

Handwritten marks: "GK 2" and a signature.

27, 1954

41

1953

Supreme Court of Ceylon.
No. 387 (Final) of 1950.

District Court, Colombo
No. 18596.

IN HER MAJESTY'S PRIVY COUNCIL
ON AN APPEAL FROM
THE SUPREME COURT OF CEYLON

BETWEEN

ALFRED RICHARD WEERASURIYA of
Ambalangoda..... *Plaintiff-Respondent.*

AND

ASSENA MARIKAR MOHAMED FUARD,
Proctor and Notary of Colombo... *Defendant-Appellant.*

RECORD
OF PROCEEDINGS

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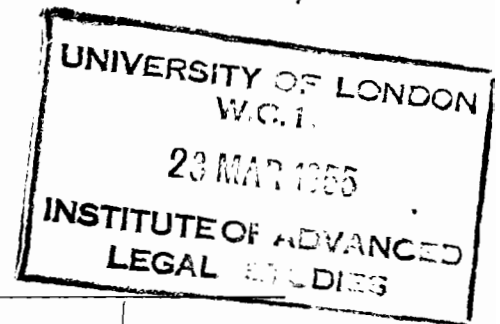


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Supreme Court of Ceylon.
No. 387 (Final) of 1950.

District Court, Colombo
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BETWEEN

ALFRED RICHARD WEERASURIYA of
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Proctor and Notary of Colombo.....*Defendant-Appellant.*

RECORD OF PROCEEDINGS

PART I.

PART I.**No. 1.****Journal Entries.****JOURNAL**

The 23rd day of October, 1947.

Messrs. Weeraratne & Haseeb file appointment and plaint.

Plaint accepted and summons ordered for 28-11-47.

(Sgd.) S. C. SWAN,
D. J.

10 (2) 11-11-47. Summons issued on defendant W.P. with precept return-
able the day of 19 .

(3) 28-11-47. Summons served on the defendant.
Plaint filed. Answer 19th December.

(Intd.) N. S.

(4) 19-12-47. Mr. M. U. M. Saleem for defendant.
Answer filed.
Trial 29th July.

(Intd.) S. J. C. S.

20 (5) 5- 7-48. Proctors for plaintiff file list of witnesses and documents
and move for summons. Copy sent by registered post.
Re 1 obtain certified copies as required by Section
154 C.P.C. Subject to this allowed.

(Intd.) S. S. J. G.,
D. J.

(6) 14- 7-46. Summons issued on 10 witnesses by plaintiff.

(7) 19- 7-48. Proctor for defendant with notice to proctor for plaintiff
files defendant's list of witnesses and moves for sum-
mons on them.

30 Allowed.

(Intd.) S. S. J. G.,
D. J.

(8) 19- 7-48. Summons issued on 5 witnesses by defendant.

(9) 20- 7-48. Summons issued on 3 witnesses by plaintiff.

No. 1.
Journal
Entries.
23-10-47 to
6-6-52—
continued.

- (10) 24- 7-48. Proctors for plaintiff with notice to proctor for defendant file list of witnesses and moves for summons.

Allowed.

(Intd.) S. S. J. G.,
D. J.

- (11) 26- 7-48. Summons issued on 7 witnesses by plaintiff.

- (12) 29- 7-48. Trial *vide* (4).

Mr. Weeraratne for plaintiff.

Mr. M. U. M. Saleem for defendant.

Witness Samaratunge tenders medical certificate (12A). 10

Mr. Advocate C. E. S. Perera with Mr. Advocate G. T.

Samarawickreme instructed by Messrs. Weeraratne and Haseeb for plaintiff.

Mr. Advocate Ferdinandz with Mr. Advocate Azeez instructed by Mr. Saleem for defendant.

Both counsel are agreed that the trial of this case will take about four days.

As I will not be in this Court from about next week I do not propose to take up this matter today.

Trial refixed for 9th, 10th and 11th May, 1949. 20

(Sgd.) S. S. J. GOONESEKERA,
D. J. 29-7-48.

- (12) Letter from Bank of Ceylon filed.

- (13) 11- 2-49. As the trial date already fixed did not suit Counsel, proctor for defendant moves to give another date of trial.

Proctors for plaintiff received notice for 18-2-49.

Call on 18th February.

(Intd.) S. J. C. S.,
D. J. 30

- (14) 18- 2-49. Case called.

Of consent 9th May will stand and trial will be resumed thereafter on 16th May (not 10th May).

(Intd.) S. J. C. S.,
D. J.

- (15) 22- 4-49. Summons issued on 5 witnesses by defendant.

- (16) 26- 4-49. Summons issued on 2 witnesses by plaintiff.

(17) 2- 5-49. Summons issued on 10 witnesses by plaintiff.

(18) 5- 5-49. Summons issued on 3 witnesses by plaintiff.

(19) 9- 5-49. Trial *vide* (14).
Mr. M. Weeraratne for plaintiff.
Mr. M. U. M. Saleem for defendant.
Defendant's list (19) filed.
Vide proceedings.

(Intd.) H. A. DE S.,
D. J.

10 (20) 10- 5-49. Summons issued on one witness by defendant.

(21) 16- 5-49. Trial *vide* (19).
Appearance as at (19).
Vide proceedings.

(Intd.) H. A. DE S.,
D. J.

Tr. 23/5 & 6/6.

(22) 23- 5-49. Trial.
Vide proceedings.

(Intd.) H. A. DE S.,
D. J.

20

(23) 24- 5-49. K. R. Samaratunge, *vide* letter, requests to instruct the proctor for plaintiff to send him a sum of Rs. 68.25 being his batta.

(24) 27- 5-49. Summons issued on one witness by defendant.

(25) 6- 6-49. *Vide* proceedings.

(Intd.) H. A. DE S.,
D. J.

(26) 14- 6-49. Trial *vide* (25)
Mr. M. Weeraratne for plaintiff.
Mr. M. U. M. Saleem for defendant.
Vide proceedings.

30

(Intd.) H. A. DE S.,
D. J.

(27) 24- 6-49. Trial resumed.
Vide proceedings.

(Intd.) H. A. DE S.,
D. J.

No. 1.
Journal
Entries.
23-10-47 to
6-6-52—
continued.

- (28) 27- 6-49. Proctor for plaintiff tenders documents marked P1-P71
(filed in Volume 2).
1. Pay deficiency.
2. Check and file.
(Intd.) H. A. DE S.,
D. J.
- (29) 27- 6-49. Proctor for defendant tenders document marked D1-
D30 (filed in Volume 2).
Check and file.
(Intd.) H. A. DE S., 10
D. J.
- (30) 29- 6-49. Deficiency called for.
- (31) 4- 7-49. Stamps to the value of Rs. ~~49~~ 31 affixed to list of docu-
ments (28) and cancelled. Letter from Proctor (31)
filed.
- (31A) Letter from Proctor for plaintiff filed.
- (32) 19- 8-49. Judgment delivered in open Court.
Vide judgment sheet for appearances.
(Intd.) H. A. DE S.,
D. J. 20
- (33) Decree entered.
- (34) 20- 8-49. The plaintiff moves to revoke the proxy granted to
Messrs. Weeraratne and Haseeb, Proctors.
Proctors consent.
Allowed.
Proxy is revoked.
(Intd.) H. A. DE S.,
D. J.
- (35) 23- 8-49. Mr. M. Weeraratne, Proctor, files proxy (35A) for the
plaintiff together with revocation of proxy (35B). 30
File.
(Intd.) H. A. DE S.,
D. J.
- (36) 29- 8-49. Mr. M. Weeraratne, Proctor, files petition of appeal of
the plaintiff-appellant against the judgment of this
Court dated 19-8-49 and tenders stamps to the value
of Rs. 15/- for certificate and Rs. 30/- for S.C. Decree.
Stamps affixed to certificate and S.C. decree (36B)
and cancelled.
Accept. 40
(Intd.) H. A. DE S.,
D. J.

- (37) 29- 8-49. The petition of appeal having been accepted Proctor for plaintiff-appellant moves that he will deposit on 6-9-49 a sum of Rs. 200/- as security for costs of appeal and that he will tender a sufficient sum of money on the same day to cover the expenses of serving notice of appeal.

No. 1:
Journal
Entries.
23-10-47 to
6-6-52—
continued.

Issue voucher for Rs. 200/-.
Call on 6-9-49.

(Intd.) H. A. DE S.,
D. J.

10

- (38) 30- 8-49. Voucher for Rs. 250/- issued.

- (39) 6- 9-49. Case called (37).
Mr. M. Weeraratne for plaintiff-appellant.
Mr. M. U. M. Saleem for defendant-respondent.
Mr. Weeraratne says that he will deposit a further Rs. 50/-.
Proctor for defendant is satisfied if Rs. 250/- were deposited.
Let Rs. 250/- be deposited and hypothecated. Once that is done issue notice of appeal.

(Intd.) H. A. DE S.,
D. J.

20

- (40) 6- 9-49. Proctor for appellant files application for typewritten copies and moves for a voucher for Rs. 40/-.
Issue voucher.

(Intd.) H. A. DE S.,
D. J.

- (41) 6- 9-49. Voucher for Rs. 40/- -issued.

- (42) 6- 9-49. Proctors for appellant tenders bond (42) and notice of appeal (42A).

30

1. File.
2. Issue notice for 14th October.

(Intd.) H. A. DE S.,
D. J.

- (43) 6- 9-49. K.R. 9/8 49650 for Rs. 250/- filed.

- (44) 6- 9-49. K.R. 9/8 49651 for Rs. 40/- filed.

- (45) 7- 9-49. Notice of appeal issued on Proctor for respondent to W.P.

No. 1.
Journal
Entries.
23-10-47 to
6-6-52—
continued.

- (46) 14-10-49. Notice of appeal served.
Forward record to S.C.
(Intd.) H. A. DE S.,
D. J.
- (47) 29-11-49. Proctor for respondent files application for typewritten
copies and moves for a voucher for Rs. 25/-.
Issue.
(Intd.) S. J. C. S.,
D. J.
- (48) 30-11-49. Voucher for Rs. 25/- issued. 10
- (49) 9-12-49. Mr. M. U. M. Saleem, Proctor for defendant tenders
Kachcheri receipt for the sum of Rs. 25/- being fees
for typewritten copy.
File.
- (50) 24- 6-50. *Vide* memo from Appeal Branch to call for additional
fees for two typewritten copies from the Proctor for
appellant and additional fees from the Proctor for
respondent.
Appellant Rs. 710/-.
Respondent Rs. 350/-.
Call for. 20
(Intd.)
D. J.
- (51) 26- 6-50. *Vide* journal entry (50).
Two vouchers for Rs. 710/- and Rs. 350/- issued to
Proctor for plaintiff-appellant and Proctor for
defendant-respondent respectively with covering letter.
(Intd.)
- (52) 27- 6-50. K.R. S/8 No. 2182/062761 of 21-7-50 for Rs. 710 filed.
- (53) 22- 7-50. K.R. S/8 No. 2201/062780 of 21-7-50 for Rs. 75/- filed. 30
- (54) 7- 9-50. Record forwarded to Registrar, S.C. with briefs and
Vol. II. documents.
(Intd.)
Secretary.

(55) 6- 6-52. Registrar, S.C. returns record with S.C. order. Decree in favour of the appellant against the respondent as prayed for with costs both in S.C. and Court below. Call on 13-6-52 with Notice to Proctors.

No. 1.
Journal
Entries.
23-10-47 to
6-6-52
—continued.

(Intd.)

D. J.

No. 2.

Plaint of the Plaintiff.

No. 2.
Plaint of the
Plaintiff.
23-10-47

IN THE DISTRICT COURT OF COLOMBO.

10 No. 18596/M.

ALFRED RICHARD WEERASURIYA of " Srinivasa ",
Ambalangoda.....*Plaintiff.*

vs.

ASSENA MARIKAR MOHAMED FUARD, Proctor and Notary Public
of No. 130, Hultsdorf Street, Colombo.....*Defendant.*

On this 23rd day of October, 1947.

The plaint of the plaintiff above-named appearing by Martin Weeraratne and Abdul Careem Abdul Haseeb practising in partnership in Colombo under the name style and firm of " Weeraratne & Haseeb " his
20 Proctors states as follows :—

1. The defendant resides and the cause of action herein after set forth arose at Colombo within the local limits of the jurisdiction of this Court.

2. On or about the 30th November, 1942, the plaintiff employed the defendant who is a Proctor and Notary Public practising his profession in Colombo to be his legal adviser and to act for and on his behalf in connection with the investment of a sum of Rs. 15,000/- belonging to the plaintiff.

3. The defendant advised the plaintiff to invest the said sum of
30 Rs. 15,000/- with one K. R. Samaratunge on the mortgage of certain properties and recommended the borrower and the title and the value of the said properties to be mortgaged.

No. 2.
Plaintiff of the
Plaintiff.
23-10-47
—continued.

4. Acting on the advice and recommendation of the defendant the plaintiff entered into a contract to lend to one K. R. Samaratunge a sum of Rs. 15,000/- and obtained from the latter security for this loan Mortgage Bond No. 2308 dated 3rd December, 1942, attested by the defendant whereby the said K. R. Samaratunge hypothecated to and with the plaintiff as a primary mortgage certain lands and premises described in Schedule "A" to the said Bond and as a secondary mortgage a large estate described in Schedule "B1" and "B2" to the said Bond. The said estate had already been mortgaged to Khemchand Moolchand.

5. On or about the 3rd September, 1945, Khemchand Moolchand¹⁰ referred to above put his Bond in suit in action No. 941 M.B. of the District Court of Colombo making the plaintiff an added party to the said action and on a sale of the mortgaged property which was held on 11-5-44, only Rs. 16,200/- was realized. The secondary mortgage in favour of the plaintiff thereby became and was proved to be of no value or worth.

6. Thereafter the plaintiff filed action No. 1084 M.B. of the District Court of Colombo to realize the primary mortgage of the lands and premises described in Schedule "A" to the said Bond No. 2308 and at a sale held on 9-3-46 a sum of Rs. 2,250/- was realized as against the plaintiff's claim of Rs. 19,500/- being principal and interest due to him besides cost of²⁰ action.

7. The plaintiff states that though the defendant was employed as his legal adviser and agreed and undertook to act for and on behalf of the plaintiff he was in the transaction referred to above in paragraph 4 furthering the interests of others whose interests were adverse to those of the plaintiff which fact was not known to the plaintiff at the time and had been fraudulently concealed from him by the defendant. The plaintiff states that he came to know of the facts set out in this paragraph on or about December, 1945.

8. The plaintiff further states that the defendant was fully aware³⁰ of facts and circumstances which rendered the security offered by Samaratunge to plaintiff inadequate and doubtful but that the defendant in breach of his duty to plaintiff not merely failed to declare them but even recommended and advised the plaintiff to accept the said security. The plaintiff states that he came to know of the facts set out in this paragraph in or about December, 1945.

9. The plaintiff states that by reason of the circumstances set out in paragraphs 6 and 7 there has been on the part of the defendant an intentional and deliberate dereliction of his professional duty and a breach of his contract of employment as legal adviser to the plaintiff to the⁴⁰ latter's detriment and loss.

10. The plaintiff states that a fair and reasonable estimate of the damages he has suffered thereby is Rs. 20,000/- which sum or any part thereof the defendant has failed and neglected to pay though often requested.

Wherefore the plaintiff prays :—

- (a) for an order directing the defendant to pay him the sum of Rs. 20,000/- with interest thereon at the legal rate till payment in full ;
- (b) for costs ;
- (c) for such other and further relief as to this Court shall seem meet.

No. 2.
Plaint of the
Plaintiff.
23-10-47
—continued.

(Sgd.) WEERARATNE & HASEEB,
Proctors for Plaintiff.

10 THE SCHEDULE “ A ” ABOVE REFERRED TO.

1. All those undivided nineteen-twentieth parts or shares of the land called Dodanwattenehena now garden bearing registered No. S.C. 6052 at the Tea Controller's Office together with the tea plantations standing thereon situate at Pallegama in Palle Gampaha Korale of Lower Dumbara, Dumbara, in the District of Kandy, Central Province, bounded on the East by road, South by Malakandura of Duranilehena, West by Appulannalagedera and Kumburewella and on the North by Kumburegedera Puncha's land and limit of Wehigalagederahena and containing and extent two amunams and two pelas of paddy sowing which said
20 land is otherwise described as follows : All that land called Dodanwattenehena situated at Pallegama aforesaid and bounded on the East by old road and fence, South by ditch, West by Udagederawattekumbureswella and limit of Puncha's land and on the North by limit of Horatala's chena containing in extent one yelamunam of paddy sowing.

2. All that land called Medakotuwewatte together with all the buildings and the tea plantations standing thereon bearing registered No. S.C. 5853 at the Tea Controller's Office situated at Kandekumbura in Naranpanawa in Palis Pattu Korale of Pata Dumbara in the District of Kandy aforesaid and bounded on the North by limit of the land belonging to Kumburegedera Puncha, East by the garden of Kumburegedera
30 Horatala, South by the land belonging to Amunegedera Kaluwa and on the West by Medakotuwa belonging to Rantetgedera Horatala and containing in extent about two pelas and five lahas of paddy sowing.

3. All that land called Pupalehena Udahawatte together with the tea plantations standing thereon bearing registered No. S.C. 6048 at the Tea Export Controller's Office situated at Kandekumbura in Naranpanawa aforesaid and bounded on the North by ditch of the land belonging to Angara, East by ditch of the land belonging to Jamaldeen, South by limit of Marieland Estate and on the West by limit of Marieland
40 Estate and containing in extent about two pelas and five lahas of paddy sowing.

4. All that land called Medakotuwa with the buildings and the tea plantations standing thereon bearing registered No. S.C. 38675 at the Tea Controller's Office situated at Kandekumbura in Naranpanawa

No. 2.
Plaint of the
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—continued.

aforsaid and bounded on the North by the land belonging to Rantetgedera Ukkuwa, East by fence of Medakotuwawatta, South by the limit of the land belonging to Amunegedera Kaluwa and on the West by the land belonging to Rantetgedera Horatala and containing in extent about eight lahas in paddy sowing.

5. An undivided half part or share of the land called Rantetgederawatta together with all the buildings and the tea plantations standing thereon bearing registered No. S.C. 5858 at the Tea Controller's Office situated at Kandekumbura in Naranpanawa aforsaid and bounded on the North by Marieland Estate, East by Wella of Ambagahamulakumbura, South by the ditch and limit of Puncha's land and on the West by Marieland Estate and containing in extent about two amunams of paddy sowing.

6. All that land called Pallehawatte together with the tea plantations standing thereon bearing registered No. S.C. 5857 at the Tea Controller's Office situated at Kandekumbura in Naranpanawa aforsaid and bounded on the North by the limit of Rantetduragedera Hapumallie's garden, East by Kumburewella, South by limit of Amunegedera Puncha's garden, and on the West by the fence of Medakotuwe Sobani's garden and containing in extent about nine lahas of paddy sowing. 20

THE SCHEDULE " B1 " ABOVE REFERRED TO.

All that one hundred and four acres one rood and eleven perches (104A. 1R. 11P.) in extent according to the figure of survey of 13th November, 1935, made by C. G. Krelezheim, Licensed Surveyor, out of all that estate called and known as " Haraslulekele " *alias* " Fincham's land " containing in extent one hundred and sixteen acres and seven perches (116A. 0R. 7P.) according to survey and description thereof made by C. D. Jayasinghe of Kandy, Licensed Surveyor, in the month of December, 1923, situated at Kandegama in Gandeka Korale of Uda Dumbara Division in the District of Kandy, Central Province, which said one hundred and four acres one rood and eleven perches (104A. 1R. 11P.) comprised of the following allotments of land with the plantations and buildings thereon to wit :—

(1) All that allotment of land situated at Kandegama aforsaid and bounded on the North by Halgolla-Oya, South by land said to be owned by villagers, East by Halgolla-Oya, and on the West by Kobonella Estate and a road, containing in extent seventeen acres one rood and twenty-four perches (17A. 1R. 24P.).

(2) All that allotment of land situated at Kandegama aforsaid and bounded on the East by Halgolla-Oya, North by land said to be owned by villagers, on the South by allotment of eleven acres and nine perches and an allotment of land of two acres and thirty perches and on the West by Kobonella Estate and containing in extent thirteen acres three roods and thirty perches (13A. 3R. 30P.).

(3) All that allotment of land situated at Kandegama aforesaid and bounded on the North-East by allotment of land of thirteen acres three roods and thirty perches, on the South by allotment of land of three acres and twelve perches, on the East by the allotment of land of two acres and thirty perches, and on the West by Kobonella Estate and containing in extent eleven acres and nine perches (11A. 0R. 9P.).

No. 2.
Plaint of the
Plaintiff.
23-10-47
—continued.

(4) All that allotment of land situated at Kandegama aforesaid and bounded on the North by the allotment of land of thirteen acres three
10 roods and thirty perches, on the East by the lands claimed by villagers, on the South by Ela, and on the West by the allotment of land of eleven acres and nine perches and containing in extent two acres and thirty perches (2A. 0R. 30P.).

(5) All that allotment of land situated at Kandegama aforesaid and bounded on the North by the allotment of land of eleven acres and nine perches, on the South by the land said to be owned by villagers, on the East by allotment of land of eleven acres and nine perches, and on the West by land said to be owned by villagers and a road containing in extent three acres and twelve perches (3A. 0R. 12P.).

(6) All that allotment of land situated at Kandegama aforesaid and
20 bounded on the North, East and South by the allotment of land of eleven acres and nine perches, and on the West by Kobonella Estate containing in extent thirty perches (0A. 0R. 30P.).

(7) All that allotment of land situated at Kandegama aforesaid and bounded on the North by a road, on the East and South by land said to be owned by villagers, and on the West by Kobonella Estate and containing in extent one acre three roods and eighteen perches (1A. 3R. 18P.).

(8) All that allotment of land situated at Kandegama aforesaid and bounded on the North by the allotment of land of three acres and twelve
30 perches, on the South and East by the land said to be owned by villagers, and on the West by a road containing in extent twenty-seven perches (0A. 0R. 27P.).

(9) All that allotment of land situated at Kandegama aforesaid and bounded on the North by the land said to be owned by villagers, on the South by allotment of land of nine acres one rood and eighteen perches and land said to be owned by villagers, on the East by stone fence, and on the West by Kobonella Estate and containing in extent twenty-three acres one rood and thirty perches (23A. 1R. 30P.).

(10) All that allotment of land situated at Kandegama aforesaid and
40 bounded on the North by the allotment of land of twenty-three acres one rood and thirty perches, on the East by old trench, on the south by Badulla tree, and on the West by land owned by villagers and Kandura and containing in extent nine acres one rood and eighteen perches (9A. 1R. 18P.).

(11) All that allotment of land situated at Kandegama aforesaid and bounded on the North and East by land said to be owned by villagers, on

No. 2.
Plaint of the
Plaintiff.
23-10-47
—continued.

the South and West by the allotment of land of nine acres one rood and twenty perches and containing in extent five acres and twelve perches (5A. 0R. 12P.).

(12) All that allotment of land situated at Kandegama aforesaid and bounded on the North by the allotment of land of three roods and three perches, on the East by the allotment of land of five acres and twelve perches, on the South by the Oya, and on the West by Kobonella Estate and containing in extent nine acres one rood and twenty perches (9A. 1R. 20P.).

(13) All that allotment of land situated at Kandegama aforesaid and bounded on the North by the land said to be owned by villagers, on the East by the allotment of land of five acres and twelve perches, on the South by allotment of land of nine acres one rood and twenty perches, and on the West by Kobonella Estate and containing in extent three roods and three perches (0A. 3R. 3P.).

(14) All that allotment of land situated at Kandegama aforesaid and bounded on the North by Oya, on the South by Oya, on the East by Oya, and on the West by Oya and containing in extent six acres one rood and twenty-eight perches (6A. 1R. 28P.).

Which said one hundred and four acres one rood and eleven perches (104A. 1R. 11P.) in extent forms part of all that estate called and known as "Haraslulekele" *alias* "Fincham's land" containing in extent one hundred and sixteen acres and seven perches (116A. 0R. 7P.) according to survey and description thereof made by C. D. Jayasinghe, Licensed Surveyor, in the month of December, 1923, situated at Kandegama aforesaid and composed and made up of the following three allotments of land to wit:—

(a) An allotment of land situated at Kandagama aforesaid and bounded on the North and North-East by Oya and Ensalwatta Estate, on the South and East by land claimed by villagers and Ela, and on the West by Horankanda Estate and containing in extent fifty-nine acres and thirty-four perches (59A. 0R. 34P.).

(b) An allotment of land situated at Kandegama aforesaid and bounded on the North, North-East and East by land claimed by villagers, and on the South and South-West by Kobonella Estate, and on the West by Horankande Estate and containing in extent thirty-five acres three roods and ten perches (35A. 3R. 10P.).

(c) An allotment of land situated at Kandegama aforesaid and bounded on the North and East by the land claimed by villagers, and on the South and West by Oya and Kobonella Estate containing in extent twenty-one acres and three perches (21A. 0R. 3P.) and which said property is otherwise described as follows:—

(a) The northern portion of three acres in extent from and out of all that allotment of land called "Haraslulekehena" of fourteen acres in extent situated at Kandegama aforesaid and which said northern portion is bounded on the East by Galkeeriya, on the South

by the land of Ukurala and Ela, on the West by the limit of Kobonellawatta, and on the North by the limit of chena belonging to Meddumarala.

No. 2.
Plaint of the
Plaintiff.
23-10-47
—continued.

(b) A portion of six acres in extent from and out of all that land called Haraslulekele of seventeen acres in extent, situated at Kandegama aforesaid and which said portion of six acres in extent, is bound on the East by the limit of the remaining portion, on the South by the land of Aratchi, on the West by the limit of Kobonellawatta, and on the North by the limit of a portion of Dingurala.

10 (c) All that portion of two acres in extent from and out of all that allotment of land called Haraslulekele of seventeen acres in extent situate at Kandegama aforesaid and which said portion is bounded on the East by Galpeli-Ella, on the South by the limit of Kawrala's Chena, on the West by Meeyapulle's land, and on the North by the Ella of Bulatwatta.

20 (d) All that portion of thirty-five acres in extent from and out of all that allotment of land called Haraslulekele of one hundred and seventy-seven acres and two roods in extent, situated at Kandegama aforesaid and bounded on the North and East by Haraslule-Ela and the land of natives, on the South and East by the land belonging to natives and Horankande Oya, and on the South and West by Horankande-Ela, and on the North and West by the land described in Plan No. 50110.

(e) All that portion of three acres in extent from and out of all that allotment of land called Haraslulekele of twenty-one acres in extent, situated at Kandegama aforesaid and which said portion of three acres in extent is bounded on the East by Galkeeriya, on the South by the land of Puchaduraya, on the West by the limit of Kobonellawatta, and on the North by the limits of Nattaranpothahena.

30 (f) All that southern portion of three acres in extent from and out of all that allotment of land called Haraslulekele of one hundred and seventy-seven acres and two roods in extent, situated at Kandegama aforesaid and which said southern portion is bounded on the East by the remaining portion, on the South by the limit of land which belonged to Meeyapulle, on the West by the limit of Kobonellawatta, and on the North by the limit of Nattaranpothahena.

40 (g) All that Western portion of four acres in extent from and out of all that allotment of land called Haraslulekele of one hundred and seventy-seven acres and two roods in extent, situated at Kandegama aforesaid and which said western portion is bounded on the East by Manawa, on the south by the limit of the jungle belonging to Kira, on the West by the limit of the garden belonging to gentleman, and on the North by the limit of the land of Kapurala.

(h) All that portion of seven acres in extent from and out of all that allotment of land called Haraslulekele of one hundred and seventy-seven acres and two roods in extent, situated at Kandegama

No. 2.
Plaint of the
Plaintiff.
23-10-47
—continued.

aforesaid and which said portion of seven acres in extent is bounded on the East by the limit of the jungle belonging to Doraliyadde Appuhamy, on the South by Maha-Oya, on the West by the limit of Kobonellawatta, and on the North by the limit of the garden of Steen.

(i) All that allotment of land called Katukitulehena of about six acres in extent, situated at Kandegama aforesaid and bounded on the East by the Katukitule-Ela, on the South by Ela, on the West by the Ela of Kobokelagolla and on the North by ditch.

(j) All that portion of fifteen acres in extent from and out of 10 twenty-one acres in extent in and out of all that allotment of land called Haraslulekele of one hundred and seventy-seven acres and two roods in extent, situated at Kandegama aforesaid and which said portion of fifteen acres in extent is bounded on the East by Haraslulekele-Ela and the land belonging to natives, on the South and East by the land belonging to natives and Horankanda-Ela and on the North and West by the land described in Plan No. 50110, and

(k) An allotment of land called Katukitulekele, situated at Kandegama aforesaid and bounded on the North by a stream and land claimed by natives, on the East by an Ela and a stream, on the South 20 by a stream, and on the West by an Ela and Watiakka-Ella and containing in extent five acres three roods and thirty perches (5A. 3R. 30P.).

THE SCHEDULE "B2" ABOVE REFERRED TO.

1. All that allotment of land called Galassehena now a garden of about sixteen Nellies in kurakkan sowing extent situated at Udawelakanda in Gandeka Korale of the Uda Dumbara Division, in the District of Kandy, Central Province, and bounded on the East by Galkande Menikrala's chena, on the South by the limit of Wattuwaduraya's chena, on the West by below the stone of Patana, and on the North by Ela. 30

2. All that allotment of land called Warawehena now a garden of thirty Nellies in kurakkan sowing extent situated at Udawela in Gandeka Korale aforesaid and bounded on the East by the limit of Tikirimenika's chena, on the south by the limit of Kurundugasmullehena and Mukkangehena, on the West by the limit of Ukkuwaduraya's chena and Herathamigehena, and on the North by Ela Kandura.

3. All that allotment of land called Egodawewehena now a garden of about thirty seers of kurakkan sowing in extent situated at Udawela aforesaid and bounded on the East by limit of Heratham's chena and Galkande in Ukkuwavidanagehena, on the South by the ridge of stone 40 in Ukkuwavidani's chena, and on the West by the limit of Mukkangehena, and on the North by Oya and the limit of Polgahakumburegederahena.

4. All that allotment of land called Kosgahamulakadullehena now a garden of thirty nellies of kurakkan sowing extent situated at Udawela aforesaid and bounded on the East by Oya, on the South by Ela, on the West by Hinikata on Gamagedera Menikrala's chena, and on the North by the limit of Tikirala's chena.

No. 2.
Plaint of the
Plaintiff.
23-10-47
—continued.

5. All that allotment of land called Egodawewehena now a garden of about forty nellies in kurakkan sowing extent situate at Udawela aforesaid and bounded on the East by Ela, on the West by the limit of Ensalwatta, on the North by Ela, and on the South by Appuhamy Aratchi's chena ; the above described five allotments of land are said to contain forty acres and thirty-two perches (40A. 0R. 32P.) as per plan dated 5th and 6th September, 1928, and made by O. V. Bartholomeusz of Kandy, Licensed Surveyor.

Settled by,
(Sgd.) G. T. SAMARAWICKREME,
Advocate.

(Sgd.) H. V. PERERA, K.C.,
Advocate.
(Sgd.) WEERARATNE & HASEEB,
Proctors for Plaintiff.

20

No. 3.

Answer of the Defendant.

No. 3.
Answer
of the
Defendant.
19-12-47

IN THE DISTRICT COURT OF COLOMBO.

ALFRED RICHARD WEERASURIYA of " Srinivasa ",
Ambalangoda.....*Plaintiff.*

No. 18596/M. vs.

ASSENA MARIKAR MOHAMED FUARD, Proctor and Notary Public,
of 130, Hultsdorf Street, Colombo.....*Defendant.*

On this 19th day of December, 1947.

30 The answer of the defendant above-named appearing by M. U. M. Saleem, his Proctor, states as follows :—

1. Answering to paragraph 1 the defendant admits the jurisdiction of this Court to hear and determine this action but denies that any cause of action has accrued to the plaintiff to sue the defendant.

2. The defendant denies all and singular the other averments in the plaint which are not admitted herein.

3. The defendant states that the plaintiff who was desirous of investing moneys on the mortgage of immovable property consulted the

No. 3.
Answer
of the
Defendant.
19-12-47
—continued.

defendant professionally. The defendant rendered the plaintiff professional services from time to time.

4. The defendant admits attesting the mortgage bond No. 2308 dated 3rd December, 1942, on instructions from the plaintiff. The defendant had at all times expressly told the plaintiff that he must satisfy himself about the value and adequacy of the security of any property on which plaintiff was lending moneys and the plaintiff satisfied himself accordingly on the occasion of the loan secured by bond No. 2308 and on occasions of earlier loans.

5. The defendant states that the security which plaintiff had on 10 bond No. 2308 aforesaid was (a) Fincham's land, 145 acres in extent (90 acres being planted in tea, 30 acres in cardamoms, 12 acres is paddy and the rest being virgin forest) subject to a primary mortgage in favour of Khemchand Moolchand and (b) Dankotuwe group about 16 acres in extent, with the residing house standing thereon. The security was adequate in fact, though the defendant did not recommend either the security or the borrower.

6. The defendant admits that (a) on or about the 3rd September, 1943, Khemchand Moolchand referred to above put his bond in suit in action No. 941/M.B. of this Court making the plaintiff an added party to 20 the said action and on a sale of the mortgaged property which was held on 11th May, 1944, Rs. 16,200/- was realised, (b) thereafter the plaintiff filed action No. 1084/M.B. also of this Court and obtained judgment thereon.

7. The allegations in paragraphs 7, 8, 9 and 10 are malicious, and in the nature of blackmail. The action is also barred by the prescriptive ordinance.

Wherefore the defendant prays—

- (a) that the plaintiff's action be dismissed,
- (b) for costs and such other and further relief as to this Court shall seem meet.

30

(Sgd.) M. U. M. SALEEM,
Proctor for Defendant.

No. 4.
Issues
Framed.

No. 4

Issues Framed.

9-5-49.

Plaintiff and defendant present.

MR. ADVOCATE A. L. JAYASURIYA with MR. ADVOCATE SAMARAWICKREME instructed by MESSRS. WEERARATNE AND HASEEB for the plaintiff.

MR. ADVOCATE THIAGALINGAM with MR. ADVOCATE AZEEZ instructed 40 by MR. M. U. M. SALEEM for the defendant.

Mr. Jayasuriya states his case and suggests the following issues :—

No. 4.
Issues
Framed.
—continued.

