation of the lands.

2. The land has not been registered under the Rubber Control Ordinance. No coupons will, however, be issued in respect of the land.

3. The highest bidder for the rent shall be the purchaser of the right to tap and take the produce of the plantations.

4. The purchaser shall pay immediately after the sale 1/5th of the rent, and the balance by four equal instalments on each anniversary of the commencement of the lease.

5. The purchaser shall not damage or fell any rubber trees or any other valuable timber trees growing on the land, without the prior consent of the Government Agent, Province of Uva, previously obtained in writing.

6. At the expiration or sooner determination of the lease the purchaser shall yield quiet possession of the land and its plantation to any person acting under the orders of the Government Agent, Province of Uva.

10 Further particulars can be had from the Government Agent, Province of Uva.

N.B.—There are about 50 rubber trees to an acre on the planted area.

Sgd. C. L. WICKREMESINGHE,
Land Commissioner.

Office of the Land Commissioner,
Colombo, January 19, 1942.

P 2. Letter from Asst. Govt. Agent, Badulla, to Land Commissioner

P 2.

No. L. R. 7839,
Badulla Kachcheri,
2nd April, 1942.

P 2
Letter from
Asst. Govt.
Agent
Badulla to
Land Com-
missioner
2-4-42

20

Keenapitiya Rubber Estate.

Sir,

With reference to your letter No. A 4161 of 17th December, 1941, I have the honour to state that the lease of the above rubber land was put up to auction on 7th March, 1942. There were several bidders and the rent for the five years fetched Rs. 44,000. The purchaser of the lease is Mr. K. Sabapathipillai of Lemastota Estate, Koslande.

2. On the date of sale he paid a sum of Rs. 880, being one-tenth of the first year's rent and promised to pay the balance within a month.
80 This was allowed.

3. He now states that owing to unexpected circumstances he is unable to pay the balance within the month, that he is prepared to pay a further sum of Rs. 1,320 immediately and begs that he may be allowed to pay the balance Rs. 6,600 in four instalments within the year.

4. In terms of the conditions on which the lease was sold the purchaser shall pay immediately after the sale one-fifth of the rent and the balance by four equal instalments on each anniversary of the commencement of the lease.

5. The lessee further states that clearing of the land will cost him
40 about Rs. 6,000.

Exhibits. 6. I would request your instructions in the matter. The lessee has not been put in possession of the land.

P 2
Letter from
Asst. Govt.
Agent
Badulla to
Land Com-
missioner
2-4-42
—continued.

7. A petition submitted by the purchaser of the lease to you through me is annexed.

I am, Sir,
Sgd. M. CHANDRASOMA,
Asst. Govt. Agent.

The Land Commissioner.

P 3
Letter from
Land Com-
missioner to
Asst. Govt.
Agent
6-4-42

P 3. Letter from Land Commissioner to Asst. Govt. Agent.

My. No. A 4161.
Office of the Land Commissioner, 10
Kegalle, 6th April, 1942.

Keenapitiya Rubber Estate.

The Government Agent, Uva,

Please furnish me with a definite recommendation on the subject, with your reasons therefor.

2. You should also report on the following points :—

(a) What is the amount of the second highest bid ?

(b) Is the person who offered the second highest bid prepared to comply with all the conditions stipulated in the sale notice ?

Sgd. H. E. JANSZ, 20
Land Commissioner.

P 4
Letter from
Asst. Govt.
Agent to
Land Com-
missioner
17-4-42

P 4. Letter from Asst. Govt. Agent to Land Commissioner.

No. L. R. 7839.
Badulla Kachcheri,
17th April, 1942.

The Land Commissioner, Kegalle.

Reference : Your A/4161 of 6-4-42.

I recommend that the lessee be given time finally till the end of this month to pay the full balance amount of the annual rent due. I have no reasons to adduce for this recommendation except that it seems to be the general policy to grant time to defaulters of monies due to Government especially at such difficult times as these. It must however be added that the lessee does not deserve this consideration as the sale notice made it quite clear that the annual rent was due in advance, and by this default the lessee is depriving the country of the rubber that would have been produced had he paid the rent on the date of the sale and gone immediately into possession of the land.

2. The amount of the second highest bid was Rs. 43,950. But Mr. Edmund Wijesuriya, the second highest bidder, informs me that he is not prepared to take the lease at this figure. The bidding after Rs. 30,000 where the third highest bidder dropped out, was confined to Messrs. Sabapathipillai and Wijesuriya and Mr. Wijesuriya states that if the highest bidder is ruled out, he should be given the lease at Rs. 30,000. If the lease is given to him at this figure he is prepared to comply with all the conditions stipulated in the sale notice.

Exhibits.
P 4
Letter from
Asst. Govt.
Agent to
Land Com-
missioner
17-4-42
—continued.

3. As the maximum production of rubber is of paramount importance just now, I suggest that if the lessee defaults, the money (Rs. 880) in deposit be forfeited and the lease given to Mr. Wijesuriya for Rs. 30,000 as advertisement will take time and in the event of another sale being held, I doubt that a sum of Rs. 30,000 will be realised.

Sgd. M. CHANDRASOMA,
for Govt. Agent.

P 5. Letter from Land Commissioner to Asst. Govt. Agent.

P 5.

No. A 4161.
Your No. LR. 7839 of 17-4-42.

P 5
Letter from
Land Com-
missioner to
Asst. Govt.
Agent
25-4-42

The Government Agent, Uva,
20 Your recommendation in para. 3 is approved.

Signed. C. L. WICKREMASINGHE,
Land Commissioner.

Kegalle, 25th April, 1942.

P 28. Letter from Land Commissioner to Govt. Agent.

P 28.

No. A/4161.

P 28
Letter from
Land Com-
missioner to
Govt. Agent
27-4-42

Kegalle, 27th April, 1942.

Rent on Lots 127 and 136 in F. V. P. 317 and Lot 1 in F. V. P.
318 for 1942-43.

Dear Sir,

80 With reference to your letter of 22nd April, 1942, you are informed that your client is allowed time till 31st May, 1942, to pay the full balance amount of the annual rent due. No further time will be allowed.

F. X. ANANDAPPA, Esq.,
No. 28, Talagama, Ambepussa.

Sgd. H. E. JANSZ,
Addl. Land Commissioner.

Exhibits.

No. A/4161.

P 28
Letter from
Land Com-
missioner to
Govt. Agent
27-4-42
—continued.

The Govt. Agent, Uva,

Ref. my letter A/4161 of 25-4-42.

Please note and return papers early. Your reference LR. 7839.

Sgd. C. NAGARATNAM,
for Land Commissioner.

27th April, 1942.

P 26. Agreement between Sabapathipillai & Karunatileke.

P 26
Agreement
between
Sabapathi-
pillai and
Karuna-
tileke
9-6-42

P 26.

No. 1433.

This Indenture made and entered into at Colombo this ninth day of June, One thousand Nine hundred and Forty-two, by and between Kana 10 Sabapathipillai son of Karuppanpillai of Koslanda (hereinafter called and referred to as the party of the first part) of the one part and Gerald Hamilton Karunatileke of Kolonnawa (hereinafter called and referred to as the party of the second part) of the second part.

Whereas the said Kana Sabapathipillai the party of the first part is the owner by right of purchase from the Crown of all those lease hold rights including the right to tap and take the produce of the rubber trees of the Crown lands more fully described in the Schedule hereto.

And whereas the party of the first part is unable personally to manage, superintend and otherwise work the said lands and is desirous for the 20 better management and control of the same of engaging the services of a partner prepared to meet the initial cost and expenses necessary for clearing the scrub jungle and weeds and otherwise bringing into condition the plantation on the said lands, and also manage and control and transact all matters connected with the same.

And whereas the party of the first part has in consideration of a sum of Rupees Five thousand (Rs. 5,000) paid by the said Gerald Hamilton Karunatileke the party of the second part, at the execution of these, Presents (the receipt of which the party of the first part hereby acknow- 30 ledges) agreed to take in the party of the second part as partner for the purposes aforesaid.

