

In the Privy Council.

No. 40 of 1951.

**ON APPEAL FROM THE COURT OF APPEAL
IN THE SUPREME COURT OF THE
FEDERATION OF MALAYA**

Suit No. 34 of 1949.

F.M. Civil Appeal No. 5 of 1951.

BETWEEN

T. R. M. THEVARAYA PILLAY ... (Defendant) Appellant

AND

MOOKA PILLAY s/o MUTHIAH PILLAY (Plaintiff) Respondent.

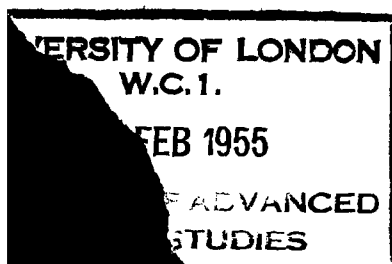
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In the Privy Council.

No. 40 of 1951.

ON APPEAL FROM THE COURT OF APPEAL IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

Suit No. 34 of 1949.
F.M. Civil Appeal No. 5 of 1951.

BETWEEN

T. R. M. THEVARAYA PILLAY (Defendant) *Appellant*

AND

MOOKA PILLAY s/o MUTHIAH PILLAY ... (Plaintiff) *Respondent.*

RECORD OF PROCEEDINGS

No. 1.
Plaint.

In the High
Court.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.
IN THE HIGH COURT AT IPOH.

Civil Suit No. 34 of 1949.

No. 1.
Plaint,
1st April,
1949.

MOOKA PILLAY s/o MUTHIAH PILLAY, No. 40, Main Road,
Bagan Datoh Plaintiff

versus

10 T. R. M. THEVARAYA PILLAY, No. 29, Anson Road, Teluk
Anson Defendant.

The abovenamed Plaintiff states as follows :—

1.—The Plaintiff is a merchant and carries on business at No. 40, Main Road, Bagan Datoh. The Defendant is a landed-proprietor and resides at No. 29, Anson Road, Teluk Anson.

In the High
Court.

No. 1.
Plaint,
1st April,
1949—
continued.

2.—On the 17th day of January, 1947, while the Plaintiff and the Defendant were in India, the Defendant in consideration of the sum of Rs. 17,000/- (Rupees Seventeen Thousand) sold his one-half ($\frac{1}{2}$) undivided share in Teluk Bharu Sinangin Estate which comprises pieces of land held under Grant for Land No. 11490, Lot No. 1701, Mukim of Teluk Bharu, and Entry Mukim Register Nos. 1724, 1723, 1720, 1045, 982, 973 now known as 2457 and 1753 Lot Nos. 1671, 1670, 1667, 861, 433A, 889 and 1681, being 650 acres in all in area, and agreed to give a registrable transfer to the Plaintiff in respect of same. A Certified translation of the document executed by the Defendant on the said 17th day of January, 1947 in Tamil 10 is hereto attached and marked "M.P. 1."

3.—Shortly after the said 17th day of January, 1947, in pursuance of the document above referred to "M.P. 1," the Plaintiff was put in possession of the said one-half ($\frac{1}{2}$) undivided share by the Defendant and is still in possession.

4.—During January, 1949, the Defendant returned to Malaya and the Plaintiff requested him to transfer the said undivided one-half ($\frac{1}{2}$) share to the Plaintiff but the Defendant put the Plaintiff off, and has since refused to give the said transfer although often requested to do so and is still refusing. 20

5.—On the 16th and the 21st days of February, 1949, the Defendant caused letters to be written to the Plaintiff, copies whereof are hereto attached and marked "M.P. 2" and "M.P. 3" respectively. The Plaintiff caused a letter in reply thereto to be written to the Defendant's Solicitors Messrs. Maxwell, Kenion, Cowdy & Jones on the 23rd day of February, 1949. A copy whereof is hereto attached and marked "M.P. 4."

6.—The Plaintiff is prepared to bring into this Court a sum of \$8,254.20 being equivalent to Rs. 12,794 being the principal and interest up to date of Plaint due by the Plaintiff to the Defendant on an On Demand promissory note in the hands of the Defendant referred to in the documents "M.P. 1," 30 "M.P. 2" and "M.P. 3."

The Plaintiff claims :—

- (a) That the Defendant be ordered to execute and give to the Plaintiff a registrable transfer of the Defendant's one-half ($\frac{1}{2}$) undivided interest in the lands held under Mukim Teluk Bharu Grant for Land No. 11490 Lot No. 1701, and Entry Mukim Register Nos. 1724, 1723, 1720, 1045, 982, 973, now known as 2457 and 1753 Lot Nos. 1671, 1670, 1667, 861, 433A, 889 and 1681.

(b) Such further and other relief as this Honourable Court deems just.
(c) Costs of Suit.

In the High Court.

Sgd. MOOKA PILLAY (In Tamil)

No. 1.
Plaint,
1st April,
1949—
continued.

Sgd. S. M. SHARMA
.....
Solicitor for Plaintiff

.....
Signature of Plaintiff

11 10
Plaint admitted.
Intld. J. W. D. A.
4.4.49

I, Mooka Pillay s/o Muthiah Pillay, the abovenamed Plaintiff, hereby declare that the above statement is true to my knowledge, except as to matters stated on information and belief and as to those matters I believe the same to be true.

Dated this 1st day of April, 1949.

Sgd. MOOKA PILLAY (In Tamil).

Filed this 1st day of April, 1949.

No. 1 (a).

M.P.1. Translation of Deed of Sale—Thevarayapillay to Mookapillay—
attached to Plaint.

No. 1 (a).
M.P.1—
Translation
of Deed of
Sale—
Thevaraya-
pillay to
Mooka-
pillay,
17th
January,
1947,
attached to
Plaint.

TRANSLATION.

20 This absolute deed of sale written and given on the 17th day of January, 1947, by Thevarayapillay s/o Raman Kanganiar of Sathanoor Village, Musri Taluk, to Mookapillay s/o Muthipillay of Putthanampatti, Musri Taluk, is as follows :—

I have on this date sold to you my share of 325 acres out of the 650 acres of the Teluk Sinangin Estate situated in the Mukim of Telok Bharu, in Malaya, for Rs. 17,000/- seventeen thousand. The manner in which I have received the said Rs. 17,000—seventeen thousand is as follows :—

30 By a pro-note I have received from you on this date, Rs. 12,000/- twelve thousand ; and cash Rs. 5,000/- received on this date for the share in the textile business known as Kanesan Store in Keelagopuravasal, Madura ; and as the total sum of Rupees seventeen thousand has been received by me, you shall have dominion and enjoyment over the said estate with absolute right of gift, use and disposal as from this date. You yourself shall pay the quit rent due up to this date for the abovesaid estate, and also the balance due to the Chinese on a Charge.

31 If by chance " Kuasa " (Letters of Administration) has to be taken out or if any encumbrance has been created by my agent in Malaya

In the High Court.

No. 1 (a).
M.P.1—
Translation
of Deed of
Sale—
Thevaraya-
pillay to
Mooka-
pillay,
17th
January,
1947,
attached to
Plaint—
continued.

R. M. Nadesapillay, I shall myself settle them and execute a transfer in your favour. If my agent causes any obstacle (or dispute) to effect a transfer in your favour, the pro-note executed by you shall become void. Moreover I shall return the Rs. 5,000/- cash which I have received from you with interest at Rs. 3/- per hundred.

After the transfer has been executed you shall return this document to me. If you fail to accept the transfer you shall forfeit the Rs. 5,000/- paid as advance.

Sd.

Witnesses :

THENOOR S. RETHINAM PILLAY.
Written by N. BALA KRISHNAN CHETTY, Head Master,
S.S.H.E. School, Puthanampatti.

10

Civil Suit No. 34/49.

Translated by me, This is a copy of the document marked " M.P. 1 " referred to in the Plaint of M. Mooka Pillay filed on the 1st day of April 1949.

Sd. M. S. ARULAPPU,
T.I.S.C. Ipoh.

Sgd. J. W. D. AMBROSE,
Sen. Asst. Registrar.

No. 1 (b).
M.P.2—
Letter,
Maxwell &
Co. to
Mooka
Pillay,
16th
February,
1949,
attached to
Plaint.

No. 1 (b).

20

M.P.2. Letter—Maxwell Kenion Cowdy & Jones to Mooka Pillay—
attached to Plaint.

Maxwell, Kenion, Cowdy & Jones,
Advocates & Solicitors.

Mercantile Bank Building,
Ipoh,
Malaya.
16th February, 1949.

A. R. Registered.

Mooka Pillay s/o Mutheeya Pillai,
Bagan Datoh.

30

Dear Sir,

We have been instructed by Thevaraya Pillay s/o Raman Kanganar of 29 Anson Road, Teluk Anson, to write to you in connection with an agreement dated 17th January, 1947, between you and your client.

By this agreement our client agreed to transfer to you 325 acres of land under coconuts at Telok Chenang, Mukim Telok Bharu, Teluk Anson for the sum of 17,000 Rupees. Of this sum our client received from you the sum of 5,000 rupees in cash and a promissory note for 12,000 rupees. In spite of repeated demands you have failed to honour the promissory note for 12,000 rupees although our client has been always willing and ready to complete his part of the transaction. This failure constitutes

a breach of the contract. Although you have been in possession of the property since the date of the agreement and have made a substantial profit from it our client is willing to return to you the promissory note for 12,000 rupees without any claim for interest thereon provided you yield up immediate possession of the land in question and pay any arrears of quit rent or interest due on the Charge mentioned in the contract.

In the High Court.

No. 1 (b).
M.P.2—

Letter,
Maxwell &
Co. to
Mooka
Pillay,
16th

February,
1949,
attached to
Plaint—
continued.

Should you fail to comply with this demand our client shall be compelled to take action against you for trespass on the land in question with accounts of the profits you have made therefrom since you entered
10 into possession.

Yours faithfully,
MAXWELL, KENION, COWDY & JONES.

Civil Suit No. 34 of 1949.

This is a copy of the document marked "M.P.2" referred to in the
Plaint of M. Mooka Pillay filed on the 1st day of April 1949.

Sgd. J. W. D. AMBROSE,
Sen. Asst. Registrar.

No. 1 (c).

20 M.P.3. Letter—Maxwell, Kenion, Cowdy & Jones to Mooka Pillay—
attached to Plaint.

No. 1 (c).
M.P.3—

Letter,
Maxwell &
Co. to
Mooka
Pillay,
21st

February,
1949,
attached to
Plaint.

Maxwell, Kenion, Cowdy & Jones,
Advocates & Solicitors.

Mercantile Bank Building,
Ipoh,
Malaya.
21st February, 1949.

Mooka Pillay s/o Mutheeya Pillai,
Bagan Datoh.

Dear Sir,

Thevaraya Pillay with you.

30 We note that we have not to date received any reply to our letter to you dated 16th February, 1949. Unless we hear from you on or before the 25th February our client will be compelled to take proceedings against you.

Yours faithfully,
MAXWELL, KENION, COWDY & JONES.

Civil Suit No. 34 of 1949.

This is a copy of the document marked "M.P.3" referred to in the
Plaint of M. Mooka Pillay filed on the 1st day of April, 1949.

Sgd. J. W. D. AMBROSE,
Sen. Asst. Registrar.

In the High
Court.

No. 1 (d).

—
No. 1 (d).
M.P.4—
Letter,
S. M.
Sharma to
Maxwell &
Co., 23rd
February,
1949,
attached to
Plaint.

M.P.4. Letter—S. M. Sharma to Maxwell, Kenion, Cowdy & Jones—
attached to Plaint.

S. M. Sharma,
Advocate & Solicitor,
Malayan Union.

1, Brewster Road,
Ipoh,
Perak, Malaya.
23rd February, 1949. 10

Messrs. Maxwell, Kenion, Cowdy & Jones,
Advocates & Solicitors,
Ipoh.

Dear Sirs,

I am instructed by Mooka Pillay s/o Muthiah Pillay of No. 40, Main Road, Bagan Datoh, to acknowledge receipts of your letters of the 16th and 21st days of February 1949.

My client says that on the date of the agreement it was arranged between the parties that the sum of Rs. 12,000/- due on the promissory note would be paid by my client to yours in Malaya where both parties intended to proceed as soon as possible after the date of the said agreement. In fact your client informed mine that he was sending the promissory note in question to his agent in Malaya. In spite of that, however, my client was at all times prepared to pay the amount if your client had demanded the money and produced the said promissory note to him in India. He further instructs me to say that he is prepared to send you a cheque in settlement of the said pro-note on your undertaking to hand over the pro-note to my client or on producing the same to my client. 20

While, therefor, there has been no failure on the part of my client to pay the money due on the pro-note since there has been no demand, my client does not agree that a failure on his part to pay this money even if it had occurred would have constituted a breach of agreement by him such as you suggest and on this point of law I agree with my client. 30

It is your client who having persistently refused to transfer his half interest in the land according to the said agreement forced my client to lodge a Caveat against the said land on the 10th day of February, 1949.

My client requires yours to give him a valid registrable transfer of his one half interest in the land mentioned in the said agreement dated 17th day of January 1947 within 7 days hereof, failing which I have instructions to institute proceedings for specific performance of the said agreement for transfer against your client. 40

Kindly let me know if you have instructions to accept service of process on your client's behalf. In the High Court.

Yours faithfully,

Civil Suit No. 34 of 1949.

This is a copy of the document marked " M.P.4 " referred to in the Plaintiff of M. Mooka Pillay filed on the 1st day of April 1949.

Sgd. J. W. D. AMBROSE,
Sen. Asst. Registrar.

No. 1 (d).
M.P.4—
Letter,
S. M.
Sharma to
Maxwell &
Co., 23rd
February,
1949,
attached to
Plaint—
continued.

No. 2.

10

Defence and Counterclaim.

No. 2.
Defence and
Counter-
claim,
29th July,
1949.

DEFENCE.

The abovenamed Defendant states as follows :—

1.—Paragraph 1 of the plaint is admitted.

2.—Paragraph 2 of the plaint is admitted save that the document of which a translation is annexed to the plaint was not signed or made by the Defendant and that the sale was subject to the conditions of the true document.

3.—In or about the month of January, 1949, the Plaintiff at 29 Anson Road, Teluk Anson, in the presence of the Defendant and others tore up the true document signed by the Defendant and threw the torn pieces to the ground. These pieces were recovered and a translation thereof is hereto annexed and marked " D1." 20

4.—A certified translation of the promissory note for Rs. 12,000/- given by the Plaintiff to the Defendant referred to in the true document is hereto annexed and marked " D2."

5.—The lands comprised in the said transaction are and have at all material times been registered in the names of the Defendant (an undivided half share) the Plaintiff (an undivided sixth share) and one R. M. Pitcha Pillai (an undivided third share).

30 . 6.—Paragraph 3 of the plaint is denied. As the owner of an undivided third share of the property, the Plaintiff was already in possession of and by consent managing the whole property.

In the High
Court.

No. 2.

Defence and
Counter-
claim,
29th July,
1949—
continued.

7.—Paragraph 4 of the plaint is admitted save that the Defendant did not put the Plaintiff off. He refused to execute the transfer and demanded restoration of his interest in the property.

8.—The Defendant will contend that at the time of the transaction he was not capable of understanding it and of forming a rational judgment as to its effect upon his interests alternatively that the transaction was induced by the Plaintiff by undue influence within the meaning of Section 16 of the Contract Enactment (Cap. 52).

9.—The Defendant will further contend that in spite of repeated demands made prior to the 31st July 1947 the Plaintiff has failed and neglected to pay the sum of Rs. 12,000/- payable under the said promissory note and has thereby relieved the Defendant of any obligation to fulfil whatever contract may exist between himself and the Plaintiff. 10

COUNTERCLAIM.

The Defendant repeats the allegation contained in his written statement and says :—

10.—The document hereto annexed and marked “ D3 ” is a translation of a copy of a letter dated the 31st July 1947 written by the Defendant to the Plaintiff. Many similar letters were written by the Defendant to the Plaintiff subsequently thereto but no reply was given to the said letter or to subsequent letters. The Defendant claims that he cancelled the transaction by the said letter dated the 31st July 1947 if not before. 20

11.—The document hereto annexed and marked “ D4 ” is a copy of a copy of a letter dated the 9th April 1949 written by the Defendant’s then Solicitors, Messrs. Shearn, Delamore & Co., to the Plaintiff’s Solicitor, Mr. S. M. Sharma.

12.—Since the Defendant’s return from India in January 1949 the Plaintiff has refused access to the property by the Defendant and denies his right to possession thereof.

13.—By reason of the premises the Plaintiff is bound to give to the Defendant possession of the said undivided share in the property and to account for the profits thereof. 30

14.—The Defendant will submit to any terms as to payment or otherwise which the Court may impose.

The Defendant therefore prays judgment upon the counterclaim as follows :—

- (i) For a declaration that he is entitled to such possession of the said property as is consistent with ownership of an undivided half share thereof.

- (ii) For an order that an account be taken by the Court in respect of the profits from the said undivided half share as from the 31st July 1947 or such earlier date as the Court may prescribe.
- (iii) For all necessary and consequential orders.
- (iv) Costs.

In the High Court.
No. 2.
Defence and Counter-claim,
29th July, 1949
continued.

Sgd. BRADDELL & RAMANI
.....
Solicitors for Defendant

Sgd. T. R. M. THEVARAYA PILLAY
.....
Signature of Defendant

10 I, T. R. M. Thevaraya Pillay, the abovenamed Defendant hereby declare that the above statement is true to my knowledge, except as to matters stated on information and belief, and as to those matters I believe the same to be true.

Dated this 29th day of July, 1949.

Sgd. T. R. M. THEVARAYA PILLAY.

No. 2 (a).

D.1. Translation of a torn Deed of Sale—Thevarayapillay to Mookapillay—annexed to Defence.

No. 2 (a).
D.1.
Translation of a torn Deed of Sale, Thevaraya-pillay to Mooka-pillay, 17th January, 1947, annexed to Defence.

20 This absolute Deed of Sale written and given on the 17th day of January 1947 by Thevarayapillay son of Raman Kanganar of Sathanoor Village in Musri Taluk, to Mookapillay son of Muthiapillay of Putthunampatti, Musri Taluk, is as follows :—

30 The particulars for my receiving my half share of 325 acres in Telok Senangin Estate situated in the Mukim of Telok Bharu in Malaya, in extent 650 acres, and Rs. 17,000/- seventeen thousand are :—By a pro-note taken from you on this date Rs. 12,000/- twelve thousand, and Rs. 5,000/- five thousand by way of transferring the share in Madura textile shop (known as) Ganesan Store ; and as the total sum of Rs. 17,000/- seventeen thousand has been received by me you shall have dominion and enjoyment over the estate as from this date with absolute right of gift use and disposal. You yourself shall pay the quit rent for the said estate and also the balance due to the Chinese on a Charge. If by chance “ Kuasa ” (Letters of Administration) has to be taken out, or if any encumbrance has been created by my agent in Malaya R. M. Nadesapillay, I shall myself settle them and execute a transfer in your favour. If my agent creates any obstacle (or dispute) to effect a transfer in your favour, the pro-note executed by you

In the High Court. shall become void. Moreover, I shall repay to you the sum of Rs. 5,000/- five thousand due in respect of the transfer of the Madura textile shop, with interest at 3 per cent. You shall return this paper after the transfer is executed. If you fail to accept the transfer, you shall forfeit the Rs. 5,000/- five thousand due in respect of the transfer of the Madura textile shop. If I do not agree to execute a transfer I shall pay an extra Rs. 5,000/- five thousand and take over the estate.

No. 2 (a).
D.1.
Translation of a torn Deed of Sale, Thevarayapillay to Mookapillay, 17th January, 1947, annexed to Defence—*continued.*

Signed in English over
2 one anna stamps

Witnesses :

THENOOR SEENA RETHINAMPILLAY
N. BALAKRISHNAN CHETTY

RM ?

10

Translated by me

Sgd. S. THAMBU,

Sen. Tamil Interpreter, S.C. Ipoh.
26.7.49

No. 2 (b).
D.2.
Translation of Promissory Note, Mookapillay to Thevarayapillay, 17th January, 1947, annexed to Defence.

No. 2 (b).

D.2.—Translation of Promissory Note—Mookapillay to Thevarayapillay—annexed to Defence.

The Promissory Note bond written and given this 17th day of January 20 1947 to Thevarayapillay son of Raman Kanganar of Sathanoor, Musri Taluk, by Mookapillay son of Muthiapillay of Putthunapatti, above said Taluk, is as follows :—

The sum of Rs. 12,000/- twelve thousand owing by me for my purchasing from you your half share of 325 acres in Telok Senangin Estate in Malaya, I shall on demand pay in cash to you or to your order the principal sum together with the accrued interest at the rate of 3 per cent., and get back the Bond with settlement endorsed.

Signed in Tamil over
2 one anna stamps

30

MOONA MOOKAPILLAY

Witnesses :

THENOOR SEENA RETHINAMPILLAY
written by N. BALAKRISHNAN CHETTY

Translated by me

Sgd. S. THAMBU,

Sen. Tamil Interpreter S.C. Ipoh
26.7.49

No. 2 (c).

D.3. Translation of a Tamil letter—Thevaraya Pillay to Mooka Pillay—annexed to Counterclaim.

31.7.7

To M. R. RY. Moona Moovanna Puthanampatti.

Written by Thena to great brother-in-law Avargal.

Safe and hope the same of you. In spite of my writing several times and as you are dragging on without paying the money you have to take back the Promissory Note you gave me and also Rs. 5,000/- and write a letter to your Agent in Malaya to submit all the Estate Account to me hereafter. Money that does not serve my need is useless.

Reply immediately.

Sd. T. R. M. THEVARAYA PILLAY.

No. 2 (c).
D. 3.
Translation of Tamil letter.
Thevaraya Pillay to Mooka Pillay.
31st July, 1917.
annexed to Counterclaim.

No. 2 (d).

D.4. Letter—Shearn Delamore & Co. to S. M. Sharma—annexed to Counterclaim.

COPY.

Shearn, Delamore & Co.

20 S.D. (S) 2598

Kuala Lumpur,
9th April, 1949.

S. M. Sharma Esq.,
Advocate & Solicitor,
1, Brewster Road,
Ipoh.

Dear Sir,

Thevaraya Pillay & M. Mooka Pillay

We are now acting for Mr. Thevaraya Pillai in respect of his interest in Teluk Chenang Estate, about which Messrs. Maxwell, Kenion, Cowdy & Jones have been recently in correspondence with you.

30 Our client has shewn us the document which he instructs us is the original of the agreement of sale dated the 17th January 1947 and we have read a translation of the same.

It appears to us that in January 1947 our client executed a document which—in the translation we have read—is called a Sale Deed whereby he purported to sell to your client his half share of 650 acres i.e. 325 acres in the estate for the sum of Rs. 17,000.

The consideration appears to have been a Promissory Note for the sum of Rs. 12,000 signed by your client and the transfer to our client of

No. 2 (d).
D.4.
Letter.
Shearn Delamore & Co. to S. M. Sharma.
9th April, 1949.
annexed to Counterclaim.

In the High Court.

No. 2 (d).
D.4.

Letter,
Shearn
Delamore &
Co. to S. M.
Sharma,
9th April,
1949,
annexed to
Counter-
claim—
continued.

the right of your client to receive from a Textile Store at Madura the sum of Rs. 5,000. In addition your client undertook to discharge the amount due to a Chinese who held a Charge over the Estate. We understand that the amount owing by our client on this account was approximately \$15,000/-.

In the result the transaction seems to us to be that your client acquired some 325 acres of the estate for a consideration amounting in all to approximately some \$27,000/-. It would appear that this consideration was entirely inadequate, but we do not—at this stage—desire to discuss this aspect in detail.

The "Sale Deed" provides according to our translation that if our client's agent refuses to transfer the land then the Promissory Note for Rs. 12,000 will not be valid and our client is to pay your client the sum of Rs. 5,000 he took over from the Madura Textile Shop. 10

It is also provided that in the event of our client being unwilling to transfer to your client his interest in the 650 acres, he is to pay an extra Rs. 5,000 and take back the Estate.

We are instructed that your client has not paid up to the present time the sum of Rs. 12,000 due on the Promissory Note, and there appears from your letter of the 25th February 1949 addressed to Messrs. Maxwell, Kenion, Cowdy & Jones to be some question as to whether it should have been paid in India or Malaya. 20

Again we do not desire at this stage to go into this aspect of the matter as our client has instructed us that he does not now wish to transfer to your client his interest in the estate, and he is prepared to pay to your client the extra Rs. 5,000 on his failure so to do.

In the result it seems to us that on the cancellation of the bargain our client will be under obligation to return to yours the sum of Rs. 5,000 received from the Madura Textile Store and to pay the extra Rs. 5,000 and to hand over the Promissory Note for Rs. 12,000.

This he is prepared and through us now offers to do. 30

We calculate that Rs. 10,000 is the equivalent of \$6,000/-, and upon hearing from you that your client will accept this sum, and the Promissory Note for Rs. 12,000 on the basis that thereafter there will be no claim by your client to the half interest of our client in the Estate which was the subject matter of the "Sale Deed" we will send you this sum and the Promissory Note for Rs. 12,000.

Yours faithfully,

Sgd. SHEARN, DELAMORE & CO.

No. 3.
Reply.

In the High Court.

No. 3.
Reply,
7th
September,
1949.

1.—The Plaintiff joins issue with the Defendant in matters raised in paragraphs 2, 3, 6, 7, 8 & 9 of the Defence and says :—

2.—The Plaintiff does not admit the allegation made in paragraph 10 of the Counterclaim and says that no such letter as referred to therein and marked “ D-3 ” was received by the Plaintiff.

3.—The Plaintiff admits paragraph 11 of the Counterclaim and says that the letter referred to therein was received after the plaint herein had 10 been filed.

4.—The Plaintiff denies the allegation made in paragraph 12 of the Counterclaim.

5.—The Plaintiff says that the counterclaim is misconceived and that the Defendant is not entitled to the relief asked for and prays that the same be dismissed with costs.

Signed.....(?)

Signature of Plaintiff.

Signed : S. M. SHARMA,
Solicitor for Plaintiff.

20 I, Egambaram Pillay, son of Perianna Pillay, attorney of Mooka Pillay s/o Muthiah Pillay, the abovenamed Plaintiff hereby declare that the above statement is true to my knowledge, except as to matters stated on information and belief and as to those matters, I believe the same to be true.
Dated this 7th day of September, 1949.

No. 4.

Judge's Notes of Evidence at Trial.

No. 4.
Judge's
Notes of
Evidence
at Trial.

For Plaintiff : S. M. SHARMA.
For Defendant : B. J. P. JOAQUIM and R. RAMANI.

MR. SHARMA OPENS—

30 No reply to letter of 23rd February, 1949.
Inspection by solicitor of original document. Had to file plaint.
(Agreed bundle put in and marked P.10.)
Next had letter (16) in P.10. Plaint filed.

In the High
Court.

No. 4.
Judge's
Notes of
Evidence
at Trial—
continued.

(Mr. Joaquim points out not yet served.)

Paragraph 6 of Defence incorrect as possession given by Defendant.

Paragraph 8 late in the day.

(Mr. Joaquim states Paragraph 8 will not be proceeded with in so far as undue influence is concerned.)

Last sentence material difference in "Sale Deeds."

It is inconsistent with rest of document.

Letter of 31st July, 1947 (D.3) never received and inconsistent with other correspondence.

In 1940 Plaintiff, Defendant and another agreed to buy estate for 10 \$42,000/-, Defendant to have 3/6, Plaintiff 2/6 and Pitchay Pillay 1/6. 250 acres is still virgin jungle.

Only 200 acres bearing at time.

No flood gates—frequent flooding.

\$12,000/- paid in cash to Chinese owner.

Balance of \$30,000/- as a charge.

Plaintiff managed estate for first 3 months.

Plaintiff to India, Defendant in charge.

Defendant in sole charge except for 3 months during Japanese time when he got Plaintiff's agent to look after it. He resumed till 1947. 20

Defendant had only paid \$6,000/- (Rs. 9,000.)

Interest on charge paid up to Japanese occupation, not since.

After liberation position was that Defendant had rendered no accounts, had twice leased estate, no money was sent to Plaintiff, and in 1946 Defendant tried to sell.

Plaintiff wrote from India that he was coming to Malaya. Before Defendant went to India in 1946 he asked Pitchay Pillay and Plaintiff's agent to sign an option for \$130/- an acre.

Chinese did not agree.

Defendant wrote Plaintiff he would sell for what it could fetch. Prices 30 then low.

Defendant had another estate. He also tried to dispose of that. He offered a friend of Plaintiff Rs. 1,000/- if he could induce Plaintiff to buy a half share.

On 17th January they came to terms for Rs. 17,000/- (\$11,000/-). Interest then amounted to about \$10,000/-, half of which Defendant owed.

Quit rent due amounted to \$2,500/-.

He got therefore 3 times what he paid for his share.

Defendant also tried to sell Plaintiff his other estate. Plaintiff refused.

Never any demand in India on the promissory note. 40

Plaintiff came here in October, 1948. But after signing agreement Plaintiff informed his agent of his purchase and to take possession, etc.

In same letter Defendant also wrote to Plaintiff's agent to take possession.

(Original of (5) in P.10 marked P.11.)

(5A) in P.10 written same day.

Coconut price increased in 1948.

Further increased in 1949 when Defendant returned to Malaya. This is Defendant's real reason for his conduct. In the High Court.

Solicitor Bhaduri tried to settle matter up to February.

Document was stamped and caveat lodged.

Genuineness of document not raised until defence filed.

My information was that witness from India was coming on 14th March, 1950. At that stage Defendant went into Mental Hospital. I called witness in India not to come. Witnesses now here. No. 4.
Judge's
Notes of
Evidence
at Trial.

Issues—forgery

10 specific performance.

(Original documents in Registrar's possession.)

Two on top are Defendant's and the bottom Plaintiff's. Signed by Suppiah and Sharma.

Photos have been taken and signatures enlarged.

Bottom marked P.13 and top and second marked X.14 and X.15.

No. 4 (a).

Evidence of Ho Tong.

Plaintiff's Evidence.

HO TONG affirmed.

20 I am a photographer and proprietor of the Modern Photo Studio, Ipoh.

I took photos of three documents in the Registry before you, another lawyer and the Registrar. P.13, X.14 and 15 are those documents. I made enlargements. These are photos and enlargements of P.13. (Marked P.13A and P.13B.)

I made a still larger enlargement of the signature. This is it. (Marked P.13C.)

This is a photo of X.14 and enlargement. (Marked X.14A and X.14B.)

This is a still bigger enlargement of X.14. (Marked X.14C.)

30 These are photos and enlargements of X.15. (Marked X.15A and X.15B.)

This is a bigger enlargement of X.15 signature. (Marked X.15C.)

I have the negatives of all photos. They have been in my possession all the time.

Mr. Somasundram instructed me to photograph P.13. I did so. He has taken the negative on 16th August, 1950.

These are the negatives. (Marked P.16.)

No. 4 (a).
Ho Tong—
Examina-
tion.

CROSS-EXAMINATION.

Declined.

In the High
Court.

No. 4 (b).

Evidence of Mooka Pillay.

Plaintiff's
Evidence.

MOOKA PILLAY affirmed.

No. 4 (b).
Mooka
Pillay.
Examina-
tion.

I am the Plaintiff. I am 65 years old. I have been in business in this country for about 40 years. Defendant has been in business here for about 20 years.

In India we live 2 to 2½ miles apart.

In 1940 Defendant and I and another purchased this estate, now in dispute, for \$42,000/-. I had 2/6, Defendant had 3/6 and Pitchay Pillay 1/6.

According to the transfer \$12,000/- was paid in cash. Defendant 10 paid \$6,000/-, I paid \$4,000/- and Pitchay Pillay \$2,000/- The land was charged to the Chinese for the balance, \$30,000/- at 9% interest per annum.

The estate is at Teluk Bharu. It is far from the road. You have to go by river or cross an estate and a river to get to it.

Estate was 650 acres—400 acres were planted and 250 were jungle. They are still jungle. Of the 400 acres only about 200 give a yield.

The charge still subsists.

I first managed the estate for three months. I had to go to India and handed over to the Defendant. I did not return before the occupation 20

I returned to Malaya in October, 1948.

During this period I received no profits from Defendant. He never gave me accounts of his management at any time.

After the liberation I wrote to the Defendant. I had a reply. This is his letter. (Marked P.17.)

A year later Defendant came to India. I went to see him, a social call. He said he was lucky to be home alive and said "Don't you talk about the "the estate." He showed me no accounts. He said there were no profits and no work done on the estate.

We saw each other frequently. I know Balakrishnan Chetty. He was at that time a teacher in our village. Mootoosamy Pillay built the school. 30 Balakrishnan attended to my correspondence. (Balakrishnan Chetty identified.)

Defendant asked me to buy his share in the estate. At first I was not prepared to buy. After some correspondence with Malaya I agreed to buy. We negotiated for about a year from date of his arrival in India. Actual negotiations took 4 to 5 months. We finally agreed to terms.

Balakrishnan and Rathna Pillay were present.

Final price and terms were reduced into a document. Balakrishnan wrote it. No copy was made. There was a draft first. I saw the Defendant sign the document. Balakrishnan and Rathna Pillay were also 40 both present. They also signed in my presence.

The document was given to me. Defendant kept the draft. One anna stamp was put on the document. This is the document, Ex. P.13.

A promissory note was also made.

This document you now show me is not in my handwriting. (Marked X.18.) In the High Court.

The promissory note was for Rs.12,000/- on demand with interest at 3% per annum. Plaintiff's Evidence.

At that time I was thinking of coming to Malaya, but I did not do so until long afterwards. No. 4 (b).
Mooka

I gave Defendant my Rs. 5,000/- share in the textile shop.

Up to the time I left India in 1948 the Defendant had made no demand on the promissory note. He told me he had sent it to Malaya. Pillay.
Examina-
tion--
continued.

10 We had had no differences up to that time.

Same day I bought the land I wrote a letter to my agent in Malaya. On the same Air Mail letter the Defendant also wrote him. Ex. P.11 is that letter. He wrote in my presence.

My agent took possession of the estate. I instructed him to carry out certain work.

I spent roughly about \$40,000/- on the estate. There was income too, but I sustained losses.

Defendant returned to Malaya in January 1949. Coconut price had then gone up to over \$25/- a picul. In January 1947 it was \$8 to \$9/-.

20 I saw Defendant. I said it was better he took the money and transferred the land. Defendant said he was not then in favour of the transfer. He said the money was not paid when he was in need of money. I asked him what he meant and he said, "In India you did not pay the money for my need. I had sent you a telegram."

He had sent me a telegram in February 1947 asking me to deposit Rs.9,000/- in Indian Oversea Bank at Trichinopoly. Telegram was in English. Balakrishnan read it for me. He wrote a reply for me asking Defendant to come over. Defendant came. I asked him to produce the promissory note and I would endorse it and pay him. Defendant said 30 the promissory note had been sent to his agent in Malaya. There it ended. He said nothing about any document.

After Defendant refused to transfer though I asked him several times I took the document to Mr. Bhaduri. He had P.13 stamped (8.2.49). I instructed Mr. Bhaduri to lodge a caveat. Defendant and I both went to see Mr. Bhaduri. This was after Mr. Bhaduri had P.13.

I took the Defendant to Mr. Bhaduri, from 28 Anson Road, Teluk Anson, which is the Defendant's agent's shop.

40 At shop I invited Defendant to come with me to Mr. Bhaduri. The agent asked what I was going to do there. I said we were going to settle the matter. He was not happy over it. I took letters out of my pocket and gave him to see. There was one about transferring two town lots to me from Defendant to his agent and I said even this was not settled. I was a little angry at the time.

Adjourned to 9.30 a.m. on 5.9.50.

In the High Court. C.S.34/49 contd.

Tuesday, 5th September, 1950.

Plaintiff's Evidence

No. 4 (b)
Mooka Pillay.
Examination—
continued.

MOOKA PILLAY re-affirmed.

I went to see with Defendant Mr. Bhaduri. He advised us to settle. I agreed. Defendant refused. Mr. Bhaduri produced Ex.P.13. He held it in his hands. Neither Defendant nor I took it to have a look at it. As Defendant did not agree no terms of settlement were stated. Defendant left.

Ten to twenty days later I took P.13 from Mr. Bhaduri. It had then been stamped and the land caveated.

I have known Defendant for over 20 years. We have been partners in some estates. I can recognise his handwriting. I do not know English, but Tamil. The writing in the body of Ex.X.14 is that of the Defendant. I am sure of that. I am also certain the writing in X. 14 (*sic* 15) is Defendant's.

I also know Balakrishnan's writing. The writing on X.14 and 15 does not resemble his writing. It is entirely different.

The handwriting on Ex.X.18 does not resemble Balakrishnan's writing. I am definite about that. I am not sure, but it looks like the Defendant's writing.