1. Did the plaintiff employ the defendant as his legal adviser and to act for and on his behalf in connexion with the investment of Rs. 15,000 in or about November, 1942 ?
2. In pursuance of such employment did the defendant invest the said sum of Rs. 15,000 with K. R. Samaratunge on Bond No. 2308 of 3-12-42 ?
3. Did the defendant recommend to the plaintiff.
 - (a) the title of K. R. Samaratunge to the premises mortgaged as sound ?
 - (b) the value of the security as sufficient ?
 - (c) the borrower K. R. Samaratunge as reliable ?
4. If issue 3 (a) and/or (b) and/or (c) are answered in the affirmative, did the defendant do so (a) well knowing that the security was inadequate and of doubtful value (b) and/or with a view to furthering the interests of others whose interests were adverse to that of the plaintiff ?
5. Has defendant fraudulently concealed material facts within his knowledge relative to the investment with a view to inducing the plaintiff to make the said investment ?
6. Has the plaintiff thereby committed (a) a breach of contract of employment with the plaintiff and/or (b) an intentional dereliction of professional duty relative to this investment ?
7. What damages, if any, is plaintiff entitled to ?

Mr. Thiagalingam objects to Issue No. 4 on the ground that it assumes that the security was inadequate and it assumes also that the defendant was furthering the interests of others whose interests were adverse to the plaintiff. He suggests the following further issues :—

8. Was the security in fact inadequate ?
9. Did the defendant ever have knowledge that the security was inadequate in fact ?
- 10A. What were the interests of others referred to in Issue No. 4 ?
- 10B. If so, were such interests adverse to those of the plaintiff ?
- 10C. Did the defendant have any knowledge of such adverse interests ?
- 10D. Did the defendant suppress such knowledge from the plaintiff ?
11. Do the facts pleaded in the plaint disclose a cause of action against the defendant ?
12. Is the plaintiff's claim, if any, prescribed ?

I adopt all the Issues 1 to 12. The case goes to trial on Issues 1 to 12.

Mr. Thiagalingam submits an additional list of witnesses notice of which was given to Proctors for plaintiff on 7-5-49.

Mr. Jayasuriya states that this list of witnesses was submitted to his Proctor on 7-5-49. He says it is too late.

No. 5.

No. 5.
Plaintiff's
Evidence.

Plaintiff's Evidence.

MR. JAYASURIYA calls :

L. B. Ekanaike.
Examination.

L. B. Ekanaike, affirmed, 53, Clerk, Land Registry, Kandy.

(Shown Bond No. 2308 dated 3-12-42 P1). This is a certified copy of a bond given by Mr. Samaratunge to the plaintiff. The Proctor who has attested the deed is Mr. Fuard. There are 3 schedules in the bond : A which has 6 lands, B1 which has 14 lands. There is no schedule marked B2. There is a last schedule which has no number.

I produce certified copies of extracts of encumbrances marked P2¹⁰ to P10 and another set of extracts of encumbrances marked P11 to P34—in all 24 documents.

Cross-Examined. Nil.

(Sgd.) H. A. DE SILVA,
D. J. 9-5-49.

K. Moolchand.
Examination.

K. Moolchand, affirmed, 48, Dealer in Textiles, 177, 2nd Cross Street, Pettah, Colombo.

I have been in business in Ceylon for 28 years. Today I am worth about Rs. 70,000 to Rs. 80,000. I know the defendant for about 20 years. When I was employed at K. Doulatram & Sons defendant was²⁰ that firm's Proctor. Subsequently when I left that firm and bought a shop defendant was my Proctor. I have lent money through the defendant. I had done about five or six businesses in coupons through the defendant before this Samaratunge business. Mr. Shamsudeen introduced Mr. Samaratunge to me. Shamsudeen is the defendant's brother. Shamsudeen works in defendant's office ; he also used to come to the Main Street on business. I first lent Samaratunge about Rs. 12,000 on a property at Panwila in the Kandy District. That was one year before I went to India ; that was about 1940. That money was repaid. I do not know how it was repaid. Thereafter I again lent to Samaratunge³⁰ Rs. 35,000. That was in 1941. I lent the money on an agreement on coupons and on a mortgage. I produce Agreement No. 2203 of 2-6-41 marked P35 by which Samaratunge leased a certain number of lands to me and took from me Rs. 35,000. The money was given contemporaneously on a bond and the agreement. I produce Bond No. 2204 of 2-6-41 marked P36. Both this agreement and the mortgage bond relate to the sum of Rs. 35,000 lent by me. Defendant attested these two documents. I thought that Samaratunge was the owner of the properties that were mortgaged to me. The land that was mortgaged by P36 is called Fincham's land. The Panwila land was not mortgaged on Bond P36.⁴⁰ The mortgage on the Panwila land was discharged. Fincham's land is about 140 acres. Later I came to know that this estate was made up of six or seven lands.

It was Shamsudeen who arranged the second mortgage of Rs. 35,000. I cannot remember how long it was before the documents were executed. Shamsudeen approached me about this matter about a fortnight before the execution of P35 and P36.

No. 5.
Plaintiff's
Evidence.
K. Mool-
chand.
Examina-
tion.

I thought Samaratunge was the owner of this land. Before I lent the money Samaratunge went with me in a car to Fincham's land. I believed Samaratunge was the owner of Fincham's land.

—continued.

Q. Subsequently did you come to know that Samaratunge had purchased the land with your own money? A. No, I did not come to know subsequently that Samaratunge had purchased this land with my money. How could I lend money if he did not own the land?

I did not come to know subsequently that at the date I inspected the land with Samaratunge that he was not the owner. When I inspected the land I thought that Samaratunge was the owner. I took it for granted that when I lent the money Samaratunge was the owner.

Subsequently I filed action on bond P36. Subsequently Samaratunge and I looked into accounts and got a document drafted. Defendant drafted the document. Before I filed the action I looked into accounts with Samaratunge.

20 (Shown Agreement No. 634 of 15-1-43 P37). Samaratunge and I looked into accounts and it was found that a sum of Rs. 44,500 was due from Samaratunge to me. Thereafter agreement P37 was attested by Proctor Kanagarajah. I know the name of the notary who attested agreement P37. I went to Mr. Kanagarajah.

Thereafter I filed Action No. 941/M.B. of this Court. I produce certified copy of the plaint in that case marked P38, and certified copy of the journal entries in the case marked P39. The plaint is dated 3-9-43. I sued for a total amount of Rs. 51,620. To that action I made the plaintiff in the present suit a party as a necessary party and summons 30 was taken out on him. I point to journal entry in P39 under date 22-10-43. Plaintiff in the present suit did not appear in that case though served with summons. I obtained decree in that case and the lands mortgaged were sold. I myself purchased the lands for Rs. 16,000. There were one or two others present at the same. Plaintiff in this suit was also present at that sale.

(To COURT : Plaintiff did not bid).

(Exam-in-chief contd.). I filed plaint P38 through Messrs. F. J. & G. de Saram. I went to Messrs. Sarams because I liked those proctors.

On my capital I lost only about Rs. 1,000 and two years time jump- 40 ing between Colombo and Kandy. I lost the whole of the interest. I received tea coupons instead of interest. I thought that I was lending Rs. 35,000 on a property worth about one lakh. That was my own valuation. After I lent the Rs. 35,000 and when the coupons system was stopped in May, 1942, I came to know that this estate had been purchased with the money I had lent. I later learned that at the time I

No. 5.
Plaintiff's
Evidence.
K. Mool-
chand.
Examina-
tion.
—continued.

went to inspect the land with Samaratunge that the latter was not the owner of the property. I came to know subsequently that Samaratunge bought this property with the money I lent him. If, at that time, I knew that Samaratunge was purchasing the land with the Rs. 35,000 I was lending him, I would not have lent him even Rs. 15,000.

Defendant attested the mortgage bond in my favour. Defendant did not tell me that on the same day Samaratunge was buying that land for Rs. 35,000 ; how can the defendant say that ? If the defendant told me this I would not have lent the money.

I cannot say what Samaratunge was prior to the purchase of this 10 property.

K. Mool-
chand.
Cross-
Examina-
tion.

Cross-Examined. In 1940-41 there was a good market in tea coupons. Quite a number of investors lent their monies on the security of tea coupons. Six months prior to June, 1941, I lent Rs. 12,000 on the Panwila property. I did not see the Panwila land before I lent the money. Shamsudeen asked me to lend the money and I lent it. I do not know the name of the Panwila land. I was told that the Panwila land was about 13 acres tea. Shamsudeen told me that there was a house on the land. I asked defendant whether I was to lend the money on that land and he advised me to lend. I do not know whether Shamsudeen was a broker. Prior 20 to the Panwila transaction Shamsudeen put through three or four trans- actions for me. In those transactions Shamsudeen acted as a broker.

Shamsudeen came to my shop at Main Street to speak to me regarding these transactions. He also went to other people in the Main Street and put through business. I used to meet Shamsudeen in the defendant's office. I do not know where Shamsudeen worked.

The Rs. 12,000 I lent Samaratunge on the Panwila land was returned. That too was a coupon deal. It was also a mortgage. The mortgage bonds carried no interest because I was going to get the tea coupons. According to the agreement I had to credit the mortgagor with a certain 30 sum of money over and above what I got as interest. The price of the coupons was fixed. Anything above the price went in reduction of the capital.

In 1941, it was Shamsudeen who asked me for a loan of Rs. 35,000 on Fincham's land. Fincham's land was altogether 144 acres in tea and cardamoms and some jungle. Defendant told me that there was Crown title in regard to a part of the land and that it was better title ; he also told me that the rest was village title.

I am an Indian merchant and a hard businessman. Rs. 35,000 is a large sum of money. I am only worth Rs. 70,000. I inspected the 40 land with Mr. Fuard and Samaratunge. On the date of the inspection when I went to pick up Mr. Fuard he said he could not come because I was late. I asked him to come. I knew Samaratunge since the mortgage of the Panwila property. Samaratunge used to see me often. Brokers like to make money on these deals. Before Shamsudeen could tell me about Samaratunge wanting money Samaratunge did not tell me he

wanted the money. He did not breathe a word about it to me. After the Panwila mortgage and before the Fincham's land transaction I met Samaratunge often. Samaratunge brought some other business also. Samaratunge was coming with Shamsudeen. They wanted me to lend money to some other man; I lent that money also. That other man was a cousin of Samaratunge's or so. Samaratunge did not tell me that he wanted Rs. 35,000. It was Shamsudeen who told me that a party wanted Rs. 35,000 on a mortgage. Later I knew that it was Samaratunge.

No. 5.
Plaintiff's
Evidence.
K. Mool-
chand.
Cross-
Examina-
tion.
—continued.

After inspecting the land I told the defendant to attest the deed. I know Mr. McHeyzer. He is a friend of mine. He is not a very good friend of mine, but a friend. Defendant did not discuss this matter with Mr. McHeyzer. I went and asked Mr. McHeyzer.

The bond P36 carried no interest. In June, 1941, there was a good market in coupons. I have brought my account books to Court. My coupon transactions of 1941 appear in my books. I made a fair amount of money in 1941. In May, 1942, the coupon market began to drop. All the time Samaratunge and I were good friends. Then Samaratunge and I went to Proctor Kanagarajah's office and settled matters. I had to get interest from May, 1942. I say that the bond carried interest at 12 per cent. from the day the coupons stopped. Coupons stopped in May, 1942. So I heard. I do not know that the coupon market ceased in May, 1943. I heard that the coupons ceased in May, 1942. After May, 1942, I did not receive any coupons. In January, 1943, Samaratunge accompanied me, at my request, to Mr. Kanagarajah's office. Mr. Fuard knew nothing about this. On 15th January, 1943, the amount due to me was fixed at Rs. 44,500.

In April, 1942, the Japanese bombed Ceylon. I do not know that thereafter properties near about Kandy appreciated in value. I went to Badugala Estate. I did not think it safe to be in Colombo. Lots of people went to Kandy. Fincham's land is 32 miles from Kandy. I cannot say whether these lands naturally went up in value. I myself sold a property in Colombo and sent the money to India.

On 3rd September, 1943, I filed action P38 on the mortgage bond. I do not know anything about making secondary mortgagees parties, etc. My proctors Messrs. F. J. & G. de Saram did the work. I obtained decree and my proctors sent Mr. Vandersmagt to value the land. About the time I filed action I went and saw the land. I can now say that Samaratunge is a good man because he is now suffering a lot; he is not worth anything today. How can Samaratunge be a good man when he cheated me of my money, when he purchased the land with my money.

In 1943 before filing action I went and saw Fincham's land. One day when I met Samaratunge at Kandy he told me that he used to go to the estate, that he stayed three weeks on the estate every month. I went to the estate bungalow and inquired for Samaratunge. I can say that I did not inspect the property. I only inquired for Samaratunge.

No. 5.
Plaintiff's
Evidence.
K. Mool-
chand.
Cross-
Examina-
tion.
—continued.

I did not meet him. I went to Kandy in search of Samaratunge. The estate bungalow is by the road side. Apart from a tea bush I did not see even a tea leaf.

At my proctor's request Mr. Vandersmagt made the report D1. I do not know at how much he valued the land. He told my proctors that he valued the land at Rs. 45,000.

(Mr. Jayasuriya objects to the production of Mr. Vandersmagt's report unless he is being called.

Mr. Thiagalingam states that Mr. Vandersmagt was the authorised agent of the witness in the mortgage bond action when he went to value the land as auctioneer and therefore the report is a statement made by the witness' agent. He therefore says that the report is admissible. A certified copy of the report filed in case No. 941/M.B. is the document that is now sought to be produced.

Mr. Jayasuriya says that Mr. Vandersmagt is the agent of the Court or the proctors.

ORDER.

In the mortgage bond action, a certified copy of the plaintiff of which has been produced marked P38 by Mr. Jayasuriya, the witness who was the plaintiff in that case had asked that order should be issued to sell the property mortgaged to Mr. Vandersmagt in the event of the plaintiff in that suit getting decree in his favour. Plaintiff in that case having obtained decree, the Court, in terms of the plaintiff's prayer, issued the commission to Mr. Vandersmagt. No doubt Mr. Vandersmagt got his authority from this Court to carry out the sale but he was undoubtedly the person nominated by the plaintiff in that suit as his auctioneer. So the question for consideration is whether Mr. Vandersmagt was this witness' agent to carry out the sale in the mortgage bond action. Mr. Vandersmagt in pursuance of that commission issued to him to sell the land sent in a report which has been filed of record in the case and Mr. Vandersmagt himself carried out the sale. I think that this report of Mr. Vandersmagt can be admitted in evidence in this case as against this witness, but in this case neither this witness is a party nor Mr. Samaratunge against whom it was issued. I therefore reject this document D1 unless and until Mr. Vandersmagt is called.

Mr. Thiagalingam states that he will call Mr. Vandersmagt.

The document then is marked D1 provisionally on the understanding that Mr. Vandersmagt will be called).

Cross-Examination *continued*. Then I and Weerasooriya (plaintiff in the present case) agreed that the sale should take place in Mr. Vandersmagt's office in Colombo. About four or five people came to the sale.

Fincham's land had a cottage and not a bungalow. I did not think it good to sell the land on the spot. I myself purchased the land for Rs. 16,000 at the sale. Others also bid for the property. I was not

happy in the purchase. Within two weeks of my purchasing it I sold it for Rs. 28,000. I sold the land for Rs. 30,000. I deny that I sold the land for more than Rs. 30,000 although I put the value at Rs. 30,000. On the date I became the purchaser of the property I did not tell McHeyzer that I bought the property for Rs. 30,000; I told him I purchased the land for Rs. 16,000. The day after my purchase at Vandersmagt's rooms Mr. McHeyzer came to see me at my bungalow and offered me Rs. 25,000. When he offered Rs. 25,000 I thought I could sell it for more. Mr. McHeyzer did not offer me Rs. 40,000.

No. 5.
Plaintiff's
Evidence.
K. Mool-
chand.
Cross-
Examina-
tion.
—continued.

10 After the purchase at the auction I made no agreement to sell to anybody. That day I got a cheque from the party to whom I sold the property. I showed the cheque to Mr. Fuard. When I showed Mr. Fuard the cheque I did not tell him that I had a bigger offer and ask him whether I could return the cheque. I asked the defendant whether I was to sell for Rs. 30,000. This was after I got the cheque. When I got the cheque I had not agreed upon a figure. The broker gave me the cheque and asked me to inform him tomorrow. When the broker gave me the cheque he told me that the prospective buyer was going to buy at Rs. 30,000. I did not agree to sell for Rs. 30,000. The broker gave me
20 a cheque for Rs. 2,000 and asked me to think the matter over and inform him tomorrow. I deny that I told the defendant that I was selling for Rs. 40,000.

The Income Tax Department does not worry people. Tax is paid only on profit and not on capital. Even if I sold for Rs. 50,000 I had to pay no income tax.

1943 was blackmarket days. I do not know that the Income Tax authorities questioned people as to where they got money with which they purchased properties.

Re-Examination. I actually sold the property for Rs. 30,000 but I
30 had to pay Rs. 2,000 as commission. That is why I said that I sold the property for Rs. 28,000.

K. Mool-
chand.
Re-Exami-
nation.

A broker came and gave me an advance of Rs. 2,000 by cheque about ten or fifteen days after I purchased the land at the Court sale. He asked me to keep the cheque and consider the offer. I took the cheque and went to see the defendant. I wanted to consult him as to how much I was losing. I wanted to show the defendant that I was losing so much. I went to the defendant because I was sorry. I did not think that the defendant was responsible for my loss. I only wanted to tell the defendant that I had lost on the transaction. Defendant did not offer to buy
40 this land from me.

(Sgd.) H. A. DE SILVA,
District Judge.
9-5-49.

No. 5.
Plaintiff's
Evidence.
K. R.
Samaratunge.
Examination.

K. R. Samaratunge, affirmed, 47, unemployed, Kandy.

I was last employed on the 31st December, 1946, as a clerk in the Army. I met with a motor accident in December, 1945. I was in hospital for seven months after the accident. After I left hospital I was given a provisional allowance and I just attended office. I have not been in active employment from the date of my accident.

I am a native of Panwila in the Kandy District. I owned certain lands there which I have inherited. I owned six blocks of land. I owned undivided shares in blocks but we took the shares of certain divided portions. They were not consolidated into one property. The total¹⁰ extent of those undivided shares came to 14 to 16 acres. I also had a residing house in which my family and I lived. I have been living in that house since my birth. I had no plans or title deeds to these lands. I know the defendant since 1939 or so. I used to visit him with his brother in connexion with the sale of coupons. I used to meet the defendant with defendant's brother. I used to meet the defendant in his office. Defendant's brother is Shamsudeen *alias* Shams.

(Interval).

(Sgd.) H. A. DE SILVA,
District Judge. 20
9-5-49.

(After lunch).

K. R. Samaratunge, affirmed, recalled.

I wanted to raise a loan on the security of the Panwila lands. I cannot remember the exact date when I raised the first loan on my Panwila lands. I remember raising a loan from Sufi Ismail on the 30th September, 1940, of Rs. 300. Shamsudeen raised this loan for me. Defendant attested the document. I think I borrowed Rs. 300 first. Later I borrowed another Rs. 800 from the same person. On both occasions the same notary attested the bonds. The bond for Rs. 800 was settled³⁰ when I borrowed money from Moolchand. I cannot remember the date I gave the bond to Moolchand. I borrowed Rs. 2,500 from Moolchand. Shamsudeen transacted this loan and the defendant attested the document.

I borrowed Rs. 35,000 again from Moolchand. Long after I got the big amount from Moolchand I borrowed money from Naina Marikar on the Panwila lands on a primary mortgage. I borrowed money from Moolchand on the security of Fincham's land. I do not know the relationship between Mr. Fuard and Naina Marikar; I do not know whether they are related. Naina Marikar put the bond in suit. I produce certified⁴⁰ copy of the plaint in D.C. 532/M.B., Colombo, marked P40, dated 20th April, 1942.

Mr. M. S. Naina Marikar was the plaintiff in that case and I was the defendant. The bond of indenture is No. 2228 of 20-8-41, certified copy of which I produce marked P41 according to which the sum borrowed is Rs. 3,750/-.

I produce the journal entries in that case marked P42 according to which, although the plaint was filed on the 20th April, 1942, summons could not be served on the defendant till the 17th August, 1942. I appeared in Court and asked for time to pay. I was given time. I settled this claim by borrowing from the plaintiff in this case. I had met plaintiff in Mr. Fuard's office several times before I borrowed the money from him. Prior to my taking the loan from the plaintiff I met him at a house at Maradana. I went there to arrange for the loan with the plaintiff. Before that I had met him in the defendant's office.

No. 5.
Plaintiff's
Evidence.
K. R.
Samara-
tunge.
Examina-
tion.
—continued.

10 I knew to whom Fincham's land originally belonged. It belonged to Mr. Simon de Silva. The land consisted of tea and cardamoms. At the time I took up work on the estate it was neglected. This was about the middle of 1921. I was employed by Mr. Silva to be in charge of the estate as conductor. In the beginning I was paid a salary of Rs. 100 a month. I continued in this employment until I purchased the estate from him.

Before I raised the money from Mr. Moolchand I was not paid anything by way of salary. I was not paid a salary for about three or four months before I raised the money from Moolchand. I do not know when
20 Mr. Silva bought this estate or for what amount. I am a married man. I have a wife and children. I was not always on the estate. I was able to save something out of my salary. I have a private income. In 1941 my private income was about 3 to 4 hundred rupees. From my private income and salary I was able to save about Rs. 100 a month in 1941. At the time I raised the loan from Moolchand I had no savings. I wanted to raise a loan on Fincham's land and I approached Mr. Moolchand directly. I went and saw him in his business place. At the time I saw him in his business place I was not the owner of the property. Mr. Simon Silva asked me to find a buyer for this property. I was able
30 to find a buyer for him. Finally he suggested that I should buy it. Then I started to raise this loan from Moolchand. I bought the property with the money I got from Moolchand. The deed of transfer to me was attested by Mr. Fuard. I do not remember the date the document was executed. The deed in my favour for Fincham's land and the bond given in favour of Moolchand were executed on the same day. The property was worth more than Rs. 35,000. On this same day that the bond was executed in favour of Moolchand I executed another document in favour of Shamsudeen and Umma Ryhan ; that was a secondary mortgage for Rs. 6,000 on this property. I know that Shamsudeen is defendant's
40 brother and that Umma Ryhan is defendant's wife. The notarial deeds were attested by the defendant.

After Moolchand visited the property I directed Shamsudeen to meet Moolchand. After Moolchand visited the property all of us met in defendant's office about two or three months before the bond was executed. Moolchand promised to give me Rs. 40,000. Later on he said that he could give only Rs. 35,000. This amount was not sufficient for me. I had to raise another Rs. 5,000 or Rs. 6,000. I spoke to Shamsudeen and

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Plaintiff's
Evidence.
K. R.
Samara-
tunge.
Examina-
tion.
—continued.

asked him to make arrangements to raise this Rs. 6,000 on a secondary mortgage of the same property. Shamsudeen raised it. That is the bond for Rs. 6,000 I gave to Mrs. Fuard and Shamsudeen.

I paid Mr. Simon Silva Rs. 35,000 to buy the land. Out of the Rs. 6,000 I borrowed I had to pay the notarial expenses. I paid Shamsudeen Rs. 750 as commission. I cannot remember what I paid as notarial expenses. After paying the notarial expenses and commission to Shamsudeen I got the balance to my hands.

I paid and settled the bond in favour of Shamsudeen and Umma Ryhan. I paid that sum with the money I borrowed from the plaintiff¹⁰ in this case. A part of Naina Marikar's debt was paid with the money raised from plaintiff in this case and a portion went to settle the debt due to Shamsudeen and defendant's wife. I do not know that Naina Marikar is defendant's brother-in-law. I had nearly Rs. 4,000 left from the money raised from the plaintiff after paying my debts.

Plaintiff deducted three months interest at the execution of the bond. Thereafter no interest was paid by me.

Sometime after I gave the bond to Moolchand for Rs. 35,000 he and I met and went into accounts. We looked into accounts at Moolchand's shop. From there we went to a notary's office. There this Agreement²⁰ No. 634 of 15-1-43 P37 was drawn up and signed. P37 is a certified copy of that agreement. By that agreement my liability to Moolchand was raised to Rs. 44,500. The amount of Rs. 35,000 borrowed came to Rs. 44,500 after looking into accounts. This amount was found to be due on the basis of the rebate I owed on the tea coupons according to the agreement P35. I did not realise that I was jeopardising the interests of the plaintiff in this case when I entered into the agreement P37.

When tea coupons were issued Moolchand took the coupons. After the coupons ceased I did not pay any interest. Then he put the bond in suit. Before putting the bond in suit he requested me to pay up the³⁰ money. I was not in a position to pay. I tried to raise money elsewhere to pay Moolchand. I failed. I did not request the defendant to raise money for me. I cannot remember. I asked Shamsudeen. I failed to raise any money. I also tried to raise the money and failed. Every time I took a man who was prepared to lend me money to Moolchand he demanded more money. Whenever I tried to raise money by way of mortgage I did not fail to do so on account of the title. Ultimately Moolchand sued me in case No. 941/M.B. of this Court P38. I received summons in this case. On receipt of the summons I went and saw his lawyers. I tried to get time from the lawyers to settle. I cannot⁴⁰ remember whether I appeared in Court. Decree was entered against me by default. I cannot remember whether I asked the Court for time to pay the claim. I did not attend the sale by Mr. Vandersmagt.

Plaintiff wrote to me calling upon me to pay the debt. I do not have any of his letters. I replied to plaintiff's letters. (Shown letter of 12-5-45 P43). This is my letter to the plaintiff.

(Shown letter of 23-5-45 P44). This is written by me to the plaintiff. The lawyers referred to in my letter P44 are not the defendant. Somebody had given the plaintiff some information about the title. That is what the plaintiff told me. Those are the lawyers I referred to in the letter. I do not know who the lawyers are. Those are the lawyers plaintiff mentioned to.

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Plaintiff's
Evidence.
K. R.
Samara-
tunge.
Examina-
tion.
—continued.

I cannot remember if I received a letter dated 28-5-45 from the plaintiff. I have been noticed to produce the originals of all the letters written by plaintiff to me.

10 (Shown copy of a letter dated 28-5-45). I cannot remember if I received this letter.

(Mr. Jayasuriya moves to mark the document under section 65.

Mr. Thiagalingam objects to Mr. Jayasuriya producing through this witness what purports to be a copy of a letter written by the plaintiff to this witness which the witness does not accept. The person noticed must admit having received the original document and the original document is either lost or destroyed. In such a case a copy may be tendered in evidence on proper proof. When the recipient says he does not remember to have received such a letter and he does not admit having
20 received the original then a copy cannot be tendered at that stage.

At this stage Mr. Thiagalingam withdraws his objection to the production of the copy of this letter dated 28-5-45.

ORDER.

As Mr. Thiagalingam has now withdrawn his objection this document is admitted and it is marked P45. P45 is initialled by Court and returned to the proctor for plaintiff).

(*Exam.-in-chief contd.*). Plaintiff sued me in D.C. 1084 of this Court on 1-6-44. I produce certified copy of the plaint in that case marked P46. Defendant is the proctor for the plaintiff in that case.

30 I produce certified copy of the journal entries in that case marked P47. I was the defendant in that case and M. S. Naina Marikar was added as a necessary party. Naina Marikar was made a party to that suit because I borrowed some money from him on the security of one of the lands hypothecated to the plaintiff. I gave a bond to Naina Marikar for Rs. 1,000 on the same day that I gave the mortgage to the plaintiff because I could not settle Naina Marikar fully. So I gave him the bond for the balance due on the decree. With the Rs. 4,000 that I had left when I borrowed the money from the plaintiff I could not settle Naina Marikar's debt fully because I wanted the Rs. 4,000 for some other
40 purpose. Naina Marikar was prepared to accept a secondary mortgage on the Panwila lands for the balance Rs. 1,000 due to him. Decree was entered against me and a sum of Rs. 2,250 was realised by the sale of the Panwila lands that were mortgaged to the plaintiff. I was in hospital when my lands were sold by plaintiff. I did not authorise anybody to

No. 5.
Plaintiff's
Evidence.
K. R.
Samara-
tunge.
Examina-
tion.
—continued.

watch my interests at the sale. I do not know the purchaser at the sale. I am not in possession of the Panwila lands now. I do not know of any trouble that the purchaser at the sale had ; there is no trouble. To my knowledge there is no partition action now pending in respect of those lands.

Defendant has not been to my Panwila lands at all. Shamsudeen has been there several times. Defendant went to Fincham's land with Mr. Moolchand. I do not know if defendant went to Fincham's land on any other occasion.

K. R.
Samara-
tunge.
Cross-
Examina-
tion.

Cross-Examined. In 1941 I approached Moolchand for a loan. He 10 agreed to lend me Rs. 40,000. He wanted to be secured both by a mortgage and a coupon agreement. Moolchand was prepared to take 7 or 8 cents from each coupon pound by way of interest on the Rs. 40,000 and to credit me with the balance in liquidation of the principal due. Thereafter Moolchand visited the property with Mr. Fuard and me. Before Moolchand visited the property with me and the defendant Mr. Fuard suggested that a valuer be taken. Moolchand wanted me to pay the valuer's fee. I said that there was no necessary for a valuer to go there as the property was so well maintained. Moolchand was not prepared to pay the valuer's fees. Moolchand suggested that he visit the property with the defendant 20 and to come and take the opinion of some valuer whom he knew. Moolchand was a good businessman. I showed Moolchand the property. The property was in good order at the time. After the visit I do not know whether Moolchand and defendant saw a valuer. On that day Moolchand told me nothing. Later he said that he was prepared to give me Rs. 35,000 and he wanted 20 cents from the value of each coupon pound as interest. Shamsudeen came on the scene only after Moolchand refused to give me Rs. 40,000 and offered only Rs. 35,000. I knew Shamsudeen three or four years earlier than I came to know the defendant. Shamsudeen is a Muslim and a brother-in-law of the defendant. At that 30 time I did not know that he was treated differently by the members of his family. I learned this later casually. I told Shamsudeen to try to induce Moolchand to give me the full Rs. 40,000. I was not successful. I wanted Rs. 40,000 to pay Rs. 35,000 to Simon de Silva to purchase the property and Rs. 5,000 for stamp fees and also to spend on some work I was doing at the time on the estate. When Moolchand refused to give me the Rs. 40,000 I asked Shamsudeen to get me another Rs. 6,000 and promised him brokerage. Shamsudeen promised to see me on the matter three or four days later. Shamsudeen told me that he had Rs. 2,500 and that he could arrange to get the balance money to make up the Rs. 6,000 40 from Mrs. Fuard. Eventually I signed P35 the coupon agreement, P36 the mortgage bond, both in favour of Moolchand, and also mortgage bond 2205 D2 in favour of Shamsudeen and the defendant's wife for Rs. 6,000.

In June, 1941, I knew the plaintiff. I had met him at defendant's office. About two months after I gave the bonds to Moolchand and Shamsudeen I wanted to raise some more money on the Panwila lands.

I was in possession of divided portions of the Panwila lands for a good number of years. My father died in 1934. My father also possessed divided portions and I continued to possess after his death. From the time I remember things my father was in possession of divided portions. The bond in favour of Sufi Ismail was also attested by the defendant. About the time of Ismail's deed defendant sounded me about my signing a deed of declaration that I was the true owner of these lands and an affidavit. I remember signing the affidavit and the declaration. (Shown deed of declaration 2147 of 20-12-40 D3). My signature is on this document.

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Plaintiff's
Evidence.
K. R.
Samara-
tunge.
Cross-
Examina-
tion.

—continued.

As far as I know there is no difficulty or doubt with regard to my title of the Panwila lands. My father and I were in possession for well over 10 years, in 1940.

I gave Moolchand on Bond P36 security by mortgaging the entire 146 acres of Fincham's land. 146 consisted of about 85 acres tea, about 30 odd acres cardamoms, a small paddy field and the rest jungle. I gave Shamsudeen and defendant's wife a secondary mortgage of only the tea on Fincham's land. I did not give them a secondary mortgage of the entire land because I wanted to sell the cardamom portion in blocks. At that time cardamoms fetched a good price. Then I could have sold the 30 acres cardamoms at about Rs. 45,000. When two months later I wanted more money I approached Naina Marikar and I obtained Rs. 3,000 odd on P41 on a primary mortgage of the Panwila lands, which consisted of high land and a house worth about Rs. 20,000. The house is still there. That house was partly built by my father and partly by me. I must have spent about Rs. 8,000 to Rs. 10,000 at that time for the part of the house I built. In the early part of 1942 P41 was put in suit. At that time too I had seen plaintiff in the office.

(It is now 4.05 p.m. No time. Trial adjourned to 16th instant. The cross examination of this witness will be continued the next day.

Mr. Jayasuriya wants witnesses Shamsudeen, Naina Marikar to be warned as he has no time to serve summons on them for the next date. Shamsudeen and Marikar are present. They are warned to attend Court on the 16th inst. if their batta is paid. They are informed that no fresh summons will be served on them. Mr. Jayasuriya's client will have to pay these witness' batta for the next day. Witness Samaratunge is informed that his next day's batta will be paid to him on the next day in Court.

(Sgd.) H. A. DE SILVA,
District Judge.
9-5-49.

40

Trial resumed.

16 5-49.

Plaintiff and defendant present.

Appearances as on the previous date except that Advocate K. Saravanamuttu also appears with Advocate Thiagalingam for the defendant.

No. 5.
Plaintiff's
Evidence.
K. R.
Samaratunge.
Cross-
Examina-
tion.
—continued.

Mr. Thiagalingam points out that in the earlier part of the cross examination of the witness Moolchand, that is, in the 4th line of the typescript in the cross examination of the witness the following appears: "I lent Rs. 45,000 on the Panwila property". He says this is an obvious error and should be Rs. 12,000. Mr. Jayasuriya agrees that is a mistake and both counsel agree that the figures 45,000 in the 4th line should be deleted and Rs. 12,000 inserted therefor. I make the amendment accordingly and initial same.

Mr. Thiagalingam also points out that on page 9 of the last day's proceedings the name of the gentleman who was sent by the proctors was not Mr. McHeyzer but Mr. Vandersmagt. Mr. Jayasuriya agrees that it should be Mr. Vandersmagt. By consent of counsel in the first line on page 9 I delete "McHeyzer" and substitute therefor "Vandersmagt".

Mr. Thiagalingam points out that in line 10 on page 11 the name of the gentleman should be not Vandersmagt but McHeyzer. Mr. Jayasuriya agrees that it should be McHeyzer. Both counsel move that the correction be made. I make the alteration and initial it.

Plaintiff's case *continued*.