Now this Indenture witnesseth that it is mutually agreed by the parties hereto as follows :—

1. The party of the first part in consideration of the payment of the said sum of Rupees Five thousand (Rs. 5,000) to the party of the first part shall be vested with the full management and control of the said lands for a period of five years commencing from 1st June, 1942.

2. The party of the second part shall in managing and working the said lands act in conformity with the terms and conditions attaching to the said lease from the Crown, and shall have the power to employ and 40

engage conductors, clerks, servants and coolies from time to time, sell the produce of the said lands and otherwise arrange for its proper disposal in and all necessary expenses payable due and make all other payments in respect of the working of the said lands and generally to do execute and perform all such further and other acts matters and things whatsoever that are necessary and proper to be done in and about or concerning the same.

Exhibits.
P 26
Agreement
between
Sabapathi-
pillai and
Karuna-
tilleke
9-6-42
—continued.

3. The party of the second part shall keep such books of accounts as shall be necessary to manifest the state of expenditure and income and working of the said lands and the said books shall at all reasonable times be accessible to the party of the first part.

4. The party of the second part after satisfying all claims whatsoever in connection with the management and working of the said land shall be entitled to retain as and by way of remuneration a one-half part of the nett profits and pay the other half to the party of the first part.

5. And the party of the first part hereby ratifies and confirms and agrees at all times to ratify and confirm whatever the party of the second part shall lawfully do or cause to be done in and about the premises aforesaid by virtue hereof and to indemnify and save harmless the party of the second part from and against the same.

6. The parties hereto bind themselves their respective heirs administrators and executors firmly by these presents.

In witness whereof the parties hereto have by these Presents set their respective hands at the place and on the day month and year first above-written.

The Schedule above referred to.

1. All that lot 136 in F. V. P. 317 together with the trees and plantations thereon called and known as Keenapitiya estate situated at Kiriwanagama Village in Kandapolla Korale, Wellawaya Division in the District of Badulla of the Province of Uva and bounded on the north by lot 116 in F. V. P. 317 leased to Keenapitiya Estate planted in rubber, south by lot 135 in F. V. P. 317 reservation to Bambaragaha Oya and lot 131 in F. V. P. 317 Crown patana, east by lot 136A in F. V. P. 317 leased to Keenapitiya Estate planted in rubber, west by lot 128 in F. V. P. 317 cattle path and reservation and containing in extent fifty-eight acres two roods and thirty perches (58A. 2R. 30P.).

2. All that lot 127 in F. V. P. 317 together with the trees and plantations thereon called and known as Atmagahinna *alias* Madugahahinna Wewelketiyatenna situated at Kiriwanagama Village aforesaid and bounded on the north by lot 116 in F. V. P. 317 leased to Keenapitiya Estate planted in rubber, south by lot 131 in F. V. P. 317 Crown patana, east by lot 126 in F. V. P. 317 cattle path and reservation, west by lot 126 in F. V. P. 317 Kammala Ara and containing in extent ninety-three acres three roods and thirty-two perches (93A. 2R. 32P.).

Exhibits.
P 26
Agreement
between
Sabapathi-
pillai and
Karuna-
tilleke
9-6-42
--continued.

3. All that lot 1 in F. V. P. 318 together with the trees and plantations thereon called and known as Atmagahinna Madugahinna, Weweketiayatenna situated at Tittawelgolla Village in the Kandapolla Korale aforesaid and bounded on the north by lot 125 in F. V. P. 317 leased to Keenapitiya Estate planted in rubber and lot 122½ in F. V. P. 317 Crown patana, south by lot 2 in F. V. P. 318 Crown patana and forest, east by lot 60 in F. V. P. 318 Kammala Ara, west by lot 2 in F. V. P. 318 Crown patana and forest and containing in extent one hundred and twenty-five acres three roods and twenty-nine perches (125A. 3R. 29P.).

The above described lot 136, lot 127 and lot 1 are contiguous and 10 form one property and can be included in one survey plan.

Sgd. K. SABAPATHI PILLAI,
Sgd. GERALD H. KARUNATILLEKE.

Witnesses :-

We do hereby declare that we are well acquainted with the executants and know their proper names and occupations and residences :

Sgd. N. S. NADESAN,
Sgd. A. S. GULAM.

Sgd. J. P. SALGADO, 20
Notary Public.

I, James Peter Salgado of Colombo, Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me to the within-named executants, Kana Sabapathipillai who is not known to me and Gerald Hamilton Karunatilleke who is known to me in the presence of Nana Selliah Nadesan of Koslande and Adam Sabi Gulamohideen of Slave Island, Colombo, the subscribing witnesses thereto, both of whom are known to me, the same was signed by the said executants as K. Sabapathipillai and Gerald H. Karunatilleke respectively by the said witnesses who signed as N. S. Nadesan and A. S. Gulam respectively 30 and by me the said Notary is the presence of one another all being present at the same time at Colombo on this Ninth day of June, One thousand Nine hundred and Forty-two.

I do hereby further certify and attest that in the original on page 2 line 36 the word " by " was deleted and in the duplicate on page 2 line 22 the word " after " was typed over and in line 35 the word " by " was deleted before the foregoing instrument was so read over and signed that the within mentioned consideration was paid to the party of the first party in cash in my presence and that the duplicate hereof bears a stamp of the value of Rs. 10 and the original a stamp of Re. 1. 40

Sgd. J. P. SALGADO,
Notary Public.

Date of attestation :
9th June, 1942.

True copy on a stamp of rupee one :
(Seal)

P 6. Permit.

Exhibits.

P 6. Permit to take the Produce of Plantations on Crown Land

P 6
Permit
10-8-42

Karuppanpillai Sabapathipillai of Lemastota Estate, Koslanda (hereinafter referred to as "the permit-holder") is hereby permitted to take the produce of the plantations on the parcel of Crown land called "Atmagahinna *alias* Madugahainna, Wewelketiyahena, Keenaketiya Estate and Atmagahinna, Madugahahinna, Wewelketiyahena" (hereinafter referred to as "the land") situated in the villages of Kiriwanaga and Tittawelgolla in the Chief Headman's Division of Wellawaya of the
10 Badulla District depicted as lots Nos. 127 and 136 in Final Village Plan No. 318 Tittawelgolla, prepared by the Surveyor-General and kept in his charge, and computed to contain in extent two hundred and seventy-eight acres, two roods and eleven perches, subject to the following conditions:—

1. This permit shall expire on the 31st day of May, 1947.
2. The annual rental shall be eight thousand eight hundred rupees. The permit-holder shall pay the annual rental on the 1st day of June in every year to the Government Agent of the Uva Province (hereinafter called "the Government Agent") at the Badulla Kachcheri.
3. This permit is personal to the permit-holder. The permit-holder
20 shall not in any manner whatsoever deal with or otherwise dispose of his interest and rights under this permit.
4. The permit-holder shall not erect any permanent buildings or make any plantation on the land.
5. The permit-holder shall not fell or in any way damage or allow to be felled or in any way damaged any rubber trees or any other valuable timber trees growing on the land except with the permission of the Government Agent previously obtained in writing.
6. The permit-holder shall not dig or in any other way whatsoever disturb the soil of the land, nor shall he clean weed the land.
- 80 7. Any breach of any of the conditions contained in this permit shall render the permit liable to immediate cancellation without compensation, on the orders of the Government Agent.
8. On the expiry or cancellation of the permit the permit-holder shall deliver quiet possession of the land to any person acting under the orders of the Government Agent, and such person may on such expiry or cancellation, enter upon the land and take possession thereof on behalf of the Government Agent.
- 40 9. The permit-holder shall not have or make any claim for compensation for improvements effected or expenses incurred, or for damages, or for any other cause or reason whatsoever.

Exhibits.
P 6
Permit
10-8-42
—continued.

10. The permit holder shall not have any claim to preferential sale or lease of the land by reason of his having been granted this permit.
Issued on the 10th day of August, 1942 :

Sgd. M. CHANDRASOMA,
Asst. Govt. Agent.

Accepted on the above conditions by the above mentioned permit holder.

Sgd. K. SABAPATHIPILLAI.

P 8
Application
by Saba-
pathipillai
to the Land
Commissioner
7-1-43

P 8. Application by Sabapathipillai to the Land Commissioner

P 8.