Balakrishnan has written dozens of documents for me.

Until he refused to transfer in Malaya the Defendant had never questioned the sale to me. I was still in possession and the estate was managed by my agent.

Cross-examination. CROSS-EXAMINED.

When I was with Defendant the proposition to buy the estate was brought to us by a Chinese broker. I gave part of my share to Pitchay Pillay. He asked for it.

The deal was not a cheap one.

Estate was in coconuts. Only about 500 rubber trees in all. We found rubber trees after clearing.

Estate was in a dirty condition. I started to clean it up. I cleared the blukar in my three months' management. The Chinese filed an affidavit that 400 acres were planted. We had no survey.

There has been no planting done. What is there to-day was there in 1940. There are not 600 acres planted to-day.

I do not know about Settlement Returns or Government inspections. I cannot agree that 601 acres are planted.

I went to India in January, 1941. Up to 1947 I had no exact information about the estate. Defendant offered to sell. Balakrishnan fixed the price.

Balakrishnan had never then been to Malaya. Defendant told him about the estate and Balakrishnan fixed the price. I had nothing to say about the price.

I wrote to Malaya before agreeing to buy. I wrote to my agent, *ngambaram*. Defendant knows him. I looked after estate personally in 1940.

I wanted information about the property before buying. I did not mention the price to Egambaram. I also wanted to know if he could run the estate if I bought it. I did not wish to consult him about the price.

The price was valued on the figure originally paid, \$42,000/-. Half that price for Defendant's share. I thought the whole estate in January, 1947, was worth \$42,000/-. I did not think it was worth more than that.

I had to pay Defendant Rs. 17,000/-, worth about \$12,000/-, not \$11,000/-. There was Defendant's share of charge, \$12,000/-, plus interest. I was paying him \$27,000/- for his half share which I valued at \$21,000/-.

10 I was not keen to buy, but Defendant said he could not return to Malaya and my people were here so that I could afford to pay a little more.

I bought the property as a friendly act.

I cannot say the value of the property today. I have just returned from India. About \$250/- a planted acre, that is, 200 acres with 10,000 trees. Jungle valued at \$50/- an acre. That means estate is worth about \$75,000/-. I would not sell for that price. I have spent a lot of money. I would not sell for \$100,000/- nor for \$150,000/-, nor for \$1,000,000/-. That is the truth. I am not prepared to sell.

I repeat that I valued the estate at \$42,000/- in 1947.

20 I do not intend to mislead Court in the \$75,000/- figure.

I do not know that current market price is \$450/- for bearing land an acre.

Copra is between \$25/- and \$30/-.

I was away 5 months this year in India. I went in April. The price was then \$28/-. I have not asked price since my return. I don't know what it was in January, 1949. From a letter I understood the price in January, 1947, was \$7/- to \$8/-.

I only have hazy ideas as to the price at any time.

30 I never had a letter from Defendant complaining that I had not paid the promissory note and that he renounced the transaction.

I recognise Defendant's handwriting in this book dated 17th February, 1947. I did not get the first letter.

The promissory note was not payable in a month. It was to be paid after a year, when the estate was cleared. The promissory note was for my convenience. I had expenses on estate to meet. The interest was 3% per annum. We were friends not Chettiars. On the true document was written 3% per year.

I think the body of X.18 is in Defendant's writing. The writing of the signature on stamp is not mine.

40 I did sign a note for Rs. 12,000/- in favour of Defendant. He has suppressed that one and put X.18 in its place. I cannot say for what purpose.

The next letter in the book is also in Defendant's writing. I never received it. It is a demand for payment.

The third dated 25th May, 1947, the same. I did not get it either.

I was at Puthanampatty.

I did not receive the next letter of 24th June, 1947. Nor did I receive the letter of 27th June. I did not receive the next letter.

In the High Court.

Plaintiff's Evidence.

No. 4 (b).

Mooka Pillay.
Cross-examination—
continued.

In the High Court. I did receive one telegram on 15th or 17th February, 1947. That is the one I have already mentioned. I did not owe him any other money except the Rs. 12,000/-.

Plaintiff's Evidence. I don't know if Defendant sent the note to Malaya. He told me so. If Defendant had posted letters to me they would not have gone astray. I did not receive the letter of 31st July, 1947. I agree that on the face of it it cancels the transfer.

No. 4 (b). Mooka Pillay. Cross-examination—*continued.* Next on 6th August is also in Defendant's writing. I did not receive such a letter. Letter (copy) of 22nd March, 1948, is also in his writing. Never 10 received by me. I never saw the original of the letter of 23rd March written to Egambaram. I did not receive the last letter dated 7th April, 1948. I left India in October, 1948. (Copy letter book marked X.19 for identification.) The promissory note is referred to in my agreement P.13. Until I heard from Maxwell, Kenion, Cowdy & Jones, Solicitors, the Defendant did not communicate with me on this matter. There were 20 letters on other matters, one or two. I did not receive the majority of the letters shown in X.19. I did not keep them in a bundle. I did not tear them in half and throw them on the ground in the agent's shop at Teluk Anson. I saw Balakrishnan write P.13. I am positive of that. He did so on 17th January, 1947. He wrote it in my house at Puthanampatty, in the hall. He used a fountain pen. His own. Rathna Pillay was there and there were women about. The Defendant was present. It was in the evening, 3 to 4 p.m. I saw Defendant write his signature on P.13. I am positive of that. 30 It was on 17th January, 1947, in my house. He signed after the contents were written and read over. The stamp was put on after the document was written and then the signature was put on. The writing of the last three lines grew smaller and smaller and curve slightly. I cannot explain that. I was told Cowdy & Jones wanted to see P.13. My lawyer then had the document. I produced no other document to Mr. Sharma but P.13. P.13 is not ruled. It is not true that the document had ruled lines when inspected. 40 I know of no document with ruled lines. The Defendant did sign P.13. I say he did sign it. It is not usual for the grantor in India to write the document. It is usually an outsider. Defendant did not make two copies of Balakrishnan's draft. Two such copies were not signed by Defendant and witnessed by Rathna Pillay and Balakrishnan. X.14 is not a copy that was signed by Defendant and handed to me. It is in Defendant's writing.

X.15 is not the other copy.

Defendant was handed the draft. It was not signed by anybody. It was cut and corrected. Only one fair copy of it was made and handed to me.

I never told my lawyer that two copies were made. I cannot explain why in his letter ((9) in P.10) he refers to a copy being in Defendant's possession.

It is quite usual to have a forfeiture clause and a penalty clause. That was not arranged between Defendant and me in this transaction.

I have had other land transactions in India. I have seen papers with embossed stamps across the top. We used the paper we did as Defendant wanted it executed that day. He said this paper would do and he would not go against his word.

The promissory note was on similar paper with a stamp stuck on ; 2 anna revenue stamp. There were two 1 anna stamps. The same two witnesses. Balakrishnan wrote it.

Defendant came to Malaya in January, 1949. He came to see me at my neighbour's house in Bagan Datoh. I don't know why he came. He did not ask for the return of the estate. He did not offer me Rs. 10,000/-.

There is a place called "Bridge" at Bagan Datoh. Defendant and I might have gone there for a talk. He wanted me to go with him and see the estate. I told him he had no interest in it. He than asked if he had sold the estate to me. He said, "I will see that there is nothing" and he went away angry.

I had told him I was on the land working and carrying out the conditions We did not mention the Rs. 12,000/- I owed him.

Next morning I did not call out to a neighbour loudly that I had given orders for him to be thrashed if he went to the estate.

Two days later I went to Nadason's shop in Teluk Anson. I had some letters in my pocket. Defendant was in the shop. I did not say "I shall end this blasted business for ever." I did not tear the papers and throw them on the ground.

I did not take off my sandal and beat the papers. I don't know what doing that means.

I held Defendant by his arm and took him to Mr. Bhaduri's office.

Adjourned to 2.30 p.m.

I gave the letters to Nadason Pillay. Defendant had sold me two town lots at Bagan Datoh. I had not got the transfer. Defendant had written authorising the transfers. Those were the papers I gave to Nadason.

The lots have not yet been transferred to me. I have taken no steps. I think I may also have given him Quit Rent receipts and a Statutory Declaration.

These are not the letters I gave to Nadason. (Marked X.20 for identification.) The envelope has my address. I may have given it to him. It is in Defendant's writing. Date stamped on envelope is August, 1948. It is headed same as letters. I did not give letters to Nadason. I did not

In the High Court.

Plaintiff's Evidence.

No. 4 (b).

Mooka Pillay.

Cross-examination—
continued.

In the High Court. tear them up and throw them on the ground. Ex.X.14 was not among the letters I gave Nadason.

Plaintiff's Evidence.

No. 4 (b).
Mooka Pillay.
Cross-examination—
continued.

I took Defendant to Mr. Bhaduri to finish up the transaction—to effect transfer. Mr. Bhaduri advised us to settle. He was my lawyer. Defendant was not willing to settle. I agreed to pay the money to him and get transfer of the land.

I have other estates and business and had no difficulty in raising \$40,000/-.

I had the money to pay Defendant Rs. 12,000/-, but he would not come and take it. 10

I had a banking account in India. I had no banking account in Malaya. I spent \$40,000/- without having one. My account books show I spent approximately \$40,000/- in 1947. I can produce those books.

I am the Manager of Balakrishnan's school. It is my family's school. I am the family manager. Balakrishnan is an employee of mine. He reads and writes English. I am paying his expenses to come to Malaya. He is on full pay leave.

Rathna Pillay has not been to Malaya before. He is a land owner. He does not know English. He has come over in this case. I have paid his passage. 20

Re-examination.

RE-EXAMINED.

I swear I never received a single one of the originals of X.19. X.19 is prepared for this case.

I had heard before the suggestion that Defendant had written the documents. A translation was sent to India. Balakrishnan said it was incorrect.

I correct myself. I had not heard that suggestion before to-day.

I had not seen X.18 before to-day.

X.15 is not in Balakrishnan's writing.

The draft, the fair, the promissory note, two letters and a telegram 30 were all the papers that were written on 17th January, 1947.

Defendant signed one document and I signed the promissory note.

There is registered post in India. I never received a registered letter from Defendant.

Defendant has never used the word "cheat" to me. Our relations were friendly up to time I left India. Two months before I attended his daughter's wedding and spent two nights in his house. I could not have gone to his house had he called me a cheat.

In 1947 I offered my share of the estate to Defendant on the same basic price of \$42,000/-. He was not willing to buy. 40

My agent said estate was hard to work and he could not look after it.

Defendant first asked for Rs. 20,000/- and me to take over the liabilities. I first offered Rs. 15,000/-.

We negotiated through Balakrishnan. Defendant suggested finally Rs. 17,000/- and I accepted.

There are 10,000 trees on the estate.

- Defendant was not prepared to spend money on the estate.
 I had flood gates put in. That alone cost \$7,000/-.
 Estate needs energetic and able management.
 Balakrishnan left the school about 1½ years ago.
 I had to send police to guard him *en route* from Penang. I have also had to pay his wife's fare.
 I have never given you any agreement on ruled paper. That is absolutely untrue.
 I brought P.13 to you after it was stamped.
- 10 I remember when I first went to you. I took P.13 back at your suggestion as you had no safe.
 Noboby suggested stamped paper when P.13 was made.
 I have never seen papers beaten with a slipper.
 I have a lot of property in India. I have over 20 acres of land worth Rs. 100,000/-.
 In Malaya I have 170 acres of coconut in Lekir. That is first class land. Besides that I have a shop at Bagan Datoh.
 The first offer of Rs. 10,000/- was by Shearn & Delamore ((16) in P.10).
- 20 Nadason is brother of Pitchay Pillay.

Plaintiff's Evidence.

No. 4 (b).
Mooka Pillay.
Re-examination—
continued.

 No. 4 (c).

Evidence of J. N. Bhaduri.

No. 4 (c).
J. N. Bhaduri.
Examination.

J. N. BHADURI affirmed.

- I am an Advocate and Solicitor at Teluk Anson for past 21 years. I got to know the parties about 15 years ago.
 Both of them came to me early in 1949. They were excited. I can't well remember what took place. I was due in Court.
 I think P.13 is the document Plaintiff showed me. I had it stamped. I can remember the part relating to the stamping on the back.
- 30 When they came the Plaintiff handed me the document. I put it in safe. I told them to settle and went to Court. My recollection is not clear. I left first for Court.
- After 5 or 6 days Plaintiff instructed me to lodge a caveat. I handed P.13 to the Indian Court Interpreter to be translated.
 When I got translation I had it stamped at Sub-Treasury and kept P.13 in my safe for some time.
 Only once did parties come together.

CROSS-EXAMINED.

Cross-examination.

- 40 I had P.13 for 10 or 12 days before it was stamped.
 I had acted in another matter for Plaintiff and also for Defendant.

In the High Court. Defendant came once to my house and once to my office with regard to a form of settlement.

Plaintiff's Evidence. I did not see Plaintiff in connexion with a settlement.
I think the Defendant was demanding some money, about \$30,000/-.

No. 4 (c). RE-EXAMINED.

J. N. Bhaduri—continued. Re-examination. Defendant came alone to my house. He said he would settle the matter if Plaintiff paid him \$30,000/-.

Adjourned to 6.9.50.

No. 4 (d).
Balakrishnan Chetty.
Examination.

No. 4 (d).

Evidence of Balakrishnan Chetty

10

C.S. 34/49 contd.

BALAKRISHNAN CHETTY affirmed.

I am a Teacher at Board Higher Elementary School in Trichinopoly. I first came to Malaya last week and in Ipoh on Sunday.

Prior to this I was a master at a school managed by the Plaintiff. I left there 1½ years ago.

Plaintiff and I lived in same town. I have known him 10 years. He has endowed another school.

I know the Defendant. I have known him since 1946. I met him at Pathanampatty, the Plaintiff's village, in the Plaintiff's house. Plaintiff introduced us. I came to know Defendant well. 20

Defendant spoke to me about a coconut estate in Malaya. He said he did not like to return to Malaya ; he had no money to do work on the estate, which required a good sum and he asked me to get Plaintiff to buy and promised me Rs. 1,000/-. He said he had a half share in estate.

This was 10 to 15 days after I had met Defendant. He mentioned Rs. 20,000/- as his price.

I spoke to the Plaintiff. The Plaintiff wrote to his agent in Malaya. Some time after he agreed to buy. He offered Rs. 15,000/-. Finally they came to an agreement after four months. That was on 17th January, 1947. That was in the hall of Plaintiffs' house. Present were Defendant, Plaintiff, Rathna Pillay and I. 30

Up to then there had been a difference of Rs. 1,000/- ; Plaintiff offered \$16,000 and Defendant wanted Rs. 18,000/-.

I told Defendant if he came down a thousand Plaintiff would probably agree. He did so.

An agreement was made. I drafted it. It was in Tamil. They both agreed to the draft. Rs. 5,000/- was to be paid in cash, the balance of Rs. 12,000/- was to be paid in Malaya. Defendant did not agree and so a promissory note was executed. He did not agree to the arrangement of paying in Malaya. Promissory note was on Demand. Defendant was to collect the money after one year. Interest was fixed at 3% per year.

In the High Court.

Plaintiff's Evidence

No. 4 (d).
Balakrishnan Chetty.
Examination—
continued.

I wrote out agreement in the terms they had agreed and made a fair copy of the draft. I put on a stamp myself for 1 anna. Defendant then signed. I saw him sign. The others present also saw him sign.

10 I then wrote the word "witnesses." Rathna Pillay signed as a witness. I then wrote on that it was written by me, Headmaster of the Higher Elementary School, etc.

Only one fair copy was made. Defendant handed the document over to Plaintiff.

Defendant kept the rough copy.

Besides this a promissory note was made for Rs. 12,000/- payable on demand by Plaintiff to Defendant with interest at 3% per year. I wrote out the note. I saw the Plaintiff sign it. Rathna Pillay witnessed it. I endorsed on it that it was written by me and gave my designation. Two
20 I anna stamps were put on it. Plaintiff signed over the stamps. I gave note to Plaintiff and he handed it to Defendant.

A letter was written by me at request of Plaintiff and Defendant addressed to Egambaram Pillay in Malaya. It was on an Air Mail letter form. Both parties signed the letter on the parts referring to them.

A telegram was also sent. It was at Defendant's request to his agent Nadason Pillay in Malaya. The telegram said, "Hand over the charge of the estate to Egambaram Pillay as I have sold it to Mooka Pillay." It was written on ordinary paper. Defendant signed it. The next day I sent it myself.

30 (Witness shown P.13, X.14 and X.15). This is the document I wrote, Ex.P.13. It is in my writing and signed by Defendant and Rathna Pillay and myself.

Ex.14 & 15 appear to be in Defendant's writing, with which I am familiar.

I see my name on X.14. That signature is a forgery. Not one single letter on it is in my writing.

X.15 appears also to be in Defendant's writing. On that, too, my signature is a forgery. No part of that document is in my writing.

The signatures on the stamps on both documents appear to be
40 Defendant's.

On both X.14 and X.15 the forgeries of my signature are good. I can immediately spot, however, that they are forgeries.

If I did not write a document I would not sign as having done so.

I have never witnessed a document without my designation. I have written and witnessed many documents and quite a lot for the Plaintiff. (Bundle of documents put in, marked P.21).

In the High Court.

Plaintiff's Evidence.

No. 4 (d).
Balakrishnan Chetty.
Examination—
continued.

The first document is dated 20th July, 1946. It was written by me. My designation is endorsed on it under my signature.

Second is dated 6th February, 1947. I wrote it. My designation as on first appears on it.

Third is dated 29th July, 1947. I wrote it. It is similarly endorsed be me.

Fourth is dated 24th February, 1947. I wrote it. It is similarly endorsed by me.

Fifth is dated 16th December, 1946. It was not written by me. I witnessed it. I signed as a witness and gave my designation. 10

Sixth is dated 30th May, 1946. I did not write it. I witnessed it and put father's name and village.

I have never just written my name.

X.18 is not written and not attested by me. Here also my signature is forged.

The signature on the stamp is not the Plaintiff's. It is a forgery.

I see the last couple of lines on X.14. Such words did not appear in the agreement drawn up by me.

Defendant was anxious to sell and agreed to give immediate possession. That was included in the document. In addition he told me to write Plaintiff's agent and he got me to send the telegram to his own agent. 20

There was never any question of his taking back the estate.

I am an insurance agent and through me Defendant took out a policy three months before P.13. He was medically examined. At the time Defendant showed no signs of mental deficiency. I did not take him like a child from village to village. I have never known him defective. I would describe him as sharp.

Defendant has not paid me the Rs. 1,000/-. He gave me a cheque for Rs. 300/- on the Oversea Bank at Trichinopoly. He gave me Rs. 200/- worth of textile goods. I agreed to forego the balance. He dictated a receipt to me. That is all I got. 30

Plaintiff left for Malaya in 1948. Up to that time, as far as I know, there were no differences between Plaintiff and Defendant.

I saw a telegram from Defendant to Plaintiff a few months after the agreement. It requested a deposit of money in the Bank. Plaintiff asked me to write Defendant telling him to come over. I wrote the letter. I know nothing further.

Plaintiff cannot read or write English. His hand is shaky in Tamil. I used to write his correspondence for him.

Ex.P.11 is the letter written by me on 17th January, 1947. Part is what Plaintiff asked me to write and part what Defendant asked me to write to Plaintiff's agent. 40

Defendant could have written himself, but he asked me to write.

Cross-examination. **CROSS-EXAMINED.**

All papers in P.21 are on stamped paper. Only those documents that require registration have to be on stamped paper. Agreements and promissory notes do not have to be on stamped paper.

I read over the draft I made to the parties. That contained a stipulation that the Rs. 12,000/- should be paid in Malaya. The Defendant objected and that was cut out. I did not prepare a second draft. From the amended draft I prepared the one fair copy. There were only two documents in existence.

In the High Court.

Plaintiff's Evidence.

I see the last lines of P.13 get smaller and smaller and curve upwards. It might have the appearance as if this was necessary in order to avoid the stamp.

No. 4 (d).
Balakrishnan Chetty.
Cross-examination—
continued.

10 The last half of the last line looks as if it was squashed to make only one line instead of going on to make a further line, which would be below the level of the stamp.

It is not correct that the stamp and signature were put on before the body of the document was written.

Those last few lines were cramped as I wanted to leave space for the stamp and for the witnesses to sign.

It is not allowed in India for there to be space between the writing and the stamp.

The same pen was used for the signature on the stamp as I used.

20 Signature has 4 dots. Top dot is like a "V". I can see that. Same person did not write body of P.13 and the signature on stamp.

The same pen was used for all the writing on P.13.

Defendant had first agreed to the Rs. 12,000/- being paid in Malaya, but when it was put in writing he disagreed.

I don't remember Defendant asking for Rs. 17,000/- in cash. He did not agree to take a promissory note if payment was made in one month. It was one year.

In May I wrote Defendant asking for Rs. 1,000/-. This is letter I wrote on 10th May, 1947. (Ex. X.22). I asked for Rs. 500/-. The hand-loan referred to is not the promissory note for Rs. 12,000/-.

30 I got a reply to X.22. I did not bring it with me. The reply was not like the draft letter you show me. (Ex.X.23.) There are lines added favourable to Defendant. Defendant did not repudiate my claim for Rs. 1,000/-. He said he would try and pay early as he had no money then in hand.

I got a cheque in a month's time and I gave a receipt. I gave him this letter (Ex.X.24).

40 I know this case was fixed for hearing in March last. I did not leave India then. I did not leave my house. I could not have been here for that hearing. I did not inform Plaintiff. I had to have a passport. I did not have one in March. I had applied for one on 23rd February, 1950, to the Home Department, Madras. I informed Plaintiff I had applied. I did not prepare for a journey as I did not get the passport. I had the intention of coming to Malaya.

I may have written a letter for Defendant to his agent Nadassa. This is a letter I wrote (Ex.X.25). The last part is in Defendant's writing. The initials look like a carbon copy of Plaintiff's initials. (Translation marked X.25A.)

In the High Court. RE-EXAMINED.

Plaintiff's Evidence. The back part of X.25 in Tamil is definitely the Defendant's writing. I cannot say if initials are in Plaintiff's writing. He did not initial any letter of Defendant's that day.

No. 4 (d). Balakrishnan Chetty. I sent you a cable about coming here. I got my passport in August. I was to fly in March. I received a cable from you.

Defendant's Rs. 300/- cheque can be proved. He did not repudiate. I gave X.24 because he had paid Rs. 500/-. The real letter in reply to X.22 is available in India.

Re-examination. The pen used for P.13 was mine. I had it a long time—a Blackbird fountain pen. We all used it on P.13. 10

The "B" and the "h" in the forged signature on X.15 is totally different to my real signature. I write my signature freely. Those on X.14B and 15C are obviously not freely written. Neither do I write the "K" as it appears on X.14 and 15.

X.15C looks as if someone has taken trouble to copy my signature. It looks like a tracing in my opinion. The "W" in "written" has two pen lifts. In P.13C there is not a single lift in the "W".

On X.15C there are numerous pen lifts in other letters.

I do not write "i" as the "i" in "written" on X.15C. 20

No. 4 (e).
Rathna Pillay.
Examination.

No. 4 (e).

Evidence of Rathna Pillay.

RATHNA PILLAY affirmed.

I am a farmer. My village is about 3 miles from Plaintiff's. I have known Plaintiff for 25 years. I also know Defendant, for about 4 years. I saw him addressing a meeting.

The agreement was made in Plaintiff's house. I went there that day by chance. I had to pass Plaintiff's house. It was hot and I called in. I saw them writing. Balakrishnan was writing. The Defendant signed when Balakrishnan finished writing. I saw him sign with my own eyes the paper Balakrishnan had written. 30

After Defendant signed, the word "witnesses" was written and I was asked to sign underneath. I did so. Then Balakrishnan wrote it was written by him and he signed. I do not know English at all. I know Tamil well. I can identify my signature.

That is my signature on P.13.

That is the document I was speaking about. I recognise it by my signature.

I also signed a promissory note as a witness. It was for Rs. 12,000/-. Only one copy of the agreement was signed. That was a draft. This was not signed.

I see my name on X.14 and X.15. Neither is my signature. Somebody else wrote my name on them. They are not my signatures. Every letter almost is different to my real signature.

I did not write my name on X.18. That is not my signature.

CROSS-EXAMINED.

(Witness sits and writes his usual signature first with fountain pen and then with ordinary nib. (Marked P.26A and B.)

RE-EXAMINATION.

Nil.

In the High Court.

Plaintiff's Evidence.

No. 4 (e).
Rathna Pillay.
continued.
Cross-examination.

No. 4 (f).

Evidence of Pitchay Pillay.

No. 4 (f).
Pitchay Pillay—
Examination.

PITCHAY PILLAY affirmed.

I am a shop-keeper at Bagan Datoh. I know parties for quite a long time. My brother is employed as Defendant's agent. Plaintiff, Defendant and I purchased an estate. I had a 1/6 share. Plaintiff had 2/6 and Defendant 3/6. Plaintiff let me have my 1/6 share. It is not true that Plaintiff's share was ever 1/6. I never had 2/6. We bought for \$42,000/-. \$12,000/- was paid in cash. The balance of \$30,000/- was charged on estate, with interest at 60 cents or 80 cts.

After the purchase the Plaintiff managed the estate for 2 to 2½ months. He went to India. I went with him. Defendant took over the management. I returned to Malaya in May, 1941. I remained here during the occupation. Defendant still managed estate.

Defendant used to send account once in two months. No profit was made during occupation. No work was done on it. It was leased for \$600/- but rent was not paid regularly. When it was I received my share.

During the occupation estate had gone back to jungle.

A good deal of money was required to clean the estate. Labour was difficult and there was nothing on hand. Quit rent had to be paid. Plaintiff paid it for 1946.

After occupation Defendant intended to sell his share. He gave an option to a Chinese. I signed the option. I signed as the agent for the Plaintiff. All these options were at the instance of the Defendant. They were for \$100/- to \$300/- an acre. We were willing to sell at \$100/- an acre, but were unable to do so.

In the High Court.

Plaintiff's Evidence

No. 4 (f).
Pitchay Pillay.
Examination—
continued.

Defendant went to India about June, 1946. Up to then many attempts had been made to sell.

Interest had mounted up.

I heard from Plaintiff's agent that Defendant had sold his share to Plaintiff. For a long time I did not know the price.

In 1948 price of copra went up and kept increasing.

I was here throughout 1947. I visited the estate. A lot of money was spent that year. Flood gates were installed and a tremendous amount of cleaning done.

I had to pay my share towards the expenses. I think there was a little loss. \$29,000/- was spent in 1947. I can't say about the income, but there was a loss.

Plaintiff came to Malaya in 1948 and he told me of the sale.

Adjourned to 9.30 a.m.

C.S. 34/49 contd.

Thursday, 7th September, 1950.

PITCHAY PILLAY *re-affirmed.*

Egambaram has shown me a letter from Plaintiff about his purchase. He was given charge of the estate. Up to now Egambaram is managing the estate.

During the occupation the Defendant was busy with other affairs. I kept in touch with him and knew his movements. I would have known if he had been taken away by the Chinese. I heard nothing to that effect.

I knew nothing of the B.M.A. security holding him. My brother never mentioned it to me.

Defendant and I had shops in same town. He never told me of being arrested by Chinese or security.

Cross-examination.

CROSS-EXAMINED.

At liberation I was living in Bagan Datoh, about 30 miles from Teluk Anson. Defendant also lived in Bagan Datoh. He went out often. We met in Bagan Datoh. I must have known if he was arrested and released on bail. I have not heard anything to that effect. Such a thing should be recorded. I do not know of this. I paid the taxes and collection for Indian Independence. I wanted independence. Defendant was the head of the Indian Independence Army. I still say I do not know that he was arrested.

I repeat I did not hear he had been carried off by Chinese.

My brother represented Defendant in his absence. He held a Power of Attorney. Nothing was done on the estate. Plaintiff was represented by Egambaram.

When Plaintiff was first in charge he sent me accounts monthly.

We never received 45 piculs a quarter of rubber. There were and are to-day rubber trees on the estate.

I know the Penghulu there, but not by name.

About 250 acres are jungle. I do not agree if Penghulu says there are only 50 acres. In the High Court.

Clearing was done in 1940-41, not fully. We are traders and we got money from our businesses. We put in additional money. I don't remember how much I put in up to the occupation. My share would roughly be about \$7,000/-. That was 1/6 of the total put in. That includes the purchase money. Plaintiff's Evidence.

I cannot say definitely from memory how much I put in over and above the purchase price. I may have put in about \$1,000/- up to 1943. No. 4 (f).
Pitchay Pillay.
Cross-examination—

10 I do not remember how much copra the estate produced. continued.

We now collect 50,000 nuts every two months.

We sell copra. We get 120 to 130 piculs of copra every two months.

Estate does not produce 8 piculs per acre per annum. Not all trees are good.

I do not know Mr. Manson of Sungei Bernam Estate. I heard he had gone over the estate on 28th August, 1950. If he says 8 piculs per acre I do not agree with his opinion.

In 1940-41 we started to put the estate in working order, clearing and cleaning up.

20 When Japanese came it was not profitable to run a coconut estate and the estate was abandoned. It became overgrown. The coconut trees still remained on the land, but were not protected. Squirrels and monkeys attacked them.

After liberation labour was hard to get and food, etc., was in short supply. Nothing was done on estate from 1945-46.

I was willing then to sell at \$100/- an acre because there was a debt to meet.

Value of coconut land varies from \$150/- to \$300/- an acre. I would not sell at any price, not for \$1,000/-.

30 I was willing to sell after the liberation at \$100/- and in March, 1946.

We have now spent money and are working the estate.

In 1947 I put into the estate about \$2,000/-. That was my share of the loss for that year, which was \$12,000/-.

In 1948 my expenses were \$4,697 and my income was \$7,276/-.

1949 was a better year than 1948. I got about \$2,000/-. This year we expect a good profit.

I remember when Defendant came back to Malaya in 1949.

RE-EXAMINED.

I would not sell for \$100,000/-.

Re-examination.



In the High
Court.

No. 4 (g).

Evidence of Poonayah.

Plaintiff's
Evidence.

POONAYAH affirmed.

No. 4 (g).
Poonayah.
Examina-
tion.

I am your clerk. Early in 1949 I produced a document to Defendant's solicitors. Defendant came with their clerk to inspect the document. There was no ruled copy of the Agreement P.13, which I know. P.13 was the only document we had and it was the only one produced. Defendant made a copy of it.

It is false to suggest that a ruled document was produced.

On 30th November, 1949, the same document was produced to 10 Mr. Ramani in Defendant's presence. That is P.13.

This cable was received from Balakrishnan. (Ex.P.27.) Case was fixed for 14th March, 1950.

Cross-exam-
ination.

CROSS-EXAMINED.

You came to office on 30th November, 1949. You came only on one occasion. Our records do not agree with this letter from you. (Ex.X.28.)

Re-exam-
ination.

RE-EXAMINED.

This is our reply to X.28 dated 12th October, 1949 (Ex.P.29.) (Mr. Sharma puts in reply to Ex.29. Marked X.30).

No. 4 (h).
Egam-
baram
Pillay.
Examina-
tion.

No. 4 (h).

20

Evidence of Egambaram Pillay.

EGAMBARAM PILLAY affirmed.

I am 40 years old. I am Plaintiff's agent. I have been connected in business with Defendant also.

I remember the purchase of this estate in 1940-41.

Estate was first managed by Plaintiff for about 3 months. He then left for India and Defendant took charge.

I managed estate for 3 months during occupation at Defendant's request. He was otherwise busy. That was the only period up to time 30 Plaintiff bought estate.

In Defendant's absence he was represented by Nadason Pillay.

I kept the accounts when Plaintiff managed the estate. There was no income. I know condition of estate when Defendant left for India. It was in a bad condition and needed a lot of money for clearing and water gates and up keep.

Defendant tried to dispose of the estate before he went to India. We all wanted to sell. In the High Court.

No interest was paid during the occupation. It had accumulated to about \$10,000/-. Plaintiff's Evidence.

No quit rent was paid up to 1946. That amounted to \$1,750/-.

Defendant asked me to sign an option. I did so. The figure was \$120/- an acre. It was given to a Chinese. Chinese did not return. No. 4 (h).
Egam-
baram
Pillay.

I lived 10 miles from Bagan Datoh. I often saw Defendant. I never heard he had been taken away by Chinese. Examina-
tion—

10 I am quite sure of that. I never heard of his being held by the B.M.A. That would have been common talk. Defendant never told me that happened to him. tion—
continued.

Plaintiff wrote me from India enquiring about estate. He asked if I could look after the place in case he bought the Defendant's share.

I replied that it was in jungle, subject to flooding and badly neglected and that I would find it hard to manage it and the cost would be heavy. I advised him to sell his share to Defendant.

Some time later I got an Air Mail letter from Plaintiff and Defendant. This is it. (Ex.P.11.)

20 I saw the Defendant's agent on receipt of P.11. He confirmed it. He said he had received a telegram. He seemed happy. I took charge of the estate and took over the accounts.

I started work on the estate. I was authorised to spend money on it. Among improvements I erected flood gates. The water gate cost \$3,000/-. Other work cost \$10,000/-. By the end of 1947 I had spent on the estate \$30,000/- about.

Plaintiff came from India in 1949. That was his first visit since 1941.

Defendant had other property besides his share in the estate. He had a coconut estate, Kayan Estate, of 57 acres on the roadside.

30 Defendant wanted to sell Kayan Estate. He told me so before he left for India. He offered it to me. He wrote about 3 letters. I did not buy. He has now sold estate in 1949.

Up to time Plaintiff returned to Malaya I had not heard of any quarrel or difference between him and Defendant.

I remember Defendant's return.

I know he refused to transfer.

40 I know Defendant sold 2 town lots to Plaintiff in 1940 for \$1,500/-. Defendant received the money. He gave me the title deeds. I have them still. He gave his agent a letter to transfer. I gave it to Plaintiff and the receipt. I don't remember what other papers I gave to Plaintiff.

When Plaintiff came he showed me the agreement by which he purchased Defendant's share. P.13 is that paper.

In 1947 the estate showed a loss of roughly \$12,000/-. After that there was a profit.

Mr. Manson went to the estate on 28th August, 1950, about 3.30 p.m. I was not present. I had not heard of his intended visit.

I used to work for Defendant before Plaintiff.

I am quite friendly with Defendant.

In the High Court. **CROSS-EXAMINED.**

Plaintiff's Evidence
 No. 4 (h).
 Egambaram Pillay
 —continued.
 Cross-examination.

I have come to give evidence about money spent on the estate. I was not asked to bring the books. It would be better to have the books. Total area of estate is 650 acres. 250 acres are jungle. About 30 acres are rubber. About 200 acres are planted in coconuts, not more. In March, 1948, I made a Statutory Declaration regarding the estate. I said I was a co-owner. I have been verbally promised a share by Plaintiff. This was at the time of the purchase in 1940. I also said 400 acres were planted in coconuts. That is true now and then. The yield comes from 200 acres, that is why I said planted area is 200. I first became interested in planting in 1940. I know difference between planted and bearing areas. I meant the bearing area when I told you 200 acres. The planted area needs a number of replacements. Our crop is 120 piculs a month. I get about 10 piculs per acre per year. The books will show how much we got and what we have sold and to whom. Our monthly profit now is not less than 150 piculs a month. The figure 120 was for the year 1948. In 1947 income was about \$18,000/-. \$3,000/- for watergate were spent in 1948. The 400 acres were cleared of bush in 1947. It was cut down with parangs. The coconut trees are tall. We got labourers from here and there, some from neighbouring kampongs. We had to rehabilitate the old coolie lines. This cost about \$10,000/-. Profit in 1948 was \$15,000/-. It was more than in 1948 in 1949. Now we are making \$3,500/- to \$4,000/- a month. This is all from 200 acres. We sell copra at \$34-5. Cost of production is about \$20/- a picul.

Re-examination.

RE-EXAMINED.

In cost I include weeding, cleaning drains and interest and depreciation. Books are kept by my clerk. Expenses of 5/6 in 1947 were \$24,300/-. In February, 1947, 38 piculs was total yield. Yield was much less than in 1948. Outside yielding area there are about 20 trees an acre. In the yielding area trees are 50 an acre.

Case for Plaintiff.

Adjourned to 18.9.50 and 3 subsequent days.

No. 5.
 Judge's
 Notes of
 Evidence
 at Trial.

**No. 5.
 Judge's Notes of Evidence at Trial.**

Tuesday, 19th September, 1950.

C.S. 34/49 contd.
 Mr. JOAQUIM.

40

P.13 basis of Plaintiff's case.
 Issue—did Defendant execute it ?

Onus on Plaintiff. Poor case by Defendant does not relieve Plaintiff of this onus. In the High Court.

Test is, are Plaintiff and his witnesses to be believed ?