K. R. Samaratunge, affirmed.

Recalled. Cross-examination continued. The Rs. 35,000 bond was given in June, 1941, to Moolchand. Two months later I raised on my Panwila properties on bond P41 a sum of Rs. 3,000. I raised that Rs. 3,000 because I had given another bond in favour of Moolchand on which I owed him money and he wanted me to settle that as he did not want to have two accounts. The Rs. 3,000 was therefore borrowed to pay off Moolchand. At the date of Fincham's mortgage, Moolchand already held a primary mortgage over the Panwilla lands in Rs. 2,500. That Rs. 2,500 was paid to Moolchand by raising money on P41 from Naina Marikar. Naina Marikar put his bond in suit during the early part of 1942.

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I recall meeting the plaintiff in Mr. Fuard's office about July or August, 1942. I was waiting for Mr. Fuard and there were Mr. Weerasuriya the plaintiff and myself in the office and the plaintiff asked me whether I was a broker. I said I was a planter and we started discussing about planting and other things. The plaintiff said he was interested in tea and he had a little money to be invested on a tea property and then Mr. Fuard came in. That was the first occasion that plaintiff mentioned to me that he had money to be invested to the best of my knowledge. Thereafter in Naina Marikar's mortgage bond action which had been filed against me I obtained time from Court to pay the money. I cannot remember how much time I obtained. About this time I approached the military to supply them with timber and I wanted money to carry out that contract. I had no money to pay Naina Marikar. I went in search of Mr. Weerasuriya, the plaintiff. I cannot remember the date, it was about the latter part of 1942—after I got the contract from the military, It was also some time after I got time from Court to pay Naina Marikar's

debt. I went in search of the plaintiff to a house in Maradana. I met him and asked him for a loan of Rs. 10,000. I approached him direct. I suggested to him that he could take as security my Panwila house property and my other lands at Panwila. Mr. Weerasuriya said that the security was insufficient, that he was interested in tea and wanted additional security over and above the Panwila properties.

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I said I could give him 40 acres of land in cardamom in addition. That 40 acres had to come out of Fincham's land. I told him I could give him a secondary mortgage of the 40 acres and the plaintiff asked me who had the primary mortgage and other particulars. I told him that there was a primary mortgage in favour of Moolchand for Rs. 35,000, and a secondary mortgage of the tea alone for Rs. 6,000 in favour of Shamsudeen and defendant's wife. I expressly told him that. Plaintiff then said he will think about it and postponed the matter and asked me to come a few days later. I again saw the plaintiff about a week later and asked him for the money. He said he could not lend that amount on the Panwila properties and on a secondary mortgage of the cardamom land only and wanted a secondary mortgage of the entirety of Fincham's land. I told him that there was a secondary mortgage for Rs. 6,000 of the portion in tea and, unless I paid that, I could not give him a mortgage of the entirety of Fincham's land. At that stage Shamsudeen did not come into the discussion. Plaintiff said he had Rs. 13,000 only to be lent. I told him that was not enough and he told me he would try to get a further Rs. 2,000 and give me making it Rs. 15,000. Then I spoke to Shamsudeen. I spoke to him because I thought the plaintiff would not be able to get me Rs. 15,000. I asked Shamsudeen to get me Rs. 2,000. Plaintiff thereafter inspected this property—that is Fincham's land. Plaintiff Shamsudeen and I went to inspect the land. We intended to inspect Fincham's land and the Panwila lands. We went from Colombo to Kandy and plaintiff and Shamsudeen stayed in a hotel and I went to my brother-in-law's place. The next morning we all went to Fincham's land. Plaintiff was content to give the money after inspecting the land and also after having seen a lot of timber on the land. He was satisfied with the security and he was willing to give the money. We could not go to inspect the Panwila lands from there, we had to come to Kandy and go, but we did not go because the plaintiff said he was satisfied and would give the money on a secondary mortgage of Fincham's land together with a primary mortgage over the Panwila lands. He did not want to inspect the Panwila lands. Plaintiff was at that time aware that out of his money I was going to pay off Shamsudeen's debt and the debt due to Fuard's wife. He was also well aware that out of the Rs. 15,000 I was going to pay the debt due to Naina Marikar on the bond P41. Therefore the plaintiff, Naina Marikar and I met at Fuard's office and on that occasion I got Naina Marikar to reduce his claim. I signed the bond P1 in favour of the plaintiff on 3-12-42. Three or four days before the bond was signed the plaintiff, Naina Marikar and I met at Fuard's office and gave him instructions to draw up the bond. At that interview at Fuard's

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office I suggested to Naina Marikar that as I would be short of money to start the contract work I had undertaken I asked him to reduce Rs. 1,000 from his claim and Naina Marikar agreed to reduce his claim by Rs. 1,000. The figure arrived at as payable to Naina Marikar was Rs. 5,500, that is after reducing certain sums. I was to pay Rs. 4,500 to Naina Marikar and give him a secondary mortgage for Rs. 1,000. Mr. Fuard was given instructions by me in the presence of the plaintiff to draw up two bonds one in favour of the plaintiff for Rs. 15,000 and one in favour of Naina Marikar for Rs. 1,000. Plaintiff's bond was to be a primary mortgage over the Panwila lands and a secondary mortgage over Fincham's land¹⁰ and Naina Marikar's bond was to be a secondary mortgage over the Panwila lands. It was understood that the secondary mortgage held by Shamsudeen and Fuard's wife over Fincham's land should be released and also Naina Marikar's primary mortgage over the Panwila lands. (Shown D4). I admit this document; it is in my handwriting. I gave this to the plaintiff with directions to him to make out the cheques in that way. I told him to draw out one cheque for Rs. 375 being notarial and proctor's fees; a cheque for Rs. 375 being interest payable to the plaintiff in advance and a cheque for Rs. 45,000 being the amount payable to Naina Marikar. Rs. 6,000 was to be paid to Shamsudeen, etc., that²⁰ is to Shamsudeen and the other mortgagee Mrs. Fuard. All this totalled Rs. 11,250. The Rs. 3,750 shown against the letters K. R. was to be a cheque in my favour. K. R. are my initials.

When I gave this chit to the plaintiff Naina Marikar had not yet come. After he came plaintiff gave two cheques, both cheques amounting to Rs. 15,000. One cheque was given to cover the interest due to the plaintiff which I had to endorse and hand back to him. I signed the bonds on that day. I signed P1 bond No. 2308 dated 3-12-42 and D5 in favour of Naina Marikar No. 2310 dated 3-12-42.

The two cheques which I got I endorsed and handed over to Mr. Fuard³⁰ to be cashed or sent to his account. That was done to realise them, because I did not know whether the plaintiff had money in the bank. I wanted Fuard after the cheques were realised to settle Naina Marikar and pay the interest due to plaintiff and to pay Rs. 6,000 to Shamsudeen and defendant's wife and the balance to be given to me. Mr. Fuard carried out my instructions. I remember Mr. Fuard on that day writing out a cheque in favour of the plaintiff for the interest due to the plaintiff. That cheque was given on the following day I think. On the following day plaintiff was there in Fuard's office. Naina Marikar, Shamsudeen and I were also there and Mr. Fuard made out all the disbursements as⁴⁰ per my instructions in the presence of the plaintiff.

(Shown D6). I remember writing this letter to Mr. Fuard dated 12-4-43. This letter is addressed to the defendant. At this time I had met the plaintiff and was in direct contact with him.

(Shown letter D7). This is my letter written to Mr. Fuard. I have referred to three debts which I owed on the properties in this letter, they are the debts due to Moolchand, Naina Marikar and plaintiff. I

wrote this letter because the plaintiff was asking for his principal and interest and Moolchand was asking for his principal and interest and Naina Marikar was also asking for his money. I wrote the letter to Fuard because he wrote to me one or two letters pressing me to settle these debts. I wrote the letter D8 dated 22-8-43 to Mr. Fuard. The gentleman referred to in that letter is a planter. I wrote this letter because Mr. Fuard must have threatened me again. In D8 I have acknowledged receipt of a letter from Mr. Fuard. I cannot trace that letter.

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(Shown D9 certificate of posting bearing post Office stamp dated 10 19-8-43). There are two addresses given in D9. A letter addressed to either of those places would have reached me.

(Shown copy of a letter dated 19-8-43 D10). I got two letters couched in the same terms as D10. It is in reply to D10 that I wrote D8. Eventually Moolchand put his bond in suit in September, 1943. Before that bond was put in suit I and Moolchand went to Kanagarajah's office and agreed upon what was due to Moolchand. Mr. Fuard did not know anything about that. That was done by me without the knowledge of Fuard. After Moolchand put the bond in suit Moolchand suggested to me to sell the property to him. He wanted to buy the property at an auction at a 20 low price. There was mica on the land and he wanted to start a mica business and make me superintendent of the estate; sell the estate later; take the amount due to him and give me half the profits. I cannot say whether Moolchand discussed that matter with plaintiff. We were expecting to get about Rs. 80,000 on the property.

To COURT: I was to get a portion of the profits he made and pay him any deficiency in the money due to him. I wanted to save the Panwila lands by paying the plaintiff out of the profits I was going to make on Fincham's land).

I met with an accident in December, 1945, in a motor bus. After 30 the sale in Moolchand's mortgage bond case the plaintiff sued me on 1-6-44 (P46) decree was entered against him on 14-10-44. I remember Krishnarajah went to value the property in the case by the plaintiff against me. I remember the sale was fixed for 2-12-44 under plaintiff's writ in that case. I went and saw the plaintiff before that date and asked the plaintiff to stay the sale because I wanted to sell the land in blocks and pay the plaintiff saving the house. That is the house where I resided with my family. Plaintiff gave me time. I cannot remember how much time he gave me. I cannot remember whether it was six months' time. I went with plaintiff to Fuard's office and Mr. Fuard was requested by me 40 and the plaintiff to put in a motion asking the Court's permission to have the sale stayed. The sale was stayed on payment of the auctioneer's charges. I paid that money, about Rs. 400 or Rs. 500. That was paid to Krishnarajah who was the auctioneer. I got time after that. I think the time expired about May, 1945, I am not sure of the date.

Q. I put it to you that you wrote this letter P43 of 12-5-45 after the expiry of the six months time with a view to frighten the plaintiff and get him to reduce his claim? A. Yes. To my knowledge there

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were no irregularities in the title of my Panwila lands. In P43 I say that there were irregularities in the title of all my properties because the plaintiff told me after consulting Mr. Fuard and some lawyers that the title was not in order and later on I consulted other lawyers at Kandy and they were satisfied but the trouble was the lands were not divided and shown as such on survey plans. At the date of P43 I was trying to get plaintiff to accept Rs. 7,500 in full settlement of his claim. Plaintiff showed P43 to his own lawyers and wrote to me he was not prepared to accept my offer of Rs. 7,500.

(Shown D11 certificate of posting dated 25-5-45). The address on this certificate is that of mine.

(Shown copy of letter D12). This is a copy of the letter I received from the defendant. I did not start a story with regard to the title of Fincham's land also.

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Re-Examination. I came from Kandy on Sunday the 8th instant. I reached Colombo on Sunday evening. I got no summons from the defendant, but I got a letter from the defendant asking me to produce some letters. I was not paid any batta by the defendant. I knew that summons was taken out by the plaintiff in this case. On the 9th I came to plaintiff's proctor's office. Plaintiff's proctor was not there, only the plaintiff was there. I did not go to defendant's proctor's office that morning. I met the defendant in the Courts that day.

I took over Fincham's land to work it about the middle of 1939 and not in 1921 as stated in my evidence given on the last date.

To Court: I came to know Fincham's land for the first time in 1939. I had seen the estate before that when passing that way. I had no interest in the estate before 1939. The title to that land was Crown title and certain blocks were purchased by Mr. Halloway from some Muslim people. I went to Kandy on the 9th and came back to Colombo this morning.

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I first discussed this matter of a loan with the plaintiff at Maradana. Prior to meeting the plaintiff at Maradana and talking about the loan I did not on any occasion discuss about a loan with plaintiff in defendant's office. Before Shamsudeen spoke to the plaintiff about this loan I myself had spoken to the plaintiff. When the plaintiff said he had only Rs. 13,000 then I told Shamsudeen about it. I do not know whether plaintiff had told Shamsudeen about it before. I told Shamsudeen that I had discussed about raising a loan with plaintiff. That was two or three weeks, I cannot remember the exact date, before the bond was signed. It was either in August or September, 1942, that I discussed with plaintiff about the raising of the loan. I communicated that to Shamsudeen about 1½ months after that. I may have met Shamsudeen in defendant's office. About the middle of November I may have met Shamsudeen in defendant's office. After I told Shamsudeen about this loan he wrote to me asking me to come and see him in Colombo.

Q. About the middle of November you met Shamsudeen at defendant's proctor's office and did he mention to you that he met plaintiff in the Pettah and had mentioned about this transaction to plaintiff? A. I cannot remember that. I told Shamsudeen that I had already met plaintiff and had discussed terms with him. I cannot remember whether that was in Fuard's office. I cannot say whether I told Shamsudeen that prior to the 17th November or subsequent.

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After P1 was executed what was left for me was about Rs. 4,000. I took that in cash. Mr. Fuard gave me a cheque and I cashed it at Sea Street. Some days prior to the signing of the bond P1 there was a meeting. About five of us met that day. Plaintiff, Shamsudeen, Mr. Fuard and myself met that day. I cannot remember now, four or five of us met that day. I can remember four persons meeting that day. That meeting was three or four days prior to the 3rd December. I cannot remember whether it was on the 29th November, 1942, that we went to inspect the land. We had that conference or meeting on the day that we went to Kandy to inspect the land. Before we went to Kandy we met in Fuard's office. The meeting was before 12 noon. I came to Fuard's office that day at about 9 a.m. and Mr. Fuard came to the office after I went there. He came at about 10 o'clock. Plaintiff was there when I went to Fuard's office and Shamsudeen was also there.

At that conference we discussed to go and visit the properties. We all met and decided that. We met by prior arrangement. Nothing else was discussed at that meeting. Plaintiff knew about the mortgages before that and that matter was not discussed at the conference. We started for Kandy by the afternoon train. We took the afternoon train at 2 or 2-30. We reached Kandy round about 6-30 or 7. Plaintiff and Shamsudeen went to the hotel and I went to my brother-in-law's place. The next morning we inspected the land—that is Shamsudeen, myself and plaintiff. We went from Kandy to the land by car. We reached the land at about 9 or 8-30 a.m. and returned to Kandy at about 11 a.m. Then I wanted to take plaintiff to Panwila to see my lands there, he said he was satisfied with Fincham's land and he wanted to return to Colombo. I stayed behind in Kandy and plaintiff and Shamsudeen returned Colombo. I came to sign the deed five or six days after that. I was intimated by letter to come. Shamsudeen sent me that letter. I got no intimation from Fuard. I did not get a telegram from Fuard. I received the letter from Shamsudeen three or four days after the inspection.

I do not have the originals of the letters I received from defendant the replies to which I have admitted. Plaintiff has written letters to me asking me for his money. I had paid three months interest at the start and thereafter no money was paid by me against the interest or capital. Early in 1943 plaintiff had written several letters asking for his money. According to the terms of the bond I had agreed to pay the interest in advance and also Rs. 500 monthly. That is what plaintiff demanded after having seen the sawn timber on the land. I did not pay interest or instalments against the capital because I could not. On the day the

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bond was signed plaintiff brought his cheque book and he gave two cheques from that book. Plaintiff was aware that disbursements will have to be made to various parties out of the money he was going to lend me. In fact I wrote those items on a piece of paper. (Shown D4). This is that paper. I showed this paper to the plaintiff but the plaintiff gave two cheques. I endorsed the big cheque for Rs. 14,000 and gave it to Fuard and he made the disbursements of the various sums by his own cheques. Fuard gave me a cheque. I cannot remember the exact amount, it was about Rs. 4,000. I cashed that cheque at Sea Street. I cashed it on the following day. (Shown D4). I have stated in D4 "Sams, etc." 10 because I always forget Mrs. Fuard's name and etc. stands for her.

I have not seen Mrs. Fuard.

(Sgd.) H. A. DE SILVA,
District Judge.
16-5-49.

A. R. Weera-
suriya.
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tion.

A. R. Weerasuriya, affirmed, 63, Government Pensioner. At present I am employed in the Ceylon Daily Paid Workers Benevolent Association. I reside at Dehiwella. I am the plaintiff in this case. My wife is living with me at Dehiwella. I have three children. My eldest child is a teacher.

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In 1941 I was living with my family at Ambalangoda at Sirisevena. I was 31 years in Government Service. I retired in 1941 from the Ceylon Government Railway. When I retired I was paid a commuted pension of Rs. 5,985 and I got from the Railway Benefit Association Rs. 3,173 and I also had about Rs. 5,000 of my money which I had saved. I had about Rs. 13,000 for investment in 1941. I had a relation in the railway, one R. P. Wijesuriya. He is now a retired station master. I came to know the defendant shortly after my retirement. Mr. Wijesuriya introduced him to me. I spoke to the defendant about investing my money. I went and saw him and Mr. Wijesuriya had also written to him about 30 me. I told him I had some money and wanted him to find me a sound investment. He invested the money for me. He invested Rs. 13,000. He recommended one Mr. Visvasam to me to lend the money. He said the security was to be a secondary mortgage of a big estate and primary mortgage of some other property in Kadugannawa. The estate was in Maskeliya. I told the defendant if my money would be safe he could invest it and that investment was made. That was in May, 1941. In September, 1942, that money was returned to me. Defendant gave me a cheque—I believe it was Mr. Visvasam's cheque. Then the defendant asked me to invest the money again. I said I had an idea of buying a 40 house property and would let him know if I failed to buy a property. I went with the bond to Fuard's office and discharged it and received payment. On that occasion defendant asked me whether I was going to re-invest the money. I tried to purchase a property but the prices were very high. I wanted to purchase a house and garden in Colombo or in its environments. I could not buy a house and garden and so I went

and saw the defendant and said I could not buy a house and he may arrange to invest the money. That was about the beginning of November, 1942. Mr. Fuard told me that there was a gentleman who wanted Rs. 25,000 to be borrowed on a tea estate in Urugala. I said I did not have so much money and he said he would find some other investment and I went away. I went again and saw the defendant about two weeks later. Mr. Fuard was not in and I came back and went to the Pettah. At the Pettah I met Shamsudeen. He came in a rickshaw and stopped and said that there was an investment for Rs. 15,000 and that he will let me have all particulars. He said it is a tea property and some other properties in Panwila, he did not give me the full particulars. I asked him to speak to Fuard and told him if Fuard is satisfied to arrange for the investment. I did not know who Shamsudeen was interested in. I used to see Shamsudeen in defendant's office. From the Pettah I went home and Shamsudeen said he would write to me.

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Luncheon interval.

(Sgd.) H. A. DE SILVA,
District Judge.
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20 (After lunch).

16-5-49.

A. R. Weerasuriya, recalled, affirmed. (Exam.-in-chief contd.): I got a letter from Shamsudeen dated 17-11-42 which I produced marked P48. There is a note on this letter to show that I replied to it on the 18th November.

To my letter of the 18th November I received a reply from Shamsudeen dated 23-11-42 which I produce marked P49. P48 and P49 are both written on the defendant's note paper. I replied by my letter of the 24th November.

Then I received the letter dated 26-11-42 which I produced marked 30 P50, which is also written on defendant's note paper.

After these letters I was satisfied that the loan was well recommended by Mr. Fuard the defendant. I came to Colombo on the 28th November. I think it was a Saturday, and I went to see the defendant at his office. I discussed the matter of the transaction with the defendant. I said that I was prepared to lend Rs. 15,000. A friend of mine had given me Rs. 2,000 for safe keeping, because I had a bank account. That Rs. 2,000 also came into this Rs. 15,000. I had only Rs. 13,000 of my money. I spoke to the defendant. Defendant said that the matter was all settled, that the person who wanted the Rs. 25,000 is the same person and that he was 40 willing to take Rs. 15,000. Defendant told me that Fincham's land was a good land, that it was worth Rs. 80,000, and that there was a mortgage of Rs. 40,000 over it and he asked me to inspect Fincham's land. He said that the other lands were worth about Rs. 30,000. I told defendant that the title must be good.

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tion.
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Defendant told me that the borrower was going to be Mr. P. R. Samaratunge. Prior to that I had not met Mr. Samaratunge. Defendant told me that he had himself inspected the land, that it was worth over Rs. 80,000, and that I should not be afraid of my money. He asked me also to go and inspect the land.

Defendant said that there was already a mortgage of Rs. 35,000 in favour of an Indian merchant and also another mortgage of Rs. 5,000 on the same land. Defendant did not tell me who the Rs. 5,000 creditor was. I did not ask the defendant who the lender of the Rs. 5,000 was. Defendant made me understand that there were two creditors, one for 10 Rs. 35,000 and that was the Indian merchant and the other creditor for Rs. 5,000. Defendant told me that the property was worth over Rs. 80,000 and that my money was quite safe. I told the defendant that if he was satisfied that the business could go through, that I was prepared to lend the money. I told the defendant that I had come to go and inspect the property. I also told him that I had received a letter from Shamsudeen. I told him that I was going to inspect the property the following morning. Samaratunge was not present at this conversation. Shamsudeen was present.

The next day, the 29th Sunday, Shamsudeen and I met at the Pettah 20 bus stand at about 7 a.m. and the two of us proceeded to Kandy. We reached Kandy at about 11 a.m. At Kandy Shamsudeen introduced Samaratunge to me. That is the first time I met Samaratunge. After lunch at a Hotel we proceeded to the estate. We lunched at a Muslim hotel. Samaratunge did not have meals with us. He went away to bring a car. Samaratunge returned with a car at about 1 p.m. and we all proceeded in the car to the estate. We reached the estate at about 3 p.m. I walked about the estate for about 10 minutes. Thereafter we returned to Kandy.

I knew that I was going to get a mortgage of another land at Panwila. 30 I did not go to inspect the lands at Panwila. Mr. Fuard also had said that it was not necessary to go and inspect the Panwila lands, and Shamsudeen also said that it was not necessary to inspect the Panwila lands. I thought it was not necessary to go and inspect the lands as they said that it was not quite necessary, and besides that we left Kandy quite late. We returned to Kandy from the other estate at about 7 p.m.

From all that they said and from my own inspection I was satisfied that the estate I saw was enough for my money. I was satisfied with Fincham's land and I was also satisfied from what these people said of the Panwila lands.

Shamsudeen and I stayed the night at Kandy at the Empire Hotel. We returned to Colombo the following morning, the 30th November by train. On reaching Colombo I went along with Shamsudeen to see the defendant at his office. I told the defendant that I had seen the estate, I told him I had no idea of estate properties very much. I said that if he was satisfied with the thing he could proceed with the business. I asked defendant to inspect the title deeds carefully and prepare the

deeds. I got a telegram from the defendant two days later, on 2nd December, which I produce marked P51. I did not expect to hear from the defendant so quickly I thought I would hear from him in a week or so. On receipt of the telegram I came to Colombo on the following day, 3rd December. I met the defendant at his office. Samaratunge and Shamsudeen were present at his office. There were one or two others also present in the office whom I did not know. Samaratunge executed bond P1 in my favour. I paid the consideration in two cheques of Rs. 375 and Rs. 14,625. After I gave the consideration the cheque for Rs. 375 was endorsed and given back to me. That sum of Rs. 375 represented the interest for three months. Defendant asked me to write out the two cheques in that manner. Thereafter I did not receive any part of the principal or interest from Samaratunge. According to the bond interest had to be paid in advance. When he did not send me interest I came and told the defendant. Defendant said that he will write to the man. No money was forthcoming. I saw the defendant almost every fortnight about this matter, because the interest was not forthcoming. My salary at the temporary job is Rs. 145 and my pension is Rs. 149. I also get cost of living allowance. At that time I hadn't the temporary job. I was depending on my pension. Defendant told me that he had written to Samaratunge.

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About November, 1943, I received copy plaint in case No. M.B. 941 which I produce marked P52. Along with the copy plaint I received copy of the summons. I do not have that copy of the summons now. The summons that accompanied the copy plaint was handed by me to the defendant Mr. Fuard. I requested the defendant to take the necessary action. That was an action filed by Moolchand against Samaratunge and I was made a party to that suit. Thereafter I received a letter from the defendant dated 18-11-43 which I produce marked P53. I signed the proxy and sent Rs. 45 to the defendant by money order. I did this on the 22nd November, 1943. There is a note to this effect on P53.

I got letter dated 24-11-43 from the defendant which I produce marked P54. I expected defendant to look after my interests.

On 15-12-43 I received letter P55 from the defendant. I found that no steps had been taken to have me represented in that case.

On 11-5-44 the land mortgaged was sold in that case. I saw the defendant often in the meanwhile; nothing was done. I came to know the date of the sale. The date of the sale was in 1944, April.

On 24-5-44 I got the letter P56 from the defendant calling upon me to pay Rs. 263.30 and giving a statement of charges in respect of the filing of action on the mortgage bond. I instructed defendant to file action on my bond. I had asked the defendant to take action before Fincham's land was sold. Defendant had put my mortgage bond in suit with the proxy I had given to him to be filed in the earlier case brought by the Indian merchant. I did not sign a fresh proxy to put my bond in suit. Now I know that my action was filed on 1st June, 1944, as would

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Evidence.
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—continued.

appear from P46. Prior to that defendant sent me the letter marked P56. In P56 I was given credit for Rs. 45.

I produce marked P47 journal entries in the mortgage bond case. Judgment was entered on 27-6-44 on a warrant to confess judgment which had been filed. (*Vide* J.E. marked P47A). The sale was fixed for 2nd December, 1944. On 18-11-44 application was made for the stay of sale by my proctor. I authorised the defendant to make an application to stay sale on defendant's advice. The sale was accordingly stayed for six months. I point to the journal entries to show that no steps were thereafter taken by the defendant in pursuing the matter. After six 10 months were over defendant took no steps. I asked the defendant several times to take steps. Defendant kept putting me off. He did not take steps to have the sale fixed again. When he kept putting off like this I suspected that something was wrong somewhere. I tried several times to meet Samaratunge I went and saw him at Diyatalawa. I met him on one or two occasions. I had gone previously also to see Samaratunge on several occasions. Defendant had also asked me to go and see Samaratunge before. Samaratunge told me that he was trying to sell the Panwila properties and make some money and pay the balance in some way or other. None of his promises matured. Then I wrote 20 to Samaratunge. He replied to my letters. P43 dated 12-5-45 is one of the replies I received from Samaratunge. I replied to P43 about a week or so later. Before sending the reply I took the letter to the defendant and gave it to him and asked him what was the meaning of this, when he borrowed Rs. 15,000 he gave all the assurances and he was now offering Rs. 7,500. Subsequently I received the letter P44 dated 23-5-45 from Samaratunge. My lawyer at this time was the defendant. I showed this letter also to the defendant. On 28-5-45 I wrote to Samaratunge P45. I did not get a reply to P45. When I got no reply to that letter I went and saw the defendant. Defendant told me that he had 30 written to Samaratunge. By this time my suspicions against the defendant were beginning to be aroused. I also saw that according to the journal entries nothing was done. I wrote to the defendant on 12-6-45 asking him to produce the title deeds.

(Mr. Thiagalingam says that he has no objection to the plaintiff producing the copy of the letter sent to the defendant ; he says that defendant has no recollection of receiving a letter like that.

Copy of letter dated 12-6-45 is marked P57). I received a reply from the defendant dated 18-6-45 which I produce marked P58.

I replied to P58 by my letter dated 22-6-45 acknowledging receipt 40 of his letter and intimating to him that I had received the documents sent and stating that I had not received the discharged mortgage bonds. I produce a copy of my letter marked P59.

(Mr. Thiagalingam says that he has no objection to the copy of the letter being produced). Still no action was taken on the properties and I had recovered no interest.

On 12-11-45 I wrote to the defendant a letter copy of which I produce marked P60. (Mr. Thiagalingam says he has the original of this document). I received in reply letter dated 14-11-45 which I produce marked P61. I replied by letter dated 22-11-45 copy of which I produce marked P62. (Mr. Thiagalingam says that he has the original of the letter sent by plaintiff to the defendant and that he has no objection to the plaintiff producing the copy). Although I threatened to send these papers to the Supreme Court I did not send them.

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I received from the defendant letter dated 30-11-45 which I produce
10 marked P63. I replied by letter dated 7-12-45 copy of which I produce
marked P64. (Mr. Thiagalingam says that he has no objection to the
copy of the letter being produced. He says his client remembers to have
received such a letter).

I received a reply from the defendant dated 10-12-45 which I produce
marked P65. I point to the journal entry in P47 under date 15-12-45
marked P47B to the motion revoking defendant's proxy. Thereafter I
retained Messrs. Weeraratne & Haseeb on my behalf in the mortgage bond
action No. 1084. Commissions were taken out and the lands were advert-
20 9-3-46. I was present at the sale. There were about 200 people present
at the sale. Defendant and Samaratunge were not present at the sale.
There were no plans of these lands. The only title deed was one in favour
of Samaratunge. The lands fetched only Rs. 2,250.

I am claiming Rs. 20,000 from the defendant as damages I have not
recovered the balance principal or interest on the balance amount due as
capital from the defendant in the mortgage bond action, Samaratunge.

I sent a letter of demand to the defendant on 13-10-47 copy of which
I produce marked P66. (Mr. Thiagalingam says his client received the
original of the letter of demand and he has no objection to the copy being
30 produced). I produce defendant's reply marked P67 dated 17-10-47.
I was present at the sale held in the mortgage bond action brought by
Moolchand in Mr. Vandersmagt's office in Colombo. At the sale I
became aware that the property fetched only Rs. 15,000. There were
about three bidders at the sale including Moolchand. That was the
highest bid that was recorded. I now know that the amount due on the
bond to Moolchand had been increased to Rs. 51,620 and that it was not
Rs. 35,000 as originally lent. Defendant never informed me that this
amount had been increased by a subsequent bond.

Defendant did not disclose to me that the earlier mortgagees with
40 the exception of Moolchand were his relatives.

(Examination-in-chief is over. Cross-examination will be taken up
on the next date. It is now 4 p.m. No time. Trial adjourned for the
23rd instant to be continued, if necessary on the 6th June.

Mr. Jayasuriya wants witnesses Shamsudeen, Marshall Perera and
Naina Marikar to be warned to be present in Court on the next date.
They are informed that no fresh summons will issue on them, that they

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will have to attend Court on the next day if their batta is paid. Proctor for plaintiff promises to pay the witnesses' batta.

Mr. Thiagalingam wants me to call out the name of Mr. Vandersmagt who has been served with summons for today at the instance of the defendant. I call out Mr. Vandersmagt's name but he is not present in Court. Mr. Thiagalingam wants me to record that fact. I record the fact that Mr. Vandersmagt is not present in Court today.

Mr. Weeraratne says that he is prepared to pay the batta of the witnesses who have been warned at plaintiff's instance today.

(Sgd.) H. A. DE SILVA, 10
District Judge.
16-5-49.

23-5-49.

Trial resumed.

Same appearances as on the last date.

Plaintiff's case continuing.

Mr. Thiagalingam points out that in the first day's proceedings (evidence of K. R. Samaratunge) document P43 is shown as of the date 12-5-43. Mr. Thiagalingam points out that the date should be 12-5-45, and he moves to have that rectified. 20

Mr. Jayasuriya has no objection.

I therefore delete 43 and substitute therefor 45 and initial same.

Mr. Jayasuriya points out that in the last day's proceedings in plaintiff's evidence the word used is 'Lunugala'. It should be not Lunugala but Urugala. He wants that to be amended.

Mr. Thiagalingam has no objection.

I make the amendment and initial same.

Mr. Thiagalingam points out that in the last day's proceedings the sentence as it now stands reads "I was satisfied that Fincham's land". He says that it should be "I was satisfied with Fincham's land". He moves that the word 'that' be deleted and 'with' substituted therefor.

Mr. Jayasuriya has no objection.

I make the amendment and initial same.

In the last day's proceedings Mr. Jayasuriya points out that the plaint in case M.B. 941 was produced and marked P52 and the sentence is incomplete. So he wants after the words "M.B. 941" the following words to be inserted "which I produce marked P52".

Mr. Thiagalingam has no objection.

I make the amendment and initial same.

A. R. Weerasuriya, recalled, affirmed. Cross-Examination.

Marshall Perera is a retired Station Master. I have known him for about 2, 3 years. He has nothing to do with this case. He has to produce certain documents. He has produced documents in a similar case that happened some time ago. That was known to me. I do not know who told me about this. Mr. Perera did not tell me about this. My proctor mentioned about it to me. I cannot say when my proctor mentioned this to me. He may have mentioned it towards the end of 1945. My proctor did not tell me that he had a number of letters regarding Marshall Perera's transaction with defendant. I went to my proctor in November, 1945. I cannot exactly remember what transpired at my proctor's; he may have asked me to write to defendant when the case was given to him.

(Shown P60). I drafted this myself. I do not think I showed the draft to my proctor. I cannot say whether I showed this document to Mr. Weeraratne. I am naturally anxious about my money. I invested this money with a view to supplementing my pension. In 1941 I lent money to one Viswasam. I obtained a mortgage bond from him. I did not obtain a lease from him. I do not think there was a lease. It was Mr. Fuard who did the transaction. I did not have two transactions. I made enough money on that bond. I did not get a rebate; I got interest at the rate of $13\frac{1}{2}$ per cent. I was not particular that Viswasam should continue to keep my money. I released the first bond and got another bond from the same man Viswasam. The first bond given by him was a secondary bond. The first bond also had a primary mortgage. In the original bond Viswasam gave me a primary mortgage of another land and a secondary mortgage of another land. That bond was discharged and a fresh bond was written. I do not know why the fresh bond was written. I did it at the defendant's request. I still did not know why the second bond was given.

I have not been in various parts of the Island on Government Service. I was in Colombo all throughout and at Ratmalana. I know A. R. de Silva of Bridgeview, Balapitiya. He is a friend of mine. I inspected a land on his behalf. A. R. de Silva wanted to invest his money on a mortgage of certain properties. I was asked to inspect the land and find out whether the security was adequate. I cannot remember to whom A. R. de Silva lent the money on that occasion. Defendant attested that bond also.

About the middle of 1942 the second bond given by Viswasam was discharged. In August, 1942, my son was operated on for appendicitis and he got quite ill. During the time the child was in hospital I lived at Temple Road, Maradana, for about two or three months. These were not very difficult times. I could manage.

Samaratunge can't be a good man. I cannot say when I discovered this. It was from these transactions. When Samaratunge signed P1 in my favour he was not a bad man. In fact I did not know him. I

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first realised that Samaratunge was not a good man after these transactions. I cannot say when, but it was after these transactions.