Lemas Eatate, 10
Koslande, 7th January, 1943.

The Land Commissioner, Kegalle.

Sir,

Subject : Lot Nos. 127 and 136 in F. V. P. No. 317 Kiriwanagama.
Lot No. 1 in F. V. P. No. 318 Tittawelgolla, situated in Wellawaya,
Badulla District.

1. By permit dated the 10th August, 1942 (a copy of which I annex hereto for your information) I, as the successful bidder at the auction sale was invested by the Government Agent, Badulla, with the right to take the produce of the several allotments of Government land referred to 20 above and planted in rubber.

2. As circumstances have now arisen to make it difficult for me to work this land personally and obtain the maximum production of rubber I applied personally to the Government Agent, Badulla, to have the permit transferred in favour of my nominee so that the maximum production may be obtained from the land and that I may also not suffer any avoidable loss. I was informed by the Government Agent that what I requested could not be effected without your permission.

3. I beg to state that my liability and the expenses already incurred by me in respect of this "lease" amount to a fairly large sum of money. 30 I am anxious that my position should be retrieved without any loss to the Government and also that the maximum production of rubber should be obtained from this land.

I, therefore, beg that you may be pleased to give this application of mine your favourable consideration and direct the Government Agent, Badulla, to transfer the permit to my nominee, Mr. Daniel Henry Wickramasekera of "Ramya", Mount Lavinia.

I remain, Sir,

Sgd. K. SABAPATHY PILLAI.

P 7. Letter from Govt. Agent. to Land Commissioner.

Exhibits.

P 7.

No. L. R. 7839.

P 7
Letter from
Govt. Agent
to Land
Commis-
sioner
21-1-48

Land Commissioner :

1. Your case No. A 4161 applies.
2. The lease referred to is the privilege of taking the produce of a Crown rubber plantation of 170 odd acres, for a period of 5 years from 1st June, 1942. A copy of the permit issued, in terms of your letter No. A 4161 of 21st July, 1942, is annexed to the letter addressed to you by the permit-holder. Your attention is invited to condition 3.
- 10 3. The permit-holder as stated in my report No. L. R. 7839 of 17th April, 1942, was not in a position to pay the first year's rent. He finally, after a period of nearly three months called at this Kachcheri with Mr. G. H. Karunatilleke who paid the rent on his behalf. Before making the payment Mr. Karunatilleke enquired whether his name too could not be inserted in the permit as a co-permit-holder, he was informed that this could not be done unless this request was made on the date of sale.
4. An application for a sub-lease to Mr. Karunatilleke was disallowed by your No. A 4161 of 21st July, 1942.
5. The permit-holder however entered into a business agreement
20 with Mr. Karunatilleke on 26-6-42, and formally gave possession of the land to Mr. Karunatilleke. I attach a copy for your information. I am at doubt as to whether this constitutes a breach of the covenants of the permit, but the present position is that the two parties to the agreement have fallen out and Mr. Karunatilleke who is in possession works the estate and refuses the permit-holder entrance to the land.
6. The Chena Surveyor Muhandiram who inspected the estate on 19-12-1942 reports that about 60 acres are being tapped and that the tapping has been done by inexperienced tappers working under Mr. Karunatilleke, and that most of the trees being tapped have been damaged.
- 30 7. I have my doubts that Mr. Karunatilleke will vacate the land unless the lease is terminated. Should the permit-holder institute a civil action in ejectment against Mr. Karunatilleke, it will take time and probably last the full tenure of the permit.
8. In view of the refusal to allow Mr. Karunatilleke a sub-lease, I doubt that the present application for a transfer to Mr. Wickramasekere can be considered. Moreover the permit-holder will find difficulty in giving Mr. Wickramasekere vacant possession of the land.
9. Should you consider a cancellation of the permit, I would recom-
40 mend that the suggestion in your letter No. A 4161 of 25th April, 1942, be given effect to, as I had to withdraw this offer once in view of your later letter No. A 4161 of 27th April, 1942. Mr. H. E. Wijesuriya, I understand, is an experienced rubber planter and financially sound. He already holds two such leases in this Province which are being worked satisfactorily.

Exhibits.
P 7
Letter from
Govt. Agent
to Land
Commissioner
21-1-48
—continued.

10. I have already had to impose two fines on Mr. Karunatilleke, one for illicit felling of timber and the other for obstructing the Chena Surveyor Muhandiram and the Forest Ranger from inspecting this felling.

Sgd. C. COOMARASWAMY
Govt. Agent, Uva.,

Sgd. R. A. ABEYESEKERA,
Office Assistant.

Badulla, 15/21st January, 1943.

P 9
Letter from
Land
Commissioner
to Govt.
Agent
28-1-43

P 9. Letter from Land Commissioner to Govt. Agent.

P 9.

My. No. A/4161. 10
Your No. LR. 7839 of 21-1-43.

Lease of Lots 127 & 136 in F. V. P. 317 and Lot 1 in F. V. P. 318.

Government Agent, Uva.

The conditions of the permit dated 10-8-42 have been flagrantly violated. You should cancel the permit forthwith and take possession of the land on behalf of the Crown. You may thereafter issue a permit to Mr. H. E. Wijesuriya to take the produce of the plantations on the land for the balance period of 5 years at the rental approved by my letter No. A/4161 of 25-4-42.

Sgd. H. E. JANSZ, 20
Acting Land Commissioner.

Kegalle, 28th January, 1943.

P 29
Letter from
Govt. Agent
to Land
Commissioner
2-2-43

P29. Letter from Govt. Agent to Land Commissioner.

P 29.

No. LR. 7839.

The Land Commissioner, Kegalle.

1. *Vide* your No. A 4161 of 28-1-43.

2. In the event of the matter going to Court the Law Officers of the Crown will have to support our action. Might I suggest that before taking action as indicated in your letter the Attorney-General be consulted as to whether the conditions of the permit could be held to have been violated and the cancellation of the permit could be justified.

30

Sgd. C. COOMARASWAMY,
Government Agent, Uva.

Sgd. M. CHANDRASOMA,
Asst. Govt. Agent.

Badulla Kachcheri,
2nd February, 1943.

P 30. Letter from Land Commissioner to Govt. Agent.

Exhibits.

P 30.My. No. A/4161.
Your No. LR. 7839 of 8-1-41.P 30
Letter from
Land Com-
missioner
to Govt.
Agent
25-2-48

G. A., Uva.

Cancellation of Permit.

Copy of my letter No. A/4161 of 13-2-48 to the Attorney-General and his reply No. L 30/43 of 24-2-45 are forwarded for necessary action.

Sgd. H. E. JANSZ,

Kegalle, 25-2-48.

10 Copy.

My. No. A/4161.

Cancellation of Permit.

Attorney-General,

Please see the annexed statement of facts, in duplicate regarding a permit to take the produce of trees on lots 127 and 136 in F. V. P. 317 and lot 1 in F. V. P. 318.

Copies of the following are attached :—

(a) permit issued to Mr. Sabapathipillai ;

(b) agreement entered into between Messrs. Sabapathipillai and Karunatileke.

20 2. The Government Agent, Uva, reports that Kana Sabapathipillai the party of the first part in the agreement No. 1433 and Karupannanpillai Sabapathipillai, the permit-holder, are one and the same person.

3. I consider that the private agreement entered into between Messrs. Sabapathipillai and Karunatileke is in contravention of condition 3 of the permit.

4. Condition 5 of the permit has been violated by the illicit felling of timber and damaging the rubber trees as stated in paragraphs 9 and 11 in the statement of facts.

5. In view of 3 and 4 above I propose to cancel immediately the 30 permit issued to Mr. Sabapathipillai without compensation in terms of condition 7 of the permit. Any rent paid by Mr. Sabapathipillai for a period beyond which the permit exists will be refunded.

6. Please advise me whether my view in paragraph 3 is correct and whether there is any legal objection to the action proposed in paragraph 5 above.

7. This matter may be treated as urgent as the Government Agent, Uva, wishes that the damage to the rubber trees should be stopped early.

Sgd. H. E. JANSZ,
Actg. Land Commissioner.