Plaintiff's evidence re estate unsatisfactory—misled Court.

Arrest and/or kidnapping of Defendant must have been known to Plaintiff and his witnesses. No. 5. Judge's Notes of Evidence at Trial—

Makes all Plaintiff's witnesses suspect.

Defendant bringing handwriting expert.

Sec. 42(1) of Land Code. Plaintiff only a trespasser if P.13 fails.

10 Court may impose conditions on Defendant.

Plaintiff seeking equity, must do it, even if P.13 held genuine.

Plaintiff not bound by P.13 to accept transfer.

Forfeits advance. Document is therefore inconsistent. executive agreement.

Plaintiff asking for specific performance.

P.13 not in law a deed of sale. Sec. 110 Land Code. P.13 not a sale, merely an agreement to sell.

Possession not best performance when there are conditions.

Sharma not cited any authorities.

continued.

20

No. 5 (a).

Evidence of Thevaraya Pillay.

Defendant's Evidence.

THEVARAYA PILLAY affirmed.

No. 5 (a).
Thevaraya
Pillay.
Examina-
tion.

I am the Defendant. I have been in Malaya since 1920 in the Teluk Anson district, two years in Selangor only.

I have known Plaintiff for 20 to 25 years.

I have known Pitchay Pillay about 20 years.

I have known Egambaram from his boyhood.

30 We lived within an area of six miles. Pitchay Pillay and Egambaram and I were here during the occupation and for six months after. We used to meet.

When I purchased estate the Chinese told us 530 acres were planted in coconuts, 70 in rubber and the rest jungle. That was the Chinese who sold us the estate. I had no reason to think that was not correct.

During the occupation I was the leader of the Indian Independence movement in that district.

I was kidnapped by Chinese after the liberation, within a month or two. The Chinese kept me for four days. I was then living in Bagan Datoh. My kidnapping was well known.

40 Later on I was arrested by the Security Forces. I was taken before the Court at Teluk Anson. I was charged. I claimed trial. I was released on bail of \$5,000/-. My bailor was Nadasseh and Arunasala. I was before the Court five or six times. Eventually no evidence was offered and

In the High Court. I was discharged. All this time I was in Bagan Datoh, except for a few days in Teluk Anson. Pitchay Pillay was in Bagan Datoh. Egambaram was on an estate. They both knew of my arrest. (Certified copies of charge and bond put in. Marked X.31 & 32).

Defendant's Evidence.

No. 5 (a).
Thevaraya Pillay.
Examination—
continued.

I gave a Power of Attorney to Nadasseh when I went to India in about May, 1946.

I agreed to sell my share in the estate and Plaintiff was to give me Rs. 12,000/-. He promised to pay it in a month's time. He gave me a document. X.18 is the paper he gave me. It is in my writing. The signature is in Plaintiff's writing. I saw Plaintiff write it. 10

Rathna Pillay wrote his signature.

I do not know what is written in English before Balakrishnan's signature. I saw Balakrishnan sign.

I am quite clear I wrote the body of X.18 myself.

I also wrote the body of the agreement I gave Plaintiff. I made two copies. I signed them both. They were both witnessed by the same witnesses in X.18.

X.14 and X.15 are the documents I wrote. I signed both.

They are both signed by Rathna Pillay and Balakrishnan.

The price was Rs. 17,000/-. Cash Rs. 5,000/- is mentioned in X.14 and 20 15. I did not collect in cash. I took a share in the shop. I have had the share transferred to me.

I could not then understand what it was all about. I don't know why Plaintiff did not pay the Rs. 12,000/-. I can't say if I asked for a promissory note or for cash. I was to be paid in a month's time.

P.13 appears to be in Balakrishnan's handwriting. I did not write my signature on P.13.

I wrote letters to Plaintiff regarding payment of the note, very often.

I kept copies of some of those letters. X.19 is my letter copy book. It contains copies of letters to Plaintiff, carbon copies. I sent the letters by ordinary post. One was registered. I did not post them myself. I have no reason to suppose the person I gave them to did not post them. 30

First letter is dated 17th February. Plaintiff had not paid within the month. I wrote month after month. I sent the shop boy to the post. When I wrote letter of 27th June I was pressed for money. About this time I sent a telegram to Plaintiff. I got no money from Plaintiff.

In my letter of 31st July I was not asking for money. According to terms of agreement if I failed to carry out my part I had to pay Plaintiff an extra Rs. 5,000/-. I had not failed. Plaintiff had failed. I thought as I said in the agreement I should pay I would offer payment. I had not sold 40 estate so I had the right to the accounts.

Letters were written from Ganesha's shop. That is the shop referred to in the agreement.

I did not promise to pay Balakrishnan any money on account of the sale of the estate. He promised to get me shares from various companies in India and I promised him Rs. 1,000/-. I paid him Rs. 500/-.

I got a letter from him, X.22.

- I might have written a reply. I can't remember.
 X.23 is in my writing. It is a letter from me to Balakrishnan. It is a rough copy draft. It is in reply to X.22 of 10th May.
 Subsequently I paid Balakrishnan Rs. 500/-. I got a receipt from him. That is X.24.
- Up to now I have only had the Rs. 5,000/- share in the shop.
 I returned to Malaya early in 1949.
 I stayed in Teluk Anson at Nadasseh Pillay's shop.
 After my return I saw Plaintiff at Bagan Datoh. I went there to see him
- 10 I spoke to him about this transaction. I told him "You give me back estate " and I give you five thousand as I promised." He did not say anything to that. I said he had not paid me and he had cheated me.
 He insulted me. He did not reply.
 In the evening we went to the sea-shore with Pitchay Pillay. I again made the same demand and offered to pay the extra five thousand.
 Plaintiff changed the subject.
 I returned home.
- The next day Plaintiff came early and sat in front portion of shop. He spoke to the nextdoor shopkeeper. He said "He refuses to sell the estate,
 20 "if he comes into the estate I will get him tied to a tree and beat him up."
 I was then coming downstairs. Though my name was not mentioned I knew he was referring to me. I went to front portion and told Plaintiff "You have not paid. I promised to give you the extra five thousand. Now "I am not prepared to give you."
 I returned to Teluk Anson.
 I next saw Plaintiff at Teluk Anson, after two days. Between 9 and 10 a.m. he came with papers and letters in his hand in a bundle.
 He came to front of Nadesseh's shop. No. 29. He tore them and put them down and asked for a match box. Before box was given he took off a
 30 sandal and hit the papers with it. That is an insulting thing to do.
 I was then seated by Nadasseh. Plaintiff came and held my hand and dragged me, saying "Come." I got puzzled and kept quiet. Nadasseh said "Go with him."
 We went to the lawyer's office. Plaintiff there said "to settle this." I knew Mr. Bhaduri well. He said "Both of you better settle it."
 I thought Plaintiff would have seen lawyer before this.
 I said that two days previously I had offered to pay the extra five thousand rupees. I was prepared still to pay it and take back the estate. I asked Mr. Bhaduri to tell Plaintiff to hand over the estate to me.
- 40 He told us to go away and settle.
 The Plaintiff agreed to settle at the lawyer's office. I am sure of that. I was to pay Rs. 5,000/- extra. That meant I had to pay Rs. 10,000/-.
 In two days' time I raised Rs. 10,000/- and wanted to pay. I went very often to lawyer's office, but Plaintiff did not come. Eventually I went to Cowdy & Jones in Ipoh and instructed to write claiming this land.
 I received torn papers from Nadasseh's clerk, Somasundram. These are the papers, X.14 and X.20.

In the High Court.

Defendant's Evidence.

No. 5 (a).
 Thevaraya Pillay.
 Examination—
continued.

In the High Court.

Defendant's Evidence.

No. 5 (a).
Thevaraya Pillay.
Examination—
continued.

X.20 contains the originals of some of the carbon copies in X.19. They are written on Ganesha's shop paper. X.14 is Plaintiff's copy of the agreement.

About the time Plaintiff filed his Plaintiff I was busy with lawyers at Kuala Lumpur. I then had the torn papers, X.14 and X.20.

In the Brahmin's shop in Ipoh while we were having coffee water was on the table and X.15 got wet in parts. X.18 also got wet. I know that shop for a long time. I was talking to one Maniam and the papers were on the table at the time. I took them out to show Maniam.

I rubbed the papers with my cloth. Some letters were faded and I wrote on top of them. I took the papers to the fireplace and had them dried. This was in the coffee shop. I also wrote in the faded letters in the coffee shop. Wherever it was wet I wrote over. I might have written over the signatures on X.14. 10

On X.18 I wrote over almost the whole thing.

Cross-examination. CROSS-EXAMINED.

I was many years in Ceylon. I may have been born there. I left there at age of 19. Education was not then compulsory. I went to school, may be at age of ten, for four or five years. I went to a Tamil estate school up to age of 15 or 16. 20

I did not learn English. I know A, B, C, D and a few letters. Did not learn that in school, self-taught.

I always sign in English. I only write "India" or "Malaya" in English on addresses.

P.T.O. is written on all letters to look at the back. I learnt that from the book. I do not know how to write English well.

I remember the purchase of this land. I just decided to buy, not Plaintiff and I.

The vendor and I did not agree at first alone. We all three purchased from the Chinese. I have not that agreement. This is the agreement. It was meant for all the three of us. It was in English. I do not know English. That is my signature on it. I always signed in English. (Agreement put in and marked P.33.) 30

They might have asked me to sign and I signed it.

Purchase price was \$42,000/-. I think that is under \$100/- an acre. At that time coconut estates were fetching better prices, but this was big jungle. For ten years no work had been done on the estate.

We had to pay \$12,000/-, balance on charge. I paid \$6,000/- for my share. It is untrue to say that I had to borrow a part of this \$6,000/-. I did not borrow from S. N. M. Sockalingam Chetty at this time. 40

Plaintiff managed estate for the first three months. When Plaintiff left for India I took over. We had stopped him. His accounts were wrong.

The clerk in the estate rendered accounts to all partners. I might have signed it if asked to do so. I was the manager. The other two would get accounts signed by me.

70,000 or 80,000 nuts were plucked. I have not got the accounts and may be it was 150 or 200 piculs. In the High Court.

Up to occupation there was no profit. The interest on the charge was paid up to the occupation. Defendant's Evidence.

(Lunch adjournment taken).

I was not manager of the estate after the occupation. It was given on contract, we all three signed. I did not enjoy any of the income during the occupation. I was working and was more mindful for the League. I did not impose taxes on people. No. 5 (a).
Thevaraya Pillay.
Cross-examination—
continued.

10 Plaintiff was assessed by the Committee of which I was the head. We collected that money. ((1) in P.10.)

I was charged with extortion.

I did not report to the police that Chinese took me away for 4 days ; to save my life I did not report.

After liberation I got a letter from Plaintiff. I do not know where it is. He did not enquire about the estate. I might have written to him about the estate. I wrote nothing false. I cannot remember all I wrote.

At that time I wanted to sell the property at any price.

We tried to sell. We gave an option for \$300/-.

20 I heard some of Egambaram's and Pitchay Pillay's evidence.

The estate is in same condition now as it was during occupation. It was leased out. The income was shared. I did not pay much attention and do not remember details.

When I went to India I was much disturbed mentally and don't know if I still wanted to sell the estate.

I cannot answer you what I do not remember.

At that time I did not intend to return to Malaya and wanted to sell all I possessed.

30 I had a shop in Malaya. I had 3 shops. In 1946 I had nearly 500 acres in coconut estate and 50 to 60 acres of rubber. When I went to India I had about 400 acres coconut and rubber. I still have some in small lots.

I sold Kayan Kampong Estate on my return. It had no road access. There is a reserve road next to it. Estate is fully planted. I was anxious to sell it before going to India. People wanted to cheat me for \$5,000/-. I sold it for \$20,000/- on my return.

I did not pester Plaintiff to buy my share.

These are my letters (Exs.P.34, 35 & 36).

I had carbon copies when I wrote from Madura mostly. I did not have copies for Air Mail letters.

40 I kept copies for 5 or 6 months.

X.19 was not deliberately manufactured for this case.

I had not forgotten the three letters I wrote to Egambaram. (P.34-36.) I wrote to Egambaram that Plaintiff was well in P.34. There was no need to write that Plaintiff had cheated me. I did not admit Ex.P.11 in your office. I only went to your office once to see the agreement and again with Mr. Ramani to see the agreement. I say on oath I did not see P.11 in your

In the High Court. office with a Chinese clerk. I do not know how P.11 was admitted by my lawyers. The signature on it is mine.

Defendant's Evidence. I don't know what letter of 17th January, 1947, I was referring to in P.34. I cannot remember. I may have signed P.11 in blank. Egambaram was a party with Plaintiff to cheat me.

No. 5 (a). Thevaraya Pillay. When I wrote P.35 I was mentally deficient. Balakrishnan put drafts before me and I wrote. He influenced me.

Cross-examination— Plaintiff was not afraid he would lose money when he bought my share.

continued. In P.36 on page 2 I was not referring to Senangin Estate when I referred to the estate he was just worried about, etc. 10

I cannot explain. At that time I might have written anything. I was not steady in my brain at that time. I have no other explanation of P.34 to 36.

Adjourned to 9.30 a.m.

Wednesday, 20th September, 1950.

C.S.34/49 contd.

THEVARAYA PILLAY (continued) re-affirmed.

There was no need to keep a copy of the telegram I sent Plaintiff in India. It was only a request to pay money. I did not think I should keep a copy. It was not because I could not fake a copy. In X.19 is a copy of a letter dated 23rd March, 1948, to Egambaram. In P.36 the estate referred to is one belonging to me not to Senangin. Plaintiff had an estate at Kayan. He was reluctant to buy. I helped and he enjoyed the produce of that estate. 20

P.36 was about my present estate. I did not have to refer to letter of 23rd March in X.19.

I wrote to Balakrishnan in May, 1947. X.23 is a draft of it. I put in date and signed it and put in address. I was replying to a registered letter and my reply was by registered cover. I have the receipt.

I wrote to Malaya by Air Mail. My agent did not always reply by Air Mail. 30

The letters from Nadessah Pillay of 28th August and 29th December, 1947, are genuine. They came by Air Mail in an envelope. I have the envelope for letter of 29th December.

I wrote Nadessah that I was coming to Malaya. As things were not settled over the estate I decided to come two or three months before I left India.

These two letters are not manufactured for this case.

On page 4 of P.36 I refer to Kayan Estate. That letter was only meant for Egambaram. I wanted money by the sale of Kayan Estate.

Egambaram had an idea of buying it. I wrote him that he better buy it. He never made an offer. I got no reply to P.36. I wanted to sell it to neighbours and waited to sell until 1949. 40

I wrote P.17. I do not remember the contents of Plaintiff's letter of 9th December, 1945, and if it referred to Senangin Estate. It might have.

By the proclamation I was referring to Japanese currency. In the High Court.
 I wanted to sell estate because I wanted to go to India not because it was in bad condition. It was not in bad condition. We had plenty of labour. The estate had been leased out. Price I had in mind was \$300/- an acre. Defendant's Evidence.

By strength in P.17 I meant mental strength. I was very alert mentally. No. 5 (a).
 Thevaraya Pillay.

P.17 was written after my arrest and beating up by Chinese. Cross-examination--
 continued.
 10 The option was not given just a few days before I left for India in May or June, 1946. Plaintiff had not yet come to Malaya. The other two partners had visited the estate. I did not.

The estate is now in same condition as it was in 1941. That is what I meant yesterday.

I last visited estate in December, 1941, and before I went to India in 1946. It might have been in 1943.

I had made up my mind to settle down in my native village in India. I then owned Kayan and my share in Senangin. I had other property. I had some town lots in Bagan Datoh and about 40 acres coconut estate and small areas in other places.

20 When I first went to India I was anxious to dispose of all my possessions in Malaya.

I was in Madura hospital for three months. I don't remember the dates. It was 2 or 3 months after my arrival in India. I can't say if it was a Government hospital. I paid. I did not keep the receipt. I think I have mislaid it. I have not tried to get a copy. For 18 months after my arrival in India I cannot remember what I have done. I had mental worries and sleepless nights. I have told you what I can remember.

30 Only after seeing them do I remember doing the carbon copies. (X.19.)
 All the exhibits I got from India. I wrote for them. I did not write them in this country. Seeing the exhibits brought back memory of past events to my mind.

My memory was not totally blank.

Lawyers asked me for correspondence. I wrote to India and they made a bundle and sent it. That was in Mr. Ramani's office.

I still have not a clear recollection of events in India. The reason is that at that time I was mentally defective.

Now I am quite all right.

40 My counsel has records of when I became normal. I gave him records I brought from the hospitals here and in Madura.

At times I was all right. At times I went senseless.

The treatment by the Chinese and my arrest by security upset me. Even now I tremble when I think of it.

I can't remember all I told my counsel.

I deny that Balakrishnan's commission was for sale of the estate. I said so yesterday. My memory had been refreshed. I don't remember if I told my counsel commission was for buying shares. That may have come suddenly to me yesterday.

In the High
Court.

Defendant's
Evidence.

No. 5 (a).
Thevaraya
Pillay.
Cross-exam-
ination—
continued.

I have not prepared any letters, nor my letter to him denying I owed Rs. 1,000/-. (Copy in X.19.) It is not because of the cheque that I made up story about commission for shares. My recollection of that is clear. I might have given letters to post to any of 2 or 3 employees in the shop.

Nothing was done prior to the day on which agreement was executed. There were no negotiations previously. I am not in a position to say that I was forced into the agreement.

I do not have a clear memory of what was in my mind at the time.

I was asked to sign an agreement and I signed it.

I remember no discussions before the signing of the agreement. 10
Whatever price they put in I signed. That's all what I can remember.

I may have remembered better when examined by my counsel.

Balakrishnan made the draft and I was asked to write and I wrote out the agreement.

I remember payment of promissory note was within a month. I can't remember if they said that or if I asked.

We did not talk about the price.

I wrote two copies of the agreement and knew the price. I wrote what they told me to write in the note.

I have executed promissory notes in this country. On two occasions 20
before going to India. I ran a money-lending business and had many notes. I was a money-lender for 10 to 12 years and had taken hundreds of promissory notes.

I did not even think I was selling my land. I just wrote what they told me. I don't know what I wrote and for what purpose I wrote.

I am quite certain that the signature on P.13 is not mine. The rough copy may be with them. I was not given it.

I spoke to the Plaintiff about selling my possessions in Malaya. He came to see me 2 or 3 days after my arrival, and I told him I wanted to sell. We used to meet regularly and I told him I wanted to sell as this country 30
was in the hands of communists. These talks happened dozens of times.

I was not very anxious to sell to Plaintiff. I said it was better to dispose of property in Malaya.

I met Balakrishnan a few days or a few months after arrival in India.

I was medically examined in India. I don't know if I told doctor of my mental lapses. I don't know if Balakrishnan told me not to tell him.

At no time did Plaintiff and I discuss purchase by him of my share. I was not anxious to sell to him. I had left word with my agent here. I don't remember if he got me any offer. Before I left I had offers of \$250/-. Nobody except Plaintiff in India was prepared to buy. My agent advised 40
me not to sell. He wrote me and sent me a cable two or three months after my arrival in India. I do not know where that cable is. I have not tried to get a copy. This story is not false.

I can understand simple English like "go" and "come," but cannot write it.

The addresses on P.34 to 36 are in my elder brother's writing.

I wrote the P.T.O. in P.34.

- My brother has remained in India. In the High Court.
- The address on this envelope is not in my handwriting. (Ex.P.37.)
- It differs from the handwriting on P.34. Defendant's Evidence.
- I did not send P.37 to Balakrishnan.
- I know a person named Pheylugam at 17th mile. No. 5 (a). Thevaraya Pillay.
- I do not know what the contents of P.37 mean or what they are. (Marked P.38.) (cross-examination—continued.)
- I know nothing of this Air letter. (Ex.P.39.)
- I can't say what it is. It is something like pictures appearing in cinema.
- 10 I don't know of this letter. (P.40.) I don't know any astrologer in Teluk Anson.
- P.40 predicts ill to Balakrishnan if he comes to Malaya and praises me.
- On P.39 is written "Don't come to Malaya."
- I would not call the sender a blackguard.
- Mr. Bhaduri did work for me many times prior to the occupation.
- There were many lawyers in my district in India. On my way back to Malaya I consulted a lawyer. That was in December, 1948. That was the only lawyer I consulted in India. He was at Madura. I have no doubt about that. I refer to the note being insufficiently stamped and lawyers saying
- 20 it is no good in a letter in X.19. I had asked a lawyer's clerk and he said it should be on stamped paper. I might have seen lawyers before December, 1948. I can't say that both these statements cannot be true.

(Lunch adjournment.)

- I adhere to the statement I made yesterday that the figures given me by the Chinese of the cultivation on the estate were correct. By the Chinese I mean the vendor.
- It was on or about 8th October, 1940, that he so informed me.
- The three of us went and saw the land 15 days before the agreement. I was satisfied the Chinese's figures were correct. I don't know if the vendor
- 30 is alive. I have made no enquiries. I know a Statutory Declaration. To lie in one is a serious thing.
- I made a Statutory Declaration for purposes of assessment in March, 1941. I don't remember going before a Magistrate. In it I stated the area of cultivation. I said 400 acres in coconuts and 213 acres reserved for cultivation. The declaration was filed after 400 acres were cleared. After further clearing we found another 130 acres planted.
- At the time of the declaration we had found by clearing 400 acres planted.
- This was an estimated figure. The estate was not cleared.
- 40 The land was never surveyed.
- On 17th January, 1947, the agreement was executed in Plaintiff's house. My village is about $1\frac{1}{2}$ miles away. 4 or 5 members of my family lived with me. I think 5—my wife, 3 daughters and self. There were 2 servants. My wife is not in Malaya. She would know of my mental condition. I am not bringing her, my daughters or servants to Court.
- I was not doing business in India. I did not buy any land. I started a shop in partnership. The other man ran the business.

In the High Court.

Defendant's Evidence.

No. 5 (a).
Thevaraya Pillay.
Cross-examination—
continued.

I asked Balakrishnan to get me shares in various companies. They did not materialise. He did nothing for me except the insurance policy.

I had put my signature to certain papers and wanted them back. That was what the Rs. 500 to Balakrishnan was for. I don't remember what the papers were.

Balakrishnan came and took me to Plaintiff's house on 17th January, 1947. We walked together. He often called me to go with him. I did not know and was not told as usual what I was going for.

At Plaintiff's house we spoke of many matters. I don't remember what. We did not talk about the price for my share. Up to noon we did not talk of the estate. We had meals in the house. Plaintiff said estate was almost in a jungle condition. He and Balakrishnan talked. I said nothing. Plaintiff must have wanted to buy. I said I would write to Nadessah. Nadessah had asked me not to sell. Plaintiff asked why I should bother to write him as it was my own property. Balakrishnan also said it was better to sell. I did not agree. I might have agreed and then signed. I was not steady in mind. I signed a document. It was written and I signed. I mean I wrote two copies of it and signed. I must have agreed. 10

If there is a letter signed by me I might have asked Balakrishnan to write. I might have asked for X.25 to be written. You may take it so that I asked him to write X.25. 20

I don't know in whose writing is written the words "Written by Muna Moona, etc."

I had spoken to Balakrishnan of things mentioned in X.25.

Postscript is in different writing to that in body of letter. I cannot say who wrote it. I did not see those lines being written. I only signed the letter. I did not tell my counsel anything about X.25.

I did not add the postscript to support X.14 & 15.

The bundle I gave to Mr. Ramani contained letters and X.19. No other documents. Not X.14 and 15. 30

I am calling witnesses from the shop where the documents got wet. They are not subpoenaed. I know them for many years. I do not know the date. I can't fix it. It must be the month in which the summons was taken out or a month before.

I did not read the lawyer's correspondence.

In Mr. Shearn's office I saw a copy of agreement on ruled paper. We took a copy of that. Letchmanan was present.

I don't remember the date I went to Kuala Lumpur to see Mr. Shearn.

It was 2 or 3 days before his letter to you. I knew you were going to summons me. I was on my way with the papers to Kuala Lumpur when the wetting occurred at the shop. 40

The Ipoh lawyers never had X.14 and 15.

Adjourned to 9.30 a.m. tomorrow.

C.S. 34/49 contd.

Thursday, 21st September, 1950.

Mr. JOAQUIM applied for evidence of Dr. Cocheme to be taken at this stage.

Mr. SHARMA—No objection, but may have to recall witness.

No. 5 (b).

Evidence of Manuel Cocheme.

In the High
Court.Defendant's
Evidence.No. 5 (b).
Manuel
Cocheme.
Examina-
tion.

MANUEL COCHEME affirmed.

I am the Medical Superintendent of Central Mental Hospital, Tanjong Rambutan. I am a B.A., M.B., P.I.M. & H. and D.P.M. I am a specialist in mental and nervous diseases and as such am Medical Superintendent.

I know the Defendant. He was my patient from 10th March, 1950, to 25th March, 1950.

10 He was sent from Ipoh Hospital with a certificate signed by Dr. Krishnan. On admission he appeared dull, retarded as to his mental processes. He was not incoherent and his memory as far as broad facts went, e.g., his age, place of birth, was not impaired. He took a long time to answer. He was extremely apathetic.

He was admitted to the 3rd class ward. He just didn't care. I formed a tentative diagnosis of melancholia and I gave him electric convulsion therapy. He had 5 treatments on alternate days.

There was an immediate marked improvement after the second treatment.

20 He became brighter. His smile came readily for the first time. This retardation disappeared and he talked freely and appreciated his environment and what was being done for him. He ate and slept well and told me that for the first time since about 1934 he had lost a sense of heaviness at the back of the head and that he felt a new man.

He agreed that the sooner he settled his affairs the better and he was discharged.

I saw him downstairs just now and he appeared as bright as when discharged.

Melancholia is a state of mind in which people commit suicide, etc. It is primarily an illness of mood as opposed to intellect.

30 Such a person is not mentally normal.

I could not say how long his condition existed except from what he told me. His condition was not inconsistent with his suffering similarly in 1946. The condition may last for years.

(Mr. Joaquim wishes to put in two papers allegedly from Madura hospital. Mr. Sharma objects.) (Admitted and shown to witness. Marked X.41 and 42).

Indicated on X.41 is treatment that might be given by a general medical practitioner to a person suffering as Defendant was, but not by a specialist.

X.42 is never consistent with out-patient treatment.

In the High Court. **CROSS-EXAMINED.**

Depression is a leading symptom of melancholia. External worry over a period could be a factor in bringing about Defendant's condition.
 Defendant's Evidence. Amnesia was not his first symptom. He said he was not efficient as he was before. Bromides are given to calm patients.
 No. 5 (b). Defendant's recovery was a good one.
 Manuel
 Cocheme.

- continued. **RE-EXAMINED.**
 Cross-examination. 1944 not 1934 is the year.
 Re-examination.

No. 5 (c).
 Thevaraya Pillay
 (recalled).
 Cross-examination—
 continued.

No. 5 (c).
Further Evidence of Thevaraya Pillay.

10

THEVARAYA PILLAY recalled re-affirmed.

CROSS-EXAMINED contd.

I see again P.13, X.14 and 15. I know Balakrishnan's writing. P.13 is in his writing. Also the words in English. The words in English on X.14 and 15 are also in Balakrishnan's writing. All appear similar to me.

I cannot explain why X.14 has only Balakrishnan's signature and X.15 has "Written by."

The signature on X.18 looks the same to me as the one on P.13 by Balakrishnan. Signature by Balakrishnan on X.14, 15 and 18 appear exactly similar.

20

I say the signatures of Rathna Pillay on X.14, 15 and 18 have a little difference to that on P.13. They do differ.

Writing of X.14, 15 and 18 is mine.

I disagree that P.13 is signed by me. That signature is different to mine on X.14 and 15.

P.13 is written with different ink and pen to that used on X.14.

I admit my signature on P.33. Signature on P.33 differs from that on P.13.

Only difference between P.13 and X.14 and 15 is the penalty clause.

I say penalty clause is consistent with first part of X.14 referring to absolute right of gift and disposal. In India agreements are always written in this manner.

30

X.14 and 15 are not rank forgeries.

I say P.13 is a forgery.

X.18 is not a forgery.

I don't know what the lawyer said in the box. He would tell the truth.

When Plaintiff took me that was first time I had been to Mr. Bhaduri over this matter.

When I returned from India I don't remember if I went to Mr. Bhaduri's house. Mr. Bhaduri would not tell an untruth. He may have forgotten. In the High Court.

I did not see any agreement shown to Mr. Bhaduri. He never spoke to us about it. No document was taken and shown to Mr. Bhaduri at that time, that is, when Plaintiff and I went to his office. Defendant's Evidence.

After tearing up X.15 Plaintiff took me to Mr. Bhaduri.

I instructed Maxwell, Kenion, Cowdy & Jones to offer Rs. 10,000/-. They wrote Plaintiff. (In P.10). No. 5 (c).
Thevaraya Pillay (recalled).
Cross-examination—
continued.

10 They advised me I was not obliged to offer Rs. 10,000/-. It is not correct that X.14 and 15 were not then in existence.

Correspondence went on for some time. Letter of 23rd February, 1949 (in P.10) was explained to me.

This firm delayed so I consulted a Kuala Lumpur firm. It was not because I dared not produce a forged document. J. L. Woods could not appear. I had renounced agreement from India in 1947 and Plaintiff had destroyed his agreement.

I did not tell Mr. Shearn about Plaintiff tearing X.14.

20 I told Ipoh lawyers letters had been destroyed. At the time I did not know the agreement had been torn up.

I gave them translation of X.14.

I think I told Mr. Shearn about X.15 being torn up.

I showed X.19, carbon copy book, to Maxwell, Kenion, Cowdy & Jones.

I made a mistake if I said X.19 came in a bundle from India.

I had all the documents except a few letters when I saw Mr. Joaquim.

We wanted inspection of documents as there was a rumour one had been forged, not because I wanted to see Plaintiff's papers first.

30 I did not trace from the promissory note Plaintiff's signature on X-15 and Balakrishnan's. I did not deliberately spill water to make tracing more difficult to detect.

It was not necessary to forge a promissory note also to conceal the real signatures.

I think signature on X.14 has been wet too, but I cannot say.

I carry a fountain pen.

I may not have written over the promissory note and X.15 with my present fountain pen. I did not write on X.14. Where water touched X.15 I wrote over. I don't remember if I wrote over any of the signatures.

40 I don't know copra price in January, 1947. I did not worry about things in Malaya. In 1948 prices rose and sky high in 1949. Price of land is very high since 1949.

I gave all letters to my lawyers. I did not keep back X.25.

I am not committing forgeries in order to get back land that has gone high in price.

I don't know how I came to go to Ipoh hospital.

RE-EXAMINED.

I once had an estate shop. I came in contact with the European estate managers. I acquired a smattering of English, a few small words. Re-Examination.

In the High Court.

Plaintiff had Fortson Estate at Kayan. That was the estate I referred to in P.36. There was no reason why I should refer to my troubles with Plaintiff in P.34, 35 & 36.

Defendant's Evidence.

I received a reply from Egambaram to P.34. This is it. (X.43). This is a reply to P.36. (X.44). I identify Egambaram's signatures on them. I had drafts of some letters. Balakrishnan sometimes prepared drafts for me. This is the draft of P.35. (X.45). I identify Balakrishnan's writing. He was helping me.

No. 5 (c).
Thevaraya Pillay (recalled).
Re-examination-continued.

This is the receipt for a registered letter sent in May, 1947, to Balakrishnan. (X.46). That is the letter to which draft X.23 refers. 10

This is envelope in which I received Nadessah's letter of 29th September, 1947. (X.47).

I wrote to India for particulars of my mental state in 1946-47. I received X.41 and 42.

I did not post X.25. They posted the letter. I left the letter in Plaintiff's house.

When I went to inspect in Mr. Sharma's office P.13 was not the document shown to me. It was one with ruled lines. I am sure of that.

At the time I did not know what papers Plaintiff had torn up at Teluk Anson. 20

One of the shop assistants gave me the torn pieces.

This was after I saw Cowdy & Jones and after going to Mr. Shearn.

At my last visit to Mr. Shearn I told him Plaintiff had torn the agreement. Maxwell, Kenion, Cowdy & Jones had a copy of X.14, a translation.

I had letters signed by Balakrishnan. It would have been better to use those for tracing than the promissory note.

Adjourned to a day to be fixed.

No. 5 (d).
Hans Christian Manson.
Examination.

No. 5 (d).

Evidence of Hans Christian Manson.

30

Monday, 4th December, 1950.

C.S. 34/49 contd.

HANS CHRISTIAN MANSON affirmed.

I am a Dane. I am employed on a coconut estate in Lower Perak. I have been so employed for 16 years. I am able to guess areas fairly accurately. In August I visited a property at Defendant's request named Telok Senangin. It is on the river and difficult of access. My estimate of the area of mature coconuts was about 500 acres with a few vacancies. I did not track it out.

I came across some rubber. Area was irregular, but I would say perhaps 40 acres. I cannot say about the jungle area. In the High Court.

CROSS-EXAMINED.

I visited estate on 28th August, 1950. I wrote to the other partner of my intention to visit the estate. I therefore expected him to know. I went to estate about 3 p.m. I was there for a couple of hours. I walked round and had a look. It is a flat area. Defendant's Evidence. No. 5 (d). Hans Christian Manson--

This is my letter dated 26th August. The date stamp is 28th August. (Ex.P.48). *continued.*

- 10 I cannot say that I am correct to within 50 acres. There were not many vacancies. They took up 20 to 30 acres. It is not difficult to make a survey. I cannot explain difference in dates on P.48. *Cross-examination.*

RE-EXAMINED.

My figures are only an estimate. It is an honest estimate. There are 640 acres to the square mile. *Re-examination.*

No. 5 (e).

Evidence of Meor Mohamed Ibrahim.

MEOR MOHAMED IBRAHIM affirmed.

- 20 I am the Penghulu of Mukim Telok Baru. In that mukim is the Selangin Estate. This is a certified plan of the estate. (X.49). *No. 5 (e). Meor Mohamed Ibrahim. Examination.*

As Penghulu I keep records of the planted and jungle areas. Planted with coconuts is 530 acres, with rubber 70 acres, unplanted over 51 acres.

Quit rent differs for planted and unplanted areas. Records are kept for that purpose.

It is my duty to inspect properties once a year. I last visited Selangin in June this year. It appeared to me that the areas were consistent with my records.

CROSS-EXAMINED.

- 30 Quit rent for last 4 years was \$2/- an acre for planted areas and unplanted \$4/- an acre. Rubber and coconut the same. *Cross-examination.*

I was subpoenaed. Previously the Defendant saw me in August. I told him I had visited land and how much was planted.

The Land Office has the records.

Declarations have to be made.

I do not know of the declaration in this case. They are delivered to the Land Office.

In the High Court.

Defendant's Evidence.

No. 5 (e).
Meor Mohamed Ibrahim.
Cross-examination—
continued.

I have to inspect all areas.

I am authorised by the Collector in writing. There is a file in the Land Office. I must have received my authority in May. I get one every year. I could produce it from file.

(Mr. Sharma asks that authority be produced. Witness told to bring the file tomorrow).

RE-EXAMINATION.

Declined.

No. 5 (f).
R. Letchumanan.
Examination.

No. 5 (f).

Evidence of R. Letchumanan.

10

R. LETCHUMANAN affirmed.

I am a clerk in the office of Cowdy & Jones. I know the Defendant. Early in 1949 he consulted my office. I asked for and got permission to inspect a document in Mr. Sharma's office. I went with Defendant to inspect. Defendant wrote out a copy. As far as I can remember Ex.P.13 is like that document. I cannot remember if the document was of ruled or plain paper.

A letter was written to Mr. Sharma. (6A in P.10). Defendant saw Mr. Lennard. He has now left the firm. 6A was actually written to the Plaintiff. Mr. Lennard drafted the letter. Defendant did offer to pay an extra \$5,000/-. 6A does not contain that offer. As far as I remember Mr. Lennard said that Plaintiff had not conformed to the agreement and it was not for Defendant to pay.

I was present when Defendant made a copy of P.13. This is that copy. (Ex.X.50).

I see X.19. Defendant brought it to Messrs. Cowdy & Jones when he came to ask for their assistance.

After a time Defendant took all his papers away.

Cross-examination.

CROSS-EXAMINED.

I have a fairly good memory. Papers a client brings are entered in a file. In some cases we make them sign when they take them away.

We have no record of X.19 being brought or taken away. Defendant was not a regular client. I did see X.19. I remember the cover.

When P.13 was translated was the first time I knew what the agreement was between the parties.

Previously Defendant had brought to us a rough translation in English. That was all we had to go on.

If Defendant had had a copy of P.13 he would have produced it to us.

Mr. Lennard was anxious to see the correct wording of the document and that was why inspection was asked for.