I went with defendant to inspect Viswasam's land. When my child was in hospital I had no time to go to defendant's office. After Viswasam's bond was discharged I went to defendant's office. I did not go often. I cannot remember the number of times I went to defendant's office. It cannot be so many as twenty times. When I went to defendant's office at times there were people there, at other times there were no people there except defendant and a clerk.

I do not think my proctor examined Samaratunge before he got into the witness box. I may have spoken to Samaratunge before he got into the witness box, but not about the particular case.

I do not know that Shamsudeen was a land agent. I went to see Samaratunge at Diyatalawa with Mr. Weeraratne. Mr. Weeraratne my proctor was holidaying at Bandarawela. I went and saw him and told him that I wanted to see Samaratunge. He also went to see Samaratunge with me, at Diyatalawa. That wasn't about the time of the first trial date of this case. I went to see Samaratunge with Mr. Weeraratne somewhere in December, 1945. After filing this action I went to see Samaratunge. I went to serve summons on him. I went to see him about twice. Samaratunge received me in the ordinary way. On each occasion I spent about half an hour or so with him. Samaratunge was not my good friend. When I went to see Samaratunge in 1945 with my proctor I had doubts about Samaratunge. I can say he is not a good man. In December, 1945, Samaratunge had made several promises about this matter. He did not stick to his promises. So I had my doubts.

I knew Shamsudeen after this transaction. When Shamsudeen first met me in the Pettah I did not know him as a broker. I thought he was sent by the defendant. On that day I did not meet the defendant. On that day defendant did not tell me that he was sending Shamsudeen. Shamsudeen had nothing to do with the Viswasam transaction. Prior to the date Shamsudeen met me in the Pettah and after the Viswasam transaction defendant did not mention the name of Shamsudeen. Shamsudeen did not tell me that Rs. 10,000 was required on some Panwila land. He mentioned the figure Rs. 16,000; he did not mention Rs. 10,000. (Shown P48). In this letter Shamsudeen says "Now he wants Rs. 15,000 on a primary mortgage of his property, etc."

It was not that he first wanted Rs. 10,000 and later wanted Rs. 15,000. Mr. Fuard told me that a certain man wanted Rs. 25,000. I think it is the same person who wanted this Rs. 15,000. At the time I received P48 I did not think that the borrower was the same person about whom defendant spoke to me earlier. I connected P48 with an earlier conversation I had with the defendant. I did not connect it because the names seemed to be the same. No names were mentioned. I connected the letter with the earlier conversation with defendant because of the expression 'now he wants' but I could not be definite.

(P48 read to witness). He wrote to me requiring me to inspect the lands. He says that the security may not appear sufficient but that if I saw the land I would realise. Shamsudeen was keen on telling me that it may be that on paper the security was not sufficient but he wanted me to satisfy myself by inspecting the land. I had to see the defendant and settle with him before I inspected the land. I wanted to see defendant and thereafter go and see the land and satisfy myself about the land. I was not satisfied myself that there was a land belonging to Samaratunge. Shamsudeen wanted me to satisfy myself about the value of the land. I was going to see the land after consulting the defendant.

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I am a Buddhist. I think I am a good Buddhist. I have alms-givings to Buddhist monks in my house. (Shown P49). In this letter I was asked to come on the 29th to inspect the property. Up to this point of time I had not seen the defendant on this matter. I saw Mr. Fuard on the day prior to the date of my inspection. 29th November, 1942, was Sunday. I saw defendant on Saturday.

I did not see the defendant on Friday when he was going to the mosque. The 28th November, 1942, was the first day I spoke to defendant about the Samaratunge matter. When I met defendant on Saturday Samaratunge was not present. Shamsudeen was present. I did not know that there were two mortgages on this property. I did not know that there was a primary and a secondary over Fincham's land. I was aware that there was a primary mortgage of Rs. 40,009 over Fincham's land. That is all I was made to understand. When I saw the defendant on the 28th I was told that there was a mortgage of Rs. 40,000 on Fincham's land. Defendant told me about this and Shamsudeen also had written to me. When I left defendant's office after speaking to him on the 28th November, 1942, I did not know that there were two bonds on Fincham's land. I was told that there was a bond for Rs. 40,000 in favour of an Indian merchant. After I left defendant's office on the 28th I did not know that there were two bonds, a mortgage for Rs. 35,000 in favour of an Indian merchant and another lease for Rs. 5,000 on the same land. What I knew was that there was one bond for Rs. 40,000. Nobody told me that the evidence I gave on the 16th was a little difficult.

(Evidence of this witness on the last day's proceedings read to him). Whatever I have said on the last date is correct if it is so recorded. Defendant told me that there were two mortgages on the day that the bond was signed.

I cannot exactly remember ; I think it was on that date. Before I inspected the property defendant did not tell me that there were two bonds.

(Evidence of this witness on the last day read to him). What I said on the last date is correct. It may be that it was when I informed defendant that I was going to inspect the property that the defendant gave me this information about there being two bonds. When I saw the defendant on the 28th he told me that I might go and see the property.

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He told me not to worry about the Panwila lands. He told me further that I must look to Fincham's land for my security.

Q. What more did you want Mr. Fuard at that stage to do? A. I cannot answer the question.

He said that he inspected the estate previously and that it was worth over Rs. 80,000 and asked me to go and inspect the land and satisfy myself. I went to the land and I was satisfied. When I started from home I wanted to inspect both lands after going to Kandy.

After inspecting Fincham's land I was content. I did not see fresh timber felled on the land. 10

(TO COURT: After I went to Fincham's land and inspected it I thought it was worth about Rs. 80,000).

Cross-Examination (contd.). On Monday the 30th I went to defendant's office. All of us gave instructions to draw up the bond. I do not know whether Naina Marikar was present in defendant's office on the 30th. I am calling Naina Marikar as a witness.

The all of us who saw the defendant on the 30th November in his office were myself and Shamsudeen.

I went again to defendant's office on the 3rd December, 1942, on receipt of his telegram. I did not tell defendant that I was surprised to receive a telegram. I merely showed him the telegram to get confirmation from him that he had sent the telegram. On 3-12-42 Shamsudeen Samaratunge, Fuard, I and another one or two people were present in defendant's office. I cannot say whether any of my witnesses were present in the office. I do not recall whether Naina Marikar was present. On 3-12-42 I knew that two bonds were outstanding on Fincham's land. I knew that I was going to get a secondary bond on Fincham's land. It may be that I knew that part of my money was going to discharge the earlier secondary bond. In order to get my secondary bond I had to get the other secondary out of the way. I expected defendant to get the earlier secondary bond out of the way. It may be that the lender sometimes draws various cheques to pay the proctor's fees and also the earlier bonds. Some proctors are clever. I mean that they are clever in their business. I did not think that I should give a cheque to the earlier secondary mortgagee. I did not know what was going to happen to my Rs. 15,000 on that day. I knew that part of my money was going to be used to pay off the earlier secondary bond. I did not know that part of my money was going to be used to pay for stamps and fees. I knew that part of my money was going to be used as advance interest. Because defendant told me to issue two cheques I wrote them out. Rs. 375 was to be endorsed back to me. Defendant asked me to write out two cheques because there was no money to pay me. If I wrote one cheque how was Samaratunge to pay the advance interest to me. I do not think it would have been in order to pay a cheque less the advance interest. I cannot remember that defendant asked me to write out two cheques in my own interest. He merely asked me to write out two cheques. Samaratunge

endorsed the cheque for Rs. 375 and gave it back to me. I took it and put it into my account and it was credited to my account. I cannot say whether I sent the cheque for Rs. 375 to my bank. I must refer to my account. I think I sent the cheque to the bank. My impression is that I sent the cheque for the interest to the bank. (Shown cheque dated 3-12-42 D13 drawn by defendant on the Imperial Bank in favour of A. R. Weerasuriya). The reverse of this cheque bears my endorsement. I remember this cheque now. This cheque was sent to my account. This cheque may be for the interest. I think it was for the interest.

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Most probably my cheque for Rs. 375 to Samaratunge must have been taken by defendant which defendant sent to his account and he drew a cheque for that amount in my favour. I have not brought my bank statement with me. D13 was given to me on the 3rd and not on the 4th December, 1942. Samaratunge did not want me to make the various disbursements. I did not tell defendant that I will give him one cheque. Defendant wanted me to write out a cheque and I gave him a cheque. I gave two cheques because he wanted two cheques to be written. I did not ask defendant why he wanted two cheques. I felt that the small cheque was for the interest. The cheque I issued for Rs. 375 has not come back to me. There are some things about this incident that I can remember. I know that defendant obtained for me a warrant to confess judgment from Samaratunge. The warrant of attorney was signed at the time P1 was signed. Up to date I do not know that Samaratunge at the same time signed a secondary bond in favour of Naina Marikar. I am calling Naina Marikar as a witness because on looking through the documents I found some mortgage there of the Panwila property. At that time I did not know that a secondary mortgage was executed on that same day by Samaratunge to Naina Marikar over the Panwila lands. I do not know when that bond was signed. I may have been there when that bond was signed. I do not remember. I cannot say how many documents were signed on that day. The whole transaction took about half an hour. I did not come the next day. At the time the bond was signed I was aware that there was an earlier secondary bond over Fincham's land. I did not know who the earlier secondary mortgagee was. I did not ask who he was. In this transaction my complaint against the defendant is that I gave this money to Samaratunge on his recommendation of the properties. One of my complaints is against the value defendant placed on Fincham's land of Rs. 80,000. My second complaint against defendant is that he said that the Panwila lands were worth about 30,000. They are the only complaints I have against him.

I know that Mr. Fuard is a proctor and notary. I do not know that he is not a valuer. I know Messrs. McHeyzer, Vandersmagt, Krishnarajah. They are auctioneers, and brokers. For valuations I will look to auctioneers and brokers and not to proctors and notaries.

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Now I know Samaratunge and Moolchand. Now I know that these people went to Proctor Kanagarajah on the 15th January, 1943, about a month after P1, and entered into an agreement. I was told that defendant gave instructions for this transaction. Moolchand himself told me that defendant gave instructions for him to draw up that agreement between Moolchand and Samaratunge. (Evidence of Moolchand put to the witness). I maintain that Moolchand told me that defendant knew about this transaction.

The only payment of interest by Samaratunge was the advance interest. Then I complained to defendant. I know that defendant wrote 10 letters to Samaratunge on my behalf calling for the interest.

(Shown D6, D7 and D8). When defendant wrote to Samaratunge at my request and Samaratunge sent replies, the replies were not shown to me. Defendant did not even tell me what the replies contained. Defendant only told me that he wrote to Samaratunge but he did not tell me what replies he got. Defendant told me that he was making arrangements to get my money back. Defendant sent letters to Samaratunge at my request. I asked defendant what replies he received. Defendant told me that he had heard from Samaratunge that he was arranging to pay the interest.

20

(Shown P52). I read this plaint. I did not read the plaint fully. I got the summons along with this. I saw the summons making me a necessary party. So I brought the summons and gave it to Mr. Fuard. Moolchand was claiming some Rs. 50,000. When I was surprised at the figure of Rs. 50,000 in the summons I did not look into the plaint to find out what it was. I have not yet gone through this plaint. I handed the summons to defendant and asked him what I had to do. Defendant asked for my proxy. I sent him the proxy and the fees he asked for. I saw defendant all the time. Defendant did not tell me that he saw Mr. Haniffa about the matter. Defendant asked me to wait and see 30 what the property will fetch at the sale. Even at that point of time I felt that the property was worth Rs. 80,000. I went to the sale under Moolchand's decree. The sale was not fixed at Vandersmagt's office by arrangement between Moolchand and me. Moolchand did not tell me anything. Although I knew him he did not tell me anything. I saw in the papers that the sale was in Vandersmagt's office. I attended the sale. I did not ask anybody to stop the sale. How can I stop the sale? I do not know that sales in auctioneers' offices did not fetch anything. I know that some people want their property sold on the land itself. A man wants his property sold on the land itself in order to get a good 40 price at the sale. I did not know that the sale in the auctioneer's office was not the best thing in so far as a good price was concerned. I told the defendant that the property fetched only Rs. 16,000. Defendant did not ask me why I did not bid for the property.

Defendant and I arranged to file action. Defendant called for certain fees giving me credit for Rs. 45. Defendant used the proxy I had signed earlier. I did not go with defendant's clerk to see an advocate.

Action was eventually filed on my bond. I obtained judgment on the warrant to confess judgment. Samaratunge came and saw me and obtained time. The six months' time I gave him expired in May, 1945. I would not have given him time but for the defendant. The sale was fixed for December, 1944. Mr. Krishnarajah was the auctioneer to whom commission was issued to sell the property on my decree. I do not know that Krishnarajah first valued the land at Rs. 23,000. I do not remember going to see Krishnarajah with the defendant. I know Krishnarajah. He is on my list of witnesses. I did not go and ask Krishnarajah to reduce his valuation to a low figure to enable me to buy the land if I could. I do not know the valuation Krishnarajah placed on this land before the sale. The sale was postponed and I gave the man six months' time. Before the time expired I worried Samaratunge to pay. By this time I had doubts about Samaratunge. Then Samaratunge wrote to me for the first time condemning his own title as bad and asking me to take Rs. 7,500. It may be true that the title deeds were not forthcoming. Samaratunge took six months time to pay. He could not pay. Then he asked me to reduce the claim to Rs. 7,500. I did not agree to this. Then he started condemning his title. When Samaratunge condemned his own title as bad I suspected that it was a trick of his to force my hand to accept Rs. 7,500. I ran to the defendant. I told the defendant to write. I also wrote the letter P45. Defendant wrote letter D12.

From about May to November, 1945, I was trying to get the money from Samaratunge if I could. I may have gone to see him twice during this period. When I failed to get the money from Samaratunge I went to see Mr. Martin Weeraratne because I thought defendant was not trying to do his work properly, that he was trying to deceive me. Until I went to see Mr. Weeraratne I did not suspect defendant. I went to Mr. Weeraratne because I had my suspicions about the defendant. In November, 1945, Mr. Weeraratne did not tell me anything about Marshall Perera. I now know that Marshall Perera had some dealings with Mr. Weeraratne. I knew this before I went to see Mr. Weeraratne. I cannot remember who told me about this incident.

Dhanapala purchased the Panwila lands at the sale for Rs. 2,250 and not for Rs. 6,000. Dhanapala was the man who bid at the sale. I do not know Dhanapala.

Re-Examination. On 3rd December it was defendant who asked me to write out two cheques. I produce my cheque book covers marked P68. Cheques on the Ceylon Bank have no counterfoils. On Ceylon Bank cheque books there is provision made on the cover to make a record of the cheques drawn. After I issued the two cheques in question I had four cheque leaves left.

At the time I entered into this transaction defendant did not tell me that there was a mortgage over the Panwila lands. Defendant did not tell me that any action was filed against Samaratunge on either of his lands. I was not told that judgment had been entered against Samaratunge.

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—continued.

I have no other complaints against the defendant except that I trusted the defendant and I lent my money on his recommendation.

I did not know that Samaratunge had a case against him at any time.

I went to defendant's office on 28-11-42. At that time I took Shamsudeen's letter P48 and P49 with me. Defendant ran through the letters.

(Sgd.) H. A. DE SILVA,
District Judge.
23-5-49. 10

A. M. Sham-
sudeen.
Examina-
tion.

A. M. Shamsudeen, 49, Land Agent, Pannipitiya.

Land agents do not require licences. I have not taken out a broker's licence. I have been a land agent for about 20 years. I know the defendant. He is my brother. I go to his office at Hultsdorf. I meet my clients at several other proctor's offices at Hultsdorf. I do not have a particular office in Hultsdorf. I know defendant's wife Umma Ryhan. I know M. S. Naina Marikar. He is my cousin. I know Sufi Ismail. He is my nephew, my sister's son. I know K. R. Samaratunge. I knew him from 1939. I was raising money for him on his coupons from 1939. Originally he had only the lands at Panwila. I have been to 20 Panwila to see him. I first made a trip there when I first advanced him Rs. 300 on coupons. I gave the Rs. 300 for one of his lands at Panwila. Rs. 300 was what I got my nephew Sufi Ismail to lend Samaratunge. (Shown Bond No. 2111 of 28-8-40 P69). This is the bond given to Sufi Ismail by Samaratunge.

(Attestation in P69 read by witness). An undivided 19/20ths share was mortgaged. According to this there is no reference to a plan. A deed of lease was also drawn up.

(Shown Bond No. 2110 of 28-8-40 P70). By this document Samaratunge leased the same land for the period ended 31-3-45; the consideration 30 Rs. 300 was paid by defendant on behalf of the lessee. The lessee was defendant's nephew.

Thereafter Samaratunge wanted more money. He asked me to raise another Rs. 800 for him. I got him Rs. 800 from my nephew, the same Sufi Ismail, on the Panwila lands. In that connexion defendant did not go and inspect the lands. I inspected the land and the money was advanced. The Rs. 800 consideration was paid by defendant's cheque. Sufi did not want the money settled. Samaratunge wanted more money. The Rs. 300 was settled by Samaratunge when he raised the Rs. 800. He wanted further money not to settle the debt of Rs. 800 40 but because he was in need of money to manage his estates. I raised a

further Rs. 2,500 for Samaratunge from Mr. K. Moolchand. I think this was in January, 1941. Moolchand paid Rs. 2,500 by cheque and the debt to Sufi Ismail was settled.

No. 5.
Plaintiff's
Evidence.
A. M. Shamsudeen.
Examination.
—continued.

(Interval).

(Sgd.) H. A. DE SILVA,
District Judge.
23-5-49.

23-5-49.

After lunch.

10 A. M. Shamsudeen, Affirmed.

Examination-in-Chief (contd.). Prior to Moolchand giving the money the defendant had not visited the Panwila lands. At no time did the defendant visit the Panwila lands. Rs. 2,500 was the first amount he lent on those lands. He did not lend anything more on those lands.

I came to know that Samaratunge was interested in some lands in Urugalla. He told me that he was interested in finding a property there. He told me that during that period of time. I cannot remember when it was. It was just after Moolchand lent Rs. 2,500 on the Panwila lands. Moolchand did not lend Rs. 12,000 on those lands. When Samaratunge spoke to me I did not inquire what those lands were. He told me he was working his uncle's property and he was interested in buying that land in Urugalla. Later on he instructed me to raise some money on that land. I do not know who his uncle was, one Simon Silva or some one. He told me that Simon Silva was the owner of that land. When he asked me to raise Rs. 40,000 on that land I spoke to Moolchand. That was two or three weeks before the transfer and the mortgage. Moolchand agreed to give only Rs. 35,000. Prior to his agreeing to give that money I did not go and see the land. I understood that defendant, Moolchand and Samaratunge had gone to see the property. I cannot say how long that was before the execution of the deed.

Moolchand lent Rs. 35,000. I cannot say whether that was on the 2nd of June. At that date Samaratunge was not the owner of the land. Samaratunge was not content with only Rs. 35,000, he asked me to raise Rs. 40,000 and failing that to raise Rs. 5,000 or Rs. 6,000 outside in addition to the Rs. 35,000. I raised the balance Rs. 6,000. I gave Rs. 2,500 and I raised from my sister-in-law Rs. 3,500. That made up the Rs. 6,000. I went and spoke to my sister-in-law and she was agreeable. She must have consulted the defendant about it.

Q. It is suggested by the defendant that you are an outcast of the family? A. No. I am not. I am not discarded by the family because I married outside the family.

It was on the very day that Moolchand was lending the Rs. 35,000 that Samaratunge became the owner of the property for Rs. 35,000. It was bought for Rs. 35,000 and mortgaged for Rs. 41,000 on two bonds.

No. 5,
Plaintiff's
Evidence.
A. M. Sham-
sudeen.
Examina-
tion.
—continued

Moolchand was quite aware of that transaction. I do not know whether Moolchand would not have lent even Rs. 15,000 if he knew on that day that the property was being bought for Rs. 35,000. Moolchand wanted his money back soon after the mortgage of the Panwila lands. I do not know whether he wanted it done in two months, he was anxious to get his money back, because he had lent Rs. 35,000 on Fincham's land he did not want to have two mortgages outstanding. The mortgage on the Panwila lands was a primary mortgage for Rs. 2,500. I do not know why he did not want to allow that bond to remain. The Urugalla land is called Fincham's land. When he gave money on a mortgage of that 10 land the mortgage on the Panwila lands was still subsisting. I do not know why he made up his mind suddenly against that mortgage remaining. I do not know whether he thought that security was not sufficient. I do not know whether most of the Panwila lands are undivided lands. I do not know whether there are no plans for the Panwila lands.

I have signed as a witness to almost all the documents but I do not know whether there are plans or not. When Moolchand wanted the Panwila lands released Samaratunge asked me to raise Rs. 5,000 to pay off the money due to Moolchand on the Panwila lands. Samaratunge was not able to pay that money due to Moolchand at the time and he 20 wanted to raise further money. By way of coupons a certain sum must have been paid to Moolchand. When Samaratunge wanted Rs. 5,000 raised I spoke to one Mr. Naina Marikar. Naina Marikar is my cousin and defendant's cousin. He agreed to give Rs. 3,750 on the Panwila lands. He gave that money on the bond P41. In order to answer the question as to how the consideration was paid I must look at the attestation. (Shown the document). The consideration was paid by cheque. (Witness reads out the attestation). I do not know whose cheque. The attestation says that no consideration passed in the presence of the notary. It is not correct to say that the consideration was paid by 30 cheque. (Witness reads the attestation over again). When P41 was executed there was a contemporaneous lease. Under these coupon transactions a lease is always given. In this case too there was such a lease.

Q. I put it to you that the consideration was paid by defendant's wife's cheque?

(Mr. Thiagalingam objects—leading question and misleading question. Mr. Jayasuriya withdraws the question).

The consideration for the lease was paid by cheque. I cannot say whose cheque that was. The bond P41 is dated 20-8-41. Naina Marikar's 40 bond P40 was put in suit on 20-2-42 in D.C. Colombo No. 532. Naina Marikar put his bond in suit so soon because the issue of coupons ceased. According to the agreement if coupons were not issued to him he was to put the bond in suit. No interest was to be paid but he must have received it by way of coupons. They were tea coupons.

On behalf of Naina Marikar the defendant put that bond in suit. I knew about that time that Samaratunge was being sued for this money

by Naina Marikar. I do not know whether several attempts were made to serve summons on Samaratunge. I do not know if there was any difficulty about the serving of summons on Samaratunge. I cannot remember when Samaratunge appeared in Court in that case. When Naina Marikar wanted his money back Samaratunge asked me to raise Rs. 10,000 on the Panwila properties. I do not know whether his position was that he was unable to pay even the Rs. 3,250, he wanted Rs. 10,000 to pay off Naina Marikar and for other expenses he had. Naina Marikar's bond was eventually paid by raising money from one Mr. Weerasuriya, that is the plaintiff. I had come to know the plaintiff about 10 1940 or 1941. He had come to defendant's office and I used to often meet him there in the mornings. I go there to attend to my sister's work. I first met him in defendant's office in 1940 or 1941. I had nothing to do with the transaction with Wiswasam. Some other broker had arranged that.

No. 5.
Plaintiff's
Evidence.
A. M. Sham-
sudeen.
Examina-
tion.
—continued.

After Naina Marikar put that bond in suit Samaratunge wanted me to raise Rs. 10,000 on the Panwila property alone. That is what he told me first. I made efforts to get the money from one D. C. Wijesinghe. He is the only man I approached. He said he would let me know in two 20 or three days time when I spoke to him and later I dropped that business as he was not prepared to give money on that property. Mr. Wijesinghe is a notary public living in Pasyala. I did not take him to see the land. I only put the proposition to him. It is not that he refused to lend but I had to drop that business because when I told the defendant that I spoke to D. C. Wijesinghe to raise money on the Panwila land defendant said if it is to be on the Panwila lands he would not recommend it but if it is to be over Fincham's land he would recommend it. Then I consulted Samaratunge and had to drop the matter. That transaction was dropped on defendant's advice.

30 Then one day I went to the Pettah and there I met the plaintiff. I did not know that day whether plaintiff had gone to defendant's office that morning. He may have gone when I was not there. Nobody told me that plaintiff had been to defendant's office that day. I spoke to the plaintiff in the Pettah about lending money to Samaratunge. After speaking to him I went away. I had come to the Pettah to purchase some medicines for my sister and after I purchased the medicines I met plaintiff and spoke to him and I told him I would write to him. After having spoken to the plaintiff I went to Wellawatte and handed over the medicines and came back to the office and wrote to the plaintiff a letter. 40 I wrote the letter on the same day that I met the plaintiff at the Pettah.

(Shown P48). This is my letter. This has been written from the office of the defendant. I have said "client of ours" in this letter. I meant by that client of Mr. Weerasuriya the plaintiff and myself. The facts as stated in this letter are correct. At the time I wrote this letter I had not consulted the defendant. I stated in the letter that the title is Crown. I was told that by Samaratunge, that the title was Crown title. I say in the letter that further Mr. Fuard had suggested to me to

No. 5.
Plaintiff's
Evidence.
A. M. Sham-
sudeen.
Examina-
tion.
—continued.

get another large estate of 140 acres. At the time I wrote this letter I had not discussed it with defendant. Although I say in the letter that Fuard suggested certain things as a matter of fact I had not discussed this matter with Fuard, I wanted to make plaintiff believe that I had discussed the matter with Fuard. I got a reply from the plaintiff. I replied to that letter which I got from the plaintiff.

(Shown P49). This is the reply I sent to the plaintiff. This was written from defendant's office on his note paper. When I sent this letter also I had not discussed the matter with Fuard.

I had instructed Samaratunge to meet us at the bus stand on the 10 29th, at the bus stand at Kandy. Plaintiff replied to P49. I have not brought that letter. To that letter I replied by letter dated 26-11-42 P50. On receipt of plaintiff's letter I did not speak to Fuard. I did not discuss with the defendant at all about the rate of interest. I confirmed my arrangement to meet Samaratunge at Kandy by P50. I went there- after with the plaintiff to Kandy. We did not go on Sunday morning. We went on Friday afternoon. That is because on the day I wrote that last letter plaintiff came to my house at about 3 or 4 o'clock and told me he had an almsgiving on Sunday and he could not come on Sunday and wanted it postponed for Friday morning. It was on Thursday evening 20 that he came and spoke to me. Then I went to the post office and sent a telegram to Samaratunge to come to Colombo and meet me at defendant's office the next morning. I met him in defendant's office on Friday morning and plaintiff came at about 12. After that Fuard returned from the Courts and wanted to go to the Mosque and then plaintiff wanted to speak to Fuard and to tell him that we were going to inspect Samara- tunge's estate. It is only then that Fuard knew that we were going to the estate.

We went by train that same afternoon, that is on Friday, to see the estate. Samaratunge the plaintiff and myself travelled together. On 30 Thursday evening I sent the telegram to Samaratunge. Plaintiff and I went and sent that telegram and Samaratunge came the next morning Samaratunge came. Plaintiff paid the telegraphic fee. I went on Fri- day morning to defendant's office and Samaratunge came there and plaintiff came there at about 12 o'clock. After visiting Fincham's land we returned to Kandy and plaintiff wanted to get back to Colombo. Plaintiff said he was very satisfied with the security, that is with Fin- cham's land and he did not want to see the Panwila lands.

A. M. Sham-
sudeen.
Cross-
Examina-
tion.

Cross-Examination. Fincham's land originally belonged to one Simon Silva. I do not know whether he had no children. Samaratunge is his nep- 40 hew. Sufi Ismail is my nephew, he is the son of a widowed sister of mine. P69 and P70 are Sufi Ismail's bonds dated 1940. At that time I was quite satisfied that it was a safe investment on coupons and I was content to recommend to my own nephew to take a mortgage of the Panwila lands. The Panwila lands were planted with tea. If I had any doubt about it I would not have recommended it to my nephew. I inspected the Pan-

wila lands—they are in five or six blocks. Samaratunge was in possession, I cannot say whether he possessed divided or undivided blocks. Samaratunge pointed out the properties to me and he told me that he was actually in possession and he also showed me the coupon cards. He was residing in the house there with his family.

No. 5.
Plaintiff's
Evidence.
A. M. Shamsudeen.
Cross-
Examination.
—continued.

I did not marry a Muslim. I married a Sinhalese. I married her about 20 years ago. I converted her to my religion. Some members of our family refused her and some did not. Fuard's wife is a wealthy woman in her own right. When Fuard married he was given properties producing about Rs. 1,000 a month—that is the income from the Colombo properties. In 1940 and 1941 Fuard's wife was doing business with me in buying and selling tea coupons. In getting the Rs. 3,500 from her I discussed it with her and she gave the money. Before P1 was signed Samaratunge, plaintiff and I went and instructed Fuard to draw up the bond. Naina Marikar was also there. About Rs. 5,500 was due to Naina Marikar. We induced him to reduce that amount and he agreed to do so. Myself plaintiff and Samaratunge induced to reduce the amount. We gave instructions to Fuard to draw up two bonds one in favour of plaintiff, a primary over the Panwila lands and the other for Rs. 1,000 a secondary bond over the same lands.

On 3-12-42 they were executed, that is the bond in favour of the plaintiff a secondary over Fincham's land and a primary mortgage over the Panwila lands for Rs. 15,000 and another secondary bond over the Panwila lands in favour of Naina Marikar. Before that date plaintiff was well aware of the various mortgages outstanding over Fincham's land, that is the Rs. 35,000 due to Moolchand and the Rs. 6,000 due to me and Fuard's wife. He also knew that Naina Marikar's bond had been put in suit and he knew that the Rs. 15,000 he was lending was going to be used partly to pay Naina Marikar and to pay me and Mrs. Fuard fully and the balance was to be given to Samaratunge for his own purposes, that is for some military contract he had to execute. On the day the bond was signed Mr. Weerasuriya, the plaintiff, gave two cheques to Fuard and Mr. Fuard wrote one cheque in favour of Weerasuriya the plaintiff. He did not give it to plaintiff that day, because when he wrote that cheque Naina Marikar asked for his cheque and I also asked for my cheque and so Fuard said that he would give the cheques on the next day at about 1 o'clock. He therefore did not give the plaintiff any cheque on that day. On 4th December we all went to Fuard's office, myself, plaintiff Shamsudeen and Naina Marikar and Fuard gave the cheque D13 to the plaintiff. (Shown D14). He gave this cheque to Samaratunge and I helped Samaratunge to cash that cheque that day. (Shown D15). This cheque for Rs. 3,500 was given to my sister-in-law. I handed that cheque to her and she got me to cash it later. (Shown D16). This is a cheque for Rs. 2,500 and this was given to me. I cashed it. (Shown D17). This cheque is for Rs. 4,500 and this cheque was given to Naina Marikar and it has gone to his credit. After Fuard filed action on

No. 5.
Plaintiff's
Evidence.
A. M. Sham-
sudeen.
Cross-
Examina-
tion.
—continued.

Naina Marikar's bond against Samaratunge, Fuard did not like Samaratunge after that. I cannot remember Fuard telling me not to have anything to do with Samaratunge.

Re-Examination. Nil.

(Sgd.) H. A. DE SILVA,
District Judge.
23-5-49.

M. S. Naina
Marikar.
Examina-
tion.

M. S. Naina Marikar, affirmed, 50, Landed Proprietor, Havelock Town. Defendant is related to me. I do not transact much of my business in defendant's office, I used to go there. I know the last witness, 10 he is the brother of the defendant. He has put through transactions for me. He raised a loan of Rs. 3,750 from me. He has done other transactions also. I lent that money through him on a Mavanella property and I was to get the tea coupons. I got a rebate on the tea coupons—we do not take interest on moneys lent. Defendant is my first cousin. His mother and my father are sister and brother.

I did not personally know Samaratunge. I visited his lands with Shamsudeen and Samaratunge. They are lands in Panwila and I obtained a bond for Rs. 3,750. (Shown P41). I must go through this to see whether this is the bond. Yes this is the bond and agreement. This 20 bond was entered into on 20-8-41. I was aware when this bond was entered into that Moolchand's bond for Rs. 2,500 should be paid. Moolchand's mortgage was over the Panwila lands. I paid the Rs. 3,750 by cheque. Moolchand's debt was not paid with my money. I paid the money to Samaratunge and I do not know whether he paid off Moolchand's debt. The cheque was given by me in favour of Samaratunge. It was my wife's cheque. I do not know into whose account that cheque went. I put my bond in suit against Samaratunge in case No. 5382 of this Court. I sued on the bond on 20-2-42. Defendant filed that plaint for me. I cannot say whether I have claimed Rs. 4,990 in that action, 30 it cannot be so little. I cannot remember how much I claimed in that case. (Shown copy of plaint). Yes it is Rs. 4,990. That was the amount due at that date. A sum of money Rs. 3,750 lent in August, 1942, became Rs. 4,990 in February, 1942, because it was on the basis of payment on rebates at so many cents per lb. of tea. It was calculated on that footing. I got more than I would have got as interest by that arrangement. I cannot remember when I filed action against Samaratunge whether I was able or not to serve summons on him.

(Shown P42). Q. Judgment was entered against the defendant in that case only on 17-8-42? A. Yes. 40

Defendant in that case took six months' time to settle the claim. He asked for nine and was given six months. I was paid after Samaratunge borrowed the money from the plaintiff.

Cross-Examination. I did not get all the money due to me on the decree in case No. 532 on the bond P41. The settlement was that I should be given Rs. 5,500 and I waived the rest. Samaratunge spoke to me about my waiving that amount. I wanted Rs. 5,500 and then Samaratunge said he was not in a position to give Rs. 5,500. Plaintiff was also there and they forced me to take Rs. 4,500 leaving Rs. 1,000 which was secured by a secondary mortgage over the Panwila lands. I agreed to that. On that day I asked Fuard to draw up the secondary bond for Rs. 1,000.

(Shown D5). This is the bond in my favour dated 3-12-42. It was a secondary bond over the Panwila lands. Plaintiff's bond was also signed. On that occasion on 3rd December. Fuard did not pay me any money. He said that he will have to send plaintiff's cheque to the bank and that he would make payments on the following day. I went the following day. Plaintiff was also there. I received the Rs. 4,500 by cheque D17 dated 4th December. I credited the cheque to my account. Plaintiff knew very well that from his money all of us were being paid off. The Rs. 1,000 on the secondary bond has not been paid yet. Plaintiff put his bond in suit in case No. 1084 of this Court. I cannot remember whether I was served with summons as secondary mortgagee. I have not been paid anything on the secondary bond.

(Sgd.) H. A. DE SILVA,
District Judge.
23-5-49.