40 Kegalle, 13-2-48.

Exhibits.

P 80
Letter from
Land Com-
missioner
to Govt.
Agent
25-2-48
—continued.

My. No. L. 30/48.
Your No. A/4161 of 18-2-43.

Cancellation of Permit.

Land Commissioner,

Your view contained in paragraph 3 of your letter is correct. The permit is liable to cancellation on the order of the Government Agent as a result of the breach of conditions 3 and 5.

2. On the question of the refunding of any rent that may have been paid already, I do not see why a refund should be made before resumption of possession.

10

24th February, 1943.

Sgd. M. W. H. DE SILVA,
Attorney-General.

P 10
Letter from
Asst. Govt.
Agent to
Sabapathi-
pillai
2-3-48

P 10. Letter from Asst. Govt. Agent to Sabapathipillai.

P 10.

No. L.R. 7839.
Badulla Kachcheri,
2nd March, 1943.

From The Government Agent, Uva.

To Mr. K. Sabapathipillai, Lamastota Estate, Koslanda.

Lease of Lots 127 & 136 in F. V. P. 317 & Lot 1 in F. V. P. 318.

This is to inform you that the private agreement entered into by you with Mr. Karunatileke is a contravention of clause 3 of the permit issued to you in respect of the above lease.

2. It is further reported that the rubber trees tapped have been damaged. This is a violation of clause 5 of the permit.

3. In terms of clause 7 of the permit, the lease granted to you is cancelled for breach of condition 3 and 5 and you are hereby requested to deliver peaceful possession of the above lots to the Divisional Revenue Officer, Wellawaya, on the 15th March, 1943, at 9-30 a.m. and vacate the land immediately thereafter.

Sgd. CHANDRASOMA, 80
*Asst. Govt. Agent,
for Govt. Agent, Uva.*

MR. G. H. KARUNATILLEKE,
6, Mackinnon Buildings,
Colombo.

Copy forwarded for your information.

Sgd. CHANDRASOMA,
for G. A., Uva.

P 12. **P 12. Cheque.** **Colombo, 4th March, 1943.** **Exhibits,**
Bank of Ceylon. **P 12**
Cheque
4-3-43

Pay the Government Agent, Uva, or Order Rupees Six thousand only.

Sgd. H. WIJESURIYA.

Rs. 6,000.

D 1. **Minute by Attanayaka.** **D 1**
Minute by
Attanayaka
4-3-43

Submitted.

10 We may accept a year's rent and place it in deposit until Mr. W. is put in possession of the land. When he is put in possession, the money can be credited to Revenue.

Intld. H. B. A.
4-3.

Yes.

Please request Mr. W. to let me know whether he will agree.

Intld. M. C.
4-3.

Yes. He agrees.

20

Intld. H. B. A.
5-3.

Rs. 6,000 deposited.

Intld. H. B. A.
5-3-43.

Do so please.

Intld. M. C.
5-3.

P 13. Minute by Asst. Govt. Agent to Chena Survey Muhandiram. **P 18**
Minute by
Asst. Govt.
Agent to
Chena
Survey
Muhandiram
4-3-43

P 13.

30 Chena Surveyor Muhandiram,

Forwarded for your information. Please accompany the Divisional Revenue Officer and point cut the land to him.

2. The lease is now given to Mr. E. Wijesuriya. You should put him in possession of the land as soon as the present lessee vacates it.

Sgd. M. CHANDRASOMA,
for Government Agent, Uva.

4th March, 1943.

Exhibits.

P 11
Receipt
5-8-48**P 11. Receipt.**

0/4 No. 59718/232.

Date : 5th March, 1943.

Received from Mr. E. Wijesuriya the sum of Rupees Six Thousand only and cents — being rent on Keenapitiya Rubber Estate pending issue of lease.

Rs. 6,000.

Sgd. A. T. SINNATAMBY,
Shroff.

P 11A
Receipt
(original)
5-8-48**P 11A. Receipt (Original)**

P 11A.

0/4 No. 59718.

10

Date : 5th March, 1943.

Kachcheri Receipt.

Received from Mr. E. Wijeyasuriya the sum of Rupees Six Thousand only cents — being rent on Keenapitiya Rubber Estate pending issue of lease.

Rs. 6,000.

Sgd. B. SINNATAMBY,
Shroff.

D 7
Letter from
Sabapathi-
pillai to
Govt. Agent
5-8-48**D 7. Letter from Sabapathipillai to Govt. Agent.**

D 7.

5th March, 1943. 20

To

The Government Agent, Badulla.

**Subject : Lease of Lots 127 & 136 in F. V. P. 317 and Lot 1 in
F. V. P. 318.**

Sir,

With reference to your letter of 2nd instant bearing No. L. R. 7839, I have the honour to inform you I am having reasons to show why my lease should not be cancelled. I am not in a position to deliver peaceful possession on 15th March, 1943, as mentioned in paragraph 3.

In the foregoing circumstances I beg you to grant me a chance and so further extension of time to prove my claim of rights.

Thanking you.

I am, Sir,
Your obedient servant,
Sgd. K. SABAPATHIPILLAI.

P14. Letter from Chena Survey Muhandiram to Plaintiff.

Exhibits.

P 14.No. 196,
6th March, 1943.P 14
Letter from
Chena
Survey
Muhandiram
to Plaintiff
6-3-43**Keenapitiya Rubber Lands Lots 127 & 136 in F. V. P. No. 317
and Lot 1 in F. V. P. No. 318.**

I have been instructed by the Government Agent, Uva, to put you in possession of the above named Rubber Lands as soon as the present lessee vacates it on the 15th instant as the lease has been now given to you.

2. Please arrange to meet me at the Talipetenna Estate Factory at 9 a.m. on that date, to accompany me to the place, so that I may give you possession. If however you are unable to come on that date, please depute a responsible person to meet me and take possession on your behalf.

Sgd. W. R. WEERARATNE,
Chena Muhandiram, Uva, Badulla.

H. E. WIJESURIYA, Esq.,
The Resthouse, Badulla.

P 35. Minute by Asst. Govt. Agent.**P 35.**P 35
Minute by
Asst. Govt.
Agent
10-8-43

20 The Government Agent.

For orders please.

A letter from Mr. Karunatileke is also submitted in file herewith.

It is not necessary to call for reasons nor is it necessary to give notice to lessee.

Intld. W. C.
10-3.

D 4. Telegram from Land Commissioner.**D 4.****Telegram**D 4
Telegram
from Land
Commis-
sioner
10-3-43

Address : The Government Agent, Badulla.

80 Station : Kegalle.

My A 4161 of 25th ultimo (Your case LR. 7839) reply representations received against immediate cancellation of permit as contemplated in your letter of 2nd instant to permit-holder. Defer action pending further instructions. Approval granted in my letter of 28th January to transfer permit to H. E. Wijesuriya withdrawn on re-consideration letter follows :—

Land Commissioner.

(Post Office Seal)—Badulla, 10th March, 1943.

Exhibits.

D 5. Letter from Land Commissioner to Govt. Agent.

D 5
 Letter from
 Land Com-
 missioner to
 Govt. Agent
 10-8-48

D 5.

My No. A 4161,
 Your No. L.R. 7839.

The Government Agent, Uva.

Lease of Lots 127 & 136 in F. V. P. 317 and Lot 1 in F. V. P. 318.

The following telegram sent to you, this day is confirmed.

“ My A 4161 of 25th ultimo (Your case L.R. 7839) representations received against immediate cancellation of permit as contemplated in your letter of 2nd instant to permit-holder (stop) defer action pending further instructions (stop) approval granted in my letter of 10 28th January to transfer permit to H. E. Wijesuriya withdrawn on reconsideration letter follows.”

2. I have further considered the recommendation in paragraph 9 of your report of the 21st January, 1943, and my letter of the 28th idem approving it. I regret my instructions therein cannot be justified for the reasons given. On the other hand the issue of a preferential lease now to the second highest bidder at an auction held an year ago at a reduced rent does not appear to be in order. If the order of cancellation of the existing permit is not varied after consideration by me of the representations received the proper course would be to sell the right by auction and 20 public tender.