I asked for permission to make a copy when I came to your office.
 Defendant took back the English translation of P.13.
 He offered to pay the extra \$5,000/- to fulfil the transaction.
 Defendant had some other letters. I do not know what they were.
 There is nothing by which I can help my memory to remember what they were.

In the High Court.

Defendant's Evidence.

No. 5 (f).
 R. Letchumanan—
continued.
 Re-examination.

RE-EXAMINED.

As far as I remember this is the translation which the Defendant brought. (Ex.X.51).

10 People bring lots of papers and documents. It is not usual to make a list of such documents. A register of land titles, etc., is kept.

No. 5 (g).

Evidence of Nadessah Pillay.

No. 5 (g).
 Nadessah Pillay.
 Examination.

R.M.N. NADESSAH PILLAY affirmed.

I am a land owner and merchant and I live at Teluk Anson. I own in that district 350 acres of land. I have a sundry goods and textile business in Teluk Anson. I lend money in a small scale.

I know the Plaintiff for 20 years and the Defendant for 15.

I have acted as Defendant's attorney.

20 During the occupation Defendant and I were together in Malaya. Plaintiff was away. Defendant was a well-known property owner in the district. He took part in the Indian Independence movement.

Defendant told me that he had been kidnapped. I think he said for two days. I was intimate with him. There were slight injuries on his face. There was some difference in his appearance.

When B.M.A. came he was arrested by the police and released on bail. I was the bailor with another. Later on charges were withdrawn.

Pitchay Pillay is my brother. He and Defendant lived in Bagan Datoh. I know he knew of Defendant's trouble.

30 After being discharged in Court Defendant went to India. He sold me some property.

The state of his mind was then not normal.

He told me he wanted to sell his property and not return to Malaya. When he left he gave me a Power of Attorney over his property.

I know Telok Senangin estate. I did not take any interest in that estate. Plaintiff and Pitchay Pillay were the other two partners. When Defendant left Senangin was leased out and was not in good condition. Only 5 or 6 persons were living and working on the estate. This was not sufficient.

40 Defendant wrote to me from India from time to time. I received a letter concerning his share in Senangin estate.

In the High
Court.

Defendant's
Evidence.

No. 5 (g).
Nadessah
Pillay.
Examina-
tion—
continued.

I received X.25.

I replied to it. (Letter dated 11.3.47 Defendant's bundle). (X.52). This is the letter I received in reply to mine. (Ex.X.53). On 30th August, 1947, I again wrote to Defendant. (Defendant's bundle). About this time I received this letter from India. (Ex.X.54). (Mr. Sharma objects. Admitted as it comes from a witness). (Translation X.54A).

On 29th December, 1947, I again wrote to the Defendant. (Last in Defendant's bundle).

(Mr. Sharma again objects to X.54. It was not disclosed. Mr. Joaquim —Letter was not in Defendant's possession at the time, obviously). 10 (Ruling adhered to).

During August, 1948, I received this letter from Defendant dated 7th August, 1948. (Ex.X.55). (Translation marked X.55A).

Defendant returned to Malaya in January, 1949. I had remained in Teluk Anson. Plaintiff had returned to Malaya before Defendant.

Defendant came to Teluk Anson and stayed with me. He told me he had sold the estate for Rs. 17,000/-; that he had taken Rs. 5,000/- in Ganesha's store; that there was a balance of Rs. 12,000/- for which he had asked several times, but had not been paid. He had already written me that he had not been paid and that I was not to transfer the estate. 20

Defendant wanted to see Plaintiff and come to a settlement and to retain the estate. He wanted to take action according to the terms of the agreement. He wanted to add another Rs. 5,000/-, pay Plaintiff Rs. 10,000/- and retain the estate. He went to Bagan Datoh to see the Plaintiff. I did not go with him. He returned in two days. He said he had spoken to Plaintiff and that Plaintiff did not agree and would not part with the estate. Defendant said he wanted to institute a case. He continued to stay in my shop.

Plaintiff came to my shop about two weeks later on a Saturday, about 10 a.m. I was in my shop, so was Defendant. Shop was open and my 30 assistant was there.

Plaintiff came on passage way with some papers in his hand. Defendant and I were seated. Plaintiff asked for a match box from one of the employees.

Before employee gave one to him Plaintiff tore up the papers he had in an angry way, put them on the five-foot way, took off his slipper and hammered them.

He then caught Defendant by the hand and told him to go with him. Defendant refused to go and remained seated.

I told Defendant he had better go. I did not ask Plaintiff where he 40 wanted him to go. Both of them left. I remained in my shop.

Plaintiff appeared to me to be angry when he came.

I told one of my employees, named A. Nadessah (identified) to pick up the pieces of paper that Plaintiff had torn up. He did so and gave them to me. I slipped a rubber band round them and gave them to Somasundram, a clerk in the shop. Somasundram has gone to India. I told him to hand them to Defendant when he returned.

I might recognise one or two of the torn papers. One was a declaration and there was a receipt for quit rent. There were letters from Defendant. These are all that I remember.

I don't know if the clerk gave Defendant the papers. Defendant returned to the shop in about an hour. He said they had all settled and he wanted money. He said they had gone to lawyer's office. He said he wanted Rs. 10,000/- or \$6,000/- to pay to the lawyer's office and settle the business. Defendant was excited and in a hurry. He wanted money badly. He wanted it immediately. I did not have it and said I would try
10 and collect it in two days' time. I would give a part and he should get elsewhere a part.

Defendant collected \$5,000/- and gave me. I made a record of it in my ledger. This is my shop ledger. There is a page, 77, for Defendant. (X.56.) (Entry dated 28th January pointed out.)

I was able to let Defendant have the balance of \$1,000/-. Daily Defendant was going to lawyer Bhaduri's office. He was not able to complete the business and he wanted to bring a case through Cowdy & Jones. Defendant received back the \$5,000/-. All Defendant's dealings with me are shown in X.56. I have no other book for that year. I have a separate
20 book for every year.

I have a separate book for money lending business.

Adjourned to 2.30 p.m.

CROSS-EXAMINED.

I was not brought to this country by the Plaintiff. I did not work for him for 4 years and then dismissed. I own coconut and rubber land. One half of 499 acres of coconuts other side of river from Bagan Datoh. It was bought in 1948. Fairly good land. Not fully planted, 200 acres, rest is bush. No rubber. I made no declaration as to how it was planted.

It was in June 1948 I bought. Price was \$18,000/- for the 499 acres,
30 bought from my eldest brother. He gave it cheap on my account. Copra price had not risen in 1948. It is not true that price was only \$15,000/-.

This is a certified copy of the transfer for \$15,000/-. (Ex. P.57.) This was for 3/4 share. \$3,000/- was on charge on the other 4th share. That was a fair price.

Not all my letters were by Air Mail.

I gave X.25 to Defendant's solicitors in 1949, about September.

I can't say in whose writing the addition after the signature is in
on X.25.

I never handed this letter to Defendant.

40 I handed X.54 to counsel the same time with X.25 and X.55 in September, 1949.

X.54 is an ordinary sheet of paper.

The addition on X.55 is on the flap.

Defendant was co-operating with the Japanese, but not exactly. He was in the Indian League. Other Indians had complained about Defendant to the Chinese.

In the High Court.

Defendant's Evidence.

No. 5 (g).
Nadessah Pillay.
Examination—
continued.

Cross-examination.

In the High Court. B.M.A. asked people to come forward and give information of atrocities and bad treatment.

Defendant's Evidence. Defendant's kidnapping was not brought to notice of B.M.A. Defendant closed his shop and left for India, selling his stock at a loss. This was abnormal conduct. I accepted the Power of Attorney from him after first refusing because he was abnormal. He pressed me and I accepted it through friendship.

No. 5 (g). Nadessah Pillay. Cross-examination—continued. I had dozens of letters from Defendant in India. I kept them together. Defendant lived with me in Teluk Anson. I saw him morning, noon and night. I don't know about two letters regarding transfer of town lots. I don't know that Plaintiff had the titles. Defendant did not tell me. Plaintiff did not give me any letters to keep. He came and tore the letters. Defendant and I have not suppressed any letter from Plaintiff. I never asked if Somasundram had given the torn papers to the Defendant. I did not speak about it to the Defendant. I expected my instructions would be carried out and I had many matters to attend to. When Defendant came back to the shop from the lawyer he said he would take the torn letters. Immediately on his return I mentioned them to him. He did not take any trouble over the matter then as he was expecting a settlement. Soon after I left for India. 10

Defendant did not tell me that the lawyer had advised him to pay the extra Rs. 5,000/-. He did not tell me what had happened in the lawyer's office. Defendant told me when he went to or returned from the lawyer. He went daily for a fortnight. I went to India end of February or early March. Up to then I did not know if Defendant had come into possession of the papers Plaintiff tore up. Neither he nor my clerk told me. 20

This part of the Defendant's case is not manufactured to explain why the documents were not handed over to Defendant's lawyers.

Plaintiff returned to Malaya end of 1949. I then had full Power of Attorney of the Defendant. I had had instructions long before from Defendant not to transfer to Plaintiff. I did not write to the Plaintiff. It was for the Plaintiff to come and ask for the transfer. 30

I did not ask Plaintiff for the estate accounts as instructed in X.54. Both parties were known to me and I wanted Defendant to come and do his business himself. X.54 is not manufactured. I don't remember if my reply to X.54 was by Air Mail or ordinary letter.

If Defendant was demanding more money from Plaintiff he would have told me. He did not demand more money from Plaintiff. This may have happened after I had gone to India. 40

I cannot explain the lawyer's evidence. He is incapable of coming to Court to tell a lie. These things may have happened after I left for India.

Lending and borrowing transactions are entered in my money lending book.

I keep rough day books. Not here today ; in the shop.

Defendant told me he was going to Cowdy & Jones about a month before I left for India. He went to them before I left. He told me he had sent a notice.

I don't know if Defendant took the torn letters to Cowdy & Jones. In the High Court.
I thought I should give the torn letters to Defendant as the Plaintiff
had thrown them away and so did not want them. -----
Defendant's Evidence.

RE-EXAMINED.

The other business books are in my shop at Teluk Anson. I can bring No. 5 (g).
them to Court tomorrow. Last letter in Defendant's bundle is in reply to Nadessah
X.54. That letter shows my general attitude to the matter. Pillay—
continued.

Adjourned to 10 a.m. tomorrow.

Tuesday, 5th December, 1950. Re-examination.

10 C.S. 34/49 contd.

NADESSAH PILLAY re-affirmed.

I have brought my fair day book and my bank paying book. (Ex.X.58).

FURTHER CROSS-EXAMINED.

Defendant deposited with me \$8,000/- on 26th January, 1949, two Further cross-examination.
cheques. They were deposited in my account at the Bank. In February
I paid out the \$5,000/-. All paid by 15th February, 1950.

No. 5 (h).

Evidence of Puran Singh.

No. 5 (h).
Puran
Singh.
Examina-
tion.

PURAN SINGH affirmed.

20 I am a handwriting expert. I have practised since 1935. I have tried to learn and have given my opinion in about 40 cases before various Courts in this country. I have studied the subject. I have been employed by the police in about 8 cases.

I see P.13. I had photographs and enlargements taken of it. I took every care that an expert ought to take when examining a document.

There is a signature at foot of document, Thevaraya Pillay. I find some peculiarities in it which appears to me that the signature is written by a person of higher writing ability. It is written with smooth and uniform strokes.

30 In the signature there are seven pen-lifts. In my opinion it had been practised. I have marked the pen-lifts on this enlargement, which was taken and made under my instructions. (Ex.X.59). It is enlargement of the signature on P.39. It is not flowing and continuous.

I also examined other documents, the signature on P.11, dated same day as P.13. I examined X.14.

In my opinion the person who signed P.13 did not sign P.11.

In the High Court.

In my opinion the signatures on P.11 and X.14 were written by one and the same man.

Defendant's Evidence.

On the signature on P.13 is an arrow-head dot over the signature caused by retraction of the hand. It is a personal characteristic of the writer.

No. 5 (h).
Puran Singh.
Examination--
continued.

There are arrow head dots in the body of P.13. There are 21 perfect arrow-heads and other imperfect ones. The writer was in the habit of making such dots. Over word "Written" is an arrow-head dot. In my opinion that and the other arrow-head dots are made by the same person. I have marked on this photo the arrow-head dots. (Ex.X.60).

There are arrow-heads on the signature on P.11. I repeat there are 10 arrow-heads on the signature on P.11. They are not the same as on P.13's signature.

I examined X.14A. There are five perfect arrow-heads in it as against 21 in P.13, or X.60. The form of making dots is a habit.

The action causing the arrow-head dots on P.13 is different from the action causing them on X.14.

The angle of strokes on signature on P.13 is the same as those in the body of the document. This enlargement shows the angles of strokes on P.13. (Ex.X.61). The angles differ from those on the other documents. 20 The man who signed P.13 did not hold the pen at the same angle as the man who signed P.11 and X.14. The angles on latter two are the same. That is my opinion for what it is worth. I am prepared to swear to that opinion.

I used a powerful magnifying glass in my examinations.

Cross-examination. CROSS-EXAMINED.

This is not the first time I have been in this Court. I have not brought my certificate of competency.

I have not attended any school or college. I corresponded with an American Institution and got a certificate. I do not remember what I had to pay for it.

The last time I was consulted by the police was in June this year. 30 I read of Kadar Mydin's conviction in this Court. It was my opinion that the signature in that case was not a forgery.

Last year I gave evidence in Penang in favour of the signature on a promissory note which I said was genuine. My evidence was not believed.

There was another case in this Court. I expressed opinion that a signature was not a forgery. I was not believed in that case.

I have not otherwise given evidence this year in the High Court.

I am acquainted with works by handwriting experts. I have read books.

BY COURT. The opinion I have given is based on my own experience 40 and not based on any handwriting authority.

Cross-examination--
continued.

There appears to be slight difference of a degree in the positions of the protractor on X.61. That happened when the photo was made. By placing the protractor different angles can be indicated. On X.61 the protractors are not in a true position. There are slight differences.

I have the negatives of the photos taken under my direction. I made the enlargements myself. In the High Court.

Pen-lifts can be seen with the naked eye if the object is sufficiently enlarged. On X.59 any man can see the pen-lifts. I look now at X.15C. That is large enough to see pen-lifts. There is one pen-lift in the letter "W" of the word "Written." In my opinion it is overwritten and cannot be properly determined. Defendant's Evidence.

I cannot say if the "ri" is correctly written. Nor can I say if there are dozens of pen-lifts in the word "Written." No. 5 (h).
Puran Singh.

10 I now see P.13C. I compare "Written" on P.13 with the same word on X.15C. I cannot say if they are written by the same person or not. Cross-examination—
continued.

I compare the signatures of Balakrishnan. I cannot say if they are written by the same hand.

I see X.14C and the signature on it. I am not prepared to say if it is written by same person as on P.13C. I would require at least seven days. I have been paid \$350/- for my opinion and \$350/- for giving evidence.

RE-EXAMINED.

I produce this authority on handwriting. On page 95 the author refers to dots. (Ex.X.62). Re-examination.

20 On P.13C and X.15C the signatures are overwritten. That is why I cannot compare them with those on X.14C. I need sufficient time before I express an opinion.

No. 5 (i).

Evidence of Nadessah.

NADESSAH affirmed.

No. 5 (i).
Nadessah.
Examination.

I work at Sungei Siput now in a shop. I came to Malaya two years ago and went to the shop at Teluk Anson on 10th January, 1949. Shop was Nadessah Pillay's, the witness.

30 I do not know the Plaintiff. I have not seen him. He once came to the shop about 10 a.m. This was 2 weeks after I had arrived. My master, Defendant and a clerk were in the shop.

Plaintiff had some papers in his hand. He asked for a match box. He was on the 5-foot way. Before I could give him he tore up the papers, put them on the 5-foot way, took his sandal and hit them 3 times. Then he came and held Defendant by the hand and took him away. At first Defendant did not want to go. My employer told him to go.

40 After they left my master told me to collect the torn pieces. I did so. I wrapped them up and gave them to my master. I saw some documents among them with revenue stamps from India. The one with the stamps was torn.

My master handed the torn papers to the clerk, Somasundram, to give to Defendant. I don't know if the clerk gave them to Defendant.

In the High Court. CROSS-EXAMINED.

Defendant's Evidence. — This happened 1½ years ago. Twice my memory has been refreshed as to what happened that day. Once was at the lawyer's office. I don't remember when. It was within 3 months of the occurrence in Mr. Ramani's office. I am sure it was within 3 months. Later on I had to see the lawyer. This was about 4 months ago. About a year ago I was asked to give evidence. I got subpoena about 3 months ago in September. I have received \$10/- subsistence.

No. 5 (i).
Nadessah—
continued.
Cross-examination.

RE-EXAMINED.

This was only occasion papers were torn and shoe used.

10

No. 5 (j).
Seshan.
Examination.

No. 5 (j)

Evidence of Seshan

SESHAN affirmed.

I am employed in a restaurant in Belfield Street, Ipoh. I assist in working of the shop and am proprietor's son.

I know the Defendant. He frequently comes to the shop for refreshments.

I remember an occasion when something happened to papers of his. He was turning papers on a table towards the back of shop. There was a glass of water on the table. I had already served him with cakes. The glass was knocked off the table. He asked me for blotting paper. I had none. I saw him wipe the papers with his cloth. He said he needed the papers in a case and if necessary I should come and give evidence. I saw stamps on the paper and the writing has faded. He put papers over the electric stove to dry them. This happened over a year ago.

Cross-examination. CROSS-EXAMINED.

Defendant is not known to my father. My father was not present this day. He went to India in January 1948.

Defendant was turning over only one paper. I mean one bundle. I did not see if the bundle was tied. Defendant was taking papers one by one from the bundle and looking at them. I did not count them. I did not pay particular attention. After he called for blotting paper I saw the glass was knocked over.

Only the one paper he was looking at got wet. I took special note of that. I saw him wipe that one paper. He dried only one paper on the stove. After it was dried he took it and went away. I did not notice if he replaced it in the bundle.

When paper got wet Defendant told me he would require me to give evidence. I kept that in mind. I did not get a subpoena. Today is the first time I have come to the Court in this case. My evidence is not lies.

In the High Court.

RE-EXAMINED.

Defendant's Evidence.

I am 31 years old. I have never been to Court before.

No. 5 (j).
Seshan—
continued.
Re-examination.

Case for Defence.

Mr. SHARMA asks for Plaintiff to be recalled as X.25 has never been put to him.

Plaintiff recalled. _____

10

No. 5 (k).

Further Evidence of Mooka Pillay.

No. 5 (k).
Mooka
Pillay
(recalled).
Examination.

Plaintiff re-affirmed.

I see X.25. It was written by Balakrishnan for the Defendant. I did not write the postscript and the signature is not mine. I did not ask anybody to write for me. The writing resembles that of the Defendant.

CROSS-EXAMINED.

Cross-examination.

I did not authorise the postscript.

Adjourned to 10 a.m. tomorrow.

Judge's Notes of Evidence at Trial.

Judge's
Notes of
Evidence
at Trial.

20 C.S. 34/49 contd.

Wednesday, 6th December, 1950.

Mr. SHARMA hands in translations of Exs. P.38, P.39 and P.40. Points out he had not finished with the Penghulu with regard to amount of quit rent on cultivated land and asks to put in Land Office receipt.

Mr. JOAQUIM to be obstructional objects.

Receipt admitted and marked P.63.

Mr. JOAQUIM.

30 Basic fact—has the Plaintiff proved P.13, that Defendant executed it. This is the only one test. That is the issue. What is a foolish Defendant going to do when faced with a false document? He may fabricate his own case. Not, however, in this case. Defendant has fabricated nothing. All his documents entirely in his own hand. Plaintiff's claim is a reasonable one. Defendant's answer also reasonable. Which is true? It might have happened as either says. P.13 is a document that any vendor might properly sign. Same applies to X.14 and 15.

In the High
Court.

Judge's
Notes of
Evidence
at Trial—
continued.

Much superficial evidence imported into case, but real question is did Defendant sign P.13 ?

Does Court think that man who made arrow-head dots wrote the other document, that is dots over signature in P.13?

Puran Singh an honest man. His knowledge not very great. Pinning faith on arrow-mark. If wrong on that lost the case.

Mr. SHARMA.

Probabilities will shew the truth. But salient facts speak for themselves.

Defendant's letter to Plaintiff of "gaining strength." He admired 10 the Japanese and their methods He tried to follow their example.

Defendant goes to India. Wants to sell at any price ; price, wages, labour, etc.

Defendant gives two versions of everything.

Plaintiff's evidence of what happened in India is straightforward.

Defendant had his cake, ate part of it. Then comes the great rise in price.

Visit to lawyer Bhaduri's office. Plaintiff then handed over his document, P.13. This is the outstanding fact. Happened within a few 20 months of the incident in shop.

From then on Defendant manufactured false case and documents wholesale. Inspection helped him. Defendant took advantage of it. Ipoh firm never saw X.14 and 15 ; Mr. Shearn never saw.

Defendant could only make his copies from the promissory note.

"Written by" and Balakrishnan's signature. Tracing would be obvious therefore necessary to forge another note. X.25 postscript not put to Plaintiff.

Insult to his office re ruled document. Lie, affidavit—executed not written by Defendant.

Did not then know Balakrishnan was coming. Then has to say 30 documents written by him.

Photos and enlargements clearly indicate forgeries.

Wetting of papers—discrepancies.

This clearly a manufactured story.

X.15c clearly shews the over-writing.

Comparison of signatures of P.13 and those on X.14 and 15.

Handwriting not a closed science. Matter of observation.

Puran Singh designed case for the Court—protractors at angle.

If Court finds P.13 genuine Plaintiff entitled to judgment.

(Mr. Joaquim interjects "Yes.") 40

Decision reserved.

Sgd. R. D. R. HILL.

True Copy.

Sgd. CHIN SEN BOO,
Secretary to Judge,
Ipoh.

No. 6.
Judgment.

In the High
Court.

No. 6.
Judgment.
5th
February,
1951.

In this case the Plaintiff claimed that the Defendant be ordered to execute and give to the Plaintiff a registrable transfer of the Defendant's one-half undivided interest in the lands held under Mukim Teluk Bharu Grant for Land No. 11490 Lot No. 1701, and Entry Mukim Register Nos. 1724, 1723, 1720, 1045, 982, 973, now known as 2457 and 1753 Lot Nos. 1671, 1670, 1667, 861, 433A, 889 and 1681.

The Defendant resisted Plaintiff's claim and counterclaimed for:—

- 10 (i) A declaration that he is entitled to such possession of the said property as is consistent with ownership of an undivided half share thereof.
- (ii) An order that an account be taken by the Court in respect of the profits from the said undivided half share as from the 31st July 1947 or such earlier date as the Court may prescribe.

The history of this dispute really starts in 1940 when the Plaintiff, Defendant and a third man named Pitchay Pillay agreed to buy the estate for \$42,000/- in respective shares of 1/3, 1/2 and 1/6.

- 20 \$12,000/- was paid to the vendor in cash, of which sum the Defendant provided half. It appears that the estate was not in good condition, but I heard during the trial such conflicting accounts of its condition then and at other times that I am relieved that it is not necessary for me to come to any definite finding on this question.

The Plaintiff managed the estate for about three months and then departed to India. The Defendant then took charge and remained in actual or nominal control until he, too, went to India in 1946.

- 30 During these years there seems little doubt that the property did not flourish. The returns were poor, prices were low, labour was short and fairly considerable expenditure was needed to put the estate on a proper working basis.

A further deterioration resulted from the Defendant's loss of interest in the property during the occupation due to his political activities, which I gather by the way were distinctly pro-Japanese.

- 40 The result of all this was that before his departure for India in 1946 the Defendant was anxious to dispose of his share in the property and made more than one attempt to do so. He appears to have been no less anxious to sell after his arrival in India and after a period of negotiation agreed to sell his share to the Plaintiff for Rs. 17,000/-. This sum was made up by a promissory note for Rs. 12,000/- and a share in a textile business valued at Rs. 5,000/-.

This transaction took place on 17th January, 1947, and it is from this date onwards that the facts are really in dispute with the result that I have to decide the all important question as to which of the exhibits P.13 or X.14 and 15 was the Agreement of Sale signed and witnessed on that day.

I think the answer to this question is clear. It is not to be found in

In the High Court.

No. 6.
Judgment.
5th
February,
1951—
continued.

the evidence of the handwriting expert Puran Singh, a glib, unscrupulous person who supports, not without skill, whichever side pays him and whose evidence has time and again been rejected by me and by other Judges. The answer could be found perhaps by my believing the evidence of this or that witness, but it is, in my opinion, conclusively found from the incidents in Nadessah's shop and in Mr. Bhaduri's office in Teluk Anson.

According to the Defendant, on the morning of their visit to Mr. Bhaduri Plaintiff first came to Nadessah's shop. There he produced a bundle of papers and tore it up. This bundle contained the originals of some of the carbon copies forming Exhibit X.19, and Exhibit X.14, which the Defendant alleged was Plaintiff's copy of the Agreement made in India on 17th January, 1947. Immediately after this they both went to see Mr. Bhaduri, before whom the Defendant says they agreed to settle the matter by payment by him of \$10,000/- to Plaintiff on which he would receive back his share of the property. 10

But what does Mr. Bhaduri say? And his is evidence that I unhesitatingly accept. Of what was actually said his recollection is naturally hazy, but Mr. Bhaduri was certain that when they came the Plaintiff handed P.13 to him and he put it in his safe.

Mr. Bhaduri remembered that Defendant subsequently visited him at his office and at his house in connexion with this matter. The Defendant said that he went very often to the lawyer's office. 20

If the Defendant's story is true, I could understand why he made no protest to Mr. Bhaduri when Plaintiff handed in P.13 for he might then not have known what it was. But that very morning, according to Nadessah, the torn papers were collected and handed to the clerk to give to Defendant, and this clerk did give them to Defendant.

Exhibit X.14 is not so badly torn that it is not easily recognisable and, if Defendant's story is true, it is amazing that he made no protest to Mr. Bhaduri and no mention of the incident or existence of X.14 to the Ipoh Solicitors, whom he consulted, or to Mr. Shearn, when he later saw him in Kuala Lumpur. 30

It is even more amazing that the Plaintiff should tear up a genuine document in front of the Defendant and, leaving the torn pieces on the ground to be recovered, a few minutes later produce a forgery, again in front of the Defendant, to Mr. Bhaduri. I think such conduct is too machiavellian even for a litigant of his type.

I prefer to think and to infer from these facts that Exhibit P.13 is the true Agreement prepared and signed in India on 17th January, 1947, and that the Defendant, because of the almost fantastic increase of the value of the property since that date, prepared Exhibits X.14 and X.15 for the case and also the carbon copies of letters in Exhibit X.19, and that the evidence relating to the Plaintiff's destruction of papers at Nadessah's shop is pure invention. 40

The denial by Balakrishnan Chetty that the signature on the promissory note, Exhibit X.18, is his, is most significant. A careful examination of the words "Written by N. Balakrishnan Chetty" on this exhibit supports

this denial and the theory put forward by Mr. Sharma that, as the Defendant could only make his copies of X.14 and X.15 from the promissory note by tracing, it was necessary to forge a new promissory note as the tracing would be obvious.

I consider, too, that the incident in the coffee shop, when the Defendant's papers were supposed to have been wetted, is one that should be viewed with the greatest suspicion. The discrepancies between the Defendant's account of what happened and the evidence of the witness Seshan strike me as being due not to forgetfulness but to untruthfulness.

10 While I claim no expert knowledge, this is by no means the first case in which I have had to decide questions of handwriting. A careful examination of the documents and of the photographs and enlargements discloses nothing to me that indicates that Exhibit P.13 is not genuine.

Though I do not put much weight on this, I should nevertheless record that, of the two men, the Plaintiff impressed me more favourably than did Defendant. And this was so even after making due allowance for the Defendant's past mental condition as described by Dr. Cocheme.

20 Further, while the Plaintiff's story and that of his witnesses of the negotiations and actual signing of the Agreement in India is one that men of their intelligence could invent and readily substantiate in Court, nevertheless the impression I received was that their evidence in this respect was true.

To sum up, my view of the matter is that Defendant, for the reasons already stated, was anxious to sell, and did sell, by the execution of Exhibit P.13, in January, 1947, to the Plaintiff. Subsequently, he became even more anxious to recover his share of the estate because of its greatly increased value and revenue and that his case, far from being the reasonable one suggested by Mr. Joaquim, is manufactured for this purpose.

30 In view of the fact that Plaintiff had been in possession for four years during which period he has worked the estate and spent money on putting it in order, I consider that the specific performance he claims is the proper remedy to be afforded him by the Court. I would be in no position to arrive at any appropriate figure for damages if any other order was made.

There will, therefore, be judgment for the Plaintiff as claimed and for him also on the counterclaim. The Plaintiff to have his costs.

Sgd. R. D. R. HILL,
Judge,
 Federation of Malaya.

Ipoh, 5th February, 1951.

In the High
 Court.

No. 6.

Judgment.

5th

February,

1951—

continued.

In the High Court.

No. 7.

Order.

No. 7.
Order,
5th
February,
1951.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.
IN THE HIGH COURT AT IPOH.

Civil Suit No. 34 of 1949.

Between

MOOKA PILLAY Plaintiff

versus

T. R. M. THEVARAYA PILLAY Defendant.

Before the Honourable Mr. Justice R. D. R. HILL this 5th day of 10
February, 1951.

IN OPEN COURT.

This Suit coming on for hearing on the 4th, 5th, 6th & 7th days of September, 1950, and 18th, 19th, 20th and 21st days of September, 1950, and 4th, 5th & 6th days of December, 1950, in the presence of Mr. S. M. Sharma of Counsel for the Plaintiff abovenamed and Messrs. B. J. P. Joaquim & R. Ramani of Counsel for the Defendant abovenamed on hearing the parties and their witnesses and upon hearing the argument of Counsel the same adjourned *sine die* for Judgment :

Now this suit coming on for Judgment this 5th day of February, 1951 : 20

IT IS ORDERED that the Defendant abovenamed do and is hereby ordered to execute a registerable transfer of his one-half (1/2) undivided interest in the lands held under Grant for Land No. 11490 for Lot No. 1701 in the Mukim of Teluk Bharu and Entry Mukim Register Nos. 1724, 1723, 1720, 1045, 982, 973 now known as 2457 & 1753 for Lot Nos. 1671, 1670, 1667, 861, 433A, 889 and 1681, in the Mukim of Teluk Bharu, in the District of Lower Perak, in favour of the Plaintiff abovenamed,

IT IS FURTHER ORDERED that the Counterclaim herein by the Defendant abovenamed be and is hereby dismissed,

IT IS FURTHER ORDERED that the Costs of this suit and the Counter- 30
claim as taxed by the taxing Officer of this Court be paid by the Defendant abovenamed to the Plaintiff abovenamed,

IT IS LASTLY ORDERED that on his sufficiently indemnifying the Plaintiff against any claim on the promissory note executed by the said Plaintiff in favour of the Defendant on the 17th day of January, 1947, to the satisfaction of the Assistant Registrar of this Court, he, the Defendant be at liberty to set off a sum of \$7698.48 (equivalent to Indian Rs. 12,000/-) with interest thereon calculated at the rate of 3% per annum from the 17th day of January, 1947, to the 1st day of April, 1949, against taxed costs 40
in this suit.

Given under my hand and the Seal of the Court this 5th day of February, 1951.

Sgd. N. G. RAMA MENON.

Ag. Assistant Registrar,

Supreme Court, Ipoh.

L.S.

No. 8.
Notice of Appeal.

In the
Court of
Appeal.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.
IN THE COURT OF APPEAL AT IPOH.

No. 8.
Notice of
Appeal,
14th
February,
1951.

Civil Appeal No. 5 of 1951.

Between

T. R. M. THEVARAYA PILLAY, 29, Anson Road, Teluk Anson... *Appellant*
and

MOOKA PILLAY s/o MUTHIAH PILLAY, 40, Main Road, Bagan
10 Datoh *Respondent.*

(In the matter of Civil Suit No. 34 of 1949

Between

Mooka Pillay s/o Muthiah Pillay
40 Main Road, Bagan Datoh ... Plaintiff
and

T. R. M. Thevaraya Pillay,
29, Anson Road, Teluk Anson Defendant.)

Take notice that the abovenamed Appellant being dissatisfied with
the decision of the Honourable Mr. Justice Hill given at Ipoh on the 5th day
20 of February, 1951, appeals to the Court of Appeal against the whole of
the said decision.

Dated this 14th day of February, 1951.

Signed. BRADDELL & RAMANI,
Solicitors for the Appellant.

To, The Asst. Registrar, Supreme Court, Ipoh,

and to Mooka Pillay s/o Muthiah Pillay or his
Solicitor S. M. Sharma Esq., Advocate &
Solicitor, Ipoh.

The address for service of the Appellant is c/o Messrs. Braddell & Ramani,
30 Advocates & Solicitors, No. 1 Hale Street, Ipoh.

In the
Court of
Appeal.

No. 9.

Memorandum of Appeal.

No. 9.
Memoran-
dum of
Appeal.
5th March,
1951.

T. R. M. Thevaraya Pillay the Appellant abovenamed, appeals to the Court of Appeal against the whole of the decision of the Honourable Mr. Justice R. D. R. Hill given at Ipoh on the 5th day of February, 1951 on the following grounds :—

I. The learned Judge was wrong in finding :—

- (a) that it was not necessary for him to come to any definite finding on the question of the condition of the estate at the time of the agreement for sale and at other times. 10
- (b) that the Defendant lost interest in the property during the Occupation due to his political activities which were distinctly pro-Japanese.
- (c) that as a result he was anxious to dispose of his share in the property and agreed to sell to the Plaintiff for Rs. 17,000.
- (d) that the answer to the all-important question as to which of the exhibits P.13 or X.14 and 15 was the Agreement signed on the 17th January 1947 is conclusively found from the incident in Nadessah's shop and in Mr. Bhaduri's office in Teluk Anson.
- (e) that Mr. Bhaduri was certain that when the Plaintiff and the Defendant came the Plaintiff handed P.13 to him and he put it in his safe and that he unhesitatingly accepts that evidence. 20
- (f) that the Defendant was given the torn papers on the very morning they were torn and yet he made no protest to Mr. Bhaduri.
- (g) that he did not mention the existence of X.14 to the Ipoh Solicitors or to Mr. Shearn.
- (h) that it was amazing that the Plaintiff should tear up a genuine document in front of the Defendant and a few minutes later produce a forgery again in front of the Defendant to Mr. Bhaduri. 30
- (i) that he prefers to think and infer that Ex. 13 is the true Agreement prepared and signed in India on the 17th January 1947.
- (j) That he prefers to think and infer that Defendant prepared Ex. X.14 and X.15 and the carbon copies X.19 and that the evidence relating to Plaintiff's destruction of the papers was pure invention.
- (k) that the condition of Promissory Note Ex. 18 supports the theory of Plaintiff's Counsel that the copies of X.14 and X.15 were made by tracing and therefore a new Promissory Note had to be forged as the tracing would be obvious. 40
- (l) that there are discrepancies between the Defendant's account of what happened in the coffee shop and that of the witness Seshan and that they are due not to forgetfulness but to untruthfulness ;

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- (*m*) that his own careful examination of the documents and of the photographs and enlargements discloses nothing to him that indicates that Ex. P.13 is not genuine.
- (*n*) that the evidence of Plaintiff and that of his witnesses as to the actual signing of the Agreement in India was true even though the story was one that men of their intelligence could invent and readily substantiate.
- 10 (o) that the Defendant was anxious to sell and did sell by the execution of P.13 in January 1947 to the Plaintiff and that subsequently, even more anxious to recover his share of the estate, he manufactured his case.
- (*p*) that the fact of the Plaintiff being in possession for four years during which he had worked the estate and put it in order renders specific performance the proper remedy.
- II. The learned Judge should have found :—
- (*a*) that it was necessary for him to come to a definite finding with regard to the condition of the estate at all material times so as to enable him to exercise his discretion whether or not he would decree specific performance ;
- 20 (b) that the Defendant did as much to the property as it was possible for him to do during the Occupation and that his political activities such as they were were pro Indian and that there was no evidence that they were distinctly pro-Japanese.
- (c) that his anxiety to dispose of his share of the property in India was due to the state of his mind at that time in consequence of his having been kidnapped by the Chinese and his arrest by the British Military Administration, which state of mind was exploited by the Plaintiff ;
- 30 (d) that the answer to the all important question was to be found in the evidence of the witnesses including that of the handwriting expert ; and Mr. Bhaduri's evidence far from supporting conclusive findings was admittedly in terms vague and not accurately recollected : and that evidence was in fact contradicted by the evidence of the Plaintiff himself who called him ; and that therefore Bhaduri's evidence did not at all assist in the conclusive determination of the question ;
- (e) that Mr. Bhaduri was in fact not certain as to when the document P.13 was handed to him, that the Defendant did not speak of any such document being handed over in his presence and that the Plaintiff's evidence was that he had handed the document over
- 40 to Mr. Bhaduri a long time previously.
- (f) that the torn papers were not handed to the Defendant until much later than the morning on which they were torn and that in any event there was no reason why the Defendant should make any protest.