Marshall Perera, sworn, 64, Government Pensioner, Lunawa. I know the defendant I had occasion to see him with regard to investing some money of mine. I have invested several amounts through him. He invested Rs. 3,000 belonging to my daughter as well. The security given was a house and garden at Baddegama. One Mr. M. J. D. Gunasekera borrowed the money.

30 (Mr. Thiagalingam objects to any evidence being led by this witness to prove that this witness had been wrongly advised by the defendant in some other cases where the witness lent money. He says the principle of law is that all evidence dealing with *inter alias acta* should be excluded in a trial between plaintiff and defendant. He says this witness cannot give any evidence relevant to the issues in question in this case nor can he speak of the stage of mind of any person. He says the plaintiff does not suggest system. Plaintiff's case is based on a breach of contract or professional duty. He cites Phipson on Evidence, 8th Ed., page 152.

40 Mr. Jayasuriya replies. He says he is seeking to prove through this witness that the defendant has gone beyond the scope of being a notary pure and simple and he has advised other people on title which was bad and ultimately paid the claims.

It is now 4 o'clock. Mr. Jayasuriya will continue his address in support of his application to continue to examine this witness who is now in the witness box.

No. 5.
Plaintiff's
Evidence.
M. S. Naina
Marikar.
Cross-
Examina-
tion.
—continued.

No. 5.
Plaintiff's
Evidence.
Marshall
Perera.
Examina-
tion.
—continued.

Further hearing on 6th June. The witness is warned to attend on 6th June provided his batta is paid.

(Sgd.) H. A. DE SILVA,
District Judge.
23-5-49.

6-3-49.

Trial resumed

Same appearances as on the last date.

Marshall Perera, recalled, sworn.

(Mr. Jayasuriya continues his argument with regard to the admis-10
sibility of the evidence of this witness.

This witness is called to prove that this defendant acting as proctor and notary recommended to another client of his, namely, the witness who is in the witness box now, to take as security property which was found to be later worthless and the defendant paid the money lent by the witness on the security of the property recommended by the defendant. This evidence is called to negative the presumption that may arise that a proctor and notary normally in the course of his business would only be investigating the title and attesting the document.

At this stage Mr. Jayasuriya says that before continuing his argu-20
ment he wants to put a few questions to this witness.

(Let that be done).

Examination-in-Chief (contd.). I knew the person who borrowed the money from me. Defendant introduced him to me. Defendant advised me legally in that matter. There was correspondence between the defendant and me over that matter. The correspondence I had with defendant are with Proctor Weeraratne. After much correspondence defendant paid me the money. I did not lose anything by that trans-
action. Defendant paid me the money by cheque. I cannot remember
by whose cheque he paid me the money. 30

Cross-Examination. M. J. D. Gunasekera borrowed the money.

Q. Did it transpire later that that M. J. D. Gunasekera who borrowed the money did not himself have title to the land but that his father by the same name had title to the lands? A. That Gunasekera's father had title to the lands.

In regard to that loan transaction I went to Mr. Weeraratne, Proctor. Mr. Weeraratne drafted the letter for me which I forwarded to the defend-
ant. The correspondence regarding that matter was with my proctor
Mr. Weeraratne. This was about 1945. I was not aware where the
correspondence was. When I got summons in this case I did not know 40
where the correspondence was. The summons served on me directed me
to produce certain letters. I did not have the letters with me. I have
given permission to nobody to produce those letters in Court.

Q. Do you think that Mr. Fuard deceived you? A. I do not think so.

Marshall
Perera.
Cross-
Examina-
tion.

Re-Examination. Since I received summons I met the defendant. I went to his office also. After I got the money from the defendant I did not know where the letters were. I did not ask for them from Mr. Weeraratne. After I got the money I did not remember where I left those letters.

No. 5.
Plaintiff's
Evidence.
Marshall
Perera.
Re-
Examina-
tion.

(Sgd.) H. A. DE SILVA,
District Judge.
6-6-49.

Mr. Thiagalingam states that he has no objection to the evidence elicited from this witness by Mr. Jayasuriya, without prejudice to his rights to object to any questions regarding the transaction spoken to by this witness, being put to the defendant when in the witness box.

Mr. Jayasuriya closes his case reading in evidence documents P1 to P70.

Interval.

(Sgd.) H. A. DE SILVA,
District Judge.
6-6-49.

No. 6.

Defendant's Evidence.

20

After lunch.

Defence.

Col. J. G. Vandersmagt, sworn. I am a valuer, auctioneer and broker. Several commissions have been issued to me from this Court to value lands. I do not remember the issue of a commission to me from this Court in case No. 941/M.B. if I am given particulars I may remember. Yes I remember receiving a commission in that case regarding the sale of some land in Urugalla in the Kandy District. That sale took place in Colombo. In the usual course I had to make a valuation report. (Shown D1). This is my valuation which I sent to Court. I valued the land as stated here. D1 is a certified copy of my report. I valued the land at Rs. 45,000.

Cross-Examination. The land was sold in my office in Colombo. I cannot now say why I decided to sell the land at my office rather than at the spot—it may be because the land was far away. So far as I remember perhaps I thought that was the best way of selling this land. I cannot say how much it fetched at the sale. My sale report will show that. (Shown P39). The land was sold for Rs. 15,000. The purchaser was the

No. 6.
Defendant's
Evidence.
Col. J. G.
Vanders-
magt.
Examina-
tion.

Col. G. J.
Vanders-
magt.
Cross-
Examina-
tion.

No. 6.
Defendant's
Evidence.
Col. G. J.
Vanders-
magt.
Cross-
Examina-
tion.
—continued.

plaintiff in that case Moolchand. I do not know who lived on the adjoining property of that land. It was a neglected land so far as I remember. I went and inspected the property before I valued it. I went right through the land at my inspection. I cannot say if Rs. 16,000 was a fair value but that was the price it fetched at the sale.

Re-Examination. Nil.

(Sgd.) H. A. DE SILVA,
District Judge.
6-6-49.

H. M. B.
Fernando.
Examina-
tion.

H. M. B. Fernando, sworn, 38, Land and Commission Agent. I am a partner of Linton & Co., who are auctioneers, brokers, importers and exporters. The sale of Fincham's land is in our hands at present. The biggest offer we have at the moment for that land is one lac of rupees. The present owner is N. T. Ratnasekera. The offer of one lac has been turned down. Ratnasekera is not willing to sell it for a lac of rupees. According to his letter dated 1-4-47 and his personal instructions to us he expects Rs. 125,000 for the land.

H. M. B.
Fernando.
Cross-
Examina-
tion.

Cross-Examination. I first contacted Ratnasekera on 28th August, 1946. I had several offers from time to time and the last offer I received was on 24-11-47 from Mr. F. W. J. Weerappah on behalf of a client of his. Weerappah is also a broker. Mr. Weerappah has not told me who his principal is. It is not usual to ask the other broker who his principal is. The offer made by Weerappah was confirmed by his principal. I have Mr. Weerappah's letter. I do not know whether his principal has confirmed the offer but I have Weerappah's letter with the offer.

I know all about Fincham's land. I know that W. S. de Silva had purchased it for Rs. 24,000 in 1939. I happened to negotiate that transaction fortunately or unfortunately. I know Mr. Silva personally. The estate was not in a very neglected condition when Simon de Silva purchased it. Before Simon de Silva bought that estate I went round the estate with him. It was actually in December, 1938, that he bought it. At that time he valued the estate on his own at Rs. 60,000. I heard that he put Samaratunge in charge of the estate after that. I did not visit the estate when Samaratunge was in charge of it. I am not aware that Samaratunge was trying his best to sell the estate for Simon de Silva. Simon de Silva is no longer alive. I do not know when he died. Simon de Silva did not approach me to sell the land nor did Samaratunge approach me to sell it.

I started our brokering business in 1937. Prior to that I was doing indenting work and I was on an estate too. I know the defendant. I have known him for about six or seven years. In the early stages I had transactions with him they were in connection with some tea coupon transactions. I once happened to approach him to raise a loan. That was in 1937. I did not borrow any money. He was the attesting notary.

The lender of the money was a chettiar. I negotiated that loan from the chettiar to my client. The money was advanced on a forward contract in regard to rubber coupons with a bond hypothecating property. That is the only transaction I put through the notarial work in regard to which was done by the defendant. I was summoned in this case. I cannot remember when I got the summons. Immediately I received the summons I went and saw Mr. Fuard and asked him what it was about. He told me that he understood that I was handling the sale of Fincham's land and asked me what had happened. I told him I had several buyers.
 10 He said he had summoned me to give evidence about that in this case and he asked me if I had any documentary evidence and asked me if I would tell what facts I knew. I consented. He did not ask me who the principal was who had made the offer. That transaction for the sale dropped because my client rejected the offer.

No. 6.
 Defendant's
 Evidence.
 H. M. B.
 Fernando.
 Cross-
 Examination.
 —continued.

Re-Examination. I last visited this land about March, 1947. At that time I valued the land at roughly over one lac.

H. M. B.
 Fernando.
 Re-
 Examination.

To Court: Since 1938 and 1939 the value of tea lands have appreciated largely. I purchased the land for Simon de Silva before the war. At that time the price of tea coupons was not very high. Simon de Silva
 20 bought the estate for the sake of the coupons because they were making money on coupons.

(Sgd.) H. A. DE SILVA,
District Judge.
 6-6-49.

R. C. McHeyzer, 64, Auctioneer and Broker. Commissions from this Court are issued to me. I know Mr. Fuard. I remember Fuard speaking to me about Fincham's land. I do not remember the plaintiff seeing me about that land. I know Moolchand. Fuard and Moolchand did not come and discuss about that land with me. Fuard came alone.
 30 I do not remember anyone else coming with Fuard. I do not remember Moolchand consulting me about that land. Fuard asked me whether it would be a safe investment to invest money on a high grown tea estate of so many acres with also a portion in cardamom. I said the security would be quite enough. He told me it was 80 acres of high grown tea and 40 or 42 acres of cardamoms. I said an investment of Rs. 35,000 on that land would be safe. On the information given to me at that date if it was first class tea land it was worth Rs. 2,000 an acre. High grown tea of a middling estate would be worth about Rs. 1,000 an acre or more. I would value at Rs. 1,500 an acre high grown tea of a middling estate.
 40 That is provided the estate is in good condition with all amenities, manured and well cultivated.

R. C. Mc.
 Heyzer.
 Examination.

I remember the sale of Fincham's land on a mortgage decree later. Moolchand when passing my bungalow at 42nd Lane gave me the results of the sale and told me that he purchased it for Rs. 30,000. I told him

No. 6.
Defendant's
Evidence.
R. C. Mc.
Heyzer.
Examina-
tion.
—continued.

I would see him later if he intended to sell it. I went on the next day to his house and asked him to come round with me to have a look at the estate and that I will make an offer. He did not want to sell it. I did not make any offer.

R. C. Mc.
Heyzer.
Cross-
Examina-
tion.

Cross-Examination. Fuard came and saw me somewhere in 1941. He asked me if it would be a safe investment to invest Rs. 35,000 on a high grown tea estate in good cultivation and with a portion in cardamoms and I said it was a safe investment. He formally asked me as to what I thought knowing that I had the experience and I said it is quite alright, that is all.

Fuard did not tell me that there was any client who wanted to purchase it for Rs. 35,000 all that I was asked was whether lending Rs. 35,000 on it was safe. I formed that opinion from the information given by Fuard. If a person wants a property value he would have to pay me my fee and take me to the land. I did not tell him I should like to see the property if he wanted a proper valuation. I do not know whether this property was purchased for Rs. 35,000 in 1941. I do not know what Samaratunge paid for the land. I do not know the estate at all. I do not know where it is located. I did not offer Moolchand Rs. 45,000 for the property. When he said he bought it for Rs. 30,000 I thought I would see what I could do in the matter. I came to know after this action that Moolchand had purchased it for Rs. 16,000 and I was surprised because a Court would not have confirmed a sale below the amount of the decree or the appraised value. I have executed many Court commissions. I have been an auctioneer for 33 years. During that period I have executed many commissions and there was not a single instance where the Court confirmed a sale of this nature and that is why I was surprised that he could have purchased for Rs. 16,000. What he told me was that he purchased it for Rs. 30,000.

Re-Examination. Nil.

(Sgd.) H. A. DE SILVA, 30
District Judge.
6-6-49.

C. A. Krish-
narajah.
Examina-
tion.

C. A. Krishnarajah, sworn, 27, Auctioneer and Broker, Wattala. Commissions have issued to me from time to time in Court sales of lands. In case No. 1084 of this Court plaintiff on a bond and under the decree in that case commission was issued to me to sell certain lands in Panwila. I went and ascertained the lands and I put in my conditions of sale with the values of the various allotments on the top. I produce copies of the conditions of sale submitted by me for the Court's approval, D18, D19, D20, D21, D22, D23.

40

I valued the various blocks at the prices shown in these conditions. There were six blocks and I valued the blocks separately. I valued the land covered by D18 at Rs. 6,250, the land covered by D19 at Rs. 2,000,

the land covered by D20 at Rs. 700, covered by D21 at Rs. 700 covered by D22 at Rs. 2,000 and covered by D23 at Rs. 9,500, totalling in all Rs. 21,150.

After I make the valuation I remember Mr. Weerasuriya the plaintiff and Mr. Fuard came and saw me to get the value reduced. Plaintiff wanted to accompany the man whom I was sending to fix posters on the land before the sale and he went with my man to the land. Then plaintiff and the man came back and plaintiff and Mr. Fuard came to my office later and wanted me to reconsider the values I had put on the various blocks of land. Plaintiff said the lands were not so valuable for people here who wanted to buy lands there. I thereupon made a revised valuation. I produce that revised valuation D24 (certified copy). In that I valued all the lands at Rs. 13,615. The sale which was originally fixed was stopped and I was paid my fee. The sale took place about two years afterwards and at that sale a third party purchased the blocks for Rs. 2,000 odd. The sale took place on the lands.

Cross-Examination. At present I hold no licence as an auctioneer. I did not renew my licence this year. I am not getting Court sales now. The issue of commissions to me from this Court was suspended till June last year owing to some delays of mine in returning commissions to Court. Mr. Fuard and the plaintiff came to me and they requested me to reduce the values. I did not think they were suggesting something wrong, I have always been willing to reconsider if my valuation was wrong. If anyone wants me to reduce a valuation of mine I would not do so but I would reconsider if they put forward any reasons. If the reasons are good I would reduce the valuation. I have not done that very often. I may have done so in other instances, but I cannot remember any. That is the only reason why I reduced the valuation. I went for the second sale. At that sale there were a large number of people bidding. I cannot remember any bidders complaining that there were no plans. I cannot say why the lands fetched only Rs. 2,000 odd. I cannot remember any trouble being created by Samaratunge's step-mother as regards the house. I cannot remember an old woman coming and claiming the house as hers.

Re-Examination. Nil.

(Sgd.) H. A. DE SILVA,
District Judge.
6-6-49.

A. M. Fuard, affirmed.

I am a proctor and I have been in practice for about 25 years. I am also a notary public. I know the plaintiff. I attested a mortgage in favour of the plaintiff in 1941, bond No. 2199 of 20-5-41, D25. The borrower was one Wiswasam. On that same day I attested a lease No. 2197 D26 in respect of the same property the lessee being the plaintiff. That was a coupon transaction. That was in respect of a tea land.

No. 6.
Defendant's
Evidence.
C. A. Krish-
narajah.
Examina-
tion.
---continued.

C. A. Krish-
narajah.
Cross-
Examina-
tion.

A. M. Fuard.
Examina-
tion.

No. 6.
 Defendant's
 Evidence.
 A. M. Fuard.
 Examination.
 —continued.

Plaintiff visited the property to satisfy himself about the value. Wiswasam had arranged to raise a bigger loan at a lower rate of interest and pay off the plaintiff. Plaintiff was very anxious that his bond should remain unpaid and earning interest. I persuaded Wiswasam eventually to keep plaintiff's bond going through the aid of a broker, one Sheriff, who negotiated that loan for the plaintiff. Plaintiff was getting 13½ per cent. on that bond. D25 was cancelled and discharged at one stage and plaintiff took a secondary bond, No. 2218 of 18-7-42 D27. Plaintiff was contended to be the secondary mortgagee for Rs. 13,000 the same amount which he had lent Wiswasam. In 1942 Wiswasam paid up the money on D27 to 10 plaintiff. It is not true that thereafter I negotiated the loan on bond P1. I deny I did so. It is not true that I recommended to plaintiff the security as being sufficient. I deny I recommended the borrower Samaratunge as being reliable. I attested that bond in the usual course of my business. In the discharge of my professional work with plaintiff I have acted diligently and honestly. To the best of my ability I searched the index of lands and looked at the encumbrances and drafted the bond. And I sent the bonds as early as possible to the land registry and after they were returned from the land registry I handed the original deeds and bonds to plaintiff. Eventually my client informed me that Mool-20 chand had put the bond in suit. Plaintiff brought a summons to my office and showed me that he was made a necessary party in the action filed by Moolchand. Plaintiff had a copy of the plaint in Sinhalese and as I could not read Sinhalese I went to the District Court and called for the record and went through the plaint. I did not find anything startling except that Samaratunge, I found, had entered into an agreement subsequent to the bond with Moolchand and that agreement was tantamount to an account stated and fixed the figure due to Moolchand on a particular date as being so much. I knew nothing about that agreement. I understood that Mr. Kanagarajah had attested that document. I thought 30 I must get Counsel's advice and I told the plaintiff that. I told plaintiff that it appears to be like collusion between Moolchand and Samaratunge and I said I would consult Counsel and let him know. In the meantime I asked him to give me a proxy authorising me to act for him and asked him to send me a fee of Rs. 45. I consulted Counsel. I was advised it was bad business to intervene in that action. Plaintiff and I went to the record room and went into the accounts and found that the account stated in that agreement was correct up to a certain date. Eventually under Moolchand's decree the property was sold. Before Moolchand lent money on Fincham's land Moolchand inspected the land with me. 40 When Samaratunge and Moolchand came to my office they informed me that Samaratunge was going to buy it for Rs. 35,000 and that Moolchand had consented to give him Rs. 40,000 at the rate of 9 cts. rebate on each lb. of coupons. I was surprised and asked Moolchand what was the meaning of this. He said that the property belonged to Samaratunge's uncle and Samaratunge had spent about Rs. 10,000 to Rs. 15,000 to bring the property to a proper condition and that Samaratunge feels that the property is now worth about one lac of rupees. Then I told him that

if that is so he had better take a valuer. They did not agree to a valuer being sent. Moolchand was satisfied with the property and after inspection he was prepared to lend the Rs. 40,000 with 8 cts. rebate on the coupons. About two months after the inspection Moolchand said he could not lend more than Rs. 35,000 and wanted 20 cts. rebate on each lb. According to that on every lb. of tea coupon Moolchand was to get 20 cts. and the balance was to be credited against the principal due on the bond. The interest that Moolchand was getting was 20 cts. on each lb. of tea coupons. After the sale in Moolchand's case I advised the plaintiff to file action on his bond immediately and I called for the title deeds of the Panwila property from the plaintiff. On account of fees I also sent him a memo. I did not give him credit for the Rs. 45 in that memo but I deducted the Rs. 45 when he paid me. I filed no proxy in Moolchand's case. In the memo I sent plaintiff I called for Rs. 40 or Rs. 50. If I taxed my bill against him in that case I would have got about Rs. 300. Then I drafted the plaint to file action for the plaintiff on his bond. The client came to my office and I had everything ready and I sent the plaint through my clerk to Mr. Haniffa to get the plaint settled. He was not available and as plaintiff wanted me to file the 20 plaint I did so and I prosecuted the case diligently. Plaintiff had no complaint to make against me as regards my conduct. I filed the action in 1944 June P46. I obtained decree and I issued order to sell. The sale did not take place because plaintiff came and requested me to stay the sale. Plaintiff gave Samaratunge six months time and the sale was stayed. I went to Court and consented to the stay of sale for six months at the request of plaintiff. On the date that P1 was signed plaintiff knew of the prior encumbrances on the land. He knew there was a primary mortgage in favour of Moolchand over Fincham's land. He knew there was a primary mortgage over the Panwila lands in favour of Naina 30 Marikar and he knew that Naina Marikar had put his bond in suit and had obtained decree and also that there was a secondary mortgage over 102 acres of Fincham's land and secondary mortgage over 100 acres of tea in favour of my wife and Shamsudeen in regard to Fincham's land. Plaintiff knew what was going to be done with the consideration he was going to pay on P1. Out of the Rs. 15,000 that he was lending Rs. 375 had to be paid to plaintiff as interest. Rs. 375 to cover cost of stamps and fees, Rs. 4,500 to be paid to Naina Marikar in part settlement of his claim and costs, Rs. 3,500 to be paid to my wife on her bond and on Shamsudeen's bond Rs. 2,500 to him. Rs. 3,750 was to be paid to 40 Samaratunge. That was all that was left to be paid to Samaratunge. On the day I attested P1 the document D4 was given to me. This is a writing given by Samaratunge to plaintiff with directions to issue the following cheques shown in D4. Plaintiff did not write those cheques which Samaratunge wanted. Instead plaintiff wanted to write one cheque in favour of Samaratunge for the Rs. 15,000. I told him to write two cheques one for Rs. 375 and one for the balance, that is Rs. 375 to cover fees and stamps due to me. I stamped the documents straight-away. The bigger cheque given by plaintiff I sent to my credit after it

No. 6.
Defendant's
Evidence.
A. M. Fuard.
Examina-
tion.
—continued.

No. 6.
Defendant's
Evidence.
A. M. Fuard.
Examina-
tion.
—continued.

was endorsed by Samaratunge. Out of that money I made out the disbursements shown in D4 by cheques issued by me. I deny that I did anything shady to pull my wife and brother out of trouble. Plaintiff never suggested that to me at any time. He first suggested that to me at the end of 1945. I produce also D28 Secretary's conveyance No. 173 of 21-6-46 attested by E. A. de Livera of the Panwila lands sold under the decree in case No. 1084 sold to one Dhanapala who was the purchaser on the mortgage bond case in which plaintiff was the plaintiff.

(Mr. Thiagalingam moves to produce deed No. 1944 of 4-2-47 whereby Dhanapala transferred the same property for Rs. 6,000 to J. de Fonseka. 10 Mr. Jayasuriya objects to the production of this document unless the notary is called. Mr. Thiagalingam says he will call the notary. Mr. Jayasuriya has now no objection to the document being produced. It is marked D29).

(Mr. Thiagalingam moves to read in evidence deed No. 39 of 15-7-44 whereby Moolchand sold Fincham's land for Rs. 30,000. Mr. Jayasuriya objects. Overruled and marked D30).

A. M. Fuard.
Cross-
Examina-
tion.

Cross-Examination. I know Samaratunge very well. I first came to know him from the date of the first bond for Rs. 300 which I attested. That was in favour of Sufi Ismail. Since then he has not come very fre- 20 quently to my office. I came to know him in connection with tea coupon transactions. Sufi Ismail is my widowed sister's son. He lives in a small house at Hampden Lane at present. He has been living in that house for the last five or six years. That bond was in 1940. He had a shop. He was not a very rich man. He is worth about Rs. 25,000. In 1940 also he was worth about that amount. He had the shop called Sufi Brothers in Main Street. He must have had a bank account, I do not know. Sufi Ismail is my brother-in-law.

His son is Hardy Ismail. When my brother-in-law was alive he was lending my sister's money. My brother-in-law died and these moneys 30 were lent through my sister's elder son Hardy Sufi Ismail. The Rs. 300 was lent by my nephew Hardy Sufi Ismail to Samaratunge. In 1940 Hardy was not worth a cent. The Rs. 300 lent was his mother's money, that is my sister's money. What was mortgaged was one of the Panwila lands. I did not visit that land. That money was not lent on my recommendation. My brother Shamsudeen visited that land. What was mortgaged was an undivided 19/20 of a land in Panwila. That is one description given and it is also described as a divided extent. I looked at the encumbrances. (Shown P10). These are the extracts of encumbrances relating to the land referred to in P69. In the left-hand 40 corner of P10 there is reference to a deed No. 33482. I examined that deed by referring to the duplicate and also by referring to the reference given and I found that second description. In the earlier deed it had been described as undivided. The land described as undivided is identical with the land registered elsewhere in folio 340 where it is described as a

divided lot. I registered the land as lease of an undivided 19/20 share but there is a remark there to say that it comes within definite boundaries.

It is now 4 p.m. Trial adjourned for 14th instant.

(Sgd.) H. A. DE SILVA,
District Judge.

No. 6.
Defendant's
Evidence.
A. M. Fuard.
Cross-
Examina-
tion.
—continued.

6-6-49.

14-6-49

Trial resumed. Plaintiff and defendant present.

Defence continued.

10 Same appearances as on the previous day.

Mr. Thiagalingam states that on 6-6-49 in addition to himself and Mr. Azeez, Mr. Adv. Canagarayar also appeared for the plaintiff.

Mr. Jayasuriya has no objection to my marking Mr. Canagarayar's appearance for 6-6-49 for the plaintiff:

Today too Mr. Thiagalingam, Mr. Azeez and Mr. Canagarayar appear for the plaintiff instructed by their proctor.

Errors in previous day's proceedings corrected.

Mr. Thiagalingam points out that in the last day's proceedings, in Mr. Fuard's evidence, in line 4 the number of the bond should be 2199
20 and not 2198 as recorded in the proceedings. He moves that 2198 be amended to read 2199. Mr. Jayasuriya has no objection. I make the amendment and initial same.

A. M. Fuard, recalled, affirmed.

Cross-Examination (contd.).—The consideration for the loan was a cheque paid by me for Rs. 300. While this bond was in existence Samaratunge raised another loan. A certain part of that loan must have been paid by the receipt of coupons. Every two or three months coupons were issued. So I take it that Hardy Sufi Ismail was paid. Sufi Ismail is the father of Hardy Sufi Ismail. I have no recollection of
30a particular sum having been paid on the loan of Rs. 300. Whatever was due on the bond in favour of Hardy Sufi Ismail was settled by Samaratunge's giving a fresh bond to the same person for Rs. 800. I have been summoned to produce my protocols. I attested that bond. I have brought my protocols.

(Shown P5). This is an extract of encumbrances relating to the Panwila lands. I have before me the protocol of bond No. 2123 of 30-9-40 in favour of Hardy Sufi Ismail. That document does not show how the consideration was paid. Along with this document a lease was executed. That lease will show how the consideration was paid on the bond. I
40 have got the protocol of that lease bond No. 2122 of 30-9-40. According to the attestation of the lease bond consideration was paid by two cheques

No. 6.
Defendant's
Evidence.
A. M. Fuard.
Cross-
Examina-
tion.
—continued.

drawn by me on the Imperial Bank of India in favour of the lessee for Rs. 643 and Rs. 157 respectively. In order to enable the lender to register his name with the Tea Controller a contemporaneous document (lease) was entered into and the mortgagee who also is the lessee gets coupons for the tea lands from the Controller according to arrangement made by the mortgagor and the mortgagee. I cannot say why two cheques were issued; I cannot remember now. I had no personal interest in the Panwila lands.

The bond for Rs. 800 was settled by Samaratunge by the delivery of tea coupons and by raising money elsewhere—from Moolchand.¹⁰ Samaratunge raised money from Moolchand. I attested the bond in favour of Moolchand. I have the protocol of bond 2149 of 4-1-41. This is also a coupon transaction. Samaratunge raised Rs. 2,500 from Moolchand on six lots of Panwila land. On the same day a lease was also executed by Samaratunge in favour of Moolchand. The bond and lease were executed simultaneously. If there had been a balance due to Hardi Sufi Ismail Samaratunge must have paid it with the money raised from Moolchand. The consideration on bond 2149 was paid by three cheques in favour of Samaratunge for sums of Rs. 1,135, Rs. 331 and Rs. 1,034. Moolchand gave three cheques in favour of Samaratunge.²⁰ I cannot remember whether any of these cheques was endorsed and given to me for my fees. The three cheques may have been written, probably, to enable him to pay off a previous debt. It is possible that Hardy Sufi Ismail's debt was paid off by one of those cheques. Moolchand must have received some coupons by this bond.

Moolchand wanted this money back a few months after the purchase of Fincham's land by Samaratunge. Moolchand's amount was paid long after the bond. Moolchand took the mortgage on Fincham's land in June, 1941. I cannot definitely say that it is two or three months after Moolchand took a mortgage of Fincham's land that he called for³⁰ this money.

(Shown P5). In this bonds 2149 and 2150 are registered. The debt on this was settled by raising another loan from Naina Marikar and by paying whatever balance was due. Whatever balance was due to Moolchand was paid to him from the money raised by Samaratunge from M. S. Naina Marikar. Rs. 3,750 was raised from Naina Marikar.

P5 shows the number of the bond. The lease is 2227 and the bond 2228.

(Shown protocol of lease 2227). The consideration Rs. 3,750 has been paid by three cheques on the Bank of Ceylon drawn by M. S. Naina⁴⁰ Marikar for Rs. 240, Rs. 2,050 and Rs. 1,460. These cheques were issued by the lender's wife in favour of Samaratunge. I cannot say how much of that money went to Moolchand. Naina Marikar is my first cousin. I did not request him to give me a cheque for the full sum and make the various disbursements.

Bond 2228 is dated 20-8-41. This is a coupon transaction. The lender gets the coupons directly from the Tea Controller in terms of the lease bond which is entered into contemporaneously. About six months later Naina Marikar put the bond in suit. I cannot say whether Samaratunge wanted Rs. 5,000 on his Panwila lands when Naina Marikar lent him Rs. 3,750. It is not correct to say that I advised Naina Marikar not to lend Rs. 5,000 on the Panwila lands but to lend only Rs. 3,750. About six months later I filed action on behalf of Naina Marikar.

No. 6.
Defendant's
Evidence.
A. M. Fuard.
Cross-
Examina-
tion.
—continued.

(Shown P4—certified copy of the plaint in case No. 532/M.B. Colombo dated 20-2-42). Naina Marikar told me the reason for wanting to put the bond in suit. Apart from the coupons Naina Marikar had to receive from the Tea Controller Samaratunge undertook to give him some further coupons which he failed to give. Then Naina Marikar put the bond in suit. Before this time I realised that Samaratunge was not a man who kept his promises. On behalf of Naina Marikar I claimed Rs. 4,990 together with interest and costs. I issued summons. Ultimately we were able to serve summons on Samaratunge. There was some difficulty in serving summons. I cannot say how many months were taken to serve summons. That appears on P40.

20 According to P40 evidently till 17-7-42 when he appeared in Court summons was not served on Samaratunge. 17-7-42 was the calling date. There was no return to the summons. Evidently summons was served on him although there is no return. The defendant appeared in Court. I cannot remember whether in between Samaratunge came to my office ; I am sorry I cannot remember whether he came to my office in between. I made efforts to serve summons on him in the Naina Marikar mortgage suit. It is more likely that he did not come to my office and face me because he played a trick on me. He had to pay 4,000 lbs. of tea coupons.

30 Upon that promise the money was lent. Then one day he came to my office before action was filed with about 6,000 or 7,000 lbs. of tea coupons and told me that he was going to deliver those coupons to Naina Marikar. From that moment Samaratunge avoided me. At the time I filed the action I did not like Samaratunge because he tricked me. He was not keeping to his promises.

40 On 17-7-42 when Samaratunge appeared in Court and asked for time to pay, I did not advise my client to give him time. Usually in mortgage bond actions when the man asks for a year's time to pay the Court allows him six months. Six months' time is what is usually given. I do not think Naina Marikar was present on the summons returnable date. It was not a question of my consenting. When the suggestion comes through Court we have to accept it formally. I have certified payment of Naina Marikar's debt on 30-1-43.

Naina Marikar's decree was satisfied partly by payment of a sum of money and partly by giving him a second mortgage bond over the Panwila lands. There was a discussion about waiving a few rupees ; I cannot say definitely how much was waived. It might be Rs. 100, Rs. 150, Rs. 75, Rs. 50 or anything.

No. 6.
Defendant's
Evidence.
A. M. Fuard.
Cross-
Examina-
tion.
—continued.

I was not content with Samaratunge's giving a secondary mortgage to Naina Marikar for the Panwila lands for the balance due. That was an arrangement between Samaratunge, Naina Marikar and plaintiff. All these three parties including plaintiff were present in my office looking into accounts on that Monday, the date on which instructions were given to me to draft the bonds in favour of plaintiff and Naina Marikar. Had Naina Marikar asked me whether to take a secondary bond of the Panwila lands or not from Samaratunge I would have advised him not to take.

It was not that he was such a bad man. It was the way he treated me. He showed me the 6,000 coupons and said that he was going to Naina Marikar's house to pay it. I told the plaintiff that Samaratunge was a very difficult customer. Plaintiff said that he was not lending money to Samaratunge on the security of his word but on the security of his lands. Up to date Samaratunge has not paid the Rs. 1,000 due on the secondary bond due to Naina Marikar. Naina Marikar has not put that bond in suit up to date.

On the day that Samaratunge borrowed money from the plaintiff, after paying all his debts, Samaratunge took away Rs. 3,750. I did not tell Naina Marikar that Samaratunge was getting about Rs. 3,750 left to him and ask Naina Marikar to take his Rs. 1,000 out of that money 20 instead of taking the secondary bond from Samaratunge.

I knew that somewhere about 1939 Samaratunge came into Fincham's land to look after the land. That land belonged to Samaratunge's uncle Simon Silva. Samaratunge used to say that Simon Silva was his uncle. When I went to inspect the land with Moolchand Simon Silva was living on that land and Samaratunge used to address him as uncle. I instructed my Counsel that Samaratunge was Simon Silva's nephew. I cannot be definite that in examining the title I found that Simon Silva had purchased the land for Rs. 23,000. I have not seen the Panwila lands. From what I was told by Samaratunge and my brother I thought that 30 the Panwila lands were worth about Rs. 7,500 to Rs. 10,000, although Samaratunge thought that the land was worth more. Samaratunge used to say that the building alone was worth Rs. 20,000 to Rs. 25,000. I told the plaintiff not to look to the Panwila lands alone as security for his money as I have not seen the land and as the land was made up of various small blocks. There were no plans. There were deeds for the Panwila lands. There were several deeds in favour of Samaratunge's father Belinda. With the exception of one land all the others were divided blocks. There was no question of the title of the Panwila lands in issue at the time. I honestly believed and I think he held good title of the 40 Panwila lands. I took a deed of declaration from Samaratunge and along with it an affidavit attached. Sometimes I take declarations and affidavits in regard to mortgage bonds. I cannot say how often I do so. I have attested nearly 2,600 deeds. In this instance I thought it fit to take a deed of declaration as evidence of his title. That was shortly before Moolchand's bond. Moolchand lent money on the Panwila lands. Moolchand never lent Rs. 12,000 on the Panwila lands to Samaratunge.