3. Mr. Karunatileke has represented that the injuries done to the rubber trees are not of a serious nature and that even if he resorted to slaughter-tapping he would be acting in accordance with the appeal made by Government to owners of rubber trees.

I have requested him to furnish me a report regarding the nature of the injuries from a recognised rubber planter. Please let me have the reports you have received on the subject from your officers.

4. Regarding the alleged breach of condition 3 of the permit I find that the agreement between the permit-holder and Mr. Karunatileke is 80 dated the 9th June, 1942—a date prior to the execution of the permit of 10th August, 1942. Please forward a copy of the conditions of sale read at the time of the auction.

Sgd. C. L. WICKREMESINGHE,

Sgd. C. NAGARATNAM,
Chief Clerk.

Land Commissioner.

Kalutara, 10th March, 1943.

D 3 B. Minute by Govt. Agent.

Exhibits.

D 3 B.

Vide telegram from Land Commissioner received today. Cancel notice for the present saying that it is done on instruction from Land Commissioner. I believe no lease has been given to Mr. Wijesuriya yet. Is this correct?

D 3 B
Minute by
Govt. Agent
10-3-43

Intld. C. C.
10-3.

D 3. Minute by Attanayaka.

D 3
Minute by
Attanayaka
11-3-43

10 D 3.

Sir,

We instructed Chena Surveyor Muhandiram to put Mr. Wijesooriya in possession when the present lessee vacates it in terms of Land Commissioner's letter of 28th January, 1943. We got a deposit from him as rent for one year. This can now be refunded to him.

Intld. H. B. A.
11-3.

D 3 A. Order by Govt. Agent.

D 3 A
Order by
Govt. Agent
12-3-43

D 3 A.
20 Yes.

Intld. M. C.
12-3.

P 15. Letter from Chena Survey Muhandiram to Plaintiff.

P 15.

No. 206.
13th March, 1943.

P 15
Letter from
Chena
Survey
Muhandiram
to Plaintiff
13-3-43

Keenapitiya Rubber Lands.

Vide my letter No. 196 of the 6th instant. I have to inform you that the notice served on Mr. Sabapathipillai, to vacate the above rubber lands has been cancelled, and in consequence I will not be able to put you in possession on the 15th instant as arranged.

Please acknowledge receipt of this letter.

Sgd. W. R. WEERARATNE,
Chena Muhandiram, Uva, Badulla.

H. E. WIJESURIYA, ESQ.,
The Resthouse, Badulla.

Exhibits. **D 2. Petition by Plaintiff to Minister for Agriculture and Lands.**

D 2
Petition
by Plaintiff
to Minister
for Agri-
culture and
Lands
18-8-48

D 2.

Wijayagiri,
Panadure, 18th March, 1943.

The Hon'ble the Minister

and the other Hon'ble Members of the Executive Committee
for Agriculture & Lands.

**Lease of Keenapitiya Crown Rubber Land in F. V. Ps. 317 in
Wellawaya Korale, Uva.**

Honourable Gentlemen,

I, Henry Edmund Wijesuriya, was the second highest bidder for the 10 lease of the above rubber land which was auctioned by the Government Agent, Uva, on 7th March, 1942, with a bid of Rs. 43,950.

2. The highest bidder at Rs. 44,000 was however unable to deposit the 1/5th of the total sum as was strictly required by the sale notice. He had about Rs. 200 with him at the time, but the Assistant Government Agent who conducted the sale, having accepted this amount at the highest bidder's request, granted him time till the following day to complete 1/10th of one year's rental amounting to Rs. 880. One tenth of one year's rental was completed on the following day, and a further extension of time was granted by the Assistant Government Agent, on request, to deposit the 20 balance sum of Rs. 8,000 so as to complete one year's rental.

3. Nearly 1½ months after the sale I was asked whether I was willing to have the lease at my bid. I declined to take over the lease at that bid as I felt that the highest bidder had unduly and unnecessarily inflated the bid, but offered to take over at the price at which the other bidders dropped out, viz. Rs. 30,000. This offer was accepted with the Land Commissioner's sanction somewhere in May, 1942, but was almost immediately withdrawn as a further extension of time had been granted to the highest bidder.

4. At a recent date, I was again informed that my offer of Rs. 30,000 30 was accepted and that I would be put in occupation of the land on 15th March, 1943. I accordingly paid Rs. 6,000 by cheque No. A 44794 drawn on the Bank of Ceylon on 5th March, 1943. This amount has been realised by the Government Agent, Uva.

5. I have so far not been put in possession of the land. I cannot understand the delay in this matter as the 1st year's rental has already been paid by me.

6. I would further submit that the lease should have been offered to me when the highest bidder was unable to satisfy the condition of depositing 1/5th of the total sum immediately after the sale. 40

7. I have been put into financial loss and great inconvenience by the failure of the Government to put me in possession on the date fixed.

8. I therefore beg that the Honourable the Minister and the other Honourable Members of the Committee be pleased to inquire into the matter and grant me redress by putting me in early occupation of the land.

I am, Hon'ble Gentlemen,
Your obedient servant,
Sgd. H. E. WIJESURIYA.

Exhibits.
D 2
Petition
by Plaintiff
to Minister
for Agri-
culture and
Lands
18-3-43
—continued.

P 17. Letter to the Minister for Agriculture and Lands.

Panadure, 23rd March, 1943.

The Hon'ble Minister for Agriculture & Lands.

P 17
Letter to the
Minister for
Agriculture
and Lands
23-3-43

10 Sir,

Lease of Keenapitiya Crown Land in F. V. P.s 317 & 318 in Wellawaya Korale, Uva.

I have the honour to place before you the following facts with regard to the above land with a desire to have early redress.

On or about the 7th March, 1942, I was present at the sale of the above-mentioned land and unsuccessfully bid up to Rs. 43,950 the successful bidder going up to Rs. 44,000.

It would appear that this person failed to comply with the Sale Conditions in as much as the successful bidder has to deposit one-fifth of the amount immediately after the sale. As a matter of fact, this person had only Rs. 200 for the purpose.

In spite of this the Government Agent gave this person leave to perfect his deposit. Although every opportunity was given to him he failed to do so.

About 1½ months after the sale, I was asked whether I was willing to have the lease at the price offered by me. I declined to do so as I felt that the highest bidder had unduly and unnecessarily inflated the bid, but offered to take over at the price at which the other bidders dropped out, viz.: Rs. 30,000.

30 This offer was accepted by the Government somewhere in May, 1942, but was almost immediately withdrawn as a further extension of time had been granted to the delinquent bidder.

On the 5th instant I was informed that my offer of Rs. 30,000 was accepted and that I would be put in possession on the 15th instant. I accordingly paid Rs. 6,000 to the Government Agent by cheque No. A44794 drawn upon the Bank of Ceylon and dated 5th March, 1943, which I find has been realised by him.

I regret to inform you that I have not yet been put in possession, although I have performed my part of the agreement. Unless I am put 40 into immediate possession of the property I will incur serious loss.

Exhibits.

P 17
Letter to the
Minister for
Agriculture
and Lands
23-3-43
—continued.

I have, therefore, to request you to be good enough to give instructions that immediate possession be granted to me.

Thanking you.

I am, your obedient servant,

P 33
Statement
by Atta-
nayaka
27-3-43

P 33. Statement by Attanayaka.

P 33.

Mr. H. B. Attanayaka.

I am the Chief Land Clerk of the Badulla Kachcheri. I hold this post with effect from about January, 1942. Prior to that date I was a junior clerk in the Badulla Kachcheri Land Branch. I was in the Land Branch of the Kachcheri for nearly 18 years.

I have nine assistants in the Land Branch. All papers submitted to a Staff Officer pass through me, and all papers with a Staff Officer's orders come direct to me. I distribute the papers among the subject clerks.

As the Chief Land Clerk, my function is to see that all orders made by Staff Officers are duly carried out. I am expected to examine periodically the files of the subject-clerks, assist them in their difficulties and secure that all orders of Staff Officers are carried out.

On receipt of Land Commissioner's letter No. A 4161 of 25-2-1943, at page 113 of the Kachcheri file, I submitted the letter to the Government Agent with the suggestion that notice of cancellation be issued to Mr. Sabapathipillai. The Government Agent approved my suggestion.