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- (g) that the Defendant did give instructions to the Ipoh Solicitors upon which they wrote to the Plaintiff a letter which is only consistent upon the existence of X.14 and that the Defendant later did inform Mr. Shearn about it.
- (h) assuming without admitting that the Plaintiff handed a document to Bhaduri in the presence of the Defendant, if that document was a forgery by which the Plaintiff intended to get a benefit to himself there was nothing to prevent him from tearing up the genuine document by way of demonstrating to the Defendant that he was claiming no rights under it ; and further, had not the circumstances that happened at Nadessah's shop been such as were spoken to by the Defendant, there was no reason for the Plaintiff and the Defendant to have been excited when they appeared before Mr. Bhaduri. 10
- (i) that all the creditable evidence including that of the expert witness definitely showed that Ex.13 was not the true agreement.
- (j) that there was no reason (and no reasons are given in the Judgment) why the evidence led to the inference that Ex.14 and 15 and the carbon copies Ex.19 including the story of the destruction of papers should have been invented. 20
- (k) that the theory of the Plaintiff with regard to tracing over the promissory note was only suggested and not proved and therefore as a mere theory provided no assistance in coming to a finding on the true agreement.
- (l) that there was no major discrepancies between the Defendant and the witness Seshan as to the incident in the coffee shop and such as there were due to lapse of time and not to untruthfulness.
- (m) that a careful examination of all the documents and the photographs and the enlargements did definitely show that P.13 could not have been written and prepared as stated by the Plaintiff and his witnesses. 30
- (n) that the Plaintiff's evidence and that of his witnesses with regard to the incidents preceding the execution of the document were in fact invented.
- (o) that though the Defendant did execute a document by which he agreed to sell, the terms and conditions of that document were not conformed to by the Plaintiff and that therefore the Defendant was entitled to and did repudiate the agreement at all events on or about the 31st day of July, 1947.
- (p) the facts that the Plaintiff was in possession and that he had spent money on the estate, were matters of easy accounting, books of such accounts having been admitted to have been kept by or on behalf of the Plaintiff and that therefore it was not impossible to give the Plaintiff the alternative remedy of damages. 40

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continued.
- III. (a) the learned Judge was unduly harsh in his criticism of the hand-writing expert and appears to have arrived at his conclusion not on the evidence given by him but from his prior impression of his competence.
- 10 (b) the learned Judge even although he might have been inclined to disregard the opinions of the expert, should not have disregarded the reasons for such opinions where such reasons were patent.
- (c) the learned Judge failed to have regard to the fact that an expert offers his opinions for acceptance by the Court and the fact that they are not accepted by some Courts in some instances does not mean either that they have never been accepted in other cases or that they should never be accepted in any case.
- (d) if the learned Judge was of the opinion that he was not going to accept the evidence of the expert as an expert because of the reasons given by him, he ought not to have accepted him as an expert to give evidence at all.
- IV. (a) even assuming the evidence of the expert should be entirely disregarded, there was sufficient other evidence, both internal evidence of the document itself and external evidence of the surrounding circumstances which tended to show that the document P.13 was not genuine.
- 20 (b) the learned Judge failed to have regard to the fact that the onus was on the Plaintiff to establish the genuineness of his agreement and however much the evidence of the Defendant both oral and documentary may be discredited that fact alone, did not establish the genuineness of the Plaintiff's document.
- V. (a) even assuming the learned Judge was right in his finding that the document P.13 was genuine, he was wrong in not having then proceeded to consider whether it was a subsisting agreement upon which the Plaintiff could found a cause of action.
- 30 (b) the learned Judge should have found on the evidence that whichever was the agreement that had been executed, the Defendant repudiated it because of the non-performance of the conditions thereof by the Plaintiff and therefore it cannot avail the Plaintiff to found any claim thereon.
- VI. (a) even assuming that the learned Judge was right in finding that Ex.13 was the genuine agreement and was subsisting at the date of the Plaint, he should then have considered if the equitable remedy of specific performance was the proper remedy in all the circumstances of the case.
- 40 (b) the learned Judge does not appear to have correctly applied his mind to this aspect of the case and did not sufficiently or at all consider the whole evidence, from that point of view.
- VII. (a) the learned Judge does not appear adequately or at all to have considered the evidence for the Plaintiff or that of the Defendant

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- by a careful analysis of its content and the probabilities thereof ; and therefore led himself to the wrong conclusion that by reason of his adverse findings against the Defendant the Plaintiff was entitled to succeed on his claim for specific performance.
- (b) the learned Judge should have found
- (i) that the agreement P.13 both on its internal evidence and the evidence of the surrounding circumstances was not a genuine document ;
 - (ii) that even if it were a genuine document, the agreement was repudiated by the Defendant so as to disable the Plaintiff from founding a cause of action thereon ; and
 - (iii) that in any event even if the agreement was genuine and was subsisting, having regard to all the circumstances, and particularly to the nature and the value of the property, the remedy by way of damages was the more appropriate and adequate remedy.

Dated this 5th day of March, 1951.

Solicitors for the Appellant.

To the Asst. Registrar, Supreme Court, Ipoh.

And to S. M. Sharma, Esq., Solicitor for the Respondent.

20

The address for service of the Appellant is c/o Messrs. Braddell & Ramani, 1, Hale Street, Ipoh.

No. 10.

Written Judgment of Foster Sutton, C.J.

No. 10.
Written
Judgment
of Foster
Sutton, C.J.
6th June,
1951.

Cor : FOSTER SUTTON C.J.,
JOBLING and BRIGGS JJ.

In this case the Plaintiff-Respondent claimed an order directing the Defendant-Appellant to execute and give to the Plaintiff a registerable transfer of the Defendant's one-half undivided interest in an estate in Teluk Bharu consisting of 650 acres. 30

The estate was originally purchased in 1940 by the Plaintiff, the Defendant and a man named Pitchay Pillay. The Plaintiff acquired a 2/6th share, the Defendant a 3/6th share, and Pitchay Pillay a 1/6th share.

The Plaintiff managed the estate for a period of about three months after the purchase, and then he left for India. The Defendant then took over the management, and would seem to have remained in actual or nominal control until he, too, went to India in 1946.

During these years it would appear that the estate did not prove to be a good investment, and it is clear from the evidence that the Defendant wished to sell his interest in it.

After they had both returned to India, negotiations took place between them, and the Defendant agreed to sell, and the Plaintiff to purchase, the former's interest in the estate for the sum of Rs. 17,000. It is common ground between the parties that the Plaintiff transferred a textile business belonging to him, valued at Rs. 5,000, to the Defendant in part payment and gave a promissory note for Rs. 12,000 in respect of the balance owing on the purchase price. The Defendant admitted that at the time the transaction took place he was anxious to dispose of his share in the estate.

At the trial, the Plaintiff produced a document, Exhibit P.13, which he alleged was the agreement for sale. The Defendant contended that this document was not the one which was actually executed at the time the agreement was entered into, and he produced two documents, Exhibits X.14 and X.15 which he alleged were the Plaintiff's and his copy, respectively, of the actual agreement entered into on the 17th day of January, 1947, when the negotiations for the sale of the Defendant's interest in the estate were finalised.

The only difference between Exhibits P.13 and X.15 is that in the latter there are the following additional words at the end thereof :—

“ If I do not agree to execute a transfer I shall pay an extra
“ Rs. 5,000 five thousand and take over the estate.”

The main issue upon which the case was fought in the Court below was the question as to whether or not Exhibit P.13 was the document, evidencing the sale, executed on the 17th of January, 1947.

The learned trial Judge came to the conclusion that Exhibit P.13 was the document which was so executed. He accordingly found for the Plaintiff, and made an order which, in effect, requires the Defendant specifically to perform the contract. In my opinion, the findings of the learned trial Judge, that Exhibit P.13 was the actual agreement entered into by the parties on the 17th January, 1947, and that Exhibits X.14 and X.15 were documents which had been fabricated for the purposes of this case, can reasonably be regarded as justified by the evidence before him.

It would appear from the evidence that, in the process of time the produce of the estate became much more valuable than it was before, and there was a strong incentive for the Appellant to attempt to recover his interest.

It seems reasonably clear that Exhibit P.13 was the document which was handed by the Respondent to Mr. Bhaduri when he and the Appellant paid him a visit early in 1949, and it has never been suggested that the Appellant contested its validity in the presence of Mr. Bhaduri. Moreover, when the Appellant accompanied Mr. Letchmanan, a clerk in the office of his Advocates, Messrs. Cowdy and Jones, to the office of the Respondent's Advocate, for the purpose of inspecting Exhibit P.13, it is not suggested that the Appellant contested its validity and there can be no doubt that

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continued.

the Appellant was fully alive to its contents, because it was he who made a copy of it, Exhibit X.50. In this connection it is also important to bear in mind that, if it was then in existence, the Appellant nevertheless failed to hand to Messrs. Cowdy and Jones, the lawyers who were then acting for him, Exhibit X.15, which was his copy of the agreement alleged by him to have been entered into by the parties on the 17th of January, 1947. In his evidence Mr. Letchmanan said :—

“ When P.13 was translated was the first time I knew what
“ the agreement was between the parties. Previously Defendant
“ had brought to us a rough translation in English. That was 10
“ all we had to go on.”

The Appellant has never offered any explanation as to why, if Exhibits X.14 and X.15 were then in existence, he failed to produce X.15 to Messrs. Cowdy and Jones. All he said in this connection was : “ The “ Ipoh Lawyers never had X.14 and 15 ” and “ Maxwell, Kenion, Cowdy “ and Jones had a copy of X.14, a translation.”

At the hearing of this Appeal, Mr. Ramani, on behalf of the Appellant, submitted, *inter alia* :—

- (i) That the learned trial Judge did not attempt to ascertain precisely what the contract was which was entered into by the parties ; 20
- (ii) that the contract was not valid and subsisting at the time the complaint was filed, that is to say on the 1st of April, 1949 ; and
- (iii) that even if the contract was valid and subsisting on the date in question, the Plaintiff was not entitled, in all the circumstances of the case, to a decree for specific performance.

Mr. Ramani, however, conceded that if the financial arrangements made between the parties on the 17th January, 1947, were in fact regarded by them as payment of the consideration for the sale of the Appellant's portion of the estate, the Appellant's only remedy would be a claim in respect of monies due under the promissory note. 30

In my opinion, the preponderance of the evidence is in favour of the proposition that on the 17th of January, 1947, the parties regarded the agreement for sale as an executed contract and the financial arrangements as payment of the purchase price. Exhibit X.25 (translation Exhibit X.25A) strongly supports this view, and it seems to me that the wording of Exhibit P.13 is inconsistent with the view that the Appellant was at liberty to withdraw from the arrangement. Moreover, if Exhibits X.14 and X.15 were fabricated for the purposes of this case, the only object could have been to provide a foundation for the Appellant's contention that he was entitled to withdraw from the agreement.

For the reasons I have stated I came to the conclusion that this Appeal 40 should be dismissed with costs.

Sd. S. FOSTER SUTTON,
Chief Justice,
Federation of Malaya.

Kuala Lumpur,
6th June, 1951.

No. 11.
Written Judgment of Jobling, J.

In the
Court of
Appeal.

Cor : FOSTER SUTTON, C.J., JOBLING & BRIGGS, JJ.

I have read the grounds of judgment of the learned President in this matter and concur therewith. For the reasons he has set out I agree that this appeal should be dismissed with costs.

Sgd. G. L. JOBLING.

Date : 8th June, 1951.

No. 11.
Written
Judgment
of
Jobling, J.
8th June,
1951.

No. 12.

10

Written Judgment of Briggs, J.

Cor : FOSTER SUTTON, C.J., JOBLING & BRIGGS, JJ.

I have had the advantage of reading the grounds of judgment of the Chief Justice and I agree with them. I agree also in general with the findings and conclusions of the learned trial Judge ; but I think it desirable to add some of my own conclusions on the appeal, since the differences in presentation of the Appellant's case in the Court below and before us have tended to cause confusion on some points.

The defence raised first the issue whether exhibit P.13 is genuine or a forgery. It stated that " at the time of the transaction " (the Defendant)
20 " was not capable of understanding it and of forming a rational judgment as to its effect upon his interests." It alleged undue influence. It alleged that non-payment of the Rs. 12,000 relieved the Defendant from liability to perform the contract. The counterclaim alleges specifically that the Defendant cancelled the contract on or before 31st July, 1947. In the Court below the issue of undue influence was abandoned at the outset. Counsel for the Defendant stressed the forgery issue and in effect abandoned all the others before the end of the trial. The memorandum of appeal was in seven sections and forty-four paragraphs. It attacked the finding that
30 exhibit P.13 was the contract, but also raised other points which were material if that finding was upheld. Summarised, they were that the contract had been lawfully repudiated and that in any event specific performance of it should have been refused.

Counsel for the Appellant dealt first with the issue of forgery. He did not discuss at any length before us the expert evidence, but stated that he did not abandon any of the points raised in his memorandum of appeal. On those points I would comment that the learned trial Judge's rejection of the expert's evidence was based on a low opinion, not of his competence, but of his veracity. I do not consider that the facts patent on the documents and photographs were such as themselves to force the Court to the
04 conclusion that Exhibit P.13 was a forgery. I personally am not impressed by the differences in the " arrow-head dots " on Exhibits P.11 and P.13, or by the differences in angle of writing. They may be such as might lead an expert to a conclusion that P.13 was forged, but they do not themselves

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continued.

lead me so to conclude. Cross-examination provided material which in my view entitled the learned trial Judge to find that the witness's veracity was not to be relied on. I am not satisfied that he genuinely believed that P.13 was a forgery, and if he did so believe, I think he was wrong.

Counsel sought to prove the forgery by other evidence, and particularly by written evidence. He relied strongly on Exhibit X.55A. The last words of this, reading from "Up to now" are consistent only with the Appellant's case being true, and it seemed to me, before I saw the original exhibits, that they were the turning-point of the case. In spite of this, in the Court below Exhibit X.55A was kept, as it were, very much in the background. Counsel apparently did not mention it either in opening or in closing his case. It was never put to the Defendant himself, so he could never be cross-examined about it. It was produced with various other letters from the Defendant, by the sixth defence witness, Nadessah Pillay. The Plaintiff's counsel protested against the admission of two of these, Exhibits X.53 and 54, on the ground that they had not been disclosed, but was overruled. Not unnaturally, he did not again specifically object when X.55 was put in immediately afterwards, but it is reasonable to suppose that it also was not disclosed and took him by surprise. The witness, however, said he had handed it to the Defendant's counsel less than two months after the defence was filed and nearly a year before the hearing. He also said, "The addition on X.55 is on the flap." This somewhat cryptic remark, and perhaps other matters, are explained by looking at the original Exhibit X.55, of which X.55A is the translation. It is an airmail letter form closely written in Tamil and shows in the arrangement of the writing the strongest indications that the Tamil words representing the passage beginning "Up to now" were added at the end at a later date. The sentence immediately before that passage is common form in correspondence of this kind, but is normally found either at the beginning or the very end of the letter. The original letter has the sender's *velasam* at the beginning and was apparently sent without a signature at the end, a practice in no way unusual in correspondence of this type. As it bore a clear postmark, its date was beyond argument. I find without hesitation that the crucial sentence and the signature were added later for the purposes of this case. Exhibit X.54 was not on an airmail letter form and could have been written at any time. I think the other written evidence on which the Appellant relied is in no way more consistent with his case than with the Respondent's, except as regards the documents actually in dispute. I agree entirely with the finding implicit in the judgment of the Court below that those documents of the Appellant were fabricated.

Still on the issue of forgery, I would refer shortly to the evidence of Mr. Bhaduri. I think the learned trial Judge did to some extent misunderstand its effect. He thought Mr. Bhaduri had sworn that the Plaintiff handed Exhibit P.13 to him on the very day when Exhibit X.14 was allegedly destroyed and the parties together saw him in his office. The case was so put to him by counsel in his reply, but the evidence was not quite to that effect. The Plaintiff was clear that he had taken P.13 to Mr. Bhaduri some time before he and the Defendant saw Mr. Bhaduri together, and that on that occasion the Defendant did not read P.13. The Defendant's own

evidence confirms this. Mr. Bhaduri says his recollection on the point is not clear. I think, however, that this is not a matter of sufficient weight to throw any doubt on the general correctness of the learned trial Judge's findings.

I am impressed by the fact that the Defendant admittedly traced over and improved the document which he puts forward as the contract. I am still more impressed by the fact that the letter of the solicitors whom he first instructed could hardly have been written if they had had before them a rough translation of the document on which he now relies, but is just such as might be expected if they were instructed on a translation of Exhibit P.13. I think that after receiving advice from them the Defendant decided to rely on forgery, fabricated the necessary documents and then instructed other solicitors.

On the contract being proved, was there any credible evidence of repudiation? I think there was none; but I think also that, even if the Defendant had purported to repudiate, he could not in law have done so. I think that in this case the transfer of the Plaintiff's interest in the textile business and the execution of the promissory-note for Rs. 12,000 amounted to complete performance of his obligations under the contract, and that in the event of non-payment of the Rs. 12,000 the only remedy was an action on the promissory-note. Counsel cited *Dixon v. Holdroyd*, 119 E.R. 1482, but the facts there were quite different. There was a covenant to "pay or cause to be paid" the total sum by an instalment and four promissory notes of even date with the covenant. If the covenant referred only to delivery of those notes it was clearly unnecessary. In this case the contract contains the following passages:—

"I have on this date sold . . . for Rs. 17,000"

"The manner in which I have received the said Rs. 17,000
is as follows:—

"By a pro-note I have received Rs. 12,000 and
cash Rs. 5,000 for the share in the textile business"

"As the total sum of Rupees seventeen thousand has been
received by me, you shall have dominion and enjoyment
as from this date."

I think these passages are conclusive against the Appellant's contention.

They bring me to the next point raised for the Appellant before us, that the Plaintiff had not alleged that he was at all times ready and willing to pay the Rs. 12,000 and had not in fact at all times been so ready and willing, and that this disentitled him to specific performance. Counsel relied on *Ardeshir v. Flora Sassoon*, 1928 A.I.R. (P.C.) 208. That case decided that a Plaintiff seeking specific performance must at all times have treated the contract as valid and subsisting and so should plead and, if the allegation is traversed, must prove that he was "ready and willing" at all times. The Plaintiff had changed his ground by treating the contract as repudiated and claiming damages: by so doing he debarred himself alike from obtaining specific performance or damages under the principles of Lord Cairns' Act. See Section 28 of the Specific Relief (Malay States) Ordinance, 1950. In this case the defence did not, or at least did not clearly, raise the issue whether the Plaintiff had at all times been ready and

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No. 12.
Written
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willing to complete and it was never tried. I decline to hold that the absence of an allegation to that effect in the plaint is itself enough to bar an action in this country, though the issue might always become vital. The point could never, I think, have succeeded before us, but in any case falls to the ground in view of my previous decision that the Plaintiffs obligations under this contract have already been fully performed. No doubt it would be equitable to put him on terms to honour his promissory note before ordering specific performance, but that he readily undertook to do. The case of *British and Beningtons Ltd. v. N. W. Cachar Tea Co. Ltd.* (1923) A.C. 48, explains the limits of the rule that a Plaintiff must be ready and willing to perform. If the other party repudiates, or purports to do so, no such allegation is required. 10

The Appellant next contended that, even if the Respondent was entitled to some relief, specific performance was not the appropriate remedy. He claimed that the Court below had made no finding that damages would not give adequate relief. There is no substance in this. It has been repeatedly held, and *Flora Sassoon's* case reaffirms, that specific performance is "peculiarly appropriate" on sales of land. Counsel suggested that as the respondent was a part owner the Court below should not have taken into account the fact of his possession. I think the Court was right in doing so, and that the position of the parties, as continuing co-owners if specific performance were refused, was an additional reason for granting it. It would have been very difficult to assess damages in this case. where even the planted acreage is in dispute, but in any case the Plaintiff was entitled to specific performance. 20

The Appellant's final point was that the Respondent was in a position of "unfair advantage" as regards the Appellant and that this, even if not sufficient ground for setting aside the contract, would be good reason to refuse specific performance. I accept the principle, but Counsel agreed that to show such unfair advantage he must satisfy us that the contract itself was unfair and that he could only do so by proving undervalue. I think he wholly failed to prove anything of the kind. The Defendant's mental condition was not shown to be such as to prevent him from contracting on fair terms and with proper regard to his own interests: he was anxious to sell and the parties negotiated at arm's length. Much of the land was mere jungle and the planted area required heavy expenditure. It was unlikely to show a profit for a long time. Finally it is worth noting that the Defendant made a useful profit. He had paid only \$6,000 or Rs. 9,000 in 1940 when the price of rubber was high, and he received Rs. 17,000 at a time when recovery from the occupation had hardly started. I see no "unfair advantage" and I think the respondent is entitled to the full benefit of the contract he made. 30 40

I agreed that the appeal should be dismissed with costs.

Dated at Kota Bharu, the 14th day of June, 1951.

Signed F. A. BRIGGS,

Judge,

Federation of Malaya.

Certified true copy.

Signed. NG YEOW HEANG

Secretary to Judge,

Kota Bharu, Kelantan.

No. 13.
Order.

In the
Court of
Appeal.

No. 13.
Order.
28th March,
1951.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.

IN THE COURT OF APPEAL AT IPOH.

Civil Appeal No. 5 of 1951.

Between

T. R. M. THEVARAYA PILLAY, 29, Anson Road, Teluk Anson... *Appellant*
and

MOOKA PILLAY s/o MUTHIAH PILLAY, 40, Main Road, Bagan
10 Datoh *Respondent.*

(In the matter of Civil Suit No. 34 of 1949

Between

Mooka Pillay s/o Muthiah Pillay
40 Main Road, Bagan Datoh ... Plaintiff
and

T. R. M. Thevaraya Pillay,
29, Anson Road, Teluk Anson Defendant.)

Before

20 The Honourable Mr. S. W. P. FOSTER SUTTON, Chief Justice,
Federation of Malaya,

The Honourable Mr. Justice JOBLING, and
The Honourable Mr. Justice BRIGGS.

IN OPEN COURT.

This 28th day of March, 1951.

This Appeal coming on for hearing before the full court of Appeal on the 27th and 28th days of March, 1951 and Upon Hearing Mr. R. Ramani Counsel for the Appellant abovenamed and Mr. S. M. Sharma Counsel for the Respondent abovenamed.

IT IS ORDERED that this Appeal be dismissed.

30 AND IT IS ORDERED that the costs of this Appeal as taxed by the proper officer of the Court be paid by the Appellant to the Respondent.

AND IT IS LASTLY ORDERED that the sum of \$500/- deposited by the Appellant be paid to the Respondent towards such taxed costs.

GIVEN under my hand and the seal of the Court this 28th day of March, 1951.

Sgd. P. SAMUEL,
Assistant Registrar,
Court of Appeal,
Federation of Malaya.

In the
Court of
Appeal.

No. 14.

Notice of Motion for Conditional Leave to Appeal to H.M. in Council.

No. 14.
Notice of
Motion for
Conditional
Leave to
Appeal to
H.M. in
Council.
31st March,
1951.

TAKE NOTICE that the Court will be moved at Kuala Lumpur on Monday the 9th day of April 1951 at 10 o'clock in the forenoon or as soon thereafter as Counsel can be heard by Mr. R. Ramani of Counsel for the Defendant-Appellant for an Order that conditional leave to appeal to His Majesty in Council be given to the Defendant-Appellant against the Judgment of the Court of Appeal given on the 28th day of March, 1951, and that the execution thereof be suspended pending the Appeal.

Dated this 31st day of March, 1951.

10

Sgd. BRADDELL & RAMANI,
Solicitors for the Defendant-Appellant.

Sgd. P. SAMUEL,
Asst. Registrar,
Court of Appeal,
Federation of Malaya.

Mooka Pillay s/o Muthiah Pillay or his
Solicitor S. M. Sharma Esq., Ipoh.

The following Affidavit will be used on the hearing of this Motion viz. :
The Affidavit of T. R. M. Thevaraya Pillay affirmed on the 31st day of 20
March, 1951 and filed herein.

No. 15.
Affidavit of
T. R. M.
Thevaraya
Pillay in
support of
Motion for
leave to
Appeal.
31st March,
1951.

No. 15.

Affidavit of T. R. M. Thevaraya Pillay in support of Motion for Leave to Appeal to H.M. in Council.

I, T. R. M. Thevaraya Pillay son of Rama Pillay of Indian Nationality and of full age residing at No. 29 Anson Road, Taluk Anson, do hereby affirm and say as follows :—

1.—I am the Appellant in Civil Appeal No. 5 of 1951; I was the Defendant in the Court below.

2.—On the 28th day of March, 1951, the Court of Appeal delivered 30 final Judgment dismissing my Appeal.

3.—I am desirous of appealing against the said Judgment of the Court of Appeal to His Majesty in Council.

4.—The Matter in dispute in the Appeal amounts to upwards of four thousand five hundred dollars.

5.—I am willing to undertake as a condition for leave to appeal to enter into good and sufficient security to the satisfaction of this Court in

any sum that may be prescribed and to conform to any other conditions that may be imposed.

6.—The relief granted against me to the Respondent is specific performance of a contract to convey my one-half undivided interest in a Coconut Estate at Bagan Datoh and that relief is sufficiently protected by the Respondent's caveat already lodged against the said interest.

7.—The costs of the suit have been paid by a set off against the balance of the purchase price due and payable to me at the date of the Decree ; and I undertake to deposit in Court or if so required pay to the Solicitor for the Respondent subject to the usual undertaking, the Costs of the Appeal.

Affirmed before me at Kuala Lumpur this 31st day of March, 1951 after the above Affidavit having been read over translated and explained to the deponent who seemed perfectly understand it, declared to me that he understood it and made his signature in my presence.

Sgd. T. R. M. THEVARAYA
PILLAY,
(In Tamil)

20 Sgd. P. SAMUEL,
Ag. Sen. Asst. Registrar,
Supreme Court,
Kuala Lumpur.

Explained to the deponent by me.

Sgd. K. SUBRAMANIAM,
Indian Interpreter,
Supreme Court,
Kuala Lumpur.

In the
Court of
Appeal.

No. 15.
Affidavit of
T. R. M.
Thevaraya
Pillay in
support of
Motion for
leave to
Appeal.
31st March,
1951—
continued.

No. 16.

Affidavit of Mooka Pillai.

30 I, Mooka Pillai s/o Muthiah Pillai of full age and Indian Nationality make oath and say as follows :—

1.—I am the Plaintiff-Respondent herein.

2.—I have had read and explained to me the contents of an Affidavit sworn to by T. R. M. Thevaraya Pillai the Defendant-Appellant above-named on the 31st day of March, 1951, and filed herein.

No. 16.
Affidavit of
Mooka
Pillai.
4th April,
1951.

In the
Court of
Appeal.

No. 16.
Affidavit of
Mooka
Pillai.
4th April,
1951—
continued.

3.—Before the minutes of the Judgment delivered in open Court by the learned trial Judge on the 5th day of February 1951 were settled the Defendant-Appellant's Solicitors wrote to my Solicitor a letter copy whereof is hereto attached and marked "M.P.1."

4.—My Solicitor Mr. S. M. Sharma in reply to the said letter wrote 2 letters on the 19th day of February, 1951; copies whereof are hereto attached and marked "M.P.2" and "M.P.3."

5.—The matter finally came before his Lordship the trial Judge when he by consent made an order as appears in the last paragraph of the order dated the 5th day of February, 1951. 10

6.—Although I have already set off the amount due by me to the Defendant-Appellant on the promissory note, the Defendant-Appellant has not up to date given to me or to my Solicitor on my behalf the indemnity bond he was ordered to execute.

7.—I am further informed and verily believe that the Defendant-Appellant did shortly before the 5th day of February, 1951 sell and transfer his immovable property comprising 14 acres of coconut land which consisted of almost all, if not all, the immovable property he had in this Country.

Sworn before me this 4th day of April, } Sgd. M. MOOKA PILLAI 20
1951. } (in Tamil)

Before me,

Sgd. R. G. SUPPIAH,
Commissioner for Oaths,
Ipoh.

I hereby certify that the above Affidavit have been read, translated and explained to the deponent who seemed perfectly to understand it, declared to me that he did understand it and made his signature in my presence.

Sgd. R. G. SUPPIAH, 30
Commissioner for Oaths,
Ipoh.

Explained by me,

Sgd. KANNAN,
Clerk to Mr. R. G. SUPPIAH,
4.4.51.

No. 16 (a).

M.P.1. Letter—Braddell & Ramani to S. M. Sharma.

In the Court of Appeal.

17th February, 1951.

No. 16 (a).
M.P.1.
Braddell & Ramani to S. M. Sharma.
17th February, 1951,
attached to affidavit of Mooka Pillay.

S. M. Sharma Esq.,
Advocate & Solicitor,
Ipoh,
Dear Sir,

Civil Suit No. 34 of 1949.

Mooka Pillay s/o Muthiah Pillay

vs.

T. R. M. Thevaraya Pillay

10

Through an oversight, the learned Judge's attention, when he delivered the Judgment in open Court, was not drawn to the amount of Rs. 12,000/- and interest thereon due by your client to ours being balance of the purchase price. That amount should have been paid into Court when the action was brought.

The learned Judge referred to that on Friday last when the application for settling the order came up before him. We propose to ask the Judge on Monday to order a set-off of the costs as against the amount due to our client.

There appears to be some conflict as to whether the interest payable is 3 per cent. per annum or 3 per cent. per month.

However, we shall be prepared to accept 3 per cent. per annum to avoid any further inquiry before the Registrar, for, after all, it is a very small matter. We hope you will agree to this suggestion.

We ascertain from the Mercantile Bank today and find that the dollar equivalent of Rs. 12,000/- is \$7,698.48 in Malayan currency. Would you please confirm this? The amount therefore payable to our client will be,

30	Principal	\$7,698.48
	Interest at the rate of 3 per cent. per annum from		
	17.1.47 to 17.2.51 (4 years and 1 month)	944.00
			\$8,642.48

Notice of appeal has already been filed which please note. The proposed supplementary offer will not and is not intended, to affect either of the parties in the appeal.

Yours faithfully,

FOR BRADDELL & RAMANI,

Sgd. K. SOMASUNDRAM.

In the
Court of
Appeal.

No. 16 (b).

M.P.2. Letter—S. M. Sharma to Braddell & Ramani.

No. 16 (b).
M.P.2.
Letter,
S. M.
Sharma to
Braddell &
Ramani,
19th
February,
1951,
attached to
affidavit of
Mooka
Pillay.

Messrs. Braddell & Ramani,
Advocates and Solicitors,
Ipoh.

19th February, 1951.

Dear Sirs,

S.C.C.S. No. 34/49.

Mooka Pillay vs. Theveraya Pillay.

Your letter in the above was received at 12.30 p.m. on Saturday. I am engaged in Tapah the whole of to-day and shall let you have a reply 10 in due course.

Yours faithfully,

Sgd. S. M. SHARMA.

No. 16 (c).
M.P.3.
Letter,
S. M.
Sharma to
Braddell &
Ramani,
19th
February,
1951,
attached to
affidavit of
Mooka
Pillay.

No. 16 (c).

M.P.3.—Letter—S. M. Sharma to Braddell & Ramani.

Messrs. Braddell & Ramani,
Advocates & Solicitors,
Ipoh.

19th February, 1951.

Dear Sirs,

Ipoh Supreme Court Civil Suit No. 34 of 1949.

20

Mooka Pillay vs. T.R.M. Theveraya Pillay.

Further to my letter of this morning I am now writing to you in detail.

1. Your statement that you failed to draw the Judge's attention to the matter of Rs. 12,000/- may or may not be correct but this certainly cannot legally form part of the Judgment in as much as the suit was based on the agreement of the 17th January, 1947, which speaks of full consideration having been paid by my client and received by yours as follows :—

- (a) Rs. 5,000/- by way of transfer of shares in Madura Textile Store.
- (b) Rs. 12,000/- by way of a valuable security, to wit, promissory note 30 on demand for Rs. 12,000/- bearing interest at 3% per annum.

This being so, there never was any question of full consideration not having been paid for your client's half share in the land in question. The promissory note did not and could not directly form part of this suit whatever your client's right under it may be.

Your client not only did not make a demand but refused to accept money due by my client when offered by me to your client on the 23rd of February, 1949, nor did he demand the money at any time by way of Defence or counterclaim.

10 Legally speaking my client can insist on the production of and endorsement on the promissory note he executed before he makes the payment. No Court in the world can force my client to pay money on a document which may, for all I know, have been suppressed by the holder to take some action thereon in India or transferred to some other person to do so. It is true that ordinarily if the holder alleges that the note is lost and the matter is in Court, the Court at the very least will require a statement on oath to that effect and will under no circumstances compel the maker of the note to pay the money without requiring from the holder adequate indemnity against any claim being made on the document. I hold that this matter is not before the Court. I am also aware that your client 20 having produced a forged promissory note instead of the true one, put himself in a very difficult position by his foolish act. If he says he has lost or destroyed the note it will amount to a confession of forgery of the document.

My client has no intention of taking advantage of your client's conduct in so far as his financial obligation under the promissory note is concerned. I have money with me and had actually sent it to the Assistant Registrar of the Supreme Court, Ipoh, when the Plaint was filed but he returned the same holding the view as he did, that the question of deposit was not raised in the Plaint. I am quite prepared to allow the amount of Rs. 12,000/- 30 plus interest at 3% per annum up to the 23rd of February, 1949 (the date when I had offered the money) to be set off against the costs but I must insist on a proper indemnity and complete discharge on the note for the protection of my client.

I do not wish my client to be met with a claim on the true note if and when he goes to India either by your client or by someone else to whom your client may have transferred the same already or may do so in the future.

If the above is not acceptable to you, you can take whatever steps you please.

Yours faithfully,

Sgd. S. M. SHARMA.

In the
Court of
Appeal.

No. 16 (c).

M.P.3.

Letter,
S. M.
Sharma to
Braddell &
Ramani,
19th
February,
1951,
attached to
affidavit of
Mooka
Pillay—
continued.

In the
Court of
Appeal.

No. 17

Order granting Conditional Leave to Appeal to H.M. in Council.

No. 17.
Order
granting
conditional
leave to
Appeal.
10th April,
1951.

Before

The Honourable Mr. S. W. P. FOSTER SUTTON, Chief Justice, F.M.
The Honourable Mr. Justice THOMSON, and
The Honourable Mr. Justice E. N. TAYLOR.

This 10th day of April, 1951.

IN OPEN COURT.

This Motion for conditional leave to appeal to His Majesty in Council coming on for hearing on the 10th day of April, 1951, before this Court in the presence of Mr. R. Ramani Counsel for the Defendant-Appellant and Mr. S. M. Sharma Counsel for the Plaintiff-Respondent. And Upon Reading the Notice of Motion dated the 30th day of March, 1951, and the Affidavit of Thevaraya Pillay affirmed on the 31st day of March, 1951, and upon hearing Counsel for both parties. 10

IT IS ORDERED that the Defendant-Appellant do have leave to appeal against the Judgment of the Court of Appeal given at Ipoh on the 28th day of March, 1951.

Upon condition that

- (a) he do before the 9th day of July, 1951, enter into good and sufficient security to the satisfaction of the Court in the sum of \$5,000/- for the due prosecution of the Appeal and the payment of all such costs as may become payable to the Respondent in the event of the Appellant not obtaining an order granting him final leave to appeal, or of the Appeal being dismissed for non-prosecution or His Majesty in Council ordering the Appellant to pay the Respondent's costs of the Appeal as the case may be. 20
- (b) he do before the said 9th day of July, 1951, take the necessary steps for the preparation of the Record and the despatch thereof to England. 30

AND IT IS ORDERED that the execution of the Judgment of the Court of Appeal be suspended pending the Appeal to His Majesty in Council.

GIVEN under my hand and the Seal of the Court this 10th day of April, 1951.

Sgd. P. SAMUEL,
Sen. Asst. Registrar,
Court of Appeal,
Federation of Malaya.

No. 18.

Order granting Final Leave to Appeal to H.M. in Council.In the
Court of
Appeal.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.

IN THE COURT OF APPEAL AT KUALA LUMPUR.

F. M. Civil Appeal No. 5 of 1951.

No. 18.
Order
granting
final leave
to Appeal.
10th July,
1951.