(Shown P2 to P34). If Counsel for the plaintiff says that these encumbrances relate to the Panwila lands and Fincham's land I accept it.

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(Shown P2). Fincham's land consisted of about 140 acres. This extract relates to one lot out of Fincham's land. This shows that W. S. Silva had purchased for Rs. 23,000 on 8th January, 1939.

I first came to know Samaratunge when I first attested the bond in favour of Hardy Sufi Ismail for Rs. 300. When Samaratunge was raising these small loans he told me that he was spending the money on Fincham's land. Samaratunge told me that when his uncle purchased Fincham's land it was in a bad condition. I cannot definitely give the date when Samaratunge wanted to raise a loan on Fincham's land; it was when Moolchand and Samaratunge both came to my office.

They must have come to my office about three months prior to the execution of the bond. They spoke the matter over with me. Moolchand told me that Samaratunge was going to buy this property from his uncle for Rs. 35,000 and that Samaratunge wanted Moolchand to give him Rs. 40,000. Then I asked Moolchand "How could you lend Rs. 40,000 on a property purchased for Rs. 35,000?" Then Moolchand said that this property was purchased by Samaratunge's uncle and that Samaratunge has spent nearly Rs. 10,000 to Rs. 15,000 over it with an understanding that Samaratunge's uncle would sell it to him for Rs. 35,000, and that Rs. 35,000 was not the true value. At the time Moolchand entered into this bond he knew all these facts fully. I have given a written statement to my Counsel. I am in the hands of my Counsel. Counsel puts questions. I was present when Samaratunge and Moolchand gave evidence. I heard what Moolchand said. I heard Moolchand say that if he had known that W. S. Silva was selling the property to Samaratunge for Rs. 35,000 he would not have lent Samaratunge even Rs. 15,000. Sometimes it happens that I advise people to lend money to the extent of the face value of the deed upon which the borrower bought the property. I will give a personal instance. I can produce the deeds: my wife bought a property which was subject to a mortgage of Rs. 5,000 for Rs. 5,000. With that money the vendor to her paid off the earlier mortgage with the result that the vendor got nothing.

Moolchand, Samaratunge and I had a talk. Then Moolchand fixed an appointment with me to inspect the land because I told him it was absurd to lend Rs. 40,000 on a property purchased for Rs. 35,000. I suggested to Moolchand that we should take a valuer. He did not want to take a valuer. I was asked to find out the exact position of the land and get a valuer's opinion. Mr. McHeyzer valued the land. He told me that if the estate was in excellent condition with a factory he would value an acre at Rs. 2,000. If it was without a factory he would value it at Rs. 1,000 to Rs. 1,500 an acre. Fincham's land is situated at an elevation of 4,500 feet. It was high grown tea. I did not ask Moolchand not to embark on this venture. Moolchand told me that Samaratunge's valuation of the estate was over Rs. 100,000. I suggested to

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Moolchand that we take a valuer. Mr. McHeyzer was never taken to the estate. I did not pay Mr. McHeyzer a fee. I took the plan and the report of the estate to Mr. McHeyzer and showed him the plan and report. Then I told him the exact position of the land and its present condition. His was a hypothetical valuation. I told him that my client was going to lend about Rs. 35,000 or Rs. 40,000 and asked him whether it was a safe investment. Mr. McHeyzer recommended and said that it was a safe investment. The estate was in very good condition at the time of my inspection. After consulting Mr. McHeyzer I thought the estate was worth more than Rs. 100,000.

10

Shamsudeen *alias* Shams is my brother. He calls himself a land agent. In fact he is an unlicensed broker. My sister's money is invested through him so he has to come practically every day to my office. About Rs. 40,000 of my sister's money is invested through him. He keeps the accounts. When coupons were suspended he had to go and tell the owners to clear the jungle and have the coupons reissued. Other people come to my office and see my brother. He had access to my office stationery. My wife consults him when she invests money. I do not call my brother an outcast. He is a gentleman. I did not suggest to my Counsel that he is an outcast. The suggestion that my brother is an outcast came from Counsel for the plaintiff. I cannot remember that my Counsel used the word outcast. I remember that that word was used by Counsel for the plaintiff.

Shamsudeen knew about the transaction over Fincham's land and Panwila. Shamsudeen knew about the transaction with Sufi Ismail, Naina Marikar and Moolchand.

I did not lend plaintiff's money to Wiswasam. Plaintiff lent the money to Wiswasam. I attested the bond. I did not go to inspect Wiswasam's land with the plaintiff when he was lending money to him. As far as I could remember the big land was subject to a primary mortgage. The security given by Wiswasam to plaintiff was a secondary mortgage of the big land and a primary mortgage of small lands.

(Shown D25). This is the first bond given by Wiswasam to plaintiff. It is dated 20th May, 1941. The amount lent is Rs. 13,000.

(Attestation in D25 read to witness). The cheque and cash must have been paid in that manner as consideration on D25 according to some arrangement. I have no account in the Bank of Ceylon.

Thereafter I drew up a fresh bond for the plaintiff. The lands subject to the primary mortgage in favour of plaintiff by Wiswasam are situated at Kadugannawa and the other land that was given as secondary mortgage was situated near about Norton Bridge. That is my impression.

Wiswasam was trying to pay off the amount due on D25 to the plaintiff by raising another loan at a lower rate of interest. The plaintiff was informed about this. Then the plaintiff came to me and wanted me to induce Wiswasam to keep the bond alive instead of discharging it because the plaintiff was anxious to get the interest from Wiswasam.

In this connexion plaintiff was given a letter by Wiswasam to enable the plaintiff to obtain coupons. Plaintiff obtained coupons from Wiswasam for the lands mortgaged to plaintiff by Wiswasam. Out of the coupons plaintiff paid himself the interest due to him on the bond and also paid my sister the balance in payment of the debt due to her by Wiswasam. In the case of Wiswasam also my sister had lent him money on an agreement. My sister is Mrs. Sufi Ismail. That agreement was also in favour of my sister's son Hardy Sufi Ismail. I do not have that document here. It was an ordinary informal agreement. My recollection is that my
10 sister lent Wiswasam Rs. 3,500 on that agreement.

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tion.
—continued.

I cannot remember who the primary mortgagee was of the lands of which plaintiff was the secondary mortgagee. As Wiswasam was making arrangements to borrow money elsewhere the bond given to plaintiff had to be discharged in order to enable the later bond to get priority. I cannot remember who the lender on the other bond was. I cannot remember how much Wiswasam borrowed from a third party to pay off the plaintiff's debt. I did not attest the bond given by Wiswasam to a third party. That bond was attested by Mr. B. James St. V. Perera, Proctor and Notary Public. That was a bond given by Wiswasam to a
20 third party to pay off plaintiff's debt.

(Interval).

(Sgd.) H. A. DE SILVA,
District Judge.
14-6-49.

14th June, 1949.

After lunch.

A. M. Fuard, affirmed.

After Wiswasam's debt was paid the plaintiff came and saw me. He saw me long before November. Wiswasam's bond was settled in
30 July or August I think, I forget the date. Plaintiff came and saw me soon after Wiswasam's debt was paid. I did not advise the plaintiff to re-invest his money. Plaintiff wanted to re-invest his money. He said his money was lying idle and he used to come practically daily and talk to the brokers who come to my office to invest his money. I knew plaintiff was trying to re-invest his money. I may have seen the plaintiff speaking to Shamsudeen. I did not at that time know that Samaratunge was trying to raise a loan on Fincham's land. In 1941 there was Moolchand's mortgage on Fincham's land and the secondary mortgage of my wife and Shamsudeen over that land.

40 (Shown D2). This shows that the consideration of Rs. 6,000 was paid in cash in my presence. That is what the attestation says. I have lent on a number of occasions moneys belonging to my wife on documents executed through me. I have brought the protocols of deeds that I was summoned to produce by the plaintiff. I have not looked into those protocols of deeds upon which my wife has lent money.

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—continued.

Q. Have you on any occasion that your wife lent money on bonds attested by you stated in your attestation that the consideration was paid in cash? **A.** I cannot remember what my attestation was in those deeds. I cannot say without referring to the deeds.

I have the bond before me on which my wife and Shamsudeen lent Rs. 6,000. The consideration in that bond is stated to have been paid in cash.

Q. Why was the money paid in cash? **A.** The money was lying at home and she handed the money to Shamsudeen. My wife was not anxious to get that money back. I cannot say whether Shamsudeen was anxious to get his money back. It was impossible to allow the secondary bond in favour of my wife to remain because plaintiff was getting a secondary mortgage over the entirety of Fincham's land and my wife had a part of Fincham's land mortgaged to her. It was no business of mine to find borrowers for the plaintiff, it was for the lender to find the borrower. Naina Marikar's bond had already been put in suit at that time. I do not know what other arrangements Samaratunge had made to pay off Naina Marikar's decree. It is entirely false for the plaintiff to say that I suggested to him to invest Rs. 25,000 on a tea property, because I knew that plaintiff had only Rs. 13,000 to be invested. I did not suggest any investments to plaintiff. (Shown P48). This is a letter written by Shamsudeen. In this letter he says "longstanding client of ours". By "ours" he evidently refers to myself and Shamsudeen. By November, 1942, I had already formed my opinion of Samaratunge. That statement in P48, written by Shamsudeen, that Samaratunge was doing good business and that he will pay the interest is entirely wrong. I do not know what the word "now" signifies in that letter. The title to the bungalow is village title. It is false what Shamsudeen has stated in his letter, that the suggestion to give a secondary mortgage of Fincham's land first came from me. Shamsudeen has not stated in this letter that there was at the time a secondary mortgage in favour of my wife and Shamsudeen. This letter has been typed on my note paper. There is nothing in this letter to indicate that Shamsudeen and the plaintiff had discussed the rate of interest, Shamsudeen was merely offering 9 per cent. in this letter. Shamsudeen apparently thought the security was not sufficient and in this letter he invites the plaintiff to go and see for himself.

(Shown P49). This letter is dated 23-11-42. This is a letter written by my brother Shamsudeen on my note paper. He has stated in this letter that he consulted me, that is wrong. I never knew anything about these letters that he has written, he has been acting behind my back. These are things which brokers generally write to clients. They had arranged to visit the land on Sunday the 29th. My brother Shamsudeen did not breathe one word to me about this letter which he has written. The first day that Shamsudeen discussed about this matter with me was in plaintiff's presence in my office. They were about to go to Kandy for the inspection. They did not discuss about the matter with me till

Friday the 27th. Plaintiff and Shamsudeen actually went to see the land on Friday and not on Sunday and they spoke to me on Friday before they left for Kandy. Till Friday there was no discussion with me about it. (Shown P50). Shamsudeen had not discussed the question of interest with me when he wrote this letter P50. Shamsudeen was trying to bait a fish by using my name.

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Q. Are you now satisfied that your brother baited a good fish?

A. No. The fish went to Kandy and satisfied himself about the value of the lands.

The money due to my wife was paid. I know that Moolchand realised only Rs. 16,000 at the sale held under his mortgage decree. If my wife had a decree in her favour she would have bid and bought the property at the sale at which Moolchand bought. I would have watched my wife's interest in that case. I knew of the sale of Fincham's land. I did not care to go and purchase it. I was not interested in buying tea land.

On Friday the 27th when I came to my office at about noon I saw the plaintiff in my office. Plaintiff and Shamsudeen were in the office. Then plaintiff came to me and told me that he was going to inspect Samaratunge's Fincham's land and the Panwila lands. I told him that Samaratunge was a difficult customer and would never keep to his word. Then plaintiff told me he is not lending the money to Samaratunge on his personal security that he was lending the money on a mortgage of lands. Then I warned him that he should not take into consideration the value of the small lands in Panwila as they consisted of several small lots and that he should be fully satisfied with the security of the secondary mortgage of Fincham's land to cover the amount he lent. If he was not satisfied with Fincham's land I wanted him to drop the matter. To discourage the plaintiff I undervalued Fincham's land and placed a value on that land of Rs. 400 per acre and I told him that unless in his opinion Fincham's land is worth over Rs. 50,000 that he should not go near it. I had already visited the land in connection with Moolchands' loan. I knew all about that land and all about the title. It is not that I was telling the plaintiff something which was not true, a lender when he lends money should always value the land very much lower than a buyer would. A lender fixes the figure at depression rate. In my opinion when I visited the property it was worth a lac of rupees at that time and at that market rate. It was worth more than Rs. 50,000. (Shown P61). This is a letter written by me to the plaintiff. I am not responsible for what Shamsudeen says in his letter. It appears as if the plaintiff has built his case on Shamsudeen's letter. I did all that I say I did to dissuade the plaintiff from lending the money, beyond that I had no interest to discuss the value of the property with him. I have stated to Court all that I told the plaintiff, beyond that I did not tell him anything more. Plaintiff was aware that my wife along with Shamsudeen had a secondary mortgage over the land, because that morning he said that he had heard that my wife had lent money and that my brother had lent money on

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that land. I did not therefore tell plaintiff that my wife had a mortgage, plaintiff knew about the mortgages.

I heard the evidence of Moolchand. He was my client for a number of years. For about 10 or 15 years. In 1943 Moolchand decided to put his bond in suit. He did not come for my assistance to recover that money. It is not because he was not very pleased with me that he did not come to me. He must have thought he should hand it over to De Sarams. It was an ordinary mortgage bond action. I cannot give any reason why Moolchand should have gone to De Sarams to file that action. I came to know that that bond had been put in suit when the plaintiff¹⁰ brought the summons and the plaint to my office and told me that he had been served with those documents. He did not ask me to take action on the summons on that day. On that day I went to the record room and took the case out and examined the case. I examined the record to find out how the figure of Rs. 35,000 had become Rs. 40,000 or Rs. 50,000 odd. When the summons was brought to me I saw that the amount of Rs. 35,000 had risen to Rs. 44,000 odd and I wanted to look into the case. When I referred to the record I saw an agreement between Moolchand and Samaratunge which showed that they had looked into the accounts and fixed the amount due on a particular date at that amount.²⁰ Moolchand did not come and see me at any time before he filed that action. I heard Moolchand's evidence.

Q. According to him that agreement which was attested by Mr. Kanagarajah was drafted by you in your office? A. Moolchand has said so that that agreement was drafted by me, but that is incorrect. It is entirely false. I had nothing to do with the drafting of that agreement. There was nothing strange to find that the amount had suddenly shot up. That agreement which had been executed between Shamsudeen and Moolchand was not derogatory to the rights of the second mortgagee. At the date that that agreement was entered into between³⁰ Samaratunge and Moolchand the amount due by Samaratunge come to that. When I saw the record of that case my first impression was, immediately I looked at the record, that I may be in a position to attack the agreement on the ground of collusion. I suspected that Samaratunge and Moolchand had between them done something and then I thought I had better consult somebody and take steps if necessary in that action. If I took steps in that action I would have had to disprove that that debt was due. I then wrote to the plaintiff the letter P53 dated 18-11. In this letter I asked the plaintiff to send Rs. 45 along with his proxy. He sent me the proxy and the Rs. 45. I have already said that I did⁴⁰ not see anything strange in finding that the amount had increased except that I thought there might be collusion between Samaratunge and Moolchand. I suspected collusion and after plaintiff went away that day I thought over the matter and thought it best to file a proxy and do something. I then wrote P54. Ultimately I decided not to file the proxy, Thereafter the property was sold and I decided to put plaintiff's bond in suit and I wrote P56. Plaintiff's plaint was filed. No Counsel

has settled that plaint. I did not pay Counsel for settling that plaint. I did not refund that money to plaintiff but I gave plaintiff credit for the Rs. 45 he sent me.

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Plaintiff inspected the land and came back to my office on Monday the 30th. He then gave instructions as to what should be done. I sent plaintiff a telegram on the 2nd. I did not hasten the event by sending that telegram. On Monday when plaintiff Shamsudeen and Naina Marikar came to my office they looked into the amount due to Naina Marikar and they fixed up the amount due to Shamsudeen, they told me
10 when the deeds were ready to inform them. When the deeds were ready in two or three days I sent that telegram. On the 30th the amounts due were well known to plaintiff. It is not that fearing that plaintiff would go back that I tried to hasten matters. In response to the telegram the plaintiff came. I did not see Samaratunge handing D4 to the plaintiff. When I came back to the office that day the plaintiff handed D4 to me and said that Samaratunge wanted these cheques drawn up and that he would issue only one cheque in favour of Samaratunge. Then I told him to draw out two cheques one to cover the stamps and fees and the balance to be paid to Samaratunge. Plaintiff accordingly issued two
20 cheques. After that D4 was in my file. D4 has been written by Samaratunge. He has written against the Rs. 6,000, Shamsudeen, etc., that is referring to the other mortgagee, my wife. We recommend title and not the security. I cannot remember if I ever took upon myself to recommend the value of the security to any lender. I would not admit or deny it because I cannot remember. In the case of Marshall Perera I did not recommend the value of the security. (Shown letter dated 18-5-45).

—continued.

(Mr. Thiagalingam objects to this letter being shown to this witness. Let the letter be shown to the witness).

30 This letter has been written by me.

(Objection of Mr. Thiagalingam is overruled. The letter is marked P71).

There was a small sum of about Rs. 400 due to my sister in respect of that property. Ultimately the money due to Marshall Perera was paid by me.

Re-Examination. Marshall Perera lent Rs. 3,000. The money was lent to Gunasekera. The title deeds were in the name of a man bearing that same name, and later it transpired that it was his father and I wrote P71 in connection with that deed. In regard to my sister, Sufi's wife,
40 after Sufi died I had the handling of her moneys and I had her money in my bank account. It is not true to suggest that I brought Moolchand into the Panwila deal with a view to get my sister's money paid off. Moolchand is not related to me, he is a Hindu. I am a Muslim. It is not true that to help Moolchand I inveigled Naina Marikar into the Panwila deal.

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tion.
—continued.

I was not aware of nor did I authorise the writing of these letters P48, P49, P50. At the time of P1 and D5 I knew that Samaratunge would get about Rs. 3,000 into his hands. I did not tell Naina Marikar to take his money out of that amount payable to Samaratunge because on Monday they told me they had come to an arrangement that Naina Marikar should get Rs. 4,500 and a secondary mortgage for the balance Rs. 1,000 over the Panwila lands. I knew that out of Rs. 3,750 Samaratunge could not pay that Rs. 1,000 because Samaratunge wanted about Rs. 4,000 or Rs. 5,000 at that time and he could not pay the Rs. 1,000 to Naina Marikar.

10

In P56 I called for Rs. 263.50 from the plaintiff. In that bill I entered Rs. 31.50 as being Counsel's fee. Plaintiff did not call upon me to refund that money to him. In P56 I have not charged the fees I was entitled to charge the plaintiff. Only an initial fee was charged of Rs. 50. If I taxed my bill it would have come to about Rs. 300. In cross examination Moolchand admitted that I knew nothing about that draft agreement.

(Sgd.) H. A. DE SILVA,
District Judge.

14-6-49. 20

Mr. Thiagalingam closes his case reading D1 to D30. It is now 3-45 p.m. Counsel move for a date for addresses.

Trial postponed for 24th for addresses of Counsel.

(Sgd.) H. A. DE SILVA,
District Judge.

14-6-49.

No. 7.
Addresses to
Court.

No. 7.

Addresses to Court.

24-6-49.

*(The pages referred to in proceedings following are
in relation*to the typed copy)* 80

Appearances as on the previous date.

Mr. Thiagalingam points out that at p. 110 of the last day's proceedings, in the 7th line the word Indian should be deleted and "Hindu" inserted. Mr. Jayasuriya has no objection.

I delete the word "Indian" and substitute the word 'Hindu'.

In p. 99 in line 11 the word should be 'valuer' and not 'estate'. Mr. Thiagalingam wants 'estates' to be deleted and 'valuer' inserted. Mr. Jayasuriya has no objection. I make the amendment and initial same.

In line 7 of the same page (99) it is written Rs. 4,500. Mr. Thiaga- 40
lingam points out that it should not be Rs. 4,500 but 4,500 feet. Mr.
Jayasuriya has no objection.

I make the correction and initial same.

Mr. Thiagalilingam addresses Court : Plaintiff's case is this. Defendant got hold of plaintiff (an unfortunate man) and tricked him and made him lose all his life's savings to help defendant's wife and brother. That is a very serious charge to be made against a proctor and notary and to make that charge in the very Court in which he practices.

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Court.
—continued.

Moolchand is a Hindu and a non-Muslim.

10 P41—Bond 2228 of 20-8-41—was given by Samaratunge to Naina Marikar, first cousin of defendant for the sum of Rs. 3,750 on the security of Panwila lands ; that money was utilised to pay off Moolchand, at least partly on Bond 2229 of 4-1-41 in favour of Moolchand which has not been produced in Court. When Naina Marikar was not given the coupons by Samaratunge as agreed he put the bond in suit in D.C. 532/M.B. P40. Moolchand a witness for plaintiff says that when he lent Rs. 35,000 on Bond 2204 P36 he valued Fincham's land at one lak of rupees. (See P5). On the same day that P36 was written in favour of Moolchand there is a bond given by Samaratunge to defendant's wife and brother D2 along with a contemporaneous lease for Rs. 6,000 ; that is a secondary mortgage bond on only the tea portion of Fincham's land and not the entirety.

20 Samaratunge valued Fincham's land at a little over one lak. Fuard's evidence is that he went with Moolchand and he valued it himself at Rs. 80,000 and he suggested to Moolchand to take a valuer but he was not willing to do so. The fact that Moolchand did not want to take a valuer shows that Moolchand was satisfied with the value, layman that he was. McHeyzer without seeing the land, on the information given him by Fuard, valued the land at over Rs. 80,000 subject to certain conditions. On 2-6-41 in the estimation of Mr. Heyzer who has not been to the land, Moolchand and Fuard, the land was over Rs. 80,000. That is long before the plaintiff came on the scene.

30 Both Samaratunge and Shams give the answer as to why Fuard's wife came on the scene on 2-6-41 : Samaratunge's evidence is that Moolchand agreed to lend him Rs. 40,000 but later he was prepared to lend only Rs. 35,000. Samaratunge was going to pay the money he was borrowing from Moolchand to his uncle Simon Silva. Whether the land was bought by him for Rs. 5, Rs. 50 or any other sum is beside the point as parties were agreed that the land was worth over Rs. 80,000. Samaratunge was not prepared to accept Rs. 35,000. He would have no money in hand. He put Shams on the job. Shams could not get Moolchand to raise the figure to Rs. 40,000 so Shams got hold of defendant's wife
40 and between them lent Samaratunge Rs. 6,000. Shams then gets his commission. Shams admitted that defendant's wife is a wealthy lady who in her own right has an income of over Rs. 1,000 a month.

In 1942 both bonds in favour of Moolchand and Shams and defendant's wife are still in force. The crucial date is 3-12-42 when P1 was executed

No. 7.
Addresses to
Court
—continued.

in favour of plaintiff by Samaratunge for Rs. 15,000. By 3-12-42, the date on which P1 was executed in favour of plaintiff, Naina Marikar had put Bond 2228 P41 in suit. P40 and P42 are J.E's in the case. At this stage there was a primary bond in favour of Moolchand over Fincham's land and a secondary in favour of Shams and Mrs. Fuard on the tea portion of Fincham's land alone.

The case has been built by the plaintiff on document P48, letter dated 19-9-42 written by Shams to plaintiff, P49 of 23-11-42 letter by Shams to plaintiff and P50 letter dated 26-11-42 also written by Shams to plaintiff. Defendant dissociates himself with these letters. Shams¹⁰ says that defendant had nothing to do with letters P48, P49, and P50; he took full responsibility for them. (See Shams' evidence at pp. 67 to 70.) Fuard's evidence on the point is at p. 105 and p. 110. Defendant disowns these letters.

In P48 Shams tells the plaintiff that 'this security does not appear sufficient enough, but if you will go to see you will realise'. Shams is a broker. There is plaintiff's evidence that after his inspection he gives the valuation of the land. Plaintiff himself has valued the land at Rs. 80,000. Plaintiff was so satisfied with Fincham's land that he did not want to go and see the Panwila lands. At p. 38 plaintiff admits that²⁰ defendant told him that there were two mortgages, that is one for Rs. 35,000 in favour of an Indian merchant and another for Rs. 5,000. At p. 39 plaintiff says that he was satisfied that the estate he saw was sufficient for his money. At p. 52 plaintiff admitted that at least on the day that bond P1 was signed he knew there were two bonds, one in favour of an Indian for Rs. 35,000 and another in favour of somebody else for Rs. 5,000. In the latter part of p. 53 plaintiff stated that he knew on 3-12-42 that two bonds were outstanding on Fincham's land. He admitted that he knew that the money he was lending was going to be used to get the earlier secondary bond paid. Every witness called by plaintiff,³⁰ except plaintiff, say that plaintiff knew well that there was a secondary bond in favour of Shams and Mrs. Fuard. Defendant has also stated that plaintiff knew that. Up to date Naina Marikar has lost his Rs. 1,000. His Rs. 1,000 was given as a secondary on Panwila at the time a primary was given to plaintiff on Panwila. D5 is the secondary in favour of Naina Marikar. D4 is the writing given by Samaratunge to plaintiff asking him to make the various cheques according to the amounts shown in D4. Plaintiff must pretend ignorance of that. Otherwise his whole case is out. Defendant in his evidence says that D4 was handed to him by plaintiff himself with the request to make one cheque in his favour.⁴⁰ Two cheques were issued in favour of Samaratunge which were endorsed and given to defendant. One cheque was for defendant's fees and stamps and the other was for the balance due to make up the Rs. 15,000 lent on the mortgage bond. What defendant did was having sent both cheques to his account he issued a cheque to the plaintiff for Rs. 375, *vide* D13, being three months interest in favour of plaintiff; he issued a cheque for Rs. 3,750 in favour of Samaratunge, another cheque for Rs. 3,500 in

favour of his wife D15, and D16 in favour of Naina Marikar who still had to get Rs. 1,000 for which he was given a secondary mortgage. All those cheques which were passed by the bank have been produced.

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MR. THIAGALINGAM continues his address.

10 Mr. Vandersmagt's valuation in 1944 was Rs. 45,000. Land was sold in Vandersmagt's office. Plaintiff was a party to Moolchand's mortgage bond action. Moolchand's evidence wherein he says that he and plaintiff agreed to the land being sold in Vandersmagt's office. Is it likely that plaintiff would have allowed this land to be sold for Rs. 16,000 unless there was some arrangement between him and Moolchand. Plaintiff was present at the sale of Moolchand's bond. By D30 within two weeks Moolchand sold the property he bought for Rs. 16,000 for Rs. 30,000. True value really for which Moolchand sold must have been more than Rs. 30,000. Heyzer says that Moolchand came and told him that he
20 (Moolchand) had bought the land for Rs. 30,000 and not Rs. 16,000. Heyzer was prepared to find a purchaser by the sale of which Moolchand would make a profit. Krishnarajah asked to lower the valuation and he lowered the valuation of Panwila lands. P71. In regard to Marshall Perera's matter there was some mistake and Marshall Perera himself says Fuard made a mistake. Plaintiff emboldened by Marshall Perera's transaction started this action. On the question of prescription— Counsel says that the claim is prescribed in two years, or at least three years from the date of P1. According to plaintiff the suppression of facts and various acts done by defendant were on or before the date of bond
80 P1. Counsel says the cause of action arose on the day that plaintiff came to know certain circumstances which Fuard should have brought within the knowledge of plaintiff. There was never a suppression of any facts.

MR. JAYASURIYA.

Marshall Perera's incident. Moolchand's evidence that defendant did not tell him that Samaratunge was giving him as security a land which he was purchasing on the same day. Moolchand's evidence that he would not have even lent Rs. 15,000 if he had known that. Money Order sent to plaintiff for Rs. 45 to file proxy and take steps in Moolchand's action. Did the plaintiff merely act as notary in this matter.
40 Defendant knew the entire transactions relating to Fincham's land from the time Samaratunge bought it. P61 dated 14-11-45. Circumstances never lie. Documents P48, P49, P50. Examination of those documents in the light of the evidence given by witnesses will show who is speaking the truth. Plaintiff wanted his money to be invested, defendant said

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there was a man at Urugalle who was willing to take the money. Defendant says that Shamsudeen is a gentleman. If that was so he must accept all the statements made by Shamsudeen in his letters P48, P49, P50. When Shamsudeen was in the box not a single question put to him that Simon Silva was his uncle. Consideration on the bond D2 in favour of Shamsudeen and defendant's wife has been not by cheque but by cash. In all other instances cheques of Fuard have been given where he was notary. What was the difficulty for defendant to write the three cheques on 3rd December itself instead of writing them on 4th December. One fact is admitted that at the date that the loan was made to Samaratunge 10 defendant did not recommend the borrower. Defendant says so. In none of the letters written by defendant to plaintiff does he discourage plaintiff from lending money to Samaratunge. Fiduciary relationship between proctor and client—proctor liable. Plaintiff admits that he knew there were two bonds before his bond was executed. Even if plaintiff was made aware there was a secondary bond he was never made aware that the mortgagee on that bond were Shamsudeen and defendant's wife. Refers to 8 L. T. (Vol. III) 1914, pp. 641, 651.

If defendant guilty of a breach of professional duty he is liable. Prescription—Date of the beginning of prescription would be either 20 December, 1945, or 9-3-46. The date of the sale on 2-12 was the date on which defendant's proxy was revoked in the mortgage bond action 1084 P46. That was the date that plaintiff came to know that defendant had committed a violation of his contract to do professional work. On the question of concealing and fraud. 20 N.L.R. 206, 23 N.L.R. 279, 28 N.L.R. 97 at 100, 33 N.L.R. at p. 7.

Mr. Thiagalingam tenders D1 to D30. Plaintiff's documents on Monday.

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District Judge. 30
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JUDGMENT

The plaintiff sues the defendant, who is a proctor and notary, for the recovery of a sum of Rs. 20,000 being damages sustained by him by reason of the latter's deliberate dereliction of his professional duty and breach of his contract of employment as legal adviser to the plaintiff to the latter's detriment and loss. Defendant denies liability. The case went to trial on issues 1 to 12 framed at the trial. Plaintiff's case, shortly 40 stated, is that he is a Government pensioner, at present employed in the Ceylon Daily Paid Workers Benevolent Association. He was for 31

years in Government Service, employed in the Ceylon Government Railway and he retired in 1941. When he retired he was paid a commuted pension of Rs. 5,985, he received from the Railway Benefit Association Rs. 3,173 and he had Rs. 5,000 which he had saved, so that he had in all Rs. 13,000 in 1941. When he retired from Government Service he desired to find an investment for this money. The defendant was introduced to the plaintiff by one R. P. Wijesuriya, a retired station master and relation of the plaintiff. Having contacted the defendant, plaintiff told him that he had money to be invested and he wanted the defendant to find him a
 10 borrower for his money. One Wiswasam was introduced to the plaintiff by the defendant and, accordingly, plaintiff lent some money to Wiswasam upon the security of certain properties of the latter. Wiswasam dealt satisfactorily with the plaintiff and paid the interest regularly. Wiswasam then wanted to raise money on a lower rate of interest than what he was paying the plaintiff and made preparations to settle plaintiff's debt. Defendant was keen on keeping the money with Wiswasam and keeping the debt alive but, anyway, Wiswasam paid off plaintiff's debt and plaintiff's money was returned. Plaintiff thereupon wanted a fresh investment for his money. Shamsudeen also known as Shams is a broker and
 20 land agent. He appears to have suggested to the plaintiff to lend to one K. R. Samaratunge a sum of Rs. 15,000. Shamsudeen is a brother of the defendant. Shamsudeen was known to the plaintiff, plaintiff having met him often in defendant's office. Before Shamsudeen discussed this matter of a fresh loan, defendant told the plaintiff that there was a gentleman who wanted Rs. 25,000 on the security of a tea estate in Urugalle. Plaintiff said that he had not Rs. 25,000 and asked the defendant to find him other security. Two weeks later plaintiff went to defendant's office and missed him. Then plaintiff went to the Pettah where he met Shamsudeen. Shamsudeen mentioned to him that Rs. 15,000 could be invested
 30 and that he would give particulars later. The particulars given were that a tea property and some other properties in Panwila would be given as security. Thereupon plaintiff asked Shamsudeen to speak to Mr. Fuard and that if the latter was satisfied the investment might be arranged for. At that time plaintiff was not aware in whom Shamsudeen was interested. Plaintiff next received a letter from Shamsudeen dated 17th November, 1942, which has been produced marked P48. In that letter P48 Shamsudeen has stated that his client whose business he suggested was one Mr. Samaratunge who was known to him for nearly ten years; Samaratunge will pay interest regularly and do goods business; the borrower
 40 wanted Rs. 15,000 on the primary mortgage of a house property with three acres of land and 15 acres fully planted tea near his home. In addition to that security the borrower was prepared to give a secondary mortgage of 146 acres of tea belonging to him as additional security and the value of that estate was Rs. 80,000. In P48 Shamsudeen has also mentioned that the tea estate was subject to a primary mortgage of Rs. 40,000. Shamsudeen suggested that the plaintiff should go and inspect the land and satisfy himself and he has also recommended the borrower. Thereafter on the 23rd November, 1942, on receipt of a reply

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from the plaintiff, Shamsudeen wrote a further letter to the plaintiff which has been produced marked P49. In this letter Shamsudeen has stated that he consulted the defendant and that he recommended the loan and a date was fixed to go and inspect the lands proposed to be given as security. Sunday the 29th of November was fixed for inspection of the lands. I may mention at this stage that actually these letters were written on note paper belonging to the defendant. P48 has defendant's name printed on the left hand side and his address 130 Hultsdorp also printed. Above the defendant's name "A. M. Shams" is typed both in P48 and P49. There is no document produced by which the defendant has recom- 10 mended this loan to the plaintiff. The recommendation is contained in the oral evidence given in this case. Accordingly mortgage Bond No. 2308 of 3rd December, 1942, P1, was executed by K. R. Samaratunge for the Rs. 15,000 borrowed by him from the plaintiff. A primary mortgage was given of the properties described in schedule A and a secondary mortgage of the properties described in Schedule B of the said mortgage bond as security for the loan of Rs. 15,000, the interest provided being 15 per cent. per annum, but 10 per cent. would be charged if the interest was paid regularly. Rs. 375 being interest for three months was paid at the date of execution of the bond and thereafter no further interest was paid 20 by the borrower, Samaratunge. One K. Moolchand, an Indian merchant, had a primary mortgage of the tea estate which is known as Fincham's land. It is a land of 140 odd acres planted largely in tea and cardamoms, etc. Upon a deed of agreement No. 2203 of 2nd June, 1941, P35, K. R. Samaratunge leased to Moolchand this entire estate known as Fincham's land for a sum of Rs. 35,000. The lease bond was for a period of 10 years. According to the lease bond Moolchand was to get the tea coupons. It is hardly necessary for me to go into the various provisions contained in that lease bond. On the same day that is on the 2nd of June, Samar- 30 atunge by Bond No. 2204 (P36) gave a primary mortgage of the property leased. It was Shamsudeen who appears to have arranged this mortgage of Rs. 35,000 to Moolchand. Moolchand put his Bond No. 2204 of 2nd June, 1941, P36, in suit in D.C. No. 941/M.B. A certified copy of the plaint has been produced P38. The plaint is dated 3rd September, 1943, and the plaintiff in the present suit was made a party defendant as a necessary party, being a puisne encumbrancer. It would appear that after the mortgage Bond No. 2204 of 2nd June, 1941 was given for Rs. 35,000 by Moolchand to the plaintiff, on or about 15th January, 1943, Moolchand and Samaratunge looked into accounts between them and entered into the indenture bearing No. 637 of 15th January, 1943, and 40 fixed the amount due to Moolchand by Samaratunge upon the said bond at Rs. 44,500. This indenture of 15th January, 1943, was not attested by Mr. Fuard, the defendant. The defendant had attested mortgage Bond No. 2204 of 2nd June, 1941, and the lease Bond No. 2203 of 2nd June, 1941. They have been produced marked P35 and P36. The new agreement which had fixed the liability of Samaratunge to Moolchand on 15th January, 1943, was attested by Mr. Kanagarajah.