When I offered my suggestion to the Government Agent I was aware of the Land Commissioner's Circular No. A 5782 of 22-10-1940, prescribing procedure for cancellation of leases. The notice I referred to was the one mentioned in para. 3 of the Land Commissioner's circular.

On receipt of the Government Agent's orders to serve a notice on the lessee I prepared the notice and submitted it to the Asst. Government Agent for signature. The endorsements to the Divisional Revenue Officer, Wellawaya, and to the Chena Surveyor Muhandiram appearing at pages 116 and 117 were also prepared by me.

In para. 2 of my endorsement to the Chena Surveyor Muhandiram, I meant that in the event of Sabapathipillai vacating the land in pursuance of the notice, the Chena Surveyor Muhandiram is to put Wijesuriya in possession of the land.

If the lessee refused to vacate the land, the Divisional Revenue Officer was to report the matter to the Government Agent when steps will be taken to cancel the lease and eject the lessee by process of law. This is the normal procedure adopted in such cases, and the Divisional Revenue Officer and the Chena Surveyor Muhandiram were aware of it.

Ordinarily no lessee can be granted possession of Crown land before the first year's rent is paid in advance. To meet this difficulty I suggested to the Government Agent to accept a year's rent from Mr. Wijesuriya by way of "deposit". In suggesting that the recovery should be by way of "deposit" it was intended that, if it was not possible for the Crown to cancel the lease in favour of Sabapathipillai the sum held in deposit should be refunded to Wijesuriya.

Exhibits.
P 83
Statement
by Atta-
nayaka
27-8-48
—continued.

On receipt of the Asst. Government Agent's orders, I discussed the case with Mr. Wijesuriya. He was present at the Kachcheri on that date. I explained to him the position. I told him that a preliminary notice had been issued on Sabapathipillai. In the event of his voluntarily handing over to the Crown the possession of the land, the Government Agent had directed that a lease be issued to Mr. Wijesuriya on an annual rental of Rs. 6,000. In the event of the matter having to go to Court, the disposal of the land would have to await decision of Court.

If Mr. Sabapathipillai voluntarily surrenders the land and if Mr. Wijesuriya is willing to take the lease, he should pay a deposit of Rs. 6,000 so that there might be as little delay as possible after Sabapathipillai's surrender and before Wijesuriya is put in possession. I distinctly made him to understand that the acceptance of the deposit did not in any way bind the Crown to issuing a lease to him, and that he will receive a lease only if Sabapathipillai voluntarily surrendered the land.

Mr. Wijesuriya agreed to these conditions. I prepared a Paying-in Voucher and handed it over to Mr. Wijesuriya. He took the money with the Paying-in Voucher and deposited the amount with the Shroff.

On the 10th March, 1943, the Land Commissioner directed that action to terminate Sabapathipillai's lease be deferred, and also withdrew his approval to issue a lease to Wijesuriya. On receipt of this direction I suggested to the Government Agent on 11th March to refund the deposit obtained from Mr. Wijesuriya. The Government Agent approved my suggestion. I passed the papers on to the subject-clerk for action. I notice he had not taken action to refund the deposit as directed by the Government Agent.

I am entrusted with all clerical work connected with internal purchase scheme, in addition to my other duties. I had not the time to check the work of my assistants. In these circumstances, the omission escaped my attention also.

Sgd. H. B. ATTANAYAKA.

True Copy :

40 A. KANAPATHIPILLAI,
for Land Commissioner.

2-1-45.

Exhibits.

P 18. Letter from Minister for Agriculture and Lands.

P 18
Letter from
Minister for
Agriculture
and Lands
4-5-48

P 18.

No. AL 85/43.

Ministry of Agriculture & Lands,
Bambalapitiya, 4th May, 1943.

Dear Sir,

**Lease of Keenapitiya Crown Land in F. V. P. 317 & 318,
Wellawaya Korale, Uva.**

With reference to your letter dated 23rd March, 1943, on the above subject, I am directed by the Minister for Agriculture and Lands to inform you that he is not prepared to intervene.

10

Sgd.

*Secretary to the Minister for Agriculture
and Lands.*

H. E. WIJESURIYA, Esq.,
"Wijayagiri," Panadure.

P 16
Letter from
Plaintiff to
Asst. Govt.
Agent
18-6-48

P 16. Letter from Plaintiff to Asst. Govt. Agent.**P 16.**

"Wijayagiri,"

Mahawila, Panadure, 13th June, 1943.

Without prejudice.

The Government Agent, Badulla.

20

**Lease of Keenapitiya Crown Rubber Land in F. V. Ps. 317 &
318 in Wellawaya Korale.**

Sir,

With reference to the above subject I have to inform you that I am daily incurring heavy losses owing to your failure to give me the lease as promised.

I regret very much that in the absence of a definite reply before the end of next week I shall have no alternative but to seek my legal remedy.

I may however mention that if you have any difficulties in this matter that I am prepared to discuss them with you with a view to an amicable settlement.

Yours faithfully,
Sgd. H. E. WIJESURIYA.

P 32. Letter from Govt. Agent to Land Commissioner.

Exhibits.

IN THE DISTRICT COURT OF COLOMBO.

P 32
Letter from
Govt. Agent
to Land
Commis-
sioner
13-6-43

P 32.

H. E. WIJESURIYA, Wijegiri, Mahawila, Panadure,.....Plaintiff.

No. 15380/M.

vs.

THE ATTORNEY-GENERAL of Ceylon..... Defendant.

The Residency,
Badulla, 13th June, 1943.

Dear Jansz,

10 I am sorry I could not go and see you last evening. Did you meet the Minister? If so please write to me about his final instructions. I am leaving for Alutnuwara this evening and shall be back on the 19th instant. No action will be taken here until your instructions are received.

With kind regards,
Yours sincerely,
Sgd. S. C. COOMARASWAMY.

P 16A. Minute by Asst. Govt. Agent.

14-6-1943

P 16A.
Minute by
Asst. Govt.
Agent
14-6-43

20 "Ack. and state that the matter is awaiting the instructions of the L. Cr. When I receive a reply from him I shall write further, Re s. on G.A.'s return from circuit."

Intd. M.C.

14.6.

Exhibits.

P 31. Letter from Land Commissioner to Govt. Agent.

P 31
Letter from
Land Com-
missioner
to Govt.
Agent
21-6-43

*Confidential.***P 31.**

Bambalapitiya, 21st June, 1943.

Dear Coomaraswamy,

Thank you for your letter of the 13th inst. Since our conference at the Attorney-General's Office, I discussed the matter with Mr. C. L. Wickremasinghe. He agrees with the view that before the Minister for Agriculture & Lands is approached, you should endeavour to arrive at an adjustment on the lines we discussed immediately after our conference, viz.:

(1) You should inspect the estate with Mr. Boyd Moss, or another 10 independent Visiting Agent, and personally ascertain whether the damage to the rubber trees is so serious as to necessitate a cancellation of the permit.

(2) If you are satisfied that the damage is not so serious, you may agree to continue the permit in favour of Mr. Sabapathipillai subject to the following :—

(a) Messrs. Sabapathipillai and Karunatileke should cancel by mutual consent the agreement entered into between them on the 9th June, 1942.

(b) Mr. Karunatileke accepts Mr. Sabapathipillai as the Crown's lessee, on the permit dated the 10th August, 1942, issued by you and 20 claims no right in respect of the land. There would be no objection to Mr. Karunatileke being employed by Mr. Sabapathipillai as his manager subject to such terms and conditions as may be approved by you in writing.

(c) As the acceptance of a deposit of Rs. 6,000 from Mr. Wijesuriya was in contravention of my direction in my letter of the 22nd January, 1943, viz.: that you may issue a lease to Mr. Wijesuriya only after you resume possession of the land from Mr. Sabapathipillai, steps be taken to refund Rs. 6,000 to Mr. Wijesuriya and to obtain his unconditional acceptance thereof.

I shall be glad if you will pursue the matter on these lines. On hearing 30 from you, I will take it up with the Minister for Agriculture & Lands again.