Between

T. R. M. THEVARAYA PILLAY *Defendant-Appellant*
andMOOKA PILLAY s/o MUTHIAH PILLAY *Plaintiff-Respondent*

10 (In the matter of Civil Suit No. 34 of 1949)

Between

Mooka Pillay s/o Muthiah Pillay Plaintiff

and

T. R. M. Thevaraya Pillay ... Defendant.

Before

The Honourable Sir Stafford FOSTER SUTTON, Chief Justice, Federation
of Malaya,The Honourable Mr. Justice T. A. BROWN, Ag. Chief Justice, Singapore,
and

20 The Honourable Mr. Justice ABBOTT.

This 10th day of July, 1951.

ORDER

In Open Court.

This Motion for final leave to appeal to His Majesty in Council coming on for hearing before this Court in the presence of Mr. R. Ramani Counsel for the Defendant-Appellant and Mr. A. K. Sen for Mr. S. M. Sharma Counsel for the Plaintiff-Respondent AND UPON READING the Notice of Motion dated the 2nd day of July, 1951, and the affidavit of Radhakrishna Ramani affirmed on the 2nd day of July, 1951, and upon hearing Counsel for both parties :

30 IT IS ORDERED that final leave be and is hereby granted to the Defendant-Appellant to appeal to His Majesty in Council.

GIVEN under my hand and the seal of the Court this 10th day of July, 1951.

Sgd. P. SAMUEL,

Asst. Registrar,

Court of Appeal,

Federation of Malaya.

EXHIBITS

Exhibits.
 P. 10 (1).
 Plaintiffs
 Bundle of
 Documents.
 Letter,
 Thevaraya
 Pillay to
 Mooka
 Pillai.
 15th
 December,
 2604.
 (Japanese)

P.10 (1).—Plaintiff's Bundle of Documents.

Letter—Thevaraya Pillay to Mooka Pillai.

Indian Independence League (Perak Branch) Bagan Datoh Sub-Branch.

Sri M. Mooka Pillai, 15th December, 04.

Merchant, Bagan Datoh.

Assessment.

On reviewing your property Declaration the Assessment Committee has estimated your assets as \$75,000/- and you have been assessed at 12½% \$9,375/- which you are required to pay in two instalments. 10

First instalment 75%	\$7,031.25 payable on or before 23-12-04
25%	\$2,343.75 " " " " 30-12-04
	<hr/>
	\$9,375.00

Indian Independence League
 (Perak Branch),
 "Jai Hind".

Sgd. T. R. M. THEVARAYA PILLAY.
Chairman,

Bagan Datoh sub-Branch.

For the Provisional Government of Azad Hind." 20

P.33.
 Agreement,
 Ooi Hoe
 Seong to
 Thevaraya
 Pillay.
 8th
 October,
 1940.

P.33.—Agreement—Ooi Hoe Seong to Thevaraya Pillay.

Stamped in due time.

Sd.

Collector of Stamp Duties,
 Larut.

12.X.40.

Stamp 25 cents
 Stamp Office
 Taiping.

AN AGREEMENT made the 8th day of October, 1940, Between OOI HOE SEONG of No. 23, Bridge Street, Penang, Merchant (hereinafter called "the Vendor" which expression includes his executors administrators and assigns) of the one part and T.R.M. THEVARAYA PILLAY son of Rama Pillay of No. 39, Main Road, Bagan Datoh, Perak, Moneylender (hereinafter-called "the Purchaser" which expression includes his executors administrators and assigns) of the other part. 30

WHEREBY IT IS AGREED as follows :—

Exhibits.

Ind :
K.H.K.
Sd. : Hoe
Seong
Ind :
T.R.M.

1. The Vendor will sell and the Purchaser will buy the unencumbered fee simple in possession of all those pieces of land and hereditaments and the chattels and things hereinafter described in the Schedule hereto.

P.33.
Agreement,
Ooi Hoe
Seong to
Thevaraya
Pillay.
8th
October.
1940—
continued.

2. The price shall be the sum of Dollars Forty two thousand and five hundred (\$42,500/-) of which the sum of Dollars One thousand (\$1,000/-) is now paid (the receipt whereof the Vendor hereby acknowledges) and the balance shall be paid on the date fixed for completion of the purchase hereinafter mentioned.

10 3.—The Purchaser shall admit the identities of the said pieces of land purchased by him with those comprised in the documents of title offered by the Vendor as the title thereto upon the evidence (if any) afforded by a comparison of the descriptions contained therein and in such documents respectively. The areas of the said pieces as given in the documents title shall be conclusive and accepted as correct.

4.—The Vendor shall deduce a good marketable title to the said pieces of land.

5.—The completion of the purchase shall take place on or before the 23rd day of November, 1940, at the office of Messrs. Hogan, Adams & Allan,
20 No. 4A, B & C, Beach Street, Penang.

6.—On payment of the sum of Dollars Eleven thousand and five hundred (\$11,500/-) part of the balance of the purchase money the Vendor will execute a proper Transfer to the Purchaser of the property sold such Transfer to be prepared and perfected by and at the expense of the Purchaser, who shall also pay the costs of these presents.

7.—Upon the completion of the purchase the Purchaser shall be entitled to possession or receipt of the rents and profits of the property sold and shall be liable to all outgoings as from that date such rents and profits and outgoings to be apportioned if necessary.

30 8.—Immediately after the execution of the Transfer to the Purchaser he shall execute a Charge of the fee simple of the said pieces of land to the Vendor for securing the payment of the balance of the purchase-money, viz. :—the sum of Dollars Thirty thousand (\$30,000/-) with interest thereon at the rate of 8.4 per cent. per annum or Seventy (70) cents per \$100/- per mensem payable once every two (2) months the first payment to be made on the expiration of two (2) calendar months from the date of the said Charge.

The said sum of \$30,000/- shall be made payable on demand and shall bear interest at the rate aforesaid until repayment.

The Purchaser shall bear all the costs of the said Charge.

Exhibits,
 P.33.
 Agreement,
 Ooi Hoe
 Seong to
 Thevaraya
 Pillay.
 8th
 October,
 1940—
continued.

9.—Until the principal sum and interest secured by the said Charge shall have been paid off all documents of title and the duplicate of the said Charge shall be retained by the Vendor.

IN WITNESS Whereof the parties hereto have hereunto set their hands at Penang on the day and year first above written.

THE SCHEDULE above referred to—

	Title No	Lot No.	Mukim	Area		
				A.	R.	P.
Grant for Land No. 11490		1701	Teluk Bharu	632	2	00
E.M.R. 1724		1671	"	2	2	37 10
" 1723		1670	"	0	3	35
" 1720		1667	"	1	1	28
" 1045		861	"	3	0	15
" 973		889	"	2	0	11
" 982		433A	"	1	1	26

Also all the chattels and things in or about the said pieces of land belonging to the Vendor at the date of completion.

Signed by the said OOI HOE SEONG } Sd. OOI HOE SEONG
 in the presence of— } (In Chinese)

Sgd. KHOO HENG KOH, 20
 Solicitor,
 Penang.

Signed by the said T.R.M. THEVARAYA PILLAY son of Rama Pillay } Sd. T.R.M. THEVARAYA PILLAY
 in the presence of— }

Sgd. KHOO HENG KOH.

P. 10 (3).
 Plaintiffs
 Bundle of
 Documents.
 Translation
 of a Tamil
 receipt
 dated
 7-1-1941.

P.10 (3).—Plaintiff's Bundle of Documents.

Translation of a Tamil receipt dated 7-1-1941.

7-1-1941.

Received from Moona Moovanna of Bagan Datoh Dollars forty two 30
 only. \$42/-

Initialled ?

Translated by me,
 Sgd. S. THAMBU,
 Senior Tamil Interpreter,
 Supreme Court,
 Ipoh.
 28-11-1949.

P.10 (4).—Plaintiff's Bundle of Documents.

Translation of an Account in Tamil of Bagan Dath M. Mooka Pillay.

Exhibits.
—
P. 10 (4).
Plaintiffs
Bundle of
Documents.
Translation
of an
Account in
Tamil.
January
1941.

Page 7.

1941			
January 7.	Credit—By cash to self		\$42.00
31.	Credit—By Adjustment a/c		\$302.35
	Debit—To cash as on the 7th inst : to self	\$20.30	
10	Credit of Estate—By sale of goats \$23/- minus \$11 50 being share of Thena Ravanna Mana		\$11.50
	Credit of Estate—28480 nuts made into copra amounting to 118 pickuls 35 katties sold to Chin Chan Thong of Hutan Melintang for \$273/23— minus \$136/61 being the share of T. R. M. Thavaraya Pillay		\$136.62
	Credit—as on 3rd February \$50/- and as on 8th \$15/05, Total		\$65.05
20	Total Debit & Credit	\$20.30	\$557.52
	Credit Balance		\$537.22
	Debit—Wages as per check-roll \$1074.45 minus \$537.23 being T. M. R. T.'s share	\$537.22	
	Account Balanced	\$537.22	\$537.22

Translated by me,

Sgd. S. THAMBU,
Senior Tamil Interpreter,

Supreme Court,
Ipoh.

30

28-11-49.

Exhibits.

P.10 (4a). Plaintiff's Bundle of Documents.

P.10 (4a).
Plaintiffs
Bundle of
Documents.
Translation
of a Tamil
Account.

Translation of a Tamil Account.

As per previous page total wages		\$1074.45
Credit of Bagan Datoh M. Mooka Pillay's share Capital	\$537.22	
Credit of Bagan Datoh T. R. M. Thevaraya Pillay's share Capital	\$537.23	
Account Balanced	\$1074.45	\$1074.45

Account Balanced as per check-roll.

Initialed ? 10

Translated by me,
Sgd. S. THAMBU,
Senior Tamil Interpreter,
Supreme Court,
Ipoh.

28-11-49.

P.17.
Tamil
letter
Thevaraya
Pillay to
Moona
Moovanna.
4th
January,
1946.

P.17.—Tamil Letter—Thevaraya Pillay to Moona Moovanna.

(Not printed.)

Original document.

P.17A.
Translation
of Exhibit
P.17.

P.17a.—Translation of Exhibit P.17.

20

(Not printed.)

Original document.

P.10 (2).—Plaintiff's Bundle of Documents.

Translation of letter in Tamil—Thevaraya Pillay to Moona Moovanna.

Thena Ravanna Mana,
Bagan Datoh.

4. 1. 46.

Sri Moona Moovanna
Puthanampatti.

“ Jai Hind ”

Written with humbleness to the august presence of “ Athan ” (brother-in-law). I pray that by God's grace you will have all the good things and long life.

When I received your letter of 9.12.45 I was both happy and sorrowful.
10 Because of our great friendship, you have travelled a long distance and attended personally to my father's cremation and it is a great help which I cannot forget for ever.

You have written regarding the Telok Senangin Estate. Up to December '41 we took care of the estate and managed it very economically. After that War came. For 4 months there was complete absence of travelling facilities. After that we collected some labourers for the estate and gave a contract. The Japanese took away all the labourers from the estate in one single night. After that as the contractor was not in a position to carry on, we gave once more on contract. For some time they looked
20 after the estate in a good manner. After that as Japanese currency became valueless we have told the above-said person to carry on for some more time and make good his (your?) loss. A Proclamation was made that anything earned in whatever manner within the period of British leaving Malaya and their coming back will not be valid. We have now decided to sell the estate for any price. At present there is a great shortage of labour in Malaya.

In this country even the European Estates are in a bad condition as they are overgrown with jungle. How long it would take for good times to come, we do not know. The estate in Kayan is clean. The profits
30 earned during the War period was spent on this by Ehambaram, through whose efforts the estate and the shop were kept in a good condition. No doubt, copra fetches a good price after the War. But foodstuffs are dear.

Yet Ehambaram is looking after them in a thrifty manner. Nobody has any old currency (British currency) in hand. After the end of the war about \$5000/- might have come from Kayan Estate. On receipt of your letter and telegram, Rupees 3000-0-0 was sent by T. T. and it would have reached you. He will send money as soon as possible. You have written to say that you would be coming over here once. At the moment, the country is not in a good condition. You can remain there and write what-
40 ever you want to be done and collect the money.

Furthermore, I am going to write everything about myself. In this country an independence government for us was formed under the leadership of Subas Babu. I attended all his speeches. His speeches could move

Exhibits.

—
P.10 (2).
Plaintiff's
Bundle of
Documents.
Translation
of letter in
Tamil.
Thevaraya
Pillay to
Moona
Moovanna.
4th
January,
1946.

Exhibits.
 P.10 (2).
 Plaintiff's
 Bundle of
 Documents.
 Translation
 of letter in
 Tamil,
 Thevaraya
 Pillay to
 Moona
 Moovanna.
 4th
 January,
 1946.
 —continued.

even persons with strong convictions. In that enthusiasm I decided to labour for independence and did so until the end. Fruits of my labour will come later.

As I was engaged in these matters I did not think much of my own properties or shops. My actions in this country are well known to the public. When I was imbued with such ideas, how could it be possible for me to direct my attention to look after properties. I attached greater value to independence than to life and property, and laboured accordingly. You may have read in newspapers about the independent government. I do not mind your writing ill of me. Because of that enthusiasm, I am not paying much attention to the estate or to the shop even now. 10

Even during the war period I sold some very good lands and made contributions to the abovesaid government. Even then, we sent a letter to Penang through a lawyer with the intention of settling the estate debt. It was not known where they had gone during war-time. Even now it is the Military Government that is functioning here. Therefore there is some inconvenience in selling the estate. I hope to sell it as early as possible. As it is a big property, only if able and energetic persons buy it, they will be able to manage it. However the outbreak of this war has given us a good opportunity. For three years we were able to carry our heads erect with cries of independence. As a result of the Japanese coming, although we were not able to acquire wealth we have acquired strength. I am also trying to come home as early as possible. 20

In this country, men of great eminence and wealth have made supreme sacrifices for their mother country. After independence is obtained only their names will be inscribed in gold letters. Although I have not earned money, I have acquired strength. In my opinion it does not matter even if money has not been earned.

It is not possible to write in letters all that took place here. I shall come and explain everything in person. I would request you to inform me as to who and who in our village caused obstacles to my father's funeral. After your letter was received my mind is in a different state. I am very sorry about things happening this way to my father. What to do. God will help every one. 30

Other matters on seeing your letter.

“ Jai Hind ”

Sd. T.R.M. THEVARAYA PILLAY.

TRUE COPY.

Sgd. CHIN SEN BOO,

Secretary to Judge, Ipoh. 40

Translated by me,

Sgd. S. THAMBU,
Senior Tamil Interpreter,
 Supreme Court, Ipoh.

28.11.49.

X.31.—Copy of Charge against Thevarayapillai in Teluk Anson Criminal Cases Nos. : 71 to 73/46.

		Exhibits.
		X.31.
		Copy of Charge against Thevaraya Pillai.
No. of Case	71 to 73 of 1946.	
Name of accused	Thevarayapillai.	
Nationality	Tamil.	
Offence	<p>1. That you on or about 25th December, 1944, at Bagan Datoh did commit extortion by putting T. Chelliah in fear of a certain injury to wit you threatened the said T. Chelliah that you would report to the Japanese M.P. if he did not pay \$1,000.00 to you for the I. I. League and thereby dishonestly induced the said T. Chelliah to deliver to you to wit cash \$1,000.00 and that you have thereby committed an offence punishable under Section 384 Penal Code.</p> <p>2. That you on or about 28.3.45 at Bagan Datoh did commit extortion by putting one S. Nathan in fear of certain injury to wit you threatened the said S. Nathan that you would report to the Japanese M.P. if he did not pay cash \$750.00 to you for I.I. League and thereby dishonestly induced the said S. Nathan to deliver cash \$750.00 to you and that you have thereby committed an offence punishable under Section 384 Penal Code.</p> <p>3. That you on or about March, 1945, at Bagan Datoh did commit extortion by putting one K. Ambalavanar in fear of a certain injury to wit you threatened the said K. Ambalavanar that you would report to the Japanese M.P. if he failed to pay cash \$1,000.00 to you for the I.I. League and thereby dishonestly induced the said K. Ambalavanar to deliver to you cash \$1,000.00 and that you have thereby committed an offence punishable under Section 384 Penal Code.</p>	
10		
20		
30		
Date of Arrest	19.1.46.	
Decision of Magistrate	Charge explained. Claims Trial on all charges. Case postponed for mention on 31st January. 1946.	

Exhibits.	Bail granted for all three charges in the sum of \$5,000.00 in 2 sureties.		
X.31.			
Copy of Charge against Thevaraya Pillai— <i>continued.</i>	Sgd. ?	22.1.46	
	To 27.2.46 for hearing.		
	Sgd. ?	31.1.46	
	To 19th and 20th March, 1946, for hearing.		
	Sgd. ?	27.2.46	10
	Postponed to 3rd April, 1946, for hearing.		
	Sgd. ?	19.3.46	
	Prosecution withdraws the charges. Accused discharged.		
	Sgd. ?	25.3.46	
	Seal of the Magistrates' Court.		
	Certified true copy,		
	Sgd. ?		20
		<i>Circuit Magistrate,</i> Teluk Anson.	

X.32.	X.32.—Copy of Bond and Bail Bond after Arrest of Thevaraya Pillay under a Warrant.		
Copy of Bond and Bail Bond after arrest of Thevaraya Pillay under a Warrant. 22nd January 1946.	B.B. No. 24/46.	Cr. Cases Nos. 71-73/46.	
	Military Courts.		
	Bond and Bail Bond after Arrest under a Warrant.		
	(Rule 10).		
	(RULE 22).		
	I, T.R.M. Thevaraya Pillay of Bagan Datoh being brought before the District Court at Teluk Anson under a warrant to compel my appearance to answer to a charge of extortion Section 384 Penal Code do hereby bind myself to attend at the District Court at Teluk Anson on the 31st day of January, 1946, next to answer the said charge and to continue so to attend until otherwise directed by the Court ; and, in case of my making default herein I bind myself to forfeit to the Chief Civil Affairs Officer, British Military Administration, Malaya, the sum of five thousand (\$5,000.00) dollars.		30
	Dated this 22nd day of January, 1946.		
	Sgd. T.R.M. THEVARAYA PILLAY		40
		in Tamil.	

SURETIES:

We, R.M.N. Nadesa Pillay of Teluk Anson and P. Arunasalem Pillay of Teluk Anson do hereby declare ourselves sureties of the above named T.R.M. Thevaraya Pillay of Bagan Datoh that he shall attend before the District Court at Teluk Anson on the 31st day of January, 1946, next to answer to the charge on which he has been arrested, and shall continue so to attend until otherwise directed by the Court and in case of his making default therein we hereby bind ourselves jointly and severally to forfeit to the Chief Civil Affairs Officer, British Military Administration, Malaya, the sum of five thousand (\$5,000.00) dollars.

Dated this 22nd day of January, 1946.

Before me,
Sgd. ?
Magistrate,
Teluk Anson.
Seal of the Magistrates'
Court, Teluk Anson.

Sgd. R.M.N. NATESA PILLAY.
Sgd. P. ARUNASALEM PILLAY
in Tamil.
(Certified true copy,
Circuit Magistrate,
Teluk Anson.
15.9.50.

Exhibits.
N.32.
Copy of
Bond and
Bail Bond
after arrest
of
Thevaraya
Pillay under
a Warrant
22nd
January
1946.
- continued.

20

P.13.—Tamil Agreement—Thevarayapillay to Mookapillay

(Not printed.)

Original document.

P.13.
Tamil
Agreement
Thevaraya-
pillay to
Mooka-
pillay.
17th
January,
1947.

P.13a.—Photograph of Exhibit P.13.

(Not printed.)

Original document.

P.13A.
Photograph
of Exhibit
P.13.

P.13b.—Photograph of Exhibit P.13.

(Not printed.)

Original document.

P.13B.
Photograph
of Exhibit
P.13.

Exhibits.

P.13c.
Photograph
of Exhibit
P.13.

P.13c.—Photograph of Exhibit P.13.

(Not printed.)

Original document.

X.50.
Copy of
Exhibit
P.13 made
by
Thevaraya-
pillay.

X.50.—Copy of Exhibit P.13 made by Thevarayapillay.

(Not printed.)

Original document.

X.51.
Translation
of Exhibit
X.50.

X.51.—Translation of Exhibit X.50.

(Not printed.)

Original document.

X.59.
Photograph
of signature
on Exhibit
P.13.

X.59.—Photograph of Signature on Exhibit P.13.

10

(Not printed.)

Original document.

X.60.
Photograph
showing
arrow head
dots.

X.60.—Photograph showing Arrow Head Dots.

(Not printed.)

Original document.

X.61.
Photo-
graphic
enlargement
of strokes.

X.61.—Photographic enlargement of Strokes.

(Not printed.)

Original document.

X.14.—Torn Tamil Agreement—Thevarayapillay to Mookapillay.*(Not printed.)*

Original document.

Exhibits.

X.14.
Torn Tamil
Agreement
Thevaraya-
pillay to
Mooka-
pillay.
17th
January,
1949.

X.14a.—Photograph of Exhibit X.14.*(Not printed.)*

Original document.

X.14a.
Photograph
of Exhibit
X.14.

X.14b.—Photograph of Exhibit X.14.*(Not printed.)*

Original document.

X.14b.
Photograph
of Exhibit
X.14.

10

X.14c.—Photograph of Exhibit X.14.*(Not printed.)*

Original document.

X.14c.
Photograph
of Exhibit
X.14.

X.15.—Tamil Agreement—Thevarayapillay to Mookapillay.*(Not printed.)*

Original document.

X.15.
Tamil
Agreement
Thevaraya-
pillay to
Mooka-
pillay.
17th
January,
1947.

Exhibits.

X.15a.
Photograph
of Exhibit
X.15.

X.15a.—Photograph of Exhibit X.15.

(Not printed.)

Original document.

X.15b.
Photograph
of Exhibit
X.15.

X.15b.—Photograph of Exhibit X.15.

(Not printed.)

Original document.

X.15c.
Photograph
of Exhibit
X.15.

X.15c.—Photograph of Exhibit X.15.

(Not printed.)

Original document.

P.16.
Negatives
of Exhibits
P.13, X.14,
and X.15.

P.16 —Negatives of Exhibits P.13, X.14 and X.15.

10

(Not printed.)

Original documents.

X.18.
Promissory
Note
Mooka-
pillay to
Thevaraya-
pillay.
17th
January,
1947.

X.18.—Promissory Note—Mookapillay to Thevarayapillay.

(Not printed.)

Original document.

P.10 (30).—Plaintiff's Bundle of Documents.

Exhibits.

Translation of Promissory Note Ex. X. 18—Mooka Pillay to Thevarayapillay.

The Promissory note bond written and given this 17th day of January 1947 to Thevarayapillay son of Raman Kanganar of Sathanoor, Musri Taluk, by Mookapillay son of Muthiapillay of Puthanampatti, above said Taluk, is as follows :—

10 The sum of Rs. 12,000/- twelve thousand owing by me for my purchasing from you your half share of 325 acres in Telok Senangin Estate in Malaya, I shall on demand pay in cash to you or to your order the principal sum together with the accrued interest at the rate of 3 per cent., and get back the Bond with settlement endorsed.

Signed in Tamil over
2 one anna stamps.

MOONA MOOKAPILLAY.

Witnesses :

THENOOR SEENA RETHINAMPILLAY
Written by M. BALAKRISHNA CHETTY.

Translated by me

20 Sgd. S. THAMBU,
Sen. Tamil Interpreter,
S.C. Ipoh 26.7.49.

P.11.—Airmail letter—Thevaraya Pillay to Yehambaram.

(Not printed.)

Original document.

P.10 (30).
Plaintiff's
Bundle of
Documents.
Translation
of Pro-
missory
Note
Mooka
Pillay to
Thevaraya-
pillay.
17th
January,
1947.

P.11
Airmail
letter
Thevaraya
Pillay to
Yeham-
baram.
17th
January,
1947.

Exhibits.

P.10 (5).—Plaintiff's Bundle of Documents.

P.10 (5).
Plaintiff's
Bundle of
Documents,
Translation
of Letter
Thevaraya
Pillay to
Yeham-
baram.
17th
January
1947.

Translation of Letter P. 11—Thevaraya Pillay to Yehambaram.

17-1-47

Puthanampatti

T. R. M. T.

Dear brother M. M. Yehambaram,

I, T. R. M. T. of Sathanoor hereunder write and inform you that I am well here and I hope to hear the same from you.

I have sold my share of Teluk Senangin Estate by written Sale deed on 17-1-1947 to Sri Mooka Pillay. I have also written a letter to Sri Nadesa Pillay informing him the same. You better transfer the property 10 without delay. Quit Rent for 1946 belongs to you. Transfer charges and other fees must be borne by you. The same I have told M. M. Mookka Pillay and we have executed written agreement. Do not cause any delay in transferring the property. Take charge of the Estate. Hence the estate belongs to you.

Please write to the present condition of the Kayan Estate.

Also reply to this letter. The rest in next.

Sgd. T. R. M. THEVARAYA PILLAY.
(In English Character.)

P.10 (5a).
Plaintiff's
Bundle of
Documents.
Translation
of letter
Mooka
Pillay to
Ekam-
baram.
17th
January.
1947.

P.10 (5a).—Plaintiff's Bundle of Documents.

20

Translation of letter P. 11—Mooka Pillay to Ekambaram.

17-1-47.

Puthanampatti

Moona Muvanna.

Bagan Datoh
M. M. Yeanna.

Written to Ekambaram with kind regards :

All are well here. Reply as to health.

On 17-1-47 I have bought the estate at Teluk Sinangin from T. R. M. Thevarayapillai in writing. He has also written a letter herein.

Therefore execute the transfer for \$25,000/- inclusive of the debt due to the Chinese. Is the estate of Thevarayapillai at Kayan in a good 30 condition? For what price could it be bought? What other properties has he in Penang? Make enquiries and write to me in detail. Write also if there are charges. Also inform me in detail about the shares in Oil Palm Co., out-standing debts, Lots, other estates with their valuations.

Don't write to him anything direct.

Sgd. M. MOOKA PILLAY.

Translated by me,
M. S. ARULAPPU,
Tamil Interpreter,
Supreme Court,
Ipoh.

40

X.25.—Air mail letter from Thevaraya Pillay.

(Not printed.)

Original document.

Exhibits.

X.25.
Air mail
letter from
Thevaraya
Pillay.
17th
January,
1947.

X.25a.—Translation of airmail letter X.25 from Thevaraya Pillay.

R. M. N. . (Religious Symbol) 17.1.1947
Teluk AnsonX.25a.
Translation
of Airmail
letter from
Thevaraya
Pillay.
17th
January,
1947.

Written to the honoured son-in-law may he live long. All well here. 10 Reply about welfare there. On 17.1.1947 I transferred in writing my full interest in the Teluk Sinangin Estate to Sriman M. Mookapillay. They (he) would pay all the rent due on the Teluk Sinangin Estate. As soon as you see this letter sent for Ekamparan and effect a transfer without any delay. All the expenses of transfer must be borne by them. You should not cause any delay whatsoever in the execution of the transfer. Hereafter we have no interest over the said Sinangin Estate.

Write in details regarding Kayan Estate. Remit the money with Sappaniapillay and the income of Kayan Estate. V. R. K. Muthusamy Chettiar of Penang has not remitted any money up to date. Collect it 20 yourself and remit it. There was horoscope with the said Chettiar. Collect it and send it.

As regards other matters write immediately without delay.

JAI HIND

Sgd. T. R. M. ? (In English).

R. M. N. Over-leaf
Teluk Anson 2
(Religious Symbol)
17.1.1947.

Written by Muna Mooana. If the transfer is not executed within 30 a month T. R. M. T. will have to pay an extra five thousand.

By Air Mail Intld. MUNA MOOANA.
Air Letter. R. M. Nadesa Pillai Esqr.,
Received Anson Road
on 5.3.47. Teluk Anson Malaya.

Sender's name and address :—

T. R. M. Thevaraya Pillai
Sathanur
Lamandur post
Trichinopoly Dist.
S. India.

Exhibits.

—
 N.25A.
 Translation
 of Airmail
 letter from
 Thevaraya
 Pillay.
 17th
 January.
 1947—
continued.

I certify that the above is a true translation of a Tamil Letter marked
 “ A ” for identification, done to the best of my ability and belief.

Sgd. M. S. ARULAPPU,
Indian Interpreter,
 Courts, Ipoh.

31st August, 1950.

Defendant's
 Bundle of
 Documents.
 Translation
 of letter—
 Thevaraya
 Pillay to
 Moona
 Moovanna.
 17th
 February.
 1947.

Defendant's Bundle of Documents.

Translation of letter—Thevaraya Pillay to Moona Moovanna.

To Moona Moovanna, Puthanampatti. 17.2.7.
 Thena writes to “ aithar.” 10

Both you and teacher Balakrishnan Chettiar have deceived me and
 got me to execute a deed over the Teluk Senangin estate by cheating me
 and telling me all sorts of things. Let things happen according to God's
 Will. Immediately you see this letter, take back your pro-note and send
 me the money without delay. Send a reply to this letter at once.

Sgd. ?

Translated by me.

Sgd. S. THAMBU,
Senior Tamil Interpreter,
 S.C. Ipoh. 16.3.49.

20

P.34
 Airmail
 Letter in
 Tamil
 Thevaraya
 Pillay to
 Yegam-
 param
 Pillay.
 22nd
 February,
 1947

P.34—Airmail Letter in Tamil—Thevaraya Pillay to Yegamparam Pillay.

(*Not printed.*)

Original document.

P.34a.
 Translation
 of Airmail
 letter in
 Tamil.
 Thevaraya
 Pillay to
 Yegam-
 param
 Pillay.
 22nd
 February,
 1947.

P.34a.—Translation of P.34—Airmail letter in Tamil—Thevaraya Pillay to Yegamparam Pillay.

Original documents.

Sender's name and address : T. R. M. Thevaraya Pillay,
 Sathanoor Village, Cumandour Post,
 Trichinopoly.

Jai Hind,

T. R. M. T.

Sathanour.

22-2-47

P. R. Y. 30

Kayan.

Written to brother Yegamparam : Here all well. Pleas write about
 the health of every body there.

Your air mail letter written from there with no date was received and
 matters noted. Please write to me for how long they had been tapping

rubber without cutting the lallang, and also write full details about Kayan estate. Before I came here I told you. "You keep the shop also. You look after the estate also." You did not agree to that. Because of that I was worried and they had to be left with others. Please write to me if you are prepared to look after Kayan estate this year after the "time" expires. After seeing your letter I shall write about all matters. For the time being you need not come home. It is better to earn as much as you can.

10 Sri Moona Moovanna is quite well at Puthanampatty. On 17-1-47 also I have written a letter to you. I am also thinking of staying in this place. I am doing a business in partnership in Madura. In India caste differences will disappear very soon. Those who want to marry can marry anyone they like irrespective of any religion. Difference is ignored. If there is an association in Bagan Datoh, expand its activities. Write frequently about other matters. Sri Moona Moovanna also has got a good opinion of you.

JAI HIND,
T. R. M. T.

20 Send Ghandi home this year. As Ghandi is also a naticnalist he will understand local conditions.

Translated by me
Sgd. S. THAMBU,
Sen. Interpreter,
S.C. Ipoh. 11.2.50.

P.10 (31).—Plaintiff's Bundle of Documents.

Translation of Tamil letter X. 52—Natesa Pillay to Thevaraya Pillay.

Telegrams :
"Natesapillay"
Teluk Anson.

Memorandum.
Licensed Rice Dealer No. 601
Teluk Anson 11.3.1947.

30 From
Rm. N. Natesa Pillay Registered
under the Registration of Businesses
Enactment, 1939. Certificate No. 93,
General Merchant, Commission
Agent & Banker, No. 29, Anson
Road, Teluk Anson, F.M.S.

To,
Mama T. R. M. Thevaraya
Pillay, Sathanoor.

P.10 (31).
Plaintiff's
Bundle of
Documents.
Translation
of Tamil
letter
Natesa
Pillay to
Thevaraya
Pillay.
11th March
1947.

Jai Hind !

40 RM. N. Natesan writes to mama. Here everybody is well. Likewise write about the welfare of those there. All the letters written by you previously were received and contents note. You wrote to say that you have sold the Telok Senangin estate to Moona Moovanna. I shewed the letter asking that it be transferred to Yegambaram and told him to get it transferred. To that he said "we shall have it transferred" and went away. It will be good (I shall be glad) if you will write to me if you have received the money for the estate.

Exhibits.
—
P.34a.
Translation
of Airmail
letter in
Tamil.
Thevaraya
Pillay to
Yegam-
param
Pillay.
22nd
February.
1947—
continued.

Exhibits.
 —
 P.10 (31).
 Plaintiff's
 Bundle of
 Documents.
 Translation
 of Tamil
 letter
 Natesa
 Pillay to
 Thevaraya
 Pillay.
 11th March,
 1947—
continued.

Today I have sent from here Rs. 1500/- one thousand and five hundred by telegraph transfer to the Imperial Bank of Trichinopoly. Please receive it. Kayan Estate is the same as always. It has some weeds. I have no leisure to go there and see. Your a/c is sent herewith. Please receive it. Other matters on seeing your letter.

Jai Hind !

Sgd. : RM. N. NATESAPILLAY in English.
 11.3.47.

Translated by me
 Sgd. : S. TAMBUR
Senior Tamil Interpreter,
 Supreme Court, Ipoh.
 6.3.50.

10

X.52.
 Letter in
 Tamil
 Natesa
 Pillay to
 Thevaraya
 Pillay.
 11th March,
 1947.

X.52.—Letter in Tamil—Natesa Pillay to Thevaraya Pillay.

(Not printed.)

Original document.

Defendant's
 Bundle of
 Documents.
 Translation
 of Tamil
 letter
 Natesa
 Pillay to
 Thevaraya
 Pillay.
 11th March,
 1947.

Defendant's Bundle of Documents.

Translation of a Tamil letter—Natesa Pillay to Thevaraya Pillay.

see P. 10 (31) above.

X.43.
 Translation
 of letter—
 Ekam-
 baram to
 Thevaraya
 Pillay.
 25th March,
 1947.

X.43.—Translation of letter—Ekambaram to Thevaraya Pillay. 20

Translation.

PT. E.
 Bagon Datch.

Sivamayam
 25.3.47.

T. RM. T.
 Sathanoor.

Written by Ekambaram. Now all are well here.
 Write regarding of the welfare of all over there.
 Received your letter written from there and read contents. There was delay in replying immediately as I was away for ten or fifteen days. Do not be annoyed ?
 Lallang is not cleared in your Kayan Estate since it was leased. Lallang and reeds have grown abundantly. The area of 8 acres around 30

the bungalow is kept clean of gress and not of lallang. Trees are in good condition. Sixteen acres are fully grown with lallang. In 15 acres, due to both lallang and reeds the trees have become pale, leaves stunted and the bearing reduced. If no drain is constructed and lallang and reeds are cleared within a year, the condition of the estate will be ten times worse than it was at the time of purchase. I need not write more on matters not known to you yet. I noted your request to look after the above estate. Immediately following the arrival of cousin Mr. Muna Moovana here, I intend to come over there. Therefore it is not convenient for me to look after (the estate). As the people of the shop at Kayan are preparing to come home (India), I cannot undertake the work without suitable people. Now there is plenty of work.

As Gandhi left at the beginning of November, 1946 to learn in Hindi School at Kuala Lumpur there are no suitable persons even in the shop at Bagan Datoh.

Without a proper leader the labourers union at Bagan Datoh is not functioning well.

Mr. Nadesapillai and members of his family at Perak (T.A.) are in good health.

20

Rest of the news later

Sgd. : PT. EKAMBARAM,
25.3.47.

I certify that the above is a true translation of a Tamil letter marked X.45 in Civil Suit No. 34/49 done to the best of my ability and belief.

Sgd. : M. S. ARULAPPU,
Tamil Interpreter, S.C., Ipoh.

P.35—Airmail letter—Thevaraya Pillay to Yegamparam Pillay.

(Not printed.)

Original document.

30 P.35a.—Translation of P.35—airmail letter—Thevaraya Pillay to Yegamparam Pillay.]

Sender's name and address :—

T. R.M. Thevaraya Pillay,
Sathanoor Village,
Oumandour Post, Trichinopoly,
S. India.
Sathanoor,
12-4-47.

40 Written to brother Yegamparam by T. R.M. Thevaraya Pillay. Here all well. Write about your health.

Exhibits.
—
X.43.
Translation
of letter—
Ekam-
baram to
Thevaraya
Pillay.
25th March,
1947—
continued.

P.35.
Airmail
letter
Thevaraya
Pillay to
Yegam-
param
Pillay,
12th April,
1947.

P.35a.
Translation
of Airmail
letter in
Tamil
Thevaraya
Pillay to
Yegam-
param
Pillay.
12th April,
1947.

Exhibits.
 P.35a.
 Translation
 of Airmail
 letter in
 Tamil
 Thevaraya
 Pillay to
 Yegam-
 param
 Pillay.
 12th April,
 1947—
continued.