It must be borne in mind that this new agreement No. 634 of 15th January, 1943, P7, was executed by Samaratunge after the plaintiff had lent the money on the mortgage bond P1. When the plaintiff received summons in the mortgage bond case D.C. No. 941 as a puisne encumbrancer, he contacted the defendant and asked him to take the necessary steps. Defendant obtained a proxy from the plaintiff and also a sum of Rs. 45 for necessary expenses, credit for which sum of Rs. 45 was given by the defendant to the plaintiff as I shall presently show. No answer was filed for the plaintiff who was a puisne encumbrancer in that mortgage bond action. Decree was entered against Samaratunge as the debtor and against the plaintiff as puisne encumbrancer on 6th December, 1943, *vide* journal sheet P39. Thereafter the land was put up for sale and order to sell issued to Mr. Vandersmagt. The land situated at Urugalle was not sold on the spot but was sold at Mr. Vandersmagt's office in Colombo. At that sale both Moolchand the judgment-creditor and the plaintiff were present. Plaintiff does not appear to have taken any steps to purchase the land himself or pay off the money due to Moolchand. If he had paid the money due to Moolchand then plaintiff's bond would have been a primary bond. Moolchand, who was called by the plaintiff, states in his evidence that plaintiff and he agreed that the sale should take place in Mr. Vandersmagt's office in Colombo. There being not many bidders at the sale the property was purchased by Moolchand himself for a sum of Rs. 16,000, which two weeks later he sold for Rs. 30,000. So that the plaintiff as secondary mortgagee lost the security on Fincham's land over which he had a secondary mortgage. Thereafter the plaintiff, through the defendant, put his bond in suit in D.C. Colombo No. 1084/M.B. for the recovery of a sum of Rs. 17,765.62, the date of the action being 1st June, 1944. To that action one Naina Marikar was made a party, as a necessary party, as he held at that time a secondary mortgage of the Panwila lands over which the plaintiff had primary. Decree was entered in favour of the plaintiff on 27th June, 1944, against Samaratunge—*vide* journal sheet P47. Decree was entered against the necessary party also on 4th September, 1944. The order to sell was issued to Mr. Krishnarajah, licensed auctioneer, to sell the property. At the sale one Dhanapala purchased all the Panwila lands for a sum of Rs. 2,250. Plaintiff thus lost the difference between Rs. 2,250 and Rs. 19,500, namely, Rs. 17,240 interest and costs. Plaintiff thus claims a sum of Rs. 20,000 being damages sustained by him.

Plaintiff has given evidence and he has called as his witnesses Ekanayake a clerk from the Land Registry, K. Moolchand, K. R. Samaratunge, the person to whom both he and Moolchand lent money, Shamsudeen, Naina Marikar and Marshall Perera. Defendant has given evidence himself and has called Col. J. G. Vandersmagt, auctioneer and broker, H. M. B. Fernando and C. F. Krishnarajah. No doubt the plaintiff has lost a considerable sum of money, perhaps all his life's savings. The question for determination is how far the defendant is responsible for the loss that has been occasioned. This man K. R. Samaratunge was the owner of certain lands in Panwila including a residential house. That

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land consists of various blocks as is seen from the schedules attached to the various bonds. Fincham's land is about 140 acres, situated in Uru-galle. That land has about 80 acres, planted in tea, and, certain other extents planted in cardamoms. It would appear that about six months prior to June, 1941, Moolchand had lent a sum of Rs. 12,000 to Samaratunge on the security of the Panwila property. He admits that he did not see the Panwila lands before he lent the money and he did so at the request of Shamsudeen. This Rs. 12,000 lent on the Panwila lands was returned by Samaratunge to Moolchand. There were coupon transactions. It was Shamsudeen who in 1941 asked Moolchand to lend to 10 Samaratunge a sum of Rs. 35,000 on Fincham's land. Before the money was lent by Moolchand on the primary mortgage of Fincham's land, Moolchand and the defendant would appear to have visited this estate. Thereafter Moolchand lent a sum of Rs. 35,000 upon the bond attested by the defendant, so that Moolchand was satisfied that the property on which he was lending a sum of Rs. 35,000 was certainly worth more than Rs. 35,000. Moolchand also admitted that when he and Samaratunge went to Mr. Proctor Kanagarajah's office to look into accounts, defendant knew nothing about it. I refer to this evidence given by Moolchand because the suggestion was made by the plaintiff that after the secondary 20 mortgage bond was given by Samaratunge to plaintiff, whilst the primary mortgage on Fincham's land was subsisting, Moolchand and Samaratunge behind the back of the plaintiff with the knowledge of defendant raised the indebtedness of Samaratunge to Moolchand to a sum of Rs. 44,500, but Moolchand denied in cross-examination that defendant knew anything about it. It would appear that when negotiations were going on for Samaratunge to borrow this sum of Rs. 15,000 from the plaintiff, there was subsisting a secondary mortgage over Fincham's land in favour of defendant's brother, Shamsudeen, and defendant's wife, Mrs. Fuard, for a sum of nearly Rs. 6,000. Of course this mortgage bond in favour of 30 Shamsudeen and defendant's wife were discharged and cancelled with the money lent by plaintiff to Samaratunge on bond P1. The suggestion made by the plaintiff is that the defendant, in order that the debt due to his wife and his brother Shamsudeen, may be paid up, induced the plaintiff to lend this sum of Rs. 15,000. In fact, I may in this connection mention that Naina Marikar, a close relation of the defendant, had lent a sum of money on the security of the Panwila lands. That was a primary mortgage bond. That bond was put in suit on the 20th February, 1942, by Naina Marikar in D.C. Colombo No. 532—*vide* certified copy of plaint P40. The amount claimed in that suit was Rs. 4,990. Decree was 40 entered against Samaratunge in that case in favour of Naina Marikar on 17th August, 1942, and Samaratunge was given six months time to pay that debt. A part payment of the amount due on that decree was made to Naina Marikar out of the Rs. 15,000 that was borrowed by Samaratunge upon bond P1 dated 3rd December, 1942, leaving a balance of Rs. 1,000 for which Samaratunge gave a secondary mortgage bond of the Panwila lands to Naina Marikar. Thus it would seem that when Samaratunge gave a primary mortgage of the Panwila lands to the plaintiff, that is P1,

Samaratunge gave a secondary mortgage of the same lands to Naina Marikar for Rs. 1,000. Naina Marikar has not been able to recover that Rs. 1,000 or the interest. If, as is suggested by the plaintiff, the defendant was trying to get money from the plaintiff for Samaratunge in order that his relations may be paid their debts, is it likely that defendant would have allowed Naina Marikar to take a secondary mortgage bond of Panwila lands. If defendant's object was to save his relations and place the plaintiff in the predicament he later found himself in, one would not expect defendant to have allowed Naina Marikar to be satisfied with a
10 secondary bond over those lands for his money.

Now with regard to the actual value of Fincham's land on the secondary mortgage of which he lent this money to Samaratunge, it will interest one to read plaintiff's evidence itself. Plaintiff says that Shamsudeen wanted him to satisfy himself by inspecting the lands. Plaintiff admits that he was aware that there was a primary mortgage for Rs. 40,000 over Fincham's land. Plaintiff admits that on the 3rd December, 1942, he was aware that two bonds were outstanding on Fincham's land, that is the primary bond for Rs. 40,000 in favour of Moolchand and the secondary bond in favour of defendant's wife and his brother Shamsudeen. He also
20 says that it may be that he knew that part of the money he was lending Samaratunge was going to discharge the earlier secondary bond, that is the bond in favour of Shamsudeen and defendant's wife. Plaintiff went and inspected Fincham's land in the company of Samaratunge, the borrower, and Shamsudeen. Although the plaintiff was advised to go and inspect both Fincham's land at Urugalle and the Panwila lands, he inspected only Fincham's land and was satisfied with the value, and did not think it worth while to go and inspect the other lands at Panwila or the house there. On that point, this is plaintiff's own evidence :

30 " From all that they said and from my own inspection I was satisfied that the estate I saw was enough for my money. I was satisfied with Fincham's land and I was also satisfied from what these people said of the Panwila lands ".

Plaintiff admitted that he did not go and inspect the Panwila lands. The reason for his decision not to inspect the Panwila lands was given by him in evidence. This is what he says :

40 " I know that I was going to get a mortgage of another land at Panwila. I did not go to inspect the lands at Panwila. Mr. Fuard also had said that it was not necessary to go and inspect the Panwila lands, and Shamsudeen also said that it was not necessary to inspect the Panwila lands. I thought it was not necessary to go and inspect the lands as they said that it was not quite necessary and besides that we left Kandy quite late. We returned to Kandy from the other estate at about 7 p.m."

Plaintiff further says this :

" Defendant told me the borrower was going to be Mr. K. R. Samaratunge. Prior to that I had not met Mr. Samaranayake,

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Defendant told me that he had himself inspected the land, that it was worth over Rs. 80,000, and that I should not be afraid of my money. He asked me also to go and inspect the land."

Plaintiff gave the following significant evidence :

"It may be that it was when I informed defendant that I was going to inspect the property that the defendant gave me this information about there being two bonds. When I saw the defendant on the 28th he told me that I might go and see the property. He told me not to worry about the Panwila lands. He told me further that I must look to Fincham's land for my security.

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Q. What more did you want Mr. Fuard at that stage to do? A. I cannot answer the question.

He said that he inspected the estate previously and that it was worth over Rs. 80,000 and asked me to go and inspect the land and satisfy myself. I went to the land and I was satisfied. When I started from home I wanted to inspect both lands after going to Kandy. After inspecting Fincham's land I was content. I did not see fresh timber felled on the land".

What does this all show. Defendant had asked the plaintiff to go and satisfy himself with the value of the lands that were being offered as secondary and primary mortgages. Plaintiff went and inspected only the big estate, that is Fincham's land, on which he was going to give the money on a secondary mortgage. He was so satisfied with that estate on which he was going to give the money on the secondary mortgage that he did not consider it worth while to go and inspect the Panwila lands where there was a big residential house. What more, defendant had asked the plaintiff to look to Fincham's land for his security. In other words the Panwila lands over which plaintiff obtained a secondary mortgage was really a subsidiary security, and the chief security that plaintiff was advised to look to by Mr. Fuard was the Fincham's land, and plaintiff was satisfied with Fincham's land. In answer to Court, the plaintiff made the following admission: "After I went to Fincham's land and inspected it I thought it was worth about Rs. 80,000". The fact that at Moolchand's sale this property fetched Rs. 16,000 is beside the point. When people lend money they have got to satisfy themselves upon the value of the security that was offered. There was no suppression of facts by the defendant at any stage, defendant told the plaintiff that at the date he was negotiating this loan there were two mortgages on Fincham's land, one in favour of Moolchand and another one for Rs. 5,000 or Rs. 6,000. It made no difference to the plaintiff whether the secondary mortgage was in favour of Shamsudeen and defendant's wife or in favour of some other parties. What the plaintiff was concerned about was that his mortgage should be a secondary mortgage of Fincham's land and that secondary mortgage the plaintiff got without any flaw in title. Shamsudeen, who has been called by the plaintiff, has stated to Court

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that plaintiff was made fully aware that Rs. 35,000 was due to Moolchand on a primary mortgage and that Rs. 6,000 was due to him (Shamsudeen) and defendant's wife on a secondary mortgage. Shamsudeen also says that plaintiff knew that part of the Rs. 15,000 he was going to lend to Samaratunge was to be utilised for the payment of Naina Marikar's debt. Mr. Vandersmagt has valued this property at Rs. 45,000 when the order to sell was issued to him in Moolchand's mortgage bond action. One H. N. B. Fernando has been called by the plaintiff. He is a land and commission agent and partner of Linton & Co. who are
 10 auctioneers, brokers, importers and exporters. He says that the present owner of Fincham's land is one Ratnasekera and that he (Fernando) has been entrusted with the sale of that land by Ratnasekera. Fernando now has an offer of one lakh for this estate, but Ratnasekera wants Rs. 125,000. There is absolutely no reason why this witness H. N. B. Fernando should give false evidence in this Court. It is common knowledge that since 1939 tea lands appreciated in value very largely, and if I may say so, both Moolchand's transaction and Naina Marikar's transaction were for Samaratunge to issue tea coupons. Tea coupons were also fetching good prices at that date. Defendant, who is a proctor and
 20 notary, is undoubtedly expected to pass title. In this case there is no proof before me that title as passed by defendant has been found to be defective. On the Panwila lands alone Moolchand had lent a sum of Rs. 12,000/- previously. That land had a very substantial bungalow. No doubt the Panwila lands are not one entity, but made up of various blocks, but there is no evidence before me that the Panwila lands fetched the very insignificant price of Rs. 2,250 at the mortgage bond sale held at the instance of the plaintiff, owing to the title being defective. Krishnarajah the auctioneer appointed by the plaintiff to sell the Panwila lands on his mortgage decree has given evidence. Before the sale actually
 30 took place, when the order to sell was issued to him, Krishnarajah went and valued the Panwila lands over which the plaintiff had a primary mortgage. Now that was the only security that was available to plaintiff at the time, because Fincham's land had already been sold and purchased by the judgment-creditor, Moolchand. Krishnarajah in his evidence states he valued the various blocks of the Panwila lands at Rs. 21,150. His valuations have been produced marked D18, D19, D20, D21 and D23. It is the practice in the courts that when a writ holder buys property on his decree, he has to buy it not below the appraised value. After this report was sent in plaintiff would appear to have gone with Mr. Fuard,
 40 the defendant, to Krishnarajah and asked him to reduce the value of these lands placed by him. Thereupon Krishnarajah made a revised valuation and valued all those lands at Rs. 13,615—*vide* revised valuation D24. Mr. Fuard does not claim to be a valuer. In his evidence he has denied all the charges made against him by the plaintiff and he has also stated to Court the part he played.

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When the plaintiff found that his security that he thought was good was no more available to him, namely, Fincham's land, he started finding

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fault with the defendant. *Vide* letter dated 12-11-45 P60. There the plaintiff charges the defendant with having advised him to lend his money on the security of Fincham's land and other lands. Mr. Fuard by his letter dated 14-11-45 P61 replied to that letter—*vide* P62 dated 22-11-45 written by plaintiff to Mr. Fuard the defendant. By letter dated 30-11-45 P63 defendant replied to it. At a certain stage Samaratunge, the debtor, having failed to pay this debt, tried to have the claim reduced. He wrote letter dated 12-5-45 to the plaintiff—*vide* P43. There Samaratunge whilst asking the plaintiff to accept in full payment of his decree a sum of Rs. 7,500 started to condemn the title to his own lands at Panwila. 10 He says the price of lands has fallen back considerably, and the house is very old and damp, etc., etc., Samaratunge, whilst offering the sum of Rs. 7,500, says that the chances of plaintiff being able to realise even that were remote at an auction sale. I attach no importance whatever to that letter P43 for the reason that Samaratunge having found that he could not pay this amount thought it best to come to some terms having denounced the title to his own lands as an inducement to the plaintiff to consent to accepting the reduced amount of Rs. 7,500. No doubt Shamsudeen has stated in his letters to the plaintiff that Mr. Fuard also recommended the security, but one must remember as Mr. Fuard says, that 20 Shamsudeen was an unlicensed broker who was trying his best to earn a commission, which he would have got only if the transaction went through. But there is the unequivocal evidence of the plaintiff himself that he was asked by Mr. Fuard to satisfy himself as regards the security that was offered and the value, etc. Once that advice was given, it was for the plaintiff to have satisfied himself and if he was not competent to place a value himself, to have got the assistance of a competent valuer. It is very unfortunate indeed that this situation has arisen for the plaintiff, where he finds himself deprived of his life long savings. But the defendant is hardly to blame in the matter. Plaintiff was very keen to earn interest 30 himself. So far as the title to the land was concerned there is no evidence before me that this low price was realised at both sale held at the instance of Moolchand and of plaintiff, as a result of the bad title of these lands. On the other hand various circumstances may have contributed to this end, that is the realisation of the low prices. It may be that proper publicity was not given to the sales and perhaps the sale of Fincham's land which is the chief security which plaintiff had being held in Mr. Vandersmagt's office in Colombo may have contributed to the low price realised. Plaintiff was present at the sale and had every opportunity of getting bidders and interesting himself to get as many bidders as possible. 40 Plaintiff himself was satisfied that Fincham's land was worth well over Rs. 80,000.

There is the evidence of Mr. McHeyzer, an auctioneer, who has not seen the land himself but has valued it according to the data given to him. I wish to say a word or two in regard to the transaction of Marshall Perera where the defendant has figured. Marshall Perera has been called as a witness for the plaintiff. He appears to have lent

some money on the security of title passed by the defendant. Defendant found that a mistake had been committed by him in passing title. Therefore the defendant took the responsibility upon himself and paid the money due to Marshall Perera. But Marshall Perera in his evidence states to Court that he did not think that Mr. Fuard had deceived him. Probably the plaintiff having come to grief in this transaction was in some way induced to make this claim against the plaintiff having come to know about this transaction between defendant and Marshall Perera. I hold that plaintiff's action fails. I answer the issues as follows :—

No. 8.
Judgment of
the District
Court.
19-8-49.
—continued.

- 10 1. Yes.
 2. Yes.
 3. (a) Yes.
 (b) No.
 (c) No.
4. This issue does not arise in view of my answer to issues 3 (b) and 3 (c) but I wish to state that the defendant did not act in this matter with a view to furthering the interests of others whose interests were adverse to that of the plaintiff.
5. No.
- 20 6. This does not arise in view of my answer to issue No. 5.
7. No.
8. The security was in fact adequate.
9. No.
10. (a) The interests referred to in issue 4 were those of Shāmsudeen, defendant's wife and Naina Marikar.
- (b) No.
- (c) Defendant knew that there was a secondary mortgage over Fincham's land in favour of Shamsudeen and defendant's wife and a primary bond in favour of Naina Marikar over Panwila lands.
- 80 (d) No.
11. No.
12. No.

With regard to the question which is raised in issue No. 12, prescription actually would run in this particular case from the time that plaintiff became aware that defendant had acted to his detriment. Plaintiff became aware of that fact about December, 1945. That is on the assumption that defendant had committed the wrong acts complained of by the plaintiff, but I do not in this case hold that defendant has acted in any manner detrimental to the interests of the plaintiff.

40 Plaintiff's action is dismissed with costs to defendant. Enter decree accordingly.

(Sgd.) H. A. DE SILVA,
District Judge.
19-8-49.

No. 8.
Judgment of
the District
Court.
19-8-49.
—continued.

Judgment pronounced in open Court in the presence of Mr. M. Weeraratne for the plaintiff and Mr. Saleem for the defendant.

(Sgd.) H. A. DE SILVA,
District Judge.
19-8-49.

No. 9.
Decree of
the District
Court.
19-8-49.

No. 9.

Decree of the District Court.

DECREE

IN THE DISTRICT COURT OF COLOMBO

ALFRED RICHARD WEERASURIYA of " Siriniwasa ",
Ambalangoda..... Plaintiff. 10

vs.

ASSENA MARIKAR MOHAMED FUARD, Proctor and Notary Public
of No. 130, Hultsdorf Street, Colombo.....Defendant.

This action coming on for final disposal before H. A. de Silva, Esq., District Judge, Colombo, on the 19th day of August, 1949, in the presence of Proctor on the part of the plaintiff and of Proctor on the part of the defendant, it is ordered and decreed that the plaintiff's action be and the same is hereby dismissed with costs to the defendant.

(Sgd.) H. A. DE SILVA, 20
District Judge.

The 19th day of August, 1949.

No. 10.
Petition of
Appeal of
the Plaintiff
to the
Supreme
Court.
29-8-49.

No. 10.

Petition of Appeal of the Plaintiff to the Supreme Court.

D. C. COLOMBO CASE No. 18596/M.

ALFRED RICHARD WEERASURIYA of Ambalangoda.....Plaintiff-Appellant.

vs.

ASSENA MARIKAR MOHAMED FUARD, Proctor and Notary of
Hultsdorf Street, Colombo.....Defendant-Respondent.

To :

THE HONOURABLE THE CHIEF JUSTICE AND OTHER JUSTICES OF THE
HONOURABLE THE SUPREME COURT OF THE ISLAND OF CEYLON.

No. 10.
Petition of
the Plaintiff
to the
Supreme
Court.
29-8-49.
—continued.

On this 29th day of August, 1949.

The Petition of Appeal of the plaintiff-appellant above-named appearing by his Proctor Martin Weeraratne states as follows :—

1. The plaintiff-appellant sued the defendant-respondent for the recovery of Rs. 20,000/- being fair and reasonable damages suffered by him by reason of the defendant-respondent's dereliction of his professional duty and breach of his contract of employment as legal adviser to the plaintiff-appellant in the matter of an investment by the latter.
2. The defendant-respondent filed answer denying that there was dereliction of duty or breach of contract on his part and setting up a plea of prescription.
3. The parties went to trial on the following issues :—
 - (1) Did the plaintiff employ the defendant as his legal adviser and to act for and on his behalf in connection with the investment of Rs. 15,000/- in or about November, 1942 ?
 - (2) In pursuance of such employment did the defendant invest the said sum of Rs. 15,000/- with K. R. Samaratunge on Bond No. 2308 dated 3-12-42 ?
 - (3) Did the defendant recommend to the plaintiff—
 - (a) the title of K. R. Samaratunge to the premises mortgaged as sound,
 - (b) the value of the security as sufficient,
 - (c) the borrower K. R. Samaratunge as reliable.
 - (4) If the issues 3 (a) and/or (b) and/or (c) is answered in the affirmative did the defendant do so—
 - (a) well knowing that the security was inadequate and of doubtful value,
 - (b) and/or with a view to furthering the interests of others whose interests were adverse to that of the plaintiff.
 - (5) Has the defendant fraudulently concealed material facts within his knowledge relative to the investment with a view to inducing the plaintiff to make the said investment ?
 - (6) Has the defendant thereby committed—
 - (a) a breach of contract of employment with the plaintiff and/or
 - (b) an intentional dereliction of professional duty relative to his investment ?
 - (7) What damages, if any, is plaintiff entitled to ?
 - (8) Was the security in fact inadequate ?

No. 10.
Petition of
Appeal of
the Plaintiff
to the
Supreme
Court.
29-8-49.
—continued.

- (9) Did the defendant ever have knowledge that the security was inadequate in fact ?
- (10A) What were the interests of others referred to in issue 4 ?
- (10B) If so were such interests adverse to those of the plaintiff ?
- (10C) Did the defendant have any knowledge of such adverse interests ?
- (10D) Did the defendant suppress such knowledge from the plaintiff ?
- (11) Do the facts pleaded in the plaint disclose a cause of action against the defendant ?
- (12) Is the plaintiff's claim, if any, prescribed ? 10

4. After trial on several dates the learned District Judge delivered his judgment on the 19th day of August, 1949, dismissing the plaintiff's action with costs.

5. Aggrieved by the said judgment the plaintiff-appellant begs to appeal therefrom to Your Lordship's Court on the following among other grounds that may be urged by Counsel at the hearing of the appeal :—

- (a) The said judgment is contrary to law and against the weight of evidence.
- (b) The learned District Judge has misdirected himself as to the duty of a person placed in the position that the defendant was 20 in relation to the plaintiff. The plaintiff-appellant's case was that the defendant was not merely a notary executing an instrument but was employed by the plaintiff as his legal adviser and to act for and on his behalf in connection with the investment. The learned District Judge has answered issue 1 in the affirmative and has found on this point in favour of the plaintiff but throughout his judgment proceeds on the basis that the defendant was only concerned with the title to the property.
- (c) The plaintiff-appellant submits that in the light of the part played by the defendant and his brother in different transactions 30 deposed to by the witnesses the conclusion is irresistible that the defendant was in the habit of advising his clients, including the plaintiff in regard to the suitability of investments.
- (d) The plaintiff-appellant submits that the statements in letters by the defendant's brother to the plaintiff that the defendant recommended the loan should have received greater consideration from the learned District Judge.
- (e) It was admitted by the defendant-respondent that the said letters contained deliberately false statements which were inducements to the plaintiff to enter on investment. The plaintiff-appellant submits that as the defendant had permitted his 40 brother to use his own office for the transaction of business and allowed him to use his own note paper and the letters themselves are to the effect that the statements therein were with the defendant's approval, the defendant cannot now repudiate them but is bound by them.

(f) In any event the plaintiff-appellant submits that the learned District Judge should have carefully examined and scrutinized the defendant and his brother's evidence that it was falsely stated in letters that the defendant had been consulted and recommended the loan when in fact he had not been so consulted. It is submitted that such scrutiny by the learned District Judge was particularly necessary as the position taken up by them was so convenient for the defendant's case.

No. 10.
Petition of
Appeal of
the Plaintiff
to the
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—continued.

10 (g) The learned District Judge emphasizes the fact that in his evidence the plaintiff-appellant stated that at the time he was satisfied with his investment but fails to see that the whole basis of the plaintiff's case was that the defendant had suppressed from him relevant facts, *inter alia*, the fact that secondary mortgage held by defendant's wife and another relative were to be discharged with the money that was to be advanced by the plaintiff.

(h) The learned District Judge states "It made no difference to the plaintiff whether the secondary mortgage was in favour of Shamsudeen and defendant's wife or in favour of some other person".

20 It is submitted that the fact was very relevant for plaintiff's decision as to whether he would act on defendant's recommendation and enter into the investment and that well known rules of equity require a person in a fiduciary capacity to make full disclosure and avoid a conflict of interest and duty. In point of fact the defendant's wife's and Shamsudeen's secondary mortgages were paid off with money lent by the plaintiff and the property proved inadequate to satisfy even the primary mortgage that had priority to them.

30 (i) It is submitted that it has been proved that the defendant-respondent was in possession of several other facts relative to the investment and the proposed mortgagor which he failed to disclose to the plaintiff-appellant though they were relevant to a consideration of the suitability of the proposed investment.

(j) It is admitted that there was no merit in the defendant-respondent asking the plaintiff-appellant to go and satisfy himself in regard to the investment if he had suppressed relevant facts and made or permitted to be made false representations as to the debtor and the investment.

40 (k) The learned District Judge further states "Once an offer was made it was for the plaintiff to have satisfied himself and if he was not competent to place a value himself to have got the assistance of a competent valuer". It is submitted that the plaintiff was entitled not to be misled by his legal adviser in arriving at such a valuation and to have disclosure from him as to facts which the latter was under a duty to disclose.

(l) The plaintiff-appellant respectfully submits that the learned District Judge has failed to appreciate the significance of and has misdirected himself on material facts placed before him.

No. 10.
Petition of
Appeal of
the Plaintiff
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WHEREFORE the plaintiff-appellant prays :—

- (a) that the judgment of the learned District Judge be set aside ;
(b) that judgment be entered in his favour as prayed for in the
 plaint ;
(c) for costs ;
(d) for such other and further relief as to this Court shall seem meet.

(Sgd.) M. WEERARATNE,
Proctor for Plaintiff-Appellant.

Settled by :

(Sgd.) G. T. SAMARAWICKREME,
Advocate.

10

(Sgd.) E. B. WICKREMANAYAKE,
Advocate.

No. 11.

Judgment of the Supreme Court.

No. 11.
Judgment of
the Supreme
Court.
27-5-52.

S.C. No. 387/M.

D.C. Colombo No. 18596/M.

A. R. WEERASURIYA.....*Plaintiff-Appellant.*

vs.

A. M. M. FUARD.....*Defendant-Respondent.*

Present : GRATIAEN, J., and GUNASEKARA, J.

20

Counsel : N. E. WEERASOORIA, Q.C., D. S. JAYAWICKREMA and G. T. SAMARAWICKREME for the plaintiff-appellant.

J. R. V. FERDINANDS and AZEEZ for the defendant-respondent.

Argued on : 14th May, 1952.

Delivered on : 27th May, 1952.

GRATIAEN, J.

This appeal relates to a claim against a Proctor of this Court consequential on an alleged breach of professional duty to his client.

The appellant, on his retirement from Government Service in 1941, had drawn a commuted pension which, together with a sum lying to his credit with his Benevolent Association, amounted to Rs. 9,158/-. He had in addition accumulated some modest savings which brought up the

total of his capital to Rs. 13,000/-. He desired to invest this sum in order to supplement his income which was now represented by a monthly Government pension of Rs. 149/-, and with this object in view, he obtained an introduction to the respondent who was a Proctor and Notary Public with a good reputation practising his profession in Colombo for over 25 years.

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—continued.

The appellant first invested a part of his capital through the respondent in a mortgage executed in his favour by a borrower named Wiswasam. This loan was duly repaid in 1942, and the appellant was
10 once again on the look out for a suitable investment. Apparently, he had at one stage conceived the idea of purchasing a small residential bungalow for himself and his family, but he had not succeeded in finding a property which he could afford to buy. In the result, his capital lay idle for some months, and he was, to the respondent's knowledge, anxious to re-invest his money. "He use to come practically daily", the respondent said, "and talk to the brokers who come to my office to invest his money".

It is convenient at this stage to refer to two other persons who played a prominent part in the subsequent transaction which forms the subject-
20 matter of this litigation. They are the respondent's brother Shamsudeen (*alias* "Shams") and a man named Samaratunge who had on many previous occasions borrowed money invested by clients of the respondent.

Shamsudeen has been described as an "unlicensed broker". He shared the respondent's office for the purpose of his business, and was also given access to the respondent's office stationery. Shamsudeen made full use of these facilities (whether with or without the respondent's express authority) so as to induce prospective customers to believe that business recommended by him was also recommended by the respondent. By these means, his activities enjoyed the cachet of his brother's pro-
30 fessional reputation. The letters marked P48, P49 and P50, with Shamsudeen's name significantly typed above the printed name of the respondent on the respondent's note paper, furnish sinister evidence of Shamsudeen's technique in attracting business. "He was trying to bait a fish", said the respondent, "by using my name". I shall have occasion to examine these letters more particularly at a later stage of my judgment, but in the present context it is sufficient to state that they contain many gross misrepresentations of fact which were designed to tempt the appellant into making an imprudent investment. "These are things", said the respondent, "which brokers generally write to
40 their clients". Even if these sweeping exaggeration be construed as giving expression only to his estimate of the business methods of his own brother, it is quite deplorable that in any view of the matter, the respondent should have acquiesced in a procedure which facilitated such improprieties in regard to business which was ultimately transacted professionally by himself.

Shamsudeen was called as a witness by the appellant in order to establish the fact that P48, P49 and P50 were written by him from the

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—continued.

respondent's office and with at least his apparent authority. But I cannot accept the artificial proposition that, merely because Shamsudeen was in a sense the appellant's witness, the appellant is necessarily bound by every false statement which Shamsudeen took the opportunity of making in the witness box. In the first place, Shamsudeen is, on his brother's own assessment, a person whose word should not be accepted by a Court of Law without most careful scrutiny. Moreover, his evidence betrays a desire to assist his brother's defence whenever possible—indeed, in some instances to the point of demonstrable absurdity. I mention by way of illustration his suggestion that the description in P48 of the pro-¹⁰ posed borrower as “a long standing client of *ours* during the last ten years” was intended to convey that Samaratunge had during that period been a “client” of *the appellant* and not of the respondent.

I now pass on to the person Samaratunge who had in truth been a long standing client of the respondent and Shamsudeen in the sense that he had on many previous occasions borrowed money from persons introduced by them.

At the time when the appellant was looking for a suitable re-investment of his modest capital—*i.e.*, towards the latter part of 1942—Samaratunge was, or claimed to be, the owner of two properties (or, to ²⁰ be more accurate, various allotments of land comprising two properties) to which I shall for convenience refer as “the Panwila property” and “Fincham's land” respectively. It is necessary to examine in respect of each property Samaratunge's more recent transactions during the relevant period—all of which transactions the respondent had been instrumental in negotiating in his professional capacity.

The Panwila property consisted of six separate lands, some of which are described as “undivided” allotments of larger lands. Samaratunge claimed to have inherited his property from his father Bilinda, but he apparently had no “paper title” to support this claim. On ³⁰ 20th December, 1940, he executed in his own favour a somewhat unusual document D3, attested by the respondent as notary and Shamsudeen as witness, declaring himself to be its lawful owner “for the better manifestation of his title thereto”. The value of the entire property was stated in the deed to be Rs. 2,000/-. The respondent admits, both in his evidence and in certain letters written by him before the action commenced, that this property was not such as he would recommend as attractive security to a prudent investor.