I return herewith your file. Please forward it later with your reply.

I suggest that till a final decision is reached in this case, the files be retained in your personal custody.

With kind regards,
Yours sincerely,

P.S.—Copy of Attorney-General's letter L. 30/43 of 15-6-43 is annexed for your information.

P 19. Letter from Govt. Agent to Plaintiff.

P 19.

No. LR. 7839.
The Kachcheri,
Badulla, 5th July, 1943.

Sir,

Exhibits.

P 19
Letter from
Govt. Agent
to Plaintiff
5-7-43

Keenapitiya Estate Crown Lease.

With reference to your letter dated the 13th June, 1943, I have to state that the matter is awaiting the instructions of the Land Commissioner. When I receive a reply from him I shall write further.

10

Yours faithfully,
Sgd.
for Government Agent, Uva

H. E. WIJESURIYA, Esq.,
" Wijegiri," Mahawila,
Panadura.

D 6. Letter from Govt. Agent to Land Commissioner.*Confidential.*

My No. LR. 7839.
Your No. A 4161.

D 6.

D 6
Letter from
Govt. Agent
to Land
Commis-
sioner
18-8-48

20 Land Commissioner, Bambalapitiya,

Lease of Lots 127 & 138 in F. V. P. 317 and Lot in F. V. P. 318.

Reference the demi-official letter dated 21st June, 1943 (Mr. H. E. Jansz).

I have inspected the land with Mr. Boyd Moss, a copy of whose report is herewith annexed. I do not think the damage to the rubber trees is so serious as to necessitate a cancellation of the permit on that count alone. Whatever damage was done appears to have been done when the lessee Sabapathipillai himself was in possession of the land. But as stated by Mr. Boyd Moss in his report the tapping has greatly improved during the
80 past few months and if the tapping is continued as at present no further damage will be caused.

2. Then there is the abandoned appearance of the estate due to undergrowth of shrubs and weeds. No clearing or weeding has been done. Clearing of the whole extent will cost a fairly large amount, but the permit itself does not contain any provision as regards clearing or weeding nor was anything to that effect stated in the notice of sale of the lease. The position taken up now on behalf of the lessee is that he is not liable to keep

Exhibits.
 D 6
 Letter from
 Govt. Agent
 to Land
 Commis-
 sioner
 18-8-43
 —continued.

the land cleared and free of weeds and that it is for Government to get that done in its own interests. It is no doubt unfortunate that this was lost sight of at the time the permit was given.

3. I have had Messrs. Sabapathipillai and Karunatilleke before me, and the former was also represented by his Proctor, Mr. H. J. Pinto. Although Karunatilleke said that according to the legal advice he had received the agreement entered into between him and Sabapathipillai on the 9th June, 1942, did not constitute a violation of the terms of the permit issued to Sabapathipillai, the parties now agree to the cancellation by mutual consent of the said agreement and to have a fresh document¹⁰ executed between them on such terms and condition as may be approved by me in writing, within one month of the communication to them of the decision of Government as regards the continuation of the permit in favour of Sabapathipillai. Karunatilleke accepts Sabapathipillai as the Crown's lessee and claims no interest now in respect of the land. Considering all the circumstances I would recommend the continuance of the permit issued in favour of Sabapathipillai on the parties complying with the above condition.

4. With regard 2 (c) on the demi-official letter under reference the acceptance of a deposit of Rs. 6,000 by Mr. Wijesuriya was not considered²⁰ a contravention of your direction in your letter of the 28th January, 1943. The question of cancelling the permit issued to Sabapathipillai and giving the lease to the next highest bidder that is Wijesuriya, had arisen earlier too and no difficulty was anticipated if such a step became necessary (*vide* my letter dated 17th April, 1942, and your reply dated 25th April, 1942.) So when your letter dated 28th January, 1943, was received here it was taken as sanctioning the cancellation of the permit issued in favour of Sabapathipillai and issuing another in favour of H. E. Wijesuriya and steps were taken to take over possession from Sabapathipillai and give over to Wijesuriya as that would have been the easier and less expensive³⁰ way of effecting the transfer. Before giving possession to Wijesuriya it was necessary to accept the deposit of Rs. 6,000 being one year's rent. It was not clear that there was any point at that time in my taking possession of the land from Sabapathipillai on behalf of the Crown and retaining it to any length of time before issuing the permit to Wijesuriya.

5. On receipt of your telegram dated 10th March, 1943, asking me to defer action on your letter of the 28th January and withdrawing approval to transfer the permit to H. E. Wijesuriya I made an order for the refund of the deposit to Wijesuriya. But the clerk who was attending to the matter did not take action on this thinking that that might be done⁴⁰ after the matter had been finally decided.

6. Wijesuriya has now written to me a letter, a copy of the reply sent to him. If it is decided to continue the permit in favour of Sabapathipillai I propose to inform Wijesuriya that on further consideration it has been decided not to cancel the permit in favour of Sabapathipillai, and also send him a payment order in refund of the money deposited by him. As the Attorney-General is of opinion that the lease cannot be given

to Mr. Wijesuriya, and if the permit in favour of Sabapathipillai is cancelled the proper procedure would be to advertise the lease for sale again, I think the continuance of the lease in favour of Sabapathipillai would perhaps be also helpful in meeting any claim of Wijesuriya.

7. My file of papers is forwarded herewith as requested.

Itld. C. C.
Govt. Agent, Uva.

Badulla, 18th August, 1943.

Exhibits.
D 6
Letter from
Govt. Agent
to Land
Commis-
sioner
18-8-43
—continued.

P 20. Letter from Govt. Agent to Plaintiff.

10 P 20.

No. LR. 7839.
Badulla Kachcheri,
14th December, 1943.

P 20
Lette. from
Govt. Agent
to Plaintiff
14-12-43

Dear Sir.

Keenapitiya Rubber Land.

With reference to the sum of Rs. 6,000 deposited by you pending the grant of the lease of Keenapitiya rubber land to you, I have to inform you that the consideration of the grant of the lease has to await the result of the case instituted by Sabapathy against Karunatileke. As this may take a considerable time I have to request you to withdraw the said sum of Rs. 6,000. A requisition for this purpose is enclosed herewith. If you receipt and present it at the Kachcheri the money will be paid.

Yours faithfully,
Sgd.
Government Agent, Uva.

E. WIJESURIYA, Esq.,
Resthouse, Badulla.

P21. Letter to the Attorney-General.

P 21.

Colombo, 28th December, 1943.

P 21
Letter to
Attorney-
General
28-12-43

80 The Hon'ble the Attorney-General,
Hultsdorf, Colombo.

Sir,

We are instructed by our client Mr. H. E. Wijesuriya of Wijegiri, Mahawila, Panadure, to give you notice in terms of Section 461 of the Civil Procedure Code that on the expiration of one month from the date of delivery of this notice our client will sue you as representing the Crown for—

(a) the recovery of damages in a sum of Rs. 75,000 for breach of agreement made on 5th March, 1943, between our client and the Govern-
40 ment Agent, Uva Province, acting on behalf of the Crown to lease to our

Exhibits.
P 21
Letter to
Attorney-
General
28-12-48
—continued.

client the right to tap rubber trees on the allotments of Crown land sometimes referred to as Keenapitiya Crown Rubber Lands and depicted as lots 127 and 136 in Final Village Plan No. 317 and lot 1 in Final Village Plan No. 318 for a period of 4 years and 2½ months on a rental of Rs, 6,000 per annum and to place our client as lessee in possession of the said allotments of land on 15th March, 1943 ;

(b) the return of the sum of Rs. 6,000 being the rent for the first year of the said lease deposited with the Government Agent, Uva Province, in pursuance of the aforesaid agreement on 5th March, 1943, with interest thereon at 9 per cent. per annum from the 15th day of March, 1943. 10

We enclose for your information copy of the Complaint which will in due course be filed by us on behalf of our client in the District Court of Colombo. The terms of the said Draft Complaint should be read as part and parcel of this notice receipt of which please acknowledge.

We have the honour to be, Sir,
Your obedient servants,

JULIUS & CREASY,
Solicitors.

P 22
Letter to
Govt. Agent
29-12-48

P 22. Letter to Govt. Agent.