Your dull letter was received and matters noted. From your letter it appears that I am very jealous, and that (you) are thinking of ruining me. If you like you can look after that estate. Instead of that, you seem to have written with the idea that the estate should be left alone if the person who is looking after it now is told to go away. When I came I told you to look after everything—the shop and the estate. Because of your narrow-mindedness and because now you have seen much money by dealing in the black-market, you have forgotten the help rendered before, and are writing this. When I was in Malaya there was not even a small matter about which I did not consult you. If that shop were to exist now it would be convenient for me to come there. 10

When Kanathur Arunasalam Pillay and Vallali Sithambaram Pillay are your intimate friends, you will certainly have their mentality only. I went and saw the land bought at Lalapettai. It is an excellent land. Even in your grandson's times a property like this cannot be bought. You caused obstacles when the Port Dickson estate was bought. It is you who are benefited by that now. It is you who are going to enjoy the benefits from Telok Senangin estate also. It is you who are going to benefit from the Lalapettai (property). You must always do things according to your own judgment and not be spoiled by listening to others. You must always endeavour to earn the good opinion of Sri Moona Moovanna. 20

Seeing that you are in a comfortable position, some people may give you advice with the intention of ruining you. Do not listen to the advice of those fools and be ruined. If you had taken over the shop as asked by me, what amount of benefit you would have derived.

When the Kayan shop was given, you refused. Now what benefit you are deriving. You speak to the person looking after my Kayan estate and pay great attention.

In Malaya as well as in India the right of owning property is the same. Today Nehru is the leader of the whole of East Asia. Even if you want the Kayan estate for yourself I am prepared to sell it at a reasonable price. Even with Moona Moovanna of that place am I looking (very particularly about the price)? Please write a reply without delay concerning every matter. 30

Translated by me.

Sgd. : S. THAMBU,
Sen. Interpreter
 S.C. Ipoh 11.2.50.

X.45.
 Draft of
 letter,
 Thevaraya
 Pillay to
 Yegam-
 param
 Pillay.
 12th April,
 1947.

X.45.—Draft of letter—Thevaraya Pillay to Yegamparam Pillay.

(*Not printed.*)

Original document.

40

Defendant's Bundle of Documents.

Translation of letter—Thevaraya Pillay to Moona Moovanna.

23.4.7.

To

Moona Moovanna
Puthanapatti.

Written to "Aithar."

Both you and Balakrishnan have somehow or other confused my mind and got me to execute the deed.

10 Therefore immediately you see this letter you must without delay take back the pro-note and pay the money and settle the account. I also am in need of money.

Sgd. : ?

Translated by me,

Sgd. : S. THAMBU,
Senior Tamil Interpreter,
S. C. Ipoh.
16.3.49.

Exhibits.

Defendant's
Bundle of
Documents.
Translation
of Letter,
Thevaraya
Pillay to
Moona
Moovanna.
23rd April,
1947.

X.22.—Tamil letter—Balakrishnan Chetty to Thevarayapillay.

20

(Not printed.)

Original document.

X.22.
Tamil letter
Balakrish-
nan Chetty
to
Thevaraya-
pillay.
10th May,
1947.

Defendant's Bundle of Documents.

Translation of Tamil letter X.22.—Balakrishnan Chetty to Thevarayapillay.

Lalapetai
10.5.47

Written by Puthanampatty School Head-Master N. Balakrishnan Chetty to T. R. M. Thevarayapillay. Here all are well. Please write about the welfare of those over there.

30 For the summer vacation I have come and I am living at Lalapetai with my family. Here five persons have jointly leased 15 acres and have

Defendant's
Bundle of
Documents.
Translation
of Tamil
letter,
Balakrish-
nan Chetty
to
Thevaraya-
pillay.
10th May,
1947.

Exhibits. decided to plant bananas. Each person has to pay Rs. 500/- I have also
 Defendant's Bundle of Documents. Translation of Tamil letter, Balakrishnan Chetty to Thevarayapillay. 10th May, 1947—
continued.

(to get) your money. Profit per year will be not less than Rs. 300/-, about Rs. 400/- per share. Mookapillay will pay your hand—loan money only after going to Malaya and returning. If I have to receive after that money has come, this affair will not materialise. Therefore if you will please send Rs. 500/- only to the undermentioned address, it will be a great favour. The balance Rs. 500/- you can pay later at your convenience. “ Namaskaram ” (Greetings). Other matters after seeing your kind reply.

Yours Sincerely,

Sd. : N. BALAKRISHNAN CHETTY,
10.5.47.

10

My address :
 N. Balakrishnan Chetty, Lalpetai,
 Lalapetai Post, *via* Kulithalai.

Translated by me
 Sgd. : S. THAMBU,
Senior Tamil Interpreter,
 Supreme Court, Ipoh.
 6.3.50.

20

X.23.
 Draft of Tamil letter Thevarayapillay to Balakrishnan Chetty. 17th May, 1947.

X.23.—Draft of Tamil letter—Thevarayapillay to Balakrishnan Chetty;

(Not printed.)

Original document.

Defendant's Bundle of Documents. Translation of Tamil letter, Thevarayapillay to Balakrishnan Chettiar. 17th May, 1947.

Defendant's Bundle of Documents.

Translation of Tamil letter X.23.—Thevarayapillay to Balakrishnan Chettiar.

Registered letter	Sivamayam	N. Balakrishnan Chettiar,
T. R.M. T.	17.5.47	Lalapetai.
Sathanoor.		

To Mr. N. Balakrishnan Chettiar, T. R.M. Thevarayapillay writes.

Your registered letter of 10.5.47 was received and I was shocked. 30
 I do not owe you any money for whatsoever reason it may be. You must

not write to me letters unnecessarily. You have cheated me somehow or other, and promising that the money will be paid within one month, you made me to write and give the estate to Moona Pillay. Up to date, for the letter I wrote to him from Madura, there is no reply. I have written a letter to my agent-in-Malaya R. M. Natesapillay not to transfer the estate to Mooka Moovanna hereafter. I have written saying that according to the agreement I have written and given to Moona Moona I have agreed under the agreement and shall pay the extra Rs. 5000/-, five thousand. Also you have obtained my signature to buy shares in several (companies).
 10 I do not want those shares. Do not write to me letters unnecessarily in future. Without leaving me alone, you have taken me to Moona Moovanna and made me to write and give. Come and see me personally for all matters. Then only truth will be known.

Signed by T. RM. THEVARAYAPILLAY
 in English.

Translated by me,
 Sgd. : S. THAMBU,
Senior Tamil Interpreter,
 Supreme Court, Ipoh.
 20 6.3.50.

X.46.—Receipt for registered letter—Thevarayapillay to Balakrishnan Chettiar.

(*Not printed.*)

Original document.

X.46.
 Receipt
 for
 Registered
 letter
 Thevaraya-
 pillay to
 Balakrish-
 nan
 Chettiar
 May, 1947.

Defendant's Bundle of Documents.

Translation of letter—Thevaraya Pillay to Moona Moovanna.

To
 30 Moona Moovanna,
 Puthanampatti.

Thena writes to "Aithar"—and sends greetings.

I wrote a letter to you on 12.2.47. The same day I wrote a letter to Ekambaram your agent in Malaya. On 23.4.47 I wrote you another letter. You have not even cared to reply both my letters and seem to be contented

25.5.7

Defendant's
 Bundle of
 Documents.
 Translation
 of letter,
 Thevaraya
 Pillay to
 Moona
 Moovanna.
 25th May,
 1947.

Exhibits. with the fact that you have cheated me. Therefore immediately you see
 ——— this letter you must without delay send the money. Or else you should
 Defendant's Bundle of Documents. bring and give it personally, and take back the pro-note after settling the
 Translation of letter, account. I am in great need for money. Reply to this without delay.
 Thevaraya Pillay to Moona Moovanna. Sgd. ?
 25th May, 1947—
continued.

Translated by me,
 Sgd. S. THAMBU,
Senior Tamil Interpreter,
 S.C. Ipoh. 16.3.49.

Defendant's Bundle of Documents. **Defendant's Bundle of Documents.** 10
 Translation of Tamil letter—Thevararaya Pillay to Moona Moovanna.
 Thevaraya Pillay to Moona Moovanna. Copied 24.6.7
 24th June, 1947. Moona Moovanna,
 Puthanampatty.

Written to Aithan : Greetings.

On seeing this letter you must send the money without delay. As there are some disputes between me and my partner Sundaram Pillay, I have to pay money to him. Please send without fail. If you don't give money when I am in need, it won't be of use later. Please send without delay. 20
 There is no good in man cheating man. Please give the money without delay and settle the account.

Sgd. T. R. M. THEVARAYAPILLAY.

Translated by me,
 Sgd. S. THAMBU,
Senior Tamil Interpreter,
 Supreme Court, Ipoh.
 9.3.50.

Defendant's Bundle of Documents. **Defendant's Bundle of Documents.** 30
 Translation of Tamil letter—Thevaraya Pillay to Moona Moovanna. 27.6.7.
 Translation of Tamil letter,
 Thevaraya Pillay to Moona Moovanna. Moona Moovanna,
 Puthanampatty.
 27th June, 1947. Written to Aithan by Thena.
 On seeing this letter you must send the money without delay. I have to settle Sundarampillay's debt. Sundaram Pillay is troubling me.

Therefore, without delaying, and without failing, you must bring the money personally and give and settle the account. This time you must come without fail and settle the account. Reply to this at once.

Sgd. T. R. M. THEVARAYA PILLAY.

Translated by me,
Sgd. S. THAMBU,
Senior Tamil Interpreter,
Supreme Court, Ipoh.
9.3.50.

Exhibits.

Defendant's
Bundle of
Documents.
Translation
of Tamil
letter,
Thevaraya
Pillay to
Moona
Moovanna.
27th June,
1947—
continued.

10

Defendant's Bundle of Documents.

Translation of Tamil letter—Thevaraya Pillay to Moona Moovanna.

31.7.7

To M. R. RY. Moona Moovanna Puthanampatti.

Written by Thena to great brother-in-law Avargal.

Safe and hope the same to you. In spite of my writing several times and as you are dragging on without paying the money you have to take back the Promissory note you gave me and also Rs. 5,000/- and write a letter to your Agent in Malaya to submit all the Estate Account to me hereafter. Money that does not serve my need is useless.

Sgd. T. R. M. THEVARAYA PILLAY.

Defendant's
Bundle of
Documents.
Translation
of Tamil
letter,
Thevaraya
Pillay to
Moona
Moovanna.
31st July,
1947.

20

Translated by me,
Sgd. S. THAMBU,
Senior Tamil Interpreter,
Supreme Court, Ipoh.
9.3.50.

Defendant's Bundle of Documents.

Translation of a Tamil letter—Natesa Pillay to Thevaraya Pillay.

Telegrams :

"Natesapillay,"
Teluk Anson.

Memorandum. Licensed Rice Dealer No.601
Teluk Anson, 30.8.1947
Perak, F.M.S.

30 From

RM. N. Natesa Pillay, Registered
under the Registration of Businesses
Enactment, 1939. Certificate No. 93.
General Merchant, Commission
Agent & Banker. No. 29, Anson
Road, Teluk Anson, F. M. S.

To

TR. M. Thevaraya Pillay,
Sathanoor.

Defendant's
Bundle of
Documents.
Translation
of Tamil
letter,
Natesa
Pillay to
Thevaraya
Pillay.
30th
August,
1947.

Jai Hind !

RM. N. Natesapillay writes to Mama. All well here. Write about the
40 welfare of those there. All the 3 letters written by you were received and

Exhibits. contents noted. The letter which you wrote to say not to transfer the
 Defendant's Telok Senangin estate, I told M. M. Yegambaram Pillay to read and also
 Bundle of have told him everything.

Documents. Here the Indian Independence celebrations were conducted very
 Translation grandly. The procession was very long. The meeting was held on the
 of Tamil Land Office grounds. On that day I had an opportunity to speak. I am
 letter, very happy over it. There was a large gathering.

Natesa Now the price of rubber here is \$30/- per pickul, copra \$18/-, \$19/-,
 Pillay to \$20/- per pickul. Other matters on seeing your letter.

Thevaraya
 Pillay.
 30th
 August,
 1947—

continued.

Jai Hind,

10

Sgd. RM. N. NATESAPILLAY,
 in English.

Translated by me,
 Sgd. S. THAMBU,
Senior Tamil Interpreter,
 Supreme Court, Ipoh.
 6.3.50.

X.53.

Tamil letter
 to
 Nadessah
 Pillay.
 30th
 August,
 1947.

X.53.—Tamil letter to Natessah Pillay.

(Not printed.)

Original document.

20

X.53a.

Translation
 of Tamil
 letter to
 Nadessah
 Pillay.
 30th
 August,
 1947.

X.53a.—Translation of a Tamil letter to Nadessah Pillay.

T. R. M. T.
 Sathanoor.

Sivamayam
 30.8.47

Sri R.M N.
 Telok Anson

Written to the august presence of "Mapilai." All well here. Write
 for the health there.

There has been delay in my writing a letter to you. I went home and
 stayed there over a certain matter. Please keep the Kayan estate in a
 good condition, and clean without lallang. Collect all the money due from
 Kandiah and send. Write frequently about the affairs over there. Moona
 Moovanna has not paid the money according to the agreement written 30
 and given by me. Do not transfer the estate hereafter. I have on many
 occasions written to him and seen him personally and when asked why he
 does not reply the letters he said that if he wrote letters I will have a hold.

Therefore do not transfer the estate hereafter. In the agreement I wrote and gave, 2 annas stamps were affixed, and I have written (there) that if I do not agree to make the transfer I should pay extra Rs. 5000/- and take over the estate. You should ask for the estate a/c and get it. If he does not give (when asked) we can take over the estate after my arrival there. Also tell (him) that the a/cs should be kept in a proper way. If not, we can find out from the a/c they must have given to Pichaipillay. Write letters frequently.

Exhibits.
—
X.53a.
Translation
of Tamil
letter to
Nadessah
Pillay.
30th
August,
1947—
continued.

10

Translated by me
Sgd. S. THAMBU,
Senior Tamil Interpreter,
Supreme Court,
Ipoh.
6.3.50.

Signed
Initialed ?

X.54.—Tamil letter to Nadessah Pillay.

(*Not printed.*)

Original document.

X.54.
Tamil letter
to Nadessah
Pillay.
30th
August,
1947.

20

X.54a.—Translation of Tamil letter to Nadessah Pillay.

T. R. M. T.
Sathanoor.

Sivamayam
30.8.47.

Sri R. M. N.
Telok Anson

X.54a.
Translation
of a Tamil
letter to
Nadessah
Pillay.
30th
August,
1947.

Written to the august presence of "Mapilai." All well here. Write for the health there.

30 There has been delay in my writing a letter to you. I went home and stayed there over a certain matter. Please keep the Kayan estate in a good condition, and clean without lallang. Collect all the money due from Kandiah and send. Write frequently about the affairs over there. Moona Moovanna has not paid the money according to the agreement written and given by me. Do not transfer the estate hereafter. I have on many occasions written to him and seen him personally and when asked why he does not reply the letters he said that if he wrote letters I will have a hold. Therefore do not transfer the estate hereafter. In the agreement I wrote and gave, 2 annas stamps were affixed, and I have written (there) that if I do not agree to make the transfer I should pay extra Rs. 5000/- and take over the estate. You should ask for the estate a/c and get it. If he

Exhibits. does not give (when asked) we can take over the estate after my arrival there. Also tell (him) that the a/cs should be kept in a proper way. If not, we can find out from the a/c they must have given to Pichaipillay. Write letters frequently.

X.54a.
Translation of a Tamil letter to Nadessah Pillay.
30th August, 1947—
continued.

Signed
Initialed ?

Translated by me
Sgd. S. THAMBU,
Senior Tamil Interpreter,
Supreme Court,
Ipoh.
6.3.50.

10

Defendant's Bundle of Documents.

Defendant's
Bundle of
Documents.
Translation
of Tamil
letter,
Thevaraya
Pillay to
Moona
Movanna.
6th
October,
1947.

Translation of Tamil letter—Thevaraya Pillay to Moona Movanna.

6.10.7.

Moona Movanna,
Puthanampatty.

Written to Aithan :

Vaikils say that the promissory note written and given by you is not valid as it was insufficiently stamped. As I have no experience of this country, you have cheated me by not affixing the correct (value) of stamps also. Therefore, hereafter, without causing delay for whatever reason, you should without fail write (a letter) to Malaya and ask that the estate account be sent to me. Do not deceive me in that also. Write a reply to this letter at once without delay.

Sgd. T. R. M. THEVARAYA PILLAY.

Translated by me,
Sgd. S. THAMBU,
Senior Tamil Interpreter,
Supreme Court, Ipoh.
9.3.50.

30

X.24.
Tamil
receipt for
Rs. 500/-.
26th
October,
1947.

X.24.—Tamil receipt for Rs. 500/-.

(*Not printed.*)

Original document.

Defendant's Bundle of Documents.

Translation of Tamil letter—Balakrishnan Chetty to Thevaraya Pillay.

The mental discord has been removed.

Sathanoor,
26.10.47.

Written and given by Puthanampatty School Master N. Balakrishnan Chetty to T. R. M. Thevaraya Pillay.

There is no giving or taking (business dealing) or promise of what-so-ever nature between you and me. In future I shall not say anything against you.

10

Sgd. N. BALAKRISHNAN CHETTY,
Puthanampatti—Teacher.
26.10.47.

Exhibits.
—
Defendant's
Bundle of
Documents.
Translation
of Tamil
letter,
Balakrish-
nan Chetty
to
Thevaraya
Pillay.
26th
October,
1947.

Translated by me

Sgd. S. THAMBU,
Senior Tamil Interpreter,
Supreme Court, Ipoh.
6.3.50.

Defendant's Bundle of Documents.

Translation of Tamil letter—Natesa Pillay to Thevaraya Pillay.

20 Telephone 161.
"Telegrams :
Natesapillay"
Teluk Anson.

Memorandum. Licensed Rice Dealer No. 601.

Teluk Anson, 29.12.1947.
Perak, F.M.S.

From

R. M. N. Natesa Pillay Registered
under the Registration of Business
Enactment, 1939. Certificate No. 93.
General Merchants, Commission
Agents & Banker. No. 29, Anson
Road, Teluk Anson, F.M.S.

To,

T. R. M. Thevaraya Pillay,
Madura.

Defendant's
Bundle of
Documents.
Translation
of Tamil
letter,
Natesa
Pillay to
Thevaraya
Pillay.
29th
December,
1947.

30

Jai Hind,

Written by R. M. N. to Mama T. R. M. Thevaraya Pillay. Here, everybody is well. Write about the welfare of all there. Your letter of 17.12.47 was received and contents noted. Herewith I am sending your estate account. On receipt of it, please write. As cutting of lallang is going on on Kayan Estate, expenses are heavy. There does not appear to be any profit from the estate. The estate is very clean. Regarding the Telok Senangin estate I have not got anything to say. If I ask for an a/c from them I shall become a bad man to everybody (become unpopular).

Exhibits. Therefore you had better come here and speak personally. You have written about Sri Karupiah Pillay of Ana Sona Shop. This place is not fit for him. If Nattham Ramasamy Pillay comes there, please see that he comes here quickly. As soon as he arrives, I must return from there within 3 months. Here copra is fetching a high price. Copra price is \$28/- per pickul. Rubber is \$52/- per pickul, Rice is \$65/- per pickul, Coconut oil is \$12.50 per tin, Sugar is \$45/- per pickul. If you come here once it would be better.

Defendant's Bundle of Documents. Translation of Tamil letter, Natesa Pillay to Thevaraya Pillay. 29th December, 1947—
continued.

In Kayan Estate a/c there is a debit balance of \$345.25. From Telok Senangin Estate one hundred (200) pickuls of copra per month is produced. 10 Other matters on seeing your letter. Jai Hind,

Sgd. R. M. N. NATESAPILLAY in English.
29.12.47.

Translated by me
Sgd. S. THAMBU,
Senior Tamil Interpreter,
Supreme Court, Ipoh.
6.3.50.

Defendant's Bundle of Documents. Translation of Tamil letter, Thevaraya-pillay to Moona Moovanna. 22nd March, 1948.

Defendant's Bundle of Documents.

Translation of Tamil letter—Thevarayapillay to Moona Moovanna. 20

Moona Moovanna, 22.3.8.
Puthanampatty.

Written to Aithan. No reply has been written to the letters written so far. Therefore please return the agreement I wrote and gave you in connection with the Telok Senangin estate, in a good (friendly) way. Also you take back the promissory note written and given by you. Please write a reply to this at once. You are certainly trying by various methods and by saying nice words to cheat (me). Therefore you and I had better take back the documents written by both of us. This is the best way. Write a reply at once without delay. 30

Sgd. T. RM. THEVARAYAPILLAY.

Translated by me,
Sgd. S. THAMBU,
Senior Tamil Interpreter,
Supreme Court, Ipoh.
9.3.50.

Defendant's Bundle of Documents.

Translation of Tamil letter—Thevarayapillay to Moona Moovanna.

Moona Moovanna Yegambaram,
Bagan Datoh.

23.3.8.

Written to brother Yegambaram.

As you have all these days not obtained the transfer from my agent RM. Natesapillay, hereafter no blame is attachable to my agent. In spite of several letters having been written to your principal Moona Moovanna, the money has not been given. Hereafter, send the estate account in person (direct) without fail. If you fail to send accordingly, there will be many difficulties later. Reply to this at once without fail.

Sgd. T. RM. THEVARAYAPILLAY.

Translated by me,

Sgd. S. THAMBU,
Senior Tamil Interpreter,
Supreme Court, Ipoh.

9.3.50.

Exhibits.

Defendant's
Bundle of
Documents.
Translation
of Tamil
letter,
Thevaraya-
pillay to
Moona
Moovanna.
23rd March,
1948.

Defendant's Bundle of Documents.

Translation of Tamil letter—Thevarayapillay to Moona Moovanna.

20 Moona Moovanna,
Puthanampatty.

7.4.8.

Written to Aithan.

Immediately on seeing this letter please write a letter to Yegambaram and ask him to send the estate account to me. I want all the account of Telok Senangin estate up to date. You have been several times (repeatedly) deceiving me. You have not replied to any of my letters. Write a reply to this at once.

Sgd. T. RM. THEVARAYAPILLAY.

Translated by me,

30 Sgd. S. THAMBU,
Senior Tamil Interpreter,
Supreme Court, Ipoh.

9.3.50.

Defendant's
Bundle of
Documents.
Translation
of Tamil
letter,
Thevaraya-
pillay to
Moona
Moovanna.
7th April,
1948.

Exhibits.

P.36.—Tamil letter—Thevaraya Pillay to Yegamparam.*(Not printed.)*

Original document.

P.36.
Tamil letter
Thevaraya
Pillay to
Yegam-
param.
30th June,
1948.

P.36a.—Translation of P.36.—Tamil letter—Thevaraya Pillay to Yegamparam.

Original documents.

P.36a.
Translation
of Tamil
letter,
Thevaraya
Pillay to
Yegam-
param.
30th June,
1948.

Sri Ganesan Stores,
Silk & Cloth Merchants & Commission Agents,
65, Mahal Vadampakki Street, Madura.

Dated 30.6.1948.

Sri Yegamparam, Bagan Datoh.

10

Written to brother Yegamparam : You will know of the news here from this letter. Write in details about the affairs over there.

Today (initials not legible) Thevarayan came here. He has told me everything. Now I am writing to you in detail everything that took place from the very beginning.

First of all, when Moona Movanna and Ana Ravana joined hands and stopped you saying there was no need for a man, it is I who succoured you and gave you work. You may still remember this. At that time I promised to give you all assistance. Furthermore, when I went home I asked you to take over the Bagan Datoh shop. I asked you to have the Sanji Kuchi shop also. You did not listen. I asked you to look after the estate also. You did not pay any attention to this also. Therefore I am now writing to you this final letter. Since you are in Kayan for a long time, it is better that you yourself have my Kayan estate. You can have it as your own.

If you want it for yourself, you can pay me (20,000) dollars twenty thousand at \$400/- per acre and have it. Kayan estate will ever remain as an asset to you. Money invested in land will not be in vain. How troubled was Moona Moovanna on account of the estate. You just think of the benefit he is now getting. When I was there, once in every 2 months the pick was 25,000 nuts. In spite of the price cocoanut is fetching now, I am not able to get anything as there is nobody (to manage). The reason for that is there is no one (to manage). Therefore if you are prepared to have Kayan estate, it will be very good for you. "Kayan" means a place used by rich people. My opinion is that you will also become rich. Therefore if you are prepared to have Kayan estate I shall write to R.M. Nadesa Pillay and ask him to sell it to you. If you have no money, you can pay half and have the other half as a loan.

Those who have property in that country will have rights later. But it is better that you have it, instead of selling it to others.

I heard that you complained saying I had once before written to you attacking you. It may be so.

40

Since you did not listen to what I said I was angry with you. When I came here, if you had taken the Bagan Datoh shop as asked by me it would have been good both for you and me. So, you just think and judge. Don't listen to the advice of others. As I am a single person I think of remaining here. Therefore as soon as you see this letter, you yourself consider all the matters, and if you are prepared to have the estate write to me at once. You can pay me half the price and (a deed) can be written for the other half at $\frac{1}{2}\%$ interest. Whoever buys property from me will prosper. This fact is known to you also. You also know what amount of help I rendered to

10 Moona Moovanna when he was in difficulties.

Exhibits.
P.36a.
Translation
of Tamil
letter,
Thevaraya
Pillay to
Yegam-
param.
30th June,
1948—
continued.

So I am writing to you this letter with sincerity. As soon as you see this letter, you yourself make up your mind, and if you wish to have my Kayan estate write to me at once without telling anybody. I shall write to RM. Nadesa Pillay and ask him to execute the transfer. In two and a half years, judging from the price ruling now, the estate would be an excess (would have cost nothing).

Also it is better to buy a cocoanut estate, and that too a known-property like this, then to have a shop. You must write to me in detail on seeing this letter. Even if the estate is not clean, it can be cleaned by

20 spending 2 months' income. Nadesa Pillay wrote saying that you would look after it. Write to me in detail why afterwards you did not look after it. If you have the Kayan estate it will be good. You, Ponniah and Nadesan all three, can have it in partnership. Whatever business is done do it in partnership. Reply at once to this.

If you buy this estate for yourself, you must consider that you have been rewarded for your staying in Kayan all these days. As I had no one, I had to give up the shop when I came. When I sold the shop also (what I got) was not the price. As that property was destined to go to them, it has gone to them. On seeing this letter treat this as a telegram, and send a

30 reply without delay. If you are prepared to buy it I need not go to Malaya. Otherwise I should go. Other matters later. Initialled T. R.M. T.

Post Script.

Those who work for wages will always remain as wage-earners. Independence is a special dignity and so everyone must remember that independence is like a priceless gem.

Sri Ganesan Store,
Handloom textile dealers,
65, Malvadampakki Street,
Madura.

40

Translated by me,

Sgd. S. THAMBU,
Sen. Interpreter S.C.

Ipoh. 11.2.50.

Exhibits.

Defendant's Bundle of Documents.

Defendant's
Bundle of
Documents.
Translation
of Tamil
letter,
Thevaraya-
pillay to
Moona
Moovanna.
1st July,
1948.

Translation of Tamil letter—Thevarayapillay to Moona Moovanna.

1.7.8.

Moona Moovanna,
Puthanampatty.

Written by Thena to Aithan.

Owing to my hardship, I wrote to you a letter on 24.6.47 and one on 27.6.47. To these you have not replied and you seem to have the intention of cheating. On 27.7.48 I have even sent a telegram asking that money be sent. Therefore please send the money without delaying any further. 10

Sgd. T. R. M. THEVARAYAPILLAY.

Translated by me,

Sgd. S. THAMBU,
Senior Tamil Interpreter,
Supreme Court, Ipoh.
9.3.50.

X.44.
Translation
of letter,
Ekam-
baram to
Thevaraya
Pillay.
10th July,
1948.

X.44.—Translation of letter—Ekambaram to Thevaraya Pillay.

P.T.E.
Bagan Datoh.

Sivamayam
10.7.48.

T. R. M.
Mathurai

To MR. R. M. Elder brother, written by Ekambaram. All are well here. Write regarding the health of all over there. 20

Received your letter of 30.6.48 and (am) glad after reading (it). I have not forgotten the help you rendered me. However, one will get whatever he is destined to. Now it is useless to think over and regret it. I need not write more on particulars not known to you yet. You write to me to take over Kayan Estate. But I also had an idea for a long time. But without the arrival of Mr. Muna Moovana, I am not inclined to buy property or do any business alone. Whatever it may be, matters will be considered after his arrival. For the last two weeks, the jungle folks came out, and committed acts of violence that have plunged the country to an increased troubles and thefts daily. All the estate managers stay in the estates in the day time with guards and in the nights in the town. (We) believe there would be more trouble than it had been in the past. Hereafter matters cannot be written in details. On the whole, you would have heard over the 30

radio I believe that the business at Madura is going on well by grace of God. Exhibits.
Business here is dull.

Rest on receipt of your kind letter.

Sgd. P. T. EKAMBARAM.

I certify that the above is a true translation of a Tamil letter marked X.44 in Civil Suit 34/49, done to the best of my ability and belief.

Sgd. M. S. ARULAPPU,
Tamil Interpreter,
Supreme Court,

X.44.
Translation
of letter,
Ekam-
baram to
Thevaraya
Pillay.
10th July,
1948—
continued.

10

Ipoh.

X.55.—Tamil air letter—Thevaraya Pillay to Nadasa Pillay.

(Not printed.)

Original document.

X.55.
Tamil air
letter,
Thevaraya
Pillay to
Nadasa
Pillay.
7th August,
1948.

X.55a.—Translation of a Tamil air letter X.55—Thevaraya Pillay to Nadasa Pillay.

Addressed to :

Sri R. M. W. Nadasa Pillay.
No. 29 Anson Road,
Teluk Anson Post,
Teluk Anson,
Malaya.

Sender's name and address :

Sri Ganesan Stores
Handloom Textile dealers
65, Malvadam Pokki Theru,
Madura.
Jai Hind

X.55a.
Translation
of Tamil
Air letter,
Thevaraya
Pillay to
Nadasa
Pillay.
7th August,
1948.

20

Sri Ganesan Stores

Handloom Textile dealers

30 65, Malvadam Pokki Theru
Madura.

7.8.48

Sr R. M. N.

Telok Anson.

To the august presence of "Mapilai," Thena writes : All well here. Write for the health there. Even now I wrote to you a letter thinking you were a noble person and would send money. If I write several letters, you write only one. However, by God's Grace I have been able to sell all the un-sold stock and tide over my needs. I have to inform you with humility that you need not trouble yourself for my sake.

Exhibits. It is not possible not to feel sorry over the fact that since the 70 acres
 X.55a. coconut estate passed into your hands from T. Kandiah there has not been
 Translation even a single cent. income. Any property without a proper person will
 of Tamil Air have the same fate. At least when it was in Kandiah's hands, there was
 letter, some profit. Then the price of coconut was \$12/- per pickul. But now
 Thevaraya when the price of coconut is \$37/-, you yourself can consider and see if it is
 Pillay to fair that not a single cent. profit is obtained. Besides when coconut is
 Nadasa selling at this price, it appears that the estate is not kept clean. When the
 Pillay. property was entrusted to you, it is only fair that you look after it as you
 7th August, would your own property. If I am alive, I shall definitely come there in 10
 1948—
continued. another 2 months. When I come there and see the estate, please see that
 the weeding and drains are in good form so that I may not get a shock.
 In all your letters, you write that coconuts are being stolen. There are
 others also who are owning estates like us. It is really a surprise that
 (coconuts) are not stolen from them, but only from us. However when
 I am staying here, I have to believe whatever you may say. Let things
 happen according to God's wish. Only after my coming there, the estate
 affair should be considered and acted upon. Do not sell the Kayan estate.
 The letter written from here on 4.8.48 should also have reached. Up to
 now, Sri Moona Moovanna also has not paid the money. Whatever letters 20
 are written, no reply is sent. Therefore do not transfer the estate hereafter.
 When I come there, I can take over after paying the extra Rs. 5000/- as
 in the agreement.

Reply immediately about all matters.

Signed
 Initialled ?

Translated by me,
 Signed. S. THAMBU,
Senior Tamil Interpreter,
 Supreme Court,
 Ipoh.
 6.3.50.

30

P. 40. P.40.—Translation of an air mail letter—Joshiar to Balakrishnan.
 Translation of an air mail letter, Joshiar to Balakrishnan.

CHARITY.

I, a benevolent astrologer of the public, do write to Balakrishnan
 Ex teacher of Mookapillai of Puttanampatti. Ayah, It is said that you
 have dragged Mookapillai into complication. On believing you it is said
 that he filed the case. After taking wages from the abovesaid person it is
 said, without coming you have sent a telegram. The abovesaid person is
 coming to fetch you. Escape from the abovesaid person by giving him 40
 some diplomatic statements. Do not associate with people who covet
 others property. The above said person is clever in deceiving. I learned

the truth from the above said person. My duty is to stop evil befalling others. Truthful persons could be known from the facial appearance. If any one comes to me to consult astrology it is my duty to take down their addresses and inform. From this evade and escape without giving false evidence for those who covet others property.

Astrologer.

Exhibits.
—
P. 40.
Translation
of an Air
mail letter,
Joshiar to
Balakrish-
nan—
continued.

To :

10 Mr. N. Balakrishnan, Teacher,
Lalapally Village,
Lalapally Post,
Trichynopoly Dt.
South India.

Sender's name and address
Joshiar
Teluk Anson
Malaya.

I certify that the above is a true translation of an air mail letter in Tamil Ex. P40, done to the best of my ability and belief.

20 Sgd. M. S. ARULAPPU,
T.I.S.C. Ipoh,
28.9.50.

X.56.—Ledger entry, page 77.

(Not printed.)

Original document.

X.56.
Ledger
entry
page 77.
28th
January,
1949.

P.10 (6).—Plaintiff's Bundle of Documents.

Caveat—Mooka Pillay to Registrar of Titles.

GOVERNMENT OF PERAK.

CAVEAT AGAINST TRANSFER CHARGE OR LEASE.

SCHEDULE XXXV.

30 (Under Section 167 of "The Land Code (Cap. 138)").

To the Registrar of Titles, Perak, Taiping.

TAKE NOTICE that I, Mooka Pillay son of Muthiah Pillay of Puthanampatti Village, Musri Taluk at present residing at No. 40, Main Road, Bagan Datoh, claiming an undivided one-half ($\frac{1}{2}$) interest belonging

P.10 (6).
Plaintiff's
Bundle of
Documents.
Caveat.
Mooka
Pillay to
Registrar
of Titles.
10th
February,
1949.

Exhibits. —
 P.10 (6).
 Plaintiff's
 Bundle of
 Documents.
 Caveat.
 Mooka
 Pillay to
 Registrar
 of Titles.
 10th
 February,
 1949.
 —continued.

to T.R.M. Thevaraya Pillay son of Rama Pillay, in Mukim Teluk Bahru Teluk Sinangin Estate, which comprises the lands held under Mukim Teluk Bahru Grant for land No. 11490 lot No. 1701 and Entry Mukim Register Nos. 1724, 1723, 1720, 1045, 982, 973 now known as 2457 and 1753 lot Nos. 1671, 1670, 1667, 861, 433A, 889 and 1681, under and by virtue of a sale Deed dated the 17th January, 1947, executed in Tamil by the said T. R.M. Thevaraya Pillay son of Rama Pillay in my favour a certified copy whereof translated into English is attached hereto in the land held under Grant for Land No. 11490 for lot No. 1701 in the mukim of Teluk Bahru in the district of Lower Perak in the State of Perak whereof T. R.M. Thevaraya Pillay son of Rama Pillay presently of No. 29, Anson Road, Teluk Anson (the name Thevaraya Pillay son of Rama Ganganar and the name T. R.M. Thevaraya Pillay son of Rama Pillay is the same and the name of the one person) is the proprietor of an undivided one-half interest do hereby forbid, "Absolutely," the registration of any transfer charge or lease of the said land executed by the said T. R.M. Thevaraya Pillay son of Rama Pillay presently of No. 29, Anson Road, Teluk Anson presently subsequently to this caveat until this caveat be withdrawn by me the caveator or by order of the Court or until the lapse of twenty-one days from the day of the service of notice on me by the caveatee at the address given above.

Dated this 10th day of February, 1949.

(Signature) M. MOOKA PILLAY,
Caveator.

I, the abovenamed Mooka Pillay son of Muthiah Pillay of Puthanam-patti Village, Musri Taluk, at present residing at No. 40, Main Road, Bagan Datoh affirm that the statements in the above Caveat are true in substance and in fact.

Sgd. M. MOOKA PILLAY,
Caveator. 30

Affirmed before me this 10th day of February, 1949.

Sgd. ?
Magistrate.

Memorial made in the Register
 folio this day of Volume
 at m. 1949
 (L.S.)