P 22.

Colombo, 29th December, 1943. 20

The Government Agent, Badulla.

Keenapitiya Rubber Land.

Dear Sir,

Our client, Mr. H. E. Wijesuriya, has handed to us your letter of the 14th instant with requisition attached. Our client does not admit that any conditions arise with regard to the refund of his deposit. As we have already given formal notice of action to the Attorney-General, he will no doubt deal with the whole matter hereafter on behalf of the Crown and we await a communication from him before taking any further steps in the matter. 80

Yours faithfully,

Sgd. JULIUS & CREASY.

P 23
Letter from
Attorney-
General
27-1-44

P 23. Letter from Attorney-General.

P 23.

No. C. 364/43.
Colombo, 27th January, 1944.

Gentlemen,

In continuation of my letter No. C. 364/43 dated 29th December, 1943, in which I acknowledge receipt of a notice under section 461 of the Civil Procedure Code, of a proposed action against me by your client,

Mr. H. E. Wijesuriya, I have the honour to inform you that an action, if instituted against me in terms of the draft plaint attached to your notice of action, will be contested.

2. A requisition for Rs. 6,000 was sent by the Government Agent, Uva, to your client on the 14th December, 1943.

Exhibits.
P 23
Letter from
Attorney-
General
27-1-44
—continued.

I am, Gentlemen,
Your obedient servant,
Sgd. J. M. FONSEKA,
Solicitor-General.

MESSRS. JULIUS & CREASY.

10 P 24. Letter to Attorney-General.

P 24. Colombo, 28th January, 1944.

P 24
Letter to
Attorney-
General
28-1-44

The Hon'ble the Attorney-General,
Colombo.

Mr. H. E. Wijesuriya.

Sir,

We beg to acknowledge receipt of your letter No. C. 364/43 of the 27th instant and in connection with the second paragraph thereof would inform you that the letter addressed by the Government Agent, Uva, to our client on the 14th ultimo stated that the consideration for the grant of the lease has to await the result of the case instituted by Sabapathipillai against Karunatilleke. Our client does not admit that any such condition can be imposed and we would furthermore add that no offer had been made to pay interest on this sum in accordance with the notice already received by you.

We are, Sir,
Yours faithfully,
Sgd. JULIUS & CREASY.

P 34. Statement by Attanayaka.

P 34.

P 34
Statement
by Atta-
nayaka
9-2-44

30 As far as I can recollect the position is as follows : On receipt of Land Commissioner's instruction to cancel the lease given to Mr. Sabapathipillai and to grant the lease to Mr. Wijesuriya who was the next highest bidder at the sale a notice was issued to the lessee terminating the lease and copies of the notice were sent to Mr. Karunatilleke and the Divisional Revenue Officer, Wellawaya. The latter was asked to take possession of the land on behalf of the Crown. A further copy of this notice was sent to the Chena Surveyor Muhandiram requesting him to

Exhibits.
 P 84
 Statement
 by Atta-
 nayaka
 9-2-44
 —continued.

point out the land to the Divisional Revenue Officer as he was new to the place and as he may not be aware of the situation and boundaries of the land. Chena Surveyor Muhandiram was further instructed to put Mr. Wijesuriya in possession of the land after the lessee hands over possession to the Crown.

As it is not in order to hand over Crown land to any one before rent is recovered in advance, I put up a minute to the Asst. Government Agent suggesting that we may call upon Mr. Wijesuriya to pay the first year's rent and added that this money be placed in deposit and that it would be credited to revenue only after Mr. W. is put in possession of the land. 10 The Asst. Government Agent approved the minute but suggested that we may enquire from Mr. W. whether he would agree. On this day Mr. Wijesuriya happened to come to the office and I verbally informed him of the position. He agreed to deposit the money pending delivery of possession. A sum of Rs. 6,000 was accordingly deposited by him.

Then representations were received from the lessee against the cancellation of the lease and almost at the same time a communication was received from the Land Commissioner cancelling his former orders. Action was then immediately taken to cancel the notice issued on the lessee and orders were obtained from the Government Agent to refund the money 20 deposited by Mr. Wijesuriya. The papers were passed on to the subject clerk for attention. He was a new comer, the officer who was dealing with this subject having been transferred to Hambantota and he has been unable to carry out this order for a few days. And I believe the file dealing with this subject was called for by the Land Commissioner almost at this time and it was sent to him. The money could not be refunded after that.

Sgd. H. B. ATTANAYAKA,
Land Clerk.

9-2-44.

P 25
 Answer of
 Defendant
 served on
 Proctors for
 Plaintiff
 4-4-44

P 25. Answer of Defendant Served on Proctors for Plaintiff. 30

P 25. District Court of Colombo No. 15380/M.

H. E. WIJESURIYA, Wijegiri, Mahawila, Panadure.....*Plaintiff.*

No. 15380/M.

vs.

THE ATTORNEY-GENERAL of Ceylon.....*Defendant.*

This 4th day of April, 1944.

Answer of the defendant abovenamed appearing by John Wilson, his Proctor, states as follows :—

1. The defendant admits the averments in paragraphs 1, 2 and 7 of the plaint.

2. Save as hereinafter admitted, the defendant denies all and singular the allegations in paragraphs 3, 4, 5 and 6 of the plaint and specially denies that there was any agreement, whether oral or otherwise, as alleged in paragraph 3 of the plaint.

3. Further answering, the defendant states :

- 10 (i.) that a sum of Rs. 6,000 was placed in deposit by the plaintiff on March 5, 1943, at the Kachcheri, Badulla, in anticipation of his obtaining a lease of the lands referred to in paragraph 3 of the plaint (hereinafter referred to as "the lands"), if and when they were vacated by one K. Sabapathipillai who had been given notice by the Government Agent, Uva Province, (hereinafter referred to as "the Government Agent") to quit the lands on March 15, 1943 ;
- (ii.) that the said notice to quit was cancelled by the Government Agent on March 11, 1943, who further made order on March 12, 1943, that the said sum of Rs. 6,000 deposited by the plaintiff should be returned to him ;
- 20 (iii.) that the said sum deposited by the plaintiff could have been withdrawn by him at any time but that no application for such withdrawal having been made, the Government Agent on December 14, 1943, prior to the receipt of the notice of action in this case, sent to the plaintiff a requisition enabling him to withdraw the said sum ; that this requisition has neither been presented for payment nor returned to the Government Agent up to the date of this answer.

4. As matters of law, the defendant states that assuming but not conceding that there was an agreement as alleged in paragraph 3 of the plaint, the said agreement is invalid and unenforceable at law by reason of the provisions of—

- 30 (a) The Prevention of Frauds Ordinance ;
 (b) The Land Sale Regulation.

Wherefore the defendant prays—

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

Sgd. JOHN WILSON,
Proctor for Defendant.

Settled by :

Sgd. J. M. FONSEKA,
Solicitor-General.

40 Sgd. CROSETTE THAMBYAH,
Crown Counsel.

Exhibits.
 P 25
 Answer of
 Defendant
 served on
 Proctors for
 Plaintiff
 4-4-44
 —continued.

Exhibits.

P 27. Requisition for Payment of Money.

P 27
 Requisition
 for Payment
 of Money
 (Undated)

P 27.

Requisition No.

Required the payment of the following sums deposited in the Badulla
 Kachcheri :—

Date of deposit : 5-3-1943.

Heads of deposit : Deposit—Miscellaneous.

Particulars : By Mr. E. Wijesuriya being deposit.

Amount : Rs. 6,000.

Amount payable : Rs. 6,000.

To whom paid : Mr. E. Wijesuriya.

10

for Government Agent, Uva.

Witnesses :

1.

2.

No.....

Supreme Court of Ceylon
No. 205/1945

District Court, Colombo
No. 15880

*In the Privy Council
on an Appeal from the Supreme Court of Ceylon*

BETWEEN

H. E. WIJESURIYA of "Wijegiri",
Mahavilla, Panadura.....*Plaintiff-Appellant*

AND

THE ATTORNEY-GENERAL of
Ceylon.....*Defendant-Respondent.*

RECORD
OF PROCEEDINGS