Registrar of Titles.

State of Perak.

SCHEDULE XXXVIII (a).

(Under Section 178 of "The Land Code (Cap. 138)"). 40

I hereby testify that the signature of the Caveator above written in my presence on this 10th day of February, 1949, is to my own personal knowledge, the true signature of Mooka Pillay son of Muthiah Pillay who has acknowledged to me, Jitendra Nath Bhaduri, an Advocate and Solicitor that he has voluntarily executed this instrument.

WITNESS MY HAND:

P.10 (6a).—Plaintiff's Bundle of Documents.

Letter—Maxwell Kenion, Cowdy & Jones to Mooka Pillay.

Maxwell, Kenion, Cowdy & Jones,
Advocates & Solicitors.
Mercantile Bank Buildings,
Ipoh.

Malaya,

16th February, 1949.

A.R. Registered.

10 Mooka Pillay s/o Mutheeya Pillai,
Bagan Datoh.

Dear Sir,

We have been instructed by Thevaraya Pillay s/o Raman Kanganariar of 29, Anson Road, Teluk Anson, to write to you in connection with an agreement dated 17th January, 1947, between you and your client.

By this agreement our client agreed to transfer to you 325 acres of land under coconuts at Telok Chenang, Mukim Telok Bharu, Teluk Anson for the sum of 17,000 Rupees. Of this sum our client received from you the sum of 5,000 rupees in cash and a promissory note for 12,000/- rupees. In
20 spite of repeated demands you have failed to honour the promissory note for 12,000 rupees although our client has been always willing and ready to complete his part of the transaction. This failure constitutes a breach of the contract. Although you have been in possession of the property since the date of the agreement and have made a substantial profit from it our client is willing to return to you the promissory note for 12,000 rupees without any claim for interest thereon provided you yield up immediate possession of the land in question and pay any arrears of quit rent or interest due on the charge mentioned in the contract.

Should you fail to comply with this demand our client shall be
40 compelled to take action against you for trespass on the land in question with accounts of the profits you have made therefrom since you entered into possession.

Yours faithfully,

MAXWELL, KENION, COWDY & JONES.

Exhibits.

P.10 (6a).
Plaintiff's
Bundle of
Documents.
Letter,
Maxwell
Kenion
Cowdy &
Jones to
Mooka
Pillay.
16th
February,
1949.

Exhibits.

P.10 (6b).—Plaintiff's Bundle of Documents.

P.10 (6b),
Plaintiff's
Bundle of
Documents.
Maxwell &
Co. to
Mooka
Pillay.
21st
February,
1949.

Letter—Maxwell, Kenion, Cowdy & Jones to Mooka Pillay.

Maxwell, Kenion, Cowdy & Jones,
Advocates & Solicitors,
Mercantile Bank Buildings,
Ipoh.

Malaya,
21st February, 1949.

Mooka Pillay s/o Mutheeya Pillai,
Bagan Datoh.

10

Dear Sir,

Thevaraya Pillay with you.

We note that we have not to date received any reply to our letter to you dated 16th February, 1949. Unless we hear from you on or before the 25th February our client will be compelled to take proceedings against you.

Yours faithfully,

MAXWELL, KENION, COWDY & JONES.

P.10 (6c).
Plaintiff's
Bundle of
Documents.
Letter,
S. M.
Sharma to
Maxwell &
Co.
23rd
February,
1949.

P.10 (6c).—Plaintiff's Bundle of Documents.**Letter—S. M. Sharma to Maxwell, Kenion, Cowdy & Jones.**

S. M. Sharma,
Advocate & Solicitor,
Malayan Union.

1, Brewster Road,
Ipoh, Perak, Malaya.
23rd February, 1949.

20

Messrs. Maxwell, Kenion, Cowdy & Jones,
Advocates & Solicitors,
Ipoh.

Dear Sirs,

I am instructed by Mooka Pillay s/o Mathiah Pillay of No. 40, Main Road, Bagan Datoh to acknowledge receipts of your letters of the 16th and 21st days of February 1949.

My client says that on the date of the agreement it was arranged 30 between the parties that the sum of Rs. 12,000/- due on the promissory note would be paid by my client to yours in Malaya where both parties intended to proceed as soon as possible after the date of the said agreement. In fact your client informed mine that he was sending the promissory note in question to his agent in Malaya. In spite of that, however, my client

was at all times prepared to pay the amount if your client had demanded the money and produced the said promissory note to him in India. He further instructs me to say that he is prepared to send you a cheque in settlement of the said pro-note on your undertaking to hand over the pro-note to my client or on producing the same to my client.

10 While, therefore, there has been no failure on the part of my client to pay the money due on the pro-note since there has been no demand, my client does not agree that a failure on his part to pay this money even if it had occurred would have constituted a breach of agreement by him such as you suggest and on this point of law I agree with my client.

It is your client who having persistently refused to transfer his half interest in the land according to the said agreement forced my client to lodge a Caveat against the said land on the 10th day of February 1949.

My client requires yours to give him a valid registrable transfer of his one half interest in the land mentioned in the said agreement dated 17th day of January 1947 within 7 days hereof, failing which I have instructions to institute proceedings for specific performance of the said agreement for transfer against your client.

20 Kindly let me know if you have instructions to accept service of process on your client's behalf.

Yours faithfully,

Sgd. S. M. SHARMA.

P.10 (7).—Plaintiff's Bundle of Documents.

Letter—Maxwell, Kenion, Cowdy & Jones to S. M. Sharma.

Maxwell, Kenion, Cowdy & Jones,
Advocates & Solicitors,
Mercantile Bank Buildings,
Ipoh.

Our ref : PFL/Ha/1311.

24th February, 1949.

30 S. M. Sharma Esq., Barrister-at-Law,
Advocate & Solicitor,
1, Brewster Road,
Ipoh.

Dear Sir,

Thevaraya Pillay with Mooka Pillay.

We thank you for your letter dated 23rd February 1949. We are communicating with our client concerning its contents and shall write to you further in due course.

Yours faithfully,

40 Sgd. MAXWELL, KENION, COWDY & JONES.

Exhibits.
P.10 (6c).
Plaintiff's
Bundle of
Documents.
Letter,
S. M.
Sharma to
Maxwell &
Co.
23rd
February,
1949—
continued.

P.10 (7).
Plaintiff's
Bundle of
Documents.
Letter
Maxwell &
Co. to S. M.
Sharma.
24th
February,
1949.

Exhibits.

P.10 (8).—Plaintiff's Bundle of Documents.

P.10 (8).
Plaintiff's
Bundle of
Documents.
Letter,
Maxwell &
Co. to S. M.
Sharma.
25th
February,
1949.

Letter—Maxwell, Kenion, Cowdy & Jones to S. M. Sharma.

Maxwell, Kenion, Cowdy & Jones,
Advocates & Solicitors,
Mercantile Bank Buildings
Ipoh.

S. M. Sharma Esq.,
Advocate & Solicitor, Ipoh.

25th February, 1949.

Dear Sir,

Thevaraya Pillay with Mooka Pillay.

With reference to your letter dated 23rd February, 1949, we have been instructed by our client to request you to fix a time when the Original agreement dated 17th January, 1947, which we understand is with you, may be inspected by our client and us.

As our client lives in Teluk Anson, we would be obliged if you would give us a few days' notice of time suitable to you.

When we have made this inspection we will write to you further in the matter.

Yours faithfully,
Sgd. MAXWELL, KENION, COWDY & JONES.

10

P.10 (9).
Plaintiff's
Bundle of
Documents.
Letter,
S. M.
Sharma to
Maxwell &
Co.
26th
February,
1949.

P.10 (9).—Plaintiff's Bundle of Documents.**Letter—S. M. Sharma to Maxwell, Kenion, Cowdy & Jones.**

S. M. Sharma,
Advocate & Solicitor,
1, Brewster Road, Ipoh.

Messrs. Maxwell, Kenion, Cowdy & Jones,
Advocates & Solicitors,
Ipoh.

26th February, 1949.

Dear Sirs,

Thevaraya Pillay with Mooka Pillay.

With reference to your letter of even date.

Your client has a copy of the agreement and I do not understand why he wishes to inspect my client's copy. However, I have not the possession of same and will take further instructions from my client herein and will write to you in due course. My client resides at Bagan Datoh and it will take a few days to get instructions from him. 30

Yours faithfully,
Sgd. S. M SHARMA.

P.10 (10).—Plaintiff's Bundle of Documents.

Letter—Maxwell, Kenion, Cowdy & Jones to S. M. Sharma.

Maxwell, Kenion, Cowdy & Jones,
Advocates & Solicitors,
Mercantile Bank Buildings,
Ipoh.

7th March, 1949.

S. M. Sharma Esq.,
Advocate & Solicitor,
No. 1, Brewster Road,
10 Ipoh.

Exhibits.

—
P.10 (10).
Plaintiff's
Bundle of
Documents.
Letter,
Maxwell &
Co. to S. M.
Sharma.
7th March,
1949.

Dear Sir,

Thevaraya Pillay with Mookka Pillay.

With reference to your letter of the 26th ultimo we shall be glad if you will let us know whether you have got in touch with your client and if so when we can have inspection of the Agreement referred to in our letter of the 25th February, 1949.

Yours faithfully,

Sgd. MAXWELL, KENION, COWDY & JONES.

P.10 (11).—Plaintiff's Bundle of Documents.

20 Letter—S. M. Sharma to Maxwell, Kenion, Cowdy & Jones.

S. M. Sharma,
Advocate & Solicitor,
Ipoh.

8th March, 1949.

Messrs. Maxwell, Kenion, Cowdy & Jones,
Advocates & Solicitors,
Ipoh.

P.10 (11).
Plaintiff's
Bundle of
Documents.
Letter,
S. M.
Sharma to
Maxwell &
Co.
8th March,
1949.

Dear Sirs,

Thevaraya Pillay with Mookka Pillay.

30 I am in receipt of your letter of the 7th instant herein and to inform you that I have no further instructions from my client in the matter.

Yours faithfully,

Sgd. S. M. SHARMA.

Exhibits.

P.10 (12).—Plaintiff's Bundle of Documents.

P.10 (12).
Plaintiff's
Bundle of
Documents.
Letter,
S. M.
Sharma to
Maxwell &
Co.
9th March,
1949.

Letter—S. M. Sharma to Maxwell, Kenion, Cowdy & Jones.

S. M. Sharma,
Advocate & Solicitor,
1, Brewster Road,
Ipoh.

9th March, 1949.

Messrs. Maxwell, Kenion, Cowdy & Jones,
Advocates & Solicitors,
Ipoh.

10

Dear Sirs,

Thevaraya Pillay and Mooka Pillay.

With further reference to my letter of yesterday's date herein my client has now handed to me the copy of the agreement which you may inspect at any time in my office on making an appointment.

Yours faithfully,

Sgd. S. M. SHARMA.

**P.10 (13).—Plaintiff's Bundle of Documents.
Certified Abstract of Title.**

(Land Code 67) 91.

STATE OF PERAK.

**AUTHENTICATED ABSTRACT ISSUED UNDER SECTION 230 (k) OF THE LAND CODE AND UNDER
SECTION 256 OF THE CIVIL PROCEDURE CODE.**

(Schedule X. Land Rule 58.)

Title.	Lot No.	Town and Section or mukim.	Registered Proprietor.	Persons interested.	Encumbrances.
Grant for land No. 11490	1701	Mukim of Teluk Bahru.	T. R. M. Thevaraya Pillay son of Rama Pillay an un- divided 3/6 share. M. Mooka Pillay son of Muthiah Pillay an undivided 2/6 share and R. M. Peechay Pillay son of Rama Pillay an undivided 1/6 share. Proprietors as on 7-12-41. Same as above.	(1) Choong Syn (f) & Phee Seng as representatives of Ooi Theam Soo deceased as char- gees of Charge No. 1789/30. (2) Mooka Pillay as Caveator of caveat No. 248/49. Same as above.	(1) Charge No. 1789/30 registered on 23-4-1930 Encumbrances as on 7-12-41. Same as above. (2) Caveat No. 248/40 registered 12-2-1949 in respect of the undivided 3/6 share of T.R.M.Thevaraya Pillay son of Rama Pillay.

I hereby certify that the above is a true abstract from the Register.
Witness my hand and Seal.

Date. Taiping 11th March, 1949.

R. 591459

11-3-49.

Chop :—
Registrar of Titles,
State of Perak.

Note :—No dealings were registered during
the Japanese occupation period.

Sd. (?)
Dy. Registrar of Titles,
Perak.

Exhibits.
—
P.10 (13).
Plaintiff's
Bundle of
Documents.
Certified
Abstract
of Title.
11th March,
1949.

Exhibits.

P.10 (14).—Plaintiff's Bundle of Documents.

P.10 (14).
Plaintiff's
Bundle of
Documents.
Letter,
S. M.
Sharma to
Maxwell &
Co.
16th March,
1949.

Letter—S. M. Sharma to Maxwell, Kenion, Cowdy & Jones.

S. M. Sharma,
Advocate & Solicitor,
1 Brewster Road,
Ipoh.
Messrs. Maxwell, Kenion, Cowdy & Jones,
Advocates & Solicitors,
Ipoh.

16th March, 1949.

Dear Sirs,

M. Mookka Pillay & Thevaraya Pillay.

In spite of the fact that you were given an inspection of the agreement asked for and allowed to make a copy on the 10th instant, you have not yet replied to my letter of the 23rd ultimo.

Unless I have definite reply by 4 p.m. tomorrow I have instructions to institute action as indicated in my said letter of the 23rd ultimo.

Yours faithfully,

Sgd. S. M. SHARMA.

10

P.10 (15).
Plaintiff's
Bundle of
Documents.
Letter,
Maxwell &
Co. to S. M.
Sharma.
16th March,
1949.

P.10 (15).—Plaintiff's Bundle of Documents.

Letter—Maxwell, Kenion, Cowdy & Jones to S. M. Sharma.

20

Maxwell, Kenion, Cowdy & Jones,
Advocates & Solicitors,
Mercantile Bank Buildings,
Ipoh.
S. M. Sharma, Esqr.,
Advocate & Solicitor,
Ipoh.

16th March, 1949.

Dear Sir,

M. Mooka Pillay vs. Thevaraya Pillay.

Thank you for your letter of the 16th instant.

30

Further to our phone conversation to your office we shall be most grateful if you can extend the time mentioned in your last paragraph until Wednesday 23rd March because :

1. Mr. Leonard who was attending to this matter has left our firm suddenly and is now in the office of Messrs. Sisson & Delay in Singapore.

2. Our Mr. Peters is flying home on short leave on Monday.

3. Mr. Shuttleworth who will be attending this matter is away at Penang and will not be back until Sunday.

Yours faithfully,

Sgd. MAXWELL, KENION, COWDY & JONES.

40

P.10 (16).—Plaintiff's Bundle of Documents.

Letter—Shearn, Delamore & Co. to S. M. Sharma.

Shearn, Delamore & Co.,
Advocates & Solicitors,
Kuala Lumpur.

9th April, 1949.

Our Reference No. S.D.(s) 2598.

S. M. Sharma, Esqr.,
Advocate & Solicitor,
1, Brewster Road,
Ipoh.

10

Dear Sir,

Thevaraya Pillay & M. Mookka Pillay.

We are now acting for Mr. Thevaraya Pillay in respect of his interest in Teluk Chenang Estate, about which Messrs. Maxwell, Kenion, Cowdy & Jones have been recently in correspondence with you.

Our client has shown us the document which he instructs us is the original of the agreement of sale dated the 17th January, 1947, and we have read a translation of the same.

20 It appears to us that in January 1947, our client executed a document which—in the translation we have read—is called a Sale Deed whereby he purported to sell to your client his half share of 650 acres, i.e. 325 acres in the estate for the sum of Rs. 17,000.

The consideration appears to have been a Promissory note for the sum of Rs. 12,000 signed by your client and the transfer to our client of the right of your client to receive from a Textile Store at Madura the sum of Rs. 5,000. In addition your client undertook to discharge the amount due to Chinese who held a Charge over the Estate.

30 We understand that the amount owing by our client on this account was approximately \$15,000/-.

In the result the transaction seems to us to be that your client acquired some 325 acres of the estate for a consideration amounting in all to approximately some \$27,000/-. It would appear that this consideration was entirely inadequate, but we do not—at this stage—desire to discuss this aspect in detail.

The "Sale Deed" provides according to our translation that if our client's agent refuses to transfer the land then the Promissory note for Rs. 12,000 will not be valid and our client is to pay your client the sum of Rs. 5,000 he took over from the Madura Textile shop.

40 It is also provided that the event of our client being unwilling to transfer to your client his interest in the 650 acres, he is to pay an extra Rs. 5,000 and take back the estate.

We are instructed that your client has not paid, up the present time, the sum of Rs. 12,000 due on the promissory note, and there appears from

Exhibits.

P.10 (16).
Plaintiff's
Bundle of
Documents.
Letter.
Shearn
Delamore &
Co. to S. M.
Sharma.
9th April,
1949.

Exhibits. your letter of the 25th February, 1949, addressed to Messrs. Maxwell, Kenion, Cowdy & Jones to be some question as to whether it should have been paid in India or Malaya.

—
P.10 (16).
Plaintiff's
Bundle of
Documents.
Letter,
Shearn
Delmore &
Co. to S. M.
Sharma.
9th April,
1949—
continued.

Again we do not desire at this stage to go into this aspect of the matter as our client has instructed us that he does not now wish to transfer to your client his interest in the estate, and he is prepared to pay to your client the extra Rs. 5.000 on his failure so to do.

In the result it seems to us that on the cancellation of the bargain our client will be under obligation to return to yours the sum of Rs. 5.000 received from the Madura Textile Store and to pay the extra Rs. 5.000 and 10 to hand over the promissory note for Rs. 12.000/-.

This he is prepared and through us, now offers to do.

We calculate that Rs. 10.000 is the equivalent of \$6,000/- and upon hearing from you that your client will accept this sum, and the Promissory note for Rs. 12.000 on the basis that thereafter there will be no claim by your client to the half interest of our client in the estate which was the subject matter of the "Sale Deed" we will send you this sum and the promissory note for Rs. 12.000.

Yours faithfully,

Sgd. SHEARN, DELMORE & CO. 20

P.10 (19).
Plaintiff's
Bundle of
Documents.
Letter,
S. M.
Sharma to
Braddell &
Ramani.
7th
September,
1949.

P.10 (19).—Plaintiff's Bundle of Documents.
Letter—S. M. Sharma to Braddell & Ramani.

S. M. Sharma,
Advocate & Solicitor,
1, Brewster Road,
Ipoh.

Messrs. Braddell & Ramani,
Advocates & Solicitors,
Ipoh.

7th September, 1949.

30

Dear Sirs,

Civil Suit No. 34 of 1949.

Mookka Pillay *vs.* Thevaraya Pillay.

Please let me have full particulars of paragraph 8 of your statement of defence.

Yours faithfully,

Sgd. S. M. SHARMA.

P.10 (20).—Plaintiff's Bundle of Documents.**Letter—S. M. Sharma to Braddell & Ramani.**

S. M. Sharma,
Advocate & Solicitor,
1, Brewster Road,
Ipoh.

Messrs. Braddell & Ramani,
Advocates & Solicitors,
Ipoh.

10 Dear Sirs,

Civil Suit No. 34 of 1949.

Mookka Pillay vs. Thevaraya Pillay.

Will you please let me know if you intend to comply with my letter of the 7th September, 1949, herein.

Yours faithfully,

Sgd. S. M. SHARMA.

27th October, 1949.

Exhibits.

P.10 (20).
Plaintiff's
Bundle of
Documents.
Letter,
S. M.
Sharma to
Braddell &
Ramani.
27th
October,
1949.

P.10 (21).—Plaintiff's Bundle of Documents.**Letter—Braddell & Ramani to S. M. Sharma.**

20 Braddell & Ramani,
Advocates & Solicitors,
1, Hale Street,
Ipoh.

S. M. Sharma, Esqr.,
Advocate & Solicitor,
Ipoh.

Dear Sir,

Civil Suit No. 34 of 1949.

Mookka Pillay vs. Thevaraya Pillay.

We are in receipt of your letter of even date.

30 We very much regret the delay.

The particulars have been drafted by counsel but before furnishing the same to you, we were anxious to check the evidence available in regard to that matter. This had meant a certain amount of delay. On a former occasion our Mr. Ramani was anxious to mention this reason for delay to you but you were away.

We do intend to comply with your request for particulars and we shall do so not later than a fortnight from to-day.

Yours faithfully,

Sgd. BRADDELL & RAMANI.

27th October, 1949.

P.10 (21).
Plaintiff's
Bundle of
Documents.
Letter,
Braddell &
Ramani to
S. M.
Sharma.
27th
October,
1949.

Exhibits.

P.10 (22).—Plaintiff's Bundle of Documents.

P.10 (22).
Plaintiff's
Bundle of
Documents.
Letter,
S. M.
Sharma to
Braddell &
Ramani.
2nd
November,
1949.

Letter—S. M. Sharma to Braddell & Ramani.

S. M. Sharma,
Advocate & Solicitor,
1, Brewster Road,
Ipoh.

2nd November, 1949.

Messrs. Braddell & Ramani,
Advocates & Solicitors,
Ipoh.

10

Dear Sirs,

Civil Suit No. 34 of 1949.

Mookka Pillay *vs.* Thevaraya Pillay.

Please make an early appointment for my client to see the document referred to in paragraph 3 of the defence. My peon will wait for your reply.

Yours faithfully,

Sgd. S. M. SHARMA.

P.10 (23).
Plaintiff's
Bundle of
Documents.
Letter,
Braddell &
Ramani to
S. M.
Sharma.
2nd
November,
1949.

P.10 (23).—Plaintiff's Bundle of Documents.**Letter—Braddell & Ramani to S. M. Sharma.**

20

Braddell & Ramani,
Advocates & Solicitors,
1, Hale Street,
Ipoh.

2nd November, 1949.

S. M. Sharma, Esq.,
Advocate & Solicitor,
Ipoh.

Dear Sir,

Civil Suit No. 34 of 1949.

30

Mookka Pillay *vs.* Thevaraya Pillay.

We are in receipt of your letter of even date.

The document in question is with Counsel at Kuala Lumpur. We shall arrange to have it brought here early and then write to you.

Yours faithfully,

P.10 (24).—Plaintiff's Bundle of Documents.

Letter—Braddell & Ramani to S. M. Sharma.

Braddell & Ramani,
Advocates & Solicitors,
1, Hale Street,
Ipoh.

9th November, 1949.

S. M. Sharma, Esq.,
Advocate & Solicitor,
Ipoh.

10

Dear Sir,

(Civil Suit No. 34 of 1949.

Mookka Pillay *vs.* Thevaraya Pillay.

Further to our letter to you of the 27th ultimo we send you herewith particulars of paragraph 8 of our Defence :

Particulars

The Defendant at the time he entered into the agreement was suffering from mental and bodily distress as a result of the following :—

- 20 (a) immediately after the surrender of the Japanese the Defendant had been kidnapped by two Chinese, detained by them during that period.
- (b) soon after his release by the Chinese he was arrested by the security services of the British Military Administration and remained on bail, and not until the beginning of April, 1946, were the charges against him withdrawn.
- (c) the Defendant was so distressed that he wanted to leave Malaya for good, wound up his affairs and sold away all his three businesses for nominal sums of money and left for India.
- 30 (d) after arrival in his native village he made no secret of the fact that he did not desire to return to Malaya, which fact also came to the knowledge of the Plaintiff.
- (e) after arrival in India the Defendant to the knowledge of the Plaintiff underwent continuous treatment for subnormalities of his mental capacities.
- (f) When the Defendant was in such condition the Plaintiff and his friend one Balakrishnan exaggerated the fears for his return to Malaya and continually worried him to sell his share of the estate in this country to himself the Plaintiff.
- 40 (g) The Plaintiff and the said Balakrishnan took him from Village to Village by way of interesting him in alternative investments for the moneys to be realised by the sale of the Defendant's share of the Malaya Estate.

Exhibits.

P.10 (24).
Plaintiff's
Bundle of
Documents.
Letter,
Braddell &
Ramani to
S. M.
Sharma.
9th
November,
1949.

Exhibits.
—
P.10 (24).
Plaintiff's
Bundle of
Documents.
Letter,
Braddell &
Ramani to
S. M.
Sharma.
9th
November,
1949—
continued.

- (h) the document was written and executed at the Plaintiff's house in his Village to which the Defendant was taken without his being told the purpose for which he was being taken.
- (i) at the time the document was written and executed Defendant had no opportunity for independent advice nor was he permitted to take time and consider the matter.
- (j) the Plaintiff by reason of the foregoing dominated the will of the Defendant and used that position to obtain an unfair advantage over the Defendant.

2.—The Plaintiff knew that the value of the Defendant's share of the estate according to the agreement was considerably undervalued, the Defendant having informed him of options he had given in Malaya at higher prices and also of his having received cable advice from Malaya not to sell. 10

Yours faithfully,

Sgd. C. N. LIM,

Braddell & Ramani.

P.10 (25)
Plaintiff's
Bundle of
Documents.
Letter,
S. M.
Sharma to
Braddell &
Ramani.
10th
November,
1949.

P.10 (25).—Plaintiff's Bundle of Documents.

Letter—S. M. Sharma to Braddell & Ramani.

S. M. Sharma,
Advocate & Solicitor,
1, Brewster Road,
Ipoh.

20

10th November, 1949.

Messrs. Braddell & Ramani,
Advocates & Solicitors,
Ipoh.

Dear Sirs,

Please give inspection of the document mentioned in paragraph 3 to the Plaintiff my client who accompanies my clerk with this letter.

Faithfully yours,

Sgd. S. M. SHARMA.

30

P.10 (26).—Plaintiff's Bundle of Documents.**Letter—Braddell & Ramani to S. M. Sharma.**

Braddell & Ramani,
Advocates & Solicitors,
1, Hale Street,
Ipoh.

10th November, 1949.

S. M. Sharma, Esq.,
Advocate & Solicitor,
Ipoh.

10

Dear Sir,

Reference to your letter of even date we are to inform you that the document mentioned therein is with Counsel at Kuala Lumpur.

We will write to you when it has been returned to us.

Yours faithfully,

Sgd. C. N. LIM,
for BRADDELL & RAMANI.

Exhibits.

P.10 (26).
Plaintiff's
Bundle of
documents.
Letter,
Braddell &
Ramani to
S. M.
Sharma.
10th
November,
1949.

P.10 (27).—Plaintiff's Bundle of Documents.**Letter—S. M. Sharma to Braddell & Ramani.**

20 S. M. Sharma,
Advocate & Solicitor,
1, Brewster Road,
Ipoh.

10th November, 1949.

Messrs. Braddell & Ramani,
Advocates & Solicitors,
Ipoh.

Dear Sirs,

Civil Suit No. 34 of 1949.

30

Mooka Pillay *vs.* Thevaraya Pillay.

You had promised to give my client an inspection of the document referred to paragraph 3 of your defence as far back as the 2nd November, 1949.

You later informed me personally that your Mr. Ramani would be in Ipoh on the 9th of November, 1949, and that the document could be inspected any time thereafter.

P.10 (27).
Plaintiff's
Bundle of
Documents.
Letter,
S. M.
Sharma to
Braddell &
Ramani.
10th
November,
1949.

Exhibits. I sent for my client from Bagan Datoh specially to inspect the document
 and on his arrival here today, sent him with my clerk for inspection I am
 surprised my clerk informed me that you told him the document was still
 in Kuala Lumpur.

Unless you give me a definite appointment within the next 3 days to
 see the document, I shall apply to the Court.

Yours faithfully,
 Sgd. S. M. SHARMA.

P.10 (27).
 Plaintiff's
 Bundle of
 Documents.
 Letter,
 S. M.
 Sharma to
 Braddell &
 Ramani.
 10th
 November,
 1949—
continued.

P.10 (28).
 Plaintiff's
 Bundle of
 Documents.
 Letter,
 Braddell &
 Ramani to
 S. M.
 Sharma.
 12th
 November,
 1949.

P.10 (28).—Plaintiff's Bundle of Documents.
Letter—Braddell & Ramani to S. M. Sharma. 10

Braddell & Ramani,
Advocates & Solicitors,
1, Hale Street,
Ipoh.

S. M. Sharma, Esqr.,
Advocate & Solicitor,
Ipoh.

12th November, 1949.

Dear Sir,

Civil Suit No. 34 of 1949. 20

Mookka Pillay *vs.* Thevaraya Pillay.

We have yours of the 10th instant.

With regard to paragraph 2 of your letter the present writer did not
 intend to convey that Mr. Ramani would be in Ipoh with the document,
 but had informed him of your request to inspect and hoped it would be
 possible for you to do so when he was here.

When we referred to Counsel in whose possession the document had
 been we were not referring to Mr. Ramani.

Anyhow we have had the document brought here today and you can
 have inspection at any time convenient. 30

Yours faithfully,
 Sgd. C. N. LIM,
 for BRADDELL & RAMANI.

P.10 (29).—Plaintiff's Bundle of Documents.

Letter—S. M. Sharma to Braddell & Ramani.

S. M. Sharma,
 Advocate & Solicitor,
 1, Brewster Road,
 Ipoh.
 Messrs. Braddell & Ramani,
 Advocates & Solicitors,
 Ipoh.

16th November, 1949.

10 Dear Sirs,

Civil Suit No. 34 of 1949.

Mooka Pillay vs. Thevaraya Pillay.

With reference to my letter dated the 10th instant, I am again sending my client with my clerk. Please give an inspection of the document in the above stated letter.

Yours faithfully,
 Sgd. S. M. SHARMA.

Exhibits.
 ———
 P.10 (29).
 Plaintiff's
 Bundle of
 Documents.
 Letter,
 S. M.
 Sharma to
 Braddell &
 Ramani.
 16th
 November,
 1949.

X.28.—Letter—Braddell & Ramani to S. M. Sharma.

“ LEX.”

20 S. M. Sharma, Esq.,
 Advocate & Solicitor,
 Ipoh.

1652/49.

10th December, 1949.

Dear Sir,

Civil Suit No. 34 of 1949.

Mooka Pillay vs. T. R.M. Thevaraya Pillay.

30 We write to place on record, lest there should be any misunderstanding in the future, that our client says that the original document shown to him at your office this morning when he called for inspection with our Mr. Ramani, is not the document that he was shown in March of this year when he obtained inspection through his then Solicitors.

We later asked for further inspection of the document with a view to our Mr. Ramani taking an accurate copy of the same, but the document was not available. We do not mean this as any complaint, as you had no reason to think that we may be asking for inspection again.

Your office later informed us that we could take a copy on Monday but we think, perhaps, that as document will have to be used at the trial, it may be convenient if a photographic print of it could be taken.

We shall be glad to hear from you as to this.

40 RR/K.

Yours faithfully,
 Sgd. BRADDELL & RAMANI.

X.28.
 Letter,
 Braddell &
 Ramani to
 S. M.
 Sharma.
 10th
 December,
 1949.

Exhibits.

P.29.

Letter,
S. M.
Sharma to
Braddell &
Ramani..
12th
December,
1949.

P.29.—Letter—S. M. Sharma to Braddell & Ramani.

S. M. Sharma,
Barrister at Law,
Advocate & Solicitor,
Federation of Malaya.]

1, Brewster Road,
Ipoh,
Perak,
Malaya.

Telegram No. 570.

12th December, 1949.

Ref.

Messrs. Braddell & Ramani,
Advocates & Solicitors,
Ipoh.

10

Dear Sirs,

Civil Suit No. 34 of 1949.

Mooka Pillay vs. T.R.M. Thevaraya Pillay.

I am in receipt of your letter dated the 10th instant delivered here at 8.55 a.m. this morning.

The alleged statement of your client suggesting that the document is a different one to what was shown to his then Solicitors is a deliberate lie.

This document had been produced for inspection at the request of the Defendant's then Solicitors before the action and a copy was allowed to be taken. It was again produced to him at your request last Saturday to suit your own convenience at a great inconvenience to myself. 20

I do not understand what you mean by saying you require further inspection of the document with a view to your Mr. Ramani taking an accurate copy of same. I am prepared to let you have a copy on your paying for same. I am not prepared to give you any further inspection nor allow a photographer or other agent of your client to handle the document.

Yours faithfully,

Sgd. S. M. SHARMA.



X.30.—Letter—Braddell & Ramani to S. M. Sharma.

Exhibits.

Braddell & Ramani,
Advocates & Solicitors,
Ref. No. 1689/49.

Ipoh.

17th December, 1949.

S. M. Sharma, Esq.,
Advocate & Solicitor,
Ipoh.

X.30.
Letter,
Braddell &
Ramani to
S. M.
Sharma.
17th
December,
1949.

Dear Sir,

10

Civil Suit No. 34 of 1949.

Mooka Pillay vs. T. R. M. Thevaraya Pillay.

We have yours of the 12th instant.

We regret to observe that you do not understand our request. Mr. Ramani reads and writes Tamil; his desire was to take a copy himself so that it may be an accurate copy, in the sense that the variant spelling of Tamil words used therein including defects thereof may be accurately copied. In this connection a copy made by you is not as satisfactory.

Anyhow we note that you do not propose to be bothered with giving a further inspection having already done so "at great inconvenience" to
20 yourself.

Yours faithfully,

Sgd. BRADDELL & RAMANI.

 Defendant's Bundle of Documents.

Notice of Caveat.

Notice of
Caveat*(Not printed.)*

 Caveat.

Caveat.

(Not printed.)

Exhibits. **Translation of Tamil Document copied by Defendant in Plaintiff's Solicitor's Office.**

Translation
of Tamil
Document
copied by
Defendant
in Plaintiff's
Solicitor's
Office.

(Not printed.)

X.19.
Letter
book of
Carbon
copy of
letters.

X.19.—Letter book of carbon copy letters.

(Not printed.)

Original document.

X.20.
Portion of
a stamped
envelope
dated
August,
1948, and
torn letters.

X.20.—Portion of a stamped envelope dated August, 1948, and torn letters

(Not printed.)

Original document.

P.21.
Bundle of
documents
showing
Balakrish-
nan's
signature.

P.21.—Bundle of Documents showing Balakrishnan's signature. 10

(Not printed.)

Original documents.

X.41 &
X.42.
Prescrip-
tions for
Thevaraya
Pillay.

**X.41. } Prescriptions for Thevaraya Pillay.
X.42. }**

(Not printed.)

Original document.

P.26(a)&(b).
Specimen
signatures
of Rathnan
Pillay.

P.26 (a) and (b).—Specimen Signatures of Rathnan Pillay.

(Not printed.)

Original document.

P.27.—Cable from Balakrishnan.

(Not printed.)

Original document.

P.27.
Cable from
Balakrish-
nan.

P.37.—Addressed envelope.

(Not printed.)

Original document.

P.37.
Addressed
envelope.

P.38.—Slip enclosed in Exhibit P.37.

(Not printed.)

Original document.

P.38.
Slip
enclosed in
Exhibit
P.37.

10

P.39.—Air mail letter with pictures.

(Not printed.)

Original document.

P.39.
Air mail
letter with
pictures.

X.47.—Registered envelope—Nadessah to Thevaraya Pillay.

(Not printed.)

Original document.

X.47.
Registered
envelope
Nadessah to
Thevaraya
Pillay.

P.48.—Letter from Christian Manson

(Not printed.)

Original document.

P.48.
Letter from
Christian
Manson.

X.49.
Certified
plan of
Selangin
estate.

X.49.—Certified Plan of Selangin Estate.

(Not printed.)

Original document.

P.57.
Memoran-
dum of
Transfer.

P.57.—Memorandum of Transfer.

(Not printed.)

Original document.

X.58.
Day book
and bank
paying in
book of
Nadessah
Pillay.

X.58.—Day Book and Bank Paying in Book of Nadessah Pillay.

(Not printed.)

Original document.

X.62.
Hardlers on
hand-
writing.

X.62.—Hardlers on Handwriting.

10

(Not printed.)

Original document.

P.63.
L. O.
Receipts.

P.63.—L.O. Receipts.

(Not printed.)

Original document.

In the Privy Council.

No. 40 of 1951.

ON APPEAL FROM THE COURT OF APPEAL AT
KUALA LUMPUR IN THE SUPREME COURT
OF THE FEDERATION OF MALAYA.

Suit No. 34 of 1949
F.M. Civil Appeal No. 5 of 1951.

BETWEEN

T. R. M. THEVARAYA PILLAY
(Defendant) Appellant

AND

MOOKA PILLAY s/o MUTHIAH
PILLAY ... *(Plaintiff) Respondent.*

RECORD OF PROCEEDINGS

PEACOCK & GODDARD,
1, Raymond Buildings,
Gray's Inn,
W.C.1,
Solicitor for the Appellant.

SHELTON COBB & CO.,
3 New Court,
Lincoln's Inn, W.C.2,
Solicitors for the Respondent.