On 20th August, 1941, Samaratunge borrowed Rs. 3,750/- from Naina Marikar on a primary mortgage of the Panwila property (P41).⁴⁰ Naina Marikar was the first cousin of the respondent and Shamsudeen, and they were on this occasion as well the attesting notary and witness respectively. The chief security for the loan, however, was contained in a contemporaneous “indenture of lease”, so called, which was primarily intended to enable the lender to liquidate the debt by securing for himself the tea coupons issued in respect of the land—a device which, as is well known, was frequently resorted to during the period when “coupons”

were negotiable and marketable documents issued in respect of properties registered under the scheme whereby the export of tea from Ceylon was controlled by Government machinery. "Upon that promise", says the respondent, "the money was lent" Samaratunge did not, however, honour the arrangement by which his debt was to be liquidated. "One day", continues the respondent, "he came to my office with about 6,000 to 7,000 pounds of tea coupons and told me that he was going to deliver those coupons to Naina Marikar". This was a false promise. The coupons were not delivered, and accordingly on 20th February, 1942, the respondent, acting on behalf of his cousin Naina Marikar, instituted action No. 532/M.B. in the District Court of Colombo against Samaratunge for the recovery of the debt. "I sued him", says the respondent, "because he tricked me. He was not keeping to his promises".

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—continued.

As one would expect, Samaratunge proved to be an elusive defendant in the mortgage action. Process was issued and re-issued against him from time to time without success. Eventually, on 17th August, 1942, he appeared in Court and consented to judgment. He was granted six months time within which to pay the judgment debt. A formal hypothecary decree for Rs. 3,750/-, interest and costs was entered of record on this basis on 12th September, 1942, and in the result the Panwila property, in whose realisable value the respondent admittedly reposed little confidence, became liable, in default of payment before 12th March, 1943, to be sold up for the recovery of the judgment debt. No doubt Naina Marikar and others interested in his welfare were in a state of some despondency as to his prospects of recovering the money which he had lent on unreliable security to a debtor introduced to him by his two cousins. It would certainly have been to his advantage if he could be rescued from his predicament without the need for selling up the Panwila property.

I now refer to the other property known as "Fincham's land". After certain preliminary negotiations had taken place, Samaratunge borrowed a sum of Rs. 35,000/- from a man named Moolchand on a primary mortgage of this property under the Bond P36 dated 2nd June, 1941, also attested by the respondent. The truth is that at the time of the earlier negotiations Samaratunge had not yet become the owner of the property, and that the entire sum borrowed from Moolchand was utilised by Samaratunge for the purpose of acquiring title to the property contemporaneously with the execution of P36, under a conveyance also notorially attested by the respondent, from the previous owner.

Fincham's land is stated to be 146 acres in extent, of which 85 acres were planted in tea and 30 acres in cardamoms, the rest of the property being jungle land. In 1941 its chief source of revenue seems to have been the market value of its tea coupons periodically issued under the tea restriction scheme, and for this reason, when P36 was executed, a so-called "indenture of lease" similar to that created in the Panwila transaction, was executed in favour of Moolchand.

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—continued.

Moolchand gave evidence at the trial, and he stated in evidence that the “tea coupon scheme” terminated in May, 1942. This circumstance possibly explains why the extent of Samaratunge’s liability under P36 had increased by 15th January, 1943, according to an account stated (P37) between both parties, to Rs. 44,500/-.

Contemporaneously with the execution of P36 Samaratunge granted a secondary mortgage D2, also attested by the respondent, in favour of Shamsudeen and the respondent’s wife jointly. The bond states that the sum due to Shamsudeen was Rs. 2,500/- and to the respondent’s wife was Rs. 3,500/-. The respondent states that the consideration for these two “loans” was paid in his presence in cash on the date of the bond. The bond D2 was expressed, however, to carry no interest on either “loan”. The reason for this liberality on the part of the creditors concerned was not explained at the trial. At any rate I am not disposed to probe the interesting theory that the sum covered by the bond represented in truth commission for services rendered by Shamsudeen and the respondent in negotiating P36.

It is not suggested that Samaratunge owned any property besides the Panwila property and Fincham’s land at any time during the relevant period.

Samaratunge was called as a witness at the trial by the appellant’s counsel for reasons which are certainly obscure. He too, like Shamsudeen, took the opportunity of making many statements, some of them patently false, unfavourable to the appellant’s case. Here again, I reject as artificial the argument that the appellant must necessarily be regarded as bound by the falsehoods to which Samaratunge gave utterance while he was in the witness box.

The scene now shifts to the latter part of November, 1942. The relative financial positions of Samaratunge and the appellant at the point of time may be summarised as follows :—

A. As far as Samaratunge was concerned, his position had, to say the least, become too precarious to justify any hope which he may have entertained of obtaining further loans from any prudent investors :—

- (1) A hypothecary decree for Rs. 4,990/- interest and costs in respect of the Panwila property had already been entered against him in favour of the respondent’s first cousin Naina Marikar and this property was liable to be sold in execution within a few months. No payment had been made in reduction of the judgment debt up to the end of November, 1942, and the prospect of making any future payment by honourable means must have been very remote ;
- (2) Fincham’s land was subject to a primary bond in favour of Moolchand to secure the payment of a debit which by this time had increased to very nearly Rs. 44,500/-. It was

also still subject to a secondary mortgage bond for Rs. 6,000/- in favour of the respondent's brother and the respondent's wife. The loans secured by this latter bond had been outstanding for approximately 18 months without any right in the joint creditors to receive interest. There was no valid reason why Shamsudeen or Mrs. Fuard or anyone protecting their interests should regard the security as satisfactory;

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10 (3) An important source of income from both properties had, if Moolchand's uncontradicted evidence on the point be true, dried up; when the tea coupons were available, Samaratunge had improperly contrived to divert them from his creditors, and he apparently now lacked the means (even if he had the inclination) to meet his financial engagements at the due dates in any other way. Shortly stated, he was a most unsatisfactory debtor from every point of view.

20 B. Turning now to the appellant's financial position, he still had capital in his hands to the extent of Rs. 13,000/- which he was anxious to invest in order to supplement his only other source of income, namely, a monthly pension of Rs. 149/- and a modest cost-of-living allowance, for the maintenance of himself and his family.

These facts which I have set out had substantially come to the knowledge of the respondent in the course of his professional employment by the clients concerned.

On 17th November, 1942, Shamsudeen wrote the letter P48 to the appellant from the respondent's office in the following terms :—

30 “ A. M. SHAMS,
C/o A. M. FUARD,
Proctor & Notary.

130, Hultsdorf Street,
Colombo, 17th November, 1942.

Telephone No. 5446.

“ Dear Mr. A. R. Weerasuriya,

40 After I met you at Main Street in Colombo, when I went to office in the noon I was surprise to find the client of ours whose business I casually suggested you. This client is one Mr. K. R. Samaratunge a long standing client of ours for the last nearly ten years or so. And he will pay interest very regularly and do good business. Now he want Rs. 15,000/- on a primary mortgage of his house property with 3 acres of land and 15 acres fully planted tea

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—continued

near his home. This bungalow where he is reside now, it is a good one with water services, etc. These two properties were situated at Medakotuwa, Panwila is only 13 miles from Kandy. Title is Crown. Further Mr. Fuard had suggested me to get another large estate of 146 acres tea belonging to him, near about Kandy as secondary mortgage as an additional security, this estate is worth over 80,000/- it has a primary mortgage of 40,000/- and interest have been paid up-to-date. Out of this 15,000/- a sum of Rs. 5,000/- will be repaid to you in six months time and the balance money will be paid back after an year. As he returning the money early in 10 instalment, he had agreed to pay you an interest of 9 (nine) per cent. This is a good business, he will be very regular in paying you the interest should you accept this. If so please let me know when you can conveniently inspect the land, I shall make all arrangement. This security does not appear as it sufficient enough, but if you will go to see you will realise. In the other hand the borrower is absolutely good and you will be more than satisfied."

(I have taken the liberty of underlining the statements which were specially calculated to interest the appellant in the investment proposed to him). Five days later Shamsudeen wrote another letter P49, to the 20 appellant as follows :—

" A. M. SHAMS,
A. M. FUARD,
Proctor & Notary.

130, Hultsdorf Street,
Colombo, 23rd November, 1942.

Telephone No. 5446.

" A. R. WEERASURIYA, ESQ.,
Sirisevena,
Ambalangoda.

Dear Mr. Weerasuriya,

I am in receipt of your letter dated the 18th instant and I immediately communicated with my client having consulted Mr. Fuard. I 30 have fixed up to inspect these properties of Mr. Samaratunge at Kandy on this Sunday, the 29th inst. Please be in Colombo at the Kandy bus stand at 5th Cross Street near the Municipal latrine between 7 and 8 in the morning. We got to inspect this property definitely on this Sunday. From Colombo we have to go by bus to Kandy and Mr. Samaratunge will be meeting us at the bus stand positively at Kandy and we will have to take breakfast at Kandy and then proceed to the estate by car.

Mr. Fuard highly recommends this loan."

On 26th November, 1942, Shamsudeen wrote P50 :—

“ A. M. SHAMS,
A. M. FUARD,
Proctor & Notary.

130, Hultsdorf Street,
Colombo, 16th November, 1942.

Telephone No. 5446.

“Dear Mr. Weerasuriya,

I received your letter dated the 24th inst. for which I thank you.

Re interest. I have managed to fix up the rate of interest at 10% through Mr. Fuard. Now it is O.K.

10 Hope to meet you on the 29th morning at the bus stand between 7 and 8.”

(The special recommendations contained in P49 and P50 have also been underlined by me).

On 3rd December, 1942, the plaintiff lent to Samaratunge a sum of Rs. 15,000/- (representing his entire capital augmented by a sum of Rs. 2,000/- made available to him by a relative) on the mortgage bond P1 carrying interest at 10 per centum per annum. The bond was attested by the respondent as notary and by the respondent's brother Shamsudeen as witness. The security covered by the bond was (a) a primary mortgage 20 of the Panwila property (b) a secondary mortgage of Fincham's land.

At the time of the execution of P1 the appellant handed to the respondent, as attesting notary, two cheques for Rs. 375/- and Rs. 14,625/- respectively. The cheque for Rs. 375/- was endorsed and returned to the appellant to cover 3 months interest in advance. The balance sum of Rs. 14,625/- was distributed by the respondent as follows :—

- (a) Rs. 375/- was retained by the respondent on account of stamps, fees, etc.
- 30 (b) Rs. 4,500/- was paid to the respondent's first cousin Naina Marikar, the judgment creditor in the pending mortgage action, in consideration of which payment (and of a fresh mortgage for Rs. 1,000/- postponed to P1) satisfaction of the decree was duly entered of record. In the result, Naina Marikar had the good fortune to receive back in cash his capital investment, together with a sum of Rs. 750/- in substantial reduction of his claim, interest and costs.
- (c) Rs. 2,500/- was paid to the respondent's brother Shamsudeen in full settlement of his claim on the bond D2.
- (d) Rs. 3,500/- was paid to the respondent's wife in full settlement of her claim on the bond D2.
- 40 (e) Rs. 3,750/- was paid to Samaratunge personally. (There is no evidence as to whether any part of this sum was later paid by

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him to the respondent's brother Shamsudeen as remuneration for negotiating this most opportune loan. On the other hand, there is no evidence which would justify the assumption that the services rendered by Shamsudeen in the transaction had been actuated solely by motives of liberality).

In the result, at least Rs. 10,500/- out of the capital invested by the appellant was directly utilised to the financial benefit of three close relatives of the attesting notary. And in each case the relative so benefited had been rescued from the situation of being the creditor of a person who could have had no reasonable prospect of raising further 10 money from prudent investors and whom the notary concerned admittedly regarded at the time as "a difficult customer who would never keep to his word". From the point of view of these persons, the completion of the transaction can certainly be regarded as entirely satisfactory.

The investment, as any reasonable person should have foreseen, proved disastrous. No change occurred in either Samaratunge's financial position or in his respect for the sanctity of his contractual obligations. He defaulted in the payment of interest from the very start, and the only sum which the appellant received on this account was the single payment of Rs. 375/- which had been retained to cover three months interest in 20 advance. The position further deteriorated in September, 1943, when Moolchand sued Samaratunge to enforce his primary bond in respect of Fincham's land, the appellant being joined in the action as secondary mortgagee. Decree in Moolchand's favour was entered for Rs. 51,620/- together with further interest and costs. On 19th April, 1944, the mortgaged property was sold in execution of the decree and was bought by Moolchand for only Rs. 16,000/-. Moolchand states that he succeeded shortly afterwards in reducing his own loss to some extent by selling Fincham's land to an outsider for Rs. 30,000/-. Whether the value of the property has more recently been enhanced by reason of the boom 30 conditions of the post-war period is quite beside the point.

The result of the sale of Fincham's land in execution of Moolchand's decree was that the appellant's interests as secondary mortgagee were wiped out. There remained only his security on the primary mortgage of the Panwila property. In June, 1944, the appellant sued Samaratunge on the bond and obtained a decree for Rs. 17,765·62. At a judicial sale conducted on the land in the presence of twenty or thirty people on 9th March, 1946, it was purchased by an outsider for only Rs. 2,250/-. This sum, together with the sum of Rs. 375/- originally retained as interest in advance, represents all that the appellant was able to recover out of the 40 capital investment of Rs. 15,000/- to say nothing of the expenses incurred in the mortgage action. In the result, the appellant has been almost completely impoverished, and he has since been reduced to the necessity of supplementing his income as a pensioner by obtaining temporary employment on a small monthly salary.

Up to this point in the narrative, the facts as I have substantially set them out are not in dispute, but there is much divergence between

the versions of the appellant and the respondent respectively as to the part which the latter played in putting through this most disastrous investment.

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The gist of the appellant's complaint is that the respondent, acting as his legal adviser, had recommended the unprofitable investment introduced by Shamsudeen, and that his conduct constituted a breach of his professional duty arising under the contract of employment; in particular, that the respondent had acted fraudulently and with the dishonest intention of furthering the interests of his own relatives — information regarding which interests he had improperly withheld from the appellant at the time when the transaction took place. In these circumstances he claimed that the respondent should indemnify him for the loss sustained by him which he assessed, at the time when the action commenced, at Rs. 20,000/-.

—continued.

The respondent denied the allegations made against him. He admitted in his pleadings that the appellant had "consulted him professionally from time to time regarding his investments", and that he had "rendered the (appellant) professional services from time to time". With regard to the particular investment of 3rd December, 1942, however, he pleaded that he "had at all times expressly told the (appellant) that he must satisfy himself about the value and adequacy of the security" and that "the (appellant) satisfied himself accordingly". Finally, he pleaded that the security was adequate in fact, though the (respondent) did not recommend either the security or the borrower". The answer does not explicitly refer to the complaint that the adverse interests of "others", *i.e.* of the respondent's relatives to whom I have referred, were not previously known to the appellant or communicated to him at the relevant time.

The case went to trial on as many as 12 issues. The learned District Judge has answered in the affirmative the following issues:—

- " 1. Did the plaintiff employ the defendant as his legal adviser and to act for and on his behalf in connection with the investment of Rs. 15,000/- in or about November, 1942? "
- " 2. In pursuance of such employment did the defendant invest the said sum of Rs. 15,000/- with K. R. Samaratunge on Bond No. 2308 of 3-12-42? "

On the other hand, the learned Judge has expressly held that the respondent had not "fraudulently concealed material facts within his knowledge with a view to inducing the (appellant) to make the investment". In this view of the matter, he decided that the further issue whether the respondent had "committed a breach of his contract of employment with the (appellant) and/or an intentional dereliction of professional duty relative to the investment" did not arise for consideration.

For the reasons which I shall later indicate, it seems to me that the learned District Judge has not paid sufficient regard to the very high

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standard of conscientiousness which a Court of Law, “exercising jurisdiction as a Court of conscience”, must always demand from legal advisers to whose contractual obligations there are superadded certain “duties of particular obligation” arising from a fiduciary relationship of a special nature—such as, for instance, where a proctor is invited to act professionally for a client in a transaction from which either the proctor or his close relatives stand to benefit materially. As I read the judgment under appeal, the learned District Judge, in disposing of issue 5, seems to take the view in this particular case that the respondent had sufficiently complied with his duty by informing the appellant of the existence only 10 of the subsisting mortgages on Fincham’s land and the Panwila property respectively (without disclosing the identity of the mortgagees). Accordingly, he holds, “it made no difference to the (appellant) whether the secondary mortgage was in favour of Shamsudeen and the (respondent’s) wife or in favour of some other parties”.

With great respect, I cannot subscribe to this view. “A solicitor who accepts such a post puts himself in a false position; if he acts for both (parties), he owes a duty to both, to do the best that he can for both” Per Farwell, J., in *Powell vs. Powell* (1). It was the plain duty of the respondent to have made it very clear to the appellant that his 20 wife, his brother and another close relative, for all of whom he was also acting and in whose financial advantage he had a special concern, were particularly interested in the proposed loan to Samaratunge going through. He should unambiguously have warned the appellant of the extent to which the situation created a conflict between his interest and his duty in order that, being thus forewarned, the appellant might have the opportunity of preferring to consult an independent and disinterested lawyer before making a final decision in the matter. Indeed, I take the view that he should have insisted that the appellant should obtain his legal 30 advice from someone else.

Notwithstanding this infirmity in the learned Judge’s method of approach to the matter arising for his decision, I cannot lose sight of the circumstance that there is a very strong finding of fact in favour of the appellant on the issue of deliberate fraud in the sense in which that term implies a dishonest intention, by means of false misrepresentations, to secure a benefit for his own relatives at the appellant’s expense. As a Judge of appeal, lacking the advantage of having seen and heard the witnesses, I cannot presume to substitute my own opinion on this grave issue for that of the learned Judge. On the other hand, the trial Judge’s 40 answer to issue 5, though it quite explicitly disposes of the allegation of fraud, was clearly not intended to express the view that the respondent had in fact disclosed every fact known to him which was in my opinion relevant to the appellant’s decision whether or not to grant the proposed loan to Samaratunge.

Does the acquittal of the respondent on the issue of actual (as opposed to constructive) fraud conclude the case against the appellant? This cannot be so. In the present case, each party had placed his version of

the transaction very fully before the Court. The appellant's cause of action, shortly stated, is that the respondent is liable to indemnify him for his loss because the respondent had failed to perform his professional duty in regard to the transaction. No doubt the appellant has failed to satisfy the trial Judge that this alleged breach of duty can be equated to the commission of an intentional and deliberate fraud. But it does not necessarily follow, however, that, if sufficient facts have been proved entitling the appellant to succeed in his claim to be indemnified, he must be denied justice merely because "his pleader has chosen to over-state
 10 his client's case and the Judge to frame an issue embodying that over-statement". Per Lord Atkinson in *Jayewickreme vs. Amarasuriya* (2).

If fraud be imputed unsuccessfully but unnecessarily as forming one of the ingredients of a cause of action, justice requires that the Court should nevertheless grant relief to the injured party provided that other matters were alleged and proved which would give the Court jurisdiction as the foundation of a decree. *Archbold vs. Commissioners of Charitable Payments for Ireland* (3). It was by the application of this principle that in a case which is in many respects similar to the present litigation, the House of Lords granted an indemnity to a client against his solicitor
 20 against whom an allegation of fraud had failed but against whom dereliction of duty arising from his position of fiduciary relationship was nevertheless established. *Nocton vs. Lord Ashburton* (4). When the real character of the litigation has been made plain, said Lord Haldane, one should not permit the issue between the parties to be clouded by "difficulties which are concerned with form and not with substance"

In my opinion the averments in the plaint justify the examination of the plaintiff's claim on the basis of a cause of action founded in tort or in contract or in breach of duty or even in a combination of all these elements.

It is indeed unfortunate that, having satisfied himself that the
 30 respondent had not intentionally defrauded the appellant, the learned Judge did not direct his mind to the further question whether upon the facts the respondent had nevertheless "violated, however innocently (because he had misconceived the extent of the obligation which a Court of Equity imposes on him), an obligation which he must be taken by the Court to have known". *Nocton's case* (5). This Court is therefore deprived of the advantage of having before it any clear adjudication upon many material issues which are controversial. Normally, the situation would have called for a re-trial, but in the present case I am satisfied that justice can be done without exposing the parties to the
 40 inconvenience and expense of a trial *de novo* regarding the circumstances of a transaction which had taken place nearly ten years ago.

I shall now enumerate the points which have particularly weighed with me in reaching the conclusion that there is sufficient material upon which the liability of the respondent has been established even if one were to take a view that is least unfavourable to his professional honour :—

1. The learned Judge has expressly held that the respondent acted as the appellant's legal adviser in the transaction, and the

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respondent admits that he did in fact tender certain professional advice to the appellant in that connection : in determining the sufficiency of this advice, it is not improper, I think, to pay special regard to the version contained in his letters P61 of 14th November, 1945 (in reply to P60), P63 of 30th November, 1945 (in reply to P62) and P67 of 17th October, 1945 (in reply to P66). Certain statements made by him for the first time in the course of cross-examination, and which the appellant had not been given the opportunity of denying when he was in the witness box, are to my mind far less reliable.

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2. Notwithstanding the protestations of Shamsudeen and Samaratunge, it is very clear from the documents P48, P49 and P50 that the loan and the proposed borrower Samaratunge were in the first instance recommended to the appellant by Shamsudeen. These letters not only contain many false statements as to the nature of the security and the integrity of the borrower, but they also expressly purport to associate the respondent with those statements. The appellant, who was not cross-examined on this point, has stated that these letters were shown by him to the respondent, and this fact has not been denied by the respondent. I regret that, in spite of my admitted disadvantages as an appellate Judge, I do not believe that the respondent could have unambiguously removed the false impression which Shamsudeen had given as to Samaratunge's personal unsuitability as a debtor. This point was not suggested to the appellant in cross-examination, nor did the respondent claim to have so acted in any of his earlier letters addressed to the appellant or the appellant's proctor. It is inherently improbable that the appellant would have proceeded with the business if he had been made to realise that Shamsudeen's written encomiums of Samaratunge, purporting to have been endorsed by the respondent himself, were deliberately false ; in this respect also the respondent has failed in his professional duty.

3. There is a finding in favour of the respondent, and the appellant admits, that the respondent had warned him that he must satisfy himself as to the value of Fincham's land, and that it was safer to regard this property as the substantial security for the proposed loan. But in the present case I do not regard this advice as even nearly approximating to the kind of professional advice which the situation demanded. Before the action commenced, the respondent set out in writing the nature of the professional advice which he claims to have given. "I cautioned you", he said in his letter P61, "that you should not lend unless you were satisfied that the big property (*i.e.* Fincham's land) is worth over Rs. 50,000/-. In fact, I remember very well that I advised you not to place any value over his (Panwila property) because it consisted of several small lots. Further, I told you that you should lend Rs. 50,000/- only if (Fincham's land) is worth Rs. 50,000/-". This

letter also confirms that the respondent had told the appellant that in his own opinion Fincham's land was in fact worth "somewhere near Rs. 50,000/-". It seems to me that even on this hypothesis, the professional advice given by the respondent was in all the circumstances quite inadequate. It is not pretended that the appellant was warned that the sum outstanding on the primary bond in Moolchand's favour now exceeded, or (in the absence of precise information) must be assumed to have exceeded Rs. 40,000/-. The proper advice should have been that there was a real risk that the security of a secondary mortgage would, particularly in the event of a forced sale, prove to be virtually negligible unless its realisable value left over an ample margin to meet that contingency. A lay client, inexpert in valuation and known to possess little previous experience of investments, cannot reasonably be expected to advise himself as to the sufficiency of the security offered unless he is forewarned of the special risks to be avoided.

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—continued.

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4. As I have previously said, the respondent should have disclosed the fact that his close relatives, for whom he was acting, were Samaratunge's creditors and stood to benefit if the transaction went through. The appellant consistently maintained that he was unaware of this circumstance until long afterwards. In his letter P60 dated 12th March, 1945 (*i.e.* nearly 5 years later) he wrote to the respondent "I understood that the money lent by your relations, also I believe on your advice, has been paid by Mr. Samaratunge". The reply to this categorical allegation was "In your letter you seem to imagine lots of things to blame me. Still Mr. Samaratunge owes money to my relatives". This was certainly not a very frank statement in the circumstances of the case, and I am perfectly satisfied that the respondent had not at any relevant period of time disclosed to the appellant the nature or the extent of the interests of his relations in the transaction. Indeed, the respondent admits that he did not give this vital information, his excuse being that the appellant had told him "that he had heard that my wife had lent money and that my brother had lent money on that land. I did not therefore tell (the appellant) that my wife had a mortgage". Indeed, it is implicit in the findings of the trial Judge that this relevant information, which the learned Judge erroneously regarded as immaterial, had not in fact been disclosed to the appellant; I find myself unable to accept as valid or as truthful this excuse for non-disclosure which was not suggested to the appellant in cross-examination or given when the first opportunity arose to offer an explanation.

When a proctor is engaged to advise a client in regard to a proposed investment, "his contract of employment imposes on him a duty to act skilfully and carefully . . . and, superimposed on this contractual duty, is the duty imposed by his fiduciary position to make a full and not a misleading disclosure of facts known to him

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when advising his client". *Nocton's case (supra)*. As Lord Haldane states, "when a solicitor has financial transactions with his client and has handled his money to the extent of using it to pay off a mortgage made to himself, the Court has jurisdiction to scrutinise the transaction". No less vigilantly should his conduct be examined when the money is utilised to settle not his own personal claims but those of his relatives. See also *Abdul Cader vs. Sittinisa* (6) where the same principles were applied by this Court in setting aside a transaction put through by a proctor for his wife's benefit.

Examined in this way, the respondent's conduct in the trans-10 action under consideration fell far short of the duty imposed on him by contract and also of "the duty of particular obligation" imposed on him by his special fiduciary relationship. Putting the case against him at the very lowest, he did not disclose to the appellant the extent to which his relatives stood to gain if the transaction went through; he did not sufficiently advise the appellant as to the safe margin which should be insisted on if the main security for the loan was to be a secondary mortgage of Fincham's land—having regard particularly to the appellant's known inability to purchase the property himself at a forced sale in order to protect himself; 20 Samaratunge was a debtor of proved unreliability whose financial position had by the beginning of December, 1942, become well-nigh desperate; and the respondent did not sufficiently, if at all, refute the recommendation of the borrower with which Shamsudeen had deliberately associated him in the letters P48, P49 and P50. In other words, he refrained from communicating to his client many circumstances within his knowledge which were material to his client's decision. It was a breach of duty in the facts of the present case to withhold any information as to the special risks attending the proposed transaction. 30

In any view of the matter, the respondent's conduct has fallen short of the high standard of conscientious duty exacted by well-defined principles of the Common Law. The appellant has lost his money in consequence and is in my opinion entitled to claim an indemnity for the loss which he has sustained.

It is not suggested that the sum of Rs. 20,000/- claimed on this account is in any way excessive. The appellant could not by any means within his power or within the realm of practicability have minimised his loss. I mention this point because the learned Judge has stated, presumably by way of criticism, that the appellant 40 "does not appear to have taken any steps to purchase (Fincham's land) himself or pay off the money due to Moolchand. If he had paid the money due to Moolchand, then (the appellant's) bond would have been a primary bond". I really do not understand how a Government pensioner who had already invested his entire capital (and indeed, some borrowed money as well) in granting the loan to Samaratunge could have been expected to raise sufficient

funds to settle the very substantial judgment-debt in favour of Moolchand in order to protect his own hypothecary rights.

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In my opinion the judgment under appeal should be set aside and a decree entered in favour of the appellant against the respondent as prayed for with costs both here and in the Court below.

—continued.

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- (1) (1900) 1 Ch. 243 at p. 246.
- (2) (1918) 20 N.L.R. 289 at p. 297.
- (3) (1849) 2 H.L.C. 440.
- (4) (1914) A.C. 932.
- (5) (Supra) at p. 954.
- (6) (1951) 52 N.L.R. 536.

(Sgd.) E. F. N. GRATIAEN,
Puisne Justice.

GUNASEKARA, J.

I agree,
(Sgd.) E. H. T. GUNASEKARA,
Puisne Justice

No. 12.

Decree of the Supreme Court.

No. 12.
Decree of the
Supreme
Court.
27-5-52.

20 D.C. (F) 387M/1950.

ELIZABETH THE SECOND, QUEEN OF CEYLON

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

ALFRED RICHARD WEERASURIYA of Ambalangoda.....*Plaintiff-Appellant.*

against

ASSENA MARIKAR MOHAMED FUARD, Proctor and Notary of
Hultsdorf Street, Colombo.....*Defendant-Respondent.*

Action No. 18596/M.

District Court of Colombo.

This cause coming on for hearing and determination on the 14th and 27th days of May, 1952, and on this day, upon an appeal preferred by the plaintiff-appellant before the Hon. Mr. E. F. N. Gratiaen, Q.C., Puisne Justice, and the Hon. Mr. E. H. T. Gunasekara, Puisne Justice of this Court, in the presence of Counsel for the plaintiff-appellant and defendant-respondent.

It is considered and adjudged that the judgment under appeal be and the same is hereby set aside and decree is entered in favour of the

No. 12.
Decree of the
Supreme
Court.
27-5-52.
—continued.

appellant against the respondent as prayed for with costs both here and in the Court below.

Witness the Hon. Sir Alan Edward Percival Rose, Kt., Q.C., Chief Justice, at Colombo, the 3rd day of June, in the year of our Lord One thousand Nine hundred and Fifty-two and of Our Reign the First.

(Sgd.) W. G. WOUTERSZ,
Deputy Registrar, S.C.

No. 13.
Application
for Condi-
tional Leave
to Appeal
to the Privy
Council.
9-6-52.

No. 13.

**Application for Conditional Leave to Appeal to the
Privy Council.**

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IN THE SUPREME COURT OF THE ISLAND OF CEYLON

D.C. Colombo No. 18596/M.
S.C. No. 387.

ALFRED RICHARD WEERASURIYA of " Srinivasa ", Ambalangoda,
presently of 124, Hill Street, Dehiwala.....*Plaintiff.*

vs.

ASSENA MARIKAR MOHAMED FUARD, Proctor and Notary Public,
of 130, Hultsdorf Street, Colombo.....*Defendant.*

ASSENA MARIKAR MOHAMED FUARD, Proctor and Notary Public,
of 130, Hultsdorf Street, Colombo.....*Defendant-Appellant.* 20

vs.

ALFRED RICHARD WEERASURIYA of " Srinivasa ", Ambalangoda,
presently of 124, Hill Street, Dehiwala.....*Plaintiff-Respondent.*

To :

**THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUSTICES OF
THE HONOURABLE THE SUPREME COURT OF THE ISLAND OF CEYLON.**

On this 9th day of June, 1952.

The humble petition of the defendant-appellant above-named appearing by Mohamed Usoof Mohamed Saleem, his Proctor, sheweth as follows :—

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1. That feeling aggrieved by the judgment and decree of this Hon'ble Court pronounced on the 27th day of May, 1952, the defendant-appellant is desirous of appealing therefrom.

2. That the said judgment is a final judgment and the matter in dispute in the appeal amounts to or is of the value of a sum over Rs. 5,000/-

Wherefore the appellant prays for conditional leave to appeal against the said judgment of this Court dated 27th May, 1952, to Her Majesty the Queen in Council.

(Sgd.) M. U. M. SALEEM,
Proctor for Defendant-Appellant.

No. 13.
Application
for Condi-
tional Leave
to Appeal
to the Privy
Council.
9-6-52.
—continued.

No. 14.

Decree of the Supreme Court Granting Conditional Leave to Appeal to the Privy Council.

ELIZABETH THE SECOND, QUEEN OF CEYLON

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

ASSENA MARIKAR MOHAMED FUARD, Proctor and Notary Public,
of 130, Hultsdorf Street, Colombo.....*Defendant-Appellant.*

against

ALFRED RICHARD WEERASURIYA of “ Srinivasa ”, Ambalangoda,
presently of Dehiwala.....*Plaintiff-Respondent.*

Action No. 18596 (S.C. 387 (Final)). District Court of Colombo.

In the matter of an application dated 9th June, 1952, for Conditional Leave to Appeal to Her Majesty the Queen in Council, by defendant-appellant above-named against the decree dated 27th May, 1952.

This matter coming on for hearing and determination on the 12th day of June, 1952, before the Hon. Mr. C. Nagalingam, Q.C., Senior Puisne Justice, and the Hon. Mr. M. F. S. Pulle, Q.C., Puisne Justice, of this Court, in the presence of Counsel for the defendant-appellant and the plaintiff-respondent.

It is considered and adjudged that this application be and the same is hereby allowed upon the condition that the applicant do within one month from this date :—

1. Deposit with the Registrar of the Supreme Court a sum of Rs. 3,000/- and hypothecate the same by bond or such other security as the Court in terms of section 7 (1) of the Appellate Procedure (Privy Council) Order shall on application made after due notice to the other side approve.

2. Deposit in terms of provisions of section 8 (a) of the Appellate Procedure (Privy Council) Order with the Registrar a sum of Rs. 300/- in respect of fees mentioned in section 4 (b) and (c) of Ordinance No. 31 of 1909 (Chapter 85).

No. 14.
Decree of the
Supreme
Court
Granting
Conditional
Leave to
Appeal to
the Privy
Council.
12-6-52.

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No. 14.
Decree of the
Supreme
Court
Granting
Conditional
Leave to
Appeal to
the Privy
Council.
12-6-52.
—continued.

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

Witness the Hon. Sir Alan Edward Percival Rose, Kt., Q.C., Chief Justice, at Colombo, the 17th day of June, in the year of our Lord One thousand Nine hundred and Fifty-two and of Our Reign the First.

(Sgd.) W. G. WOUTERSZ,
Deputy Registrar, S.C.

No. 15.
Application
for Final
Leave to
Appeal to
the Privy
Council.
16-6-52.

No. 15.

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**Application for Final Leave to Appeal to the Privy Council.
IN THE SUPREME COURT OF THE ISLAND OF CEYLON**

D.C. Colombo No. 18596/M.
S.C. No. 387 (F).

In the matter of an application for leave to appeal under the provisions of the Appeals (Privy Council) Ordinance, Chap. 85.

ALFRED RICHARD WEERASURIYA of “ Srinivasa ”, Ambalangoda,
presently of 124, Hill Street, Dehiwala.....*Plaintiff.*

vs.

ASSENA MARIKAR MOHAMED FUARD, Proctor and Notary of No. 130, Hultsdorf Street, Colombo.....*Defendant.* 20

Between

ASSENA MARIKAR MOHAMED FUARD, Proctor and Notary of 130,
Hultsdorf Street, Colombo.....*Defendant-Appellant.*

and

ALFRED RICHARD WEERASURIYA of “ Srinivasa ”, Ambalangoda,
presently of 124, Hill Street, Dehiwala.....*Plaintiff-Respondent.*

On this 16th day of June, 1952.

The petition of the defendant-appellant above-named appearing by M. U. M. Saleem his Proctor, states as follows:— 30

1. That the defendant-appellant on the 12th day of June, 1952, obtained conditional leave from this Honourable Court to appeal to Her Majesty the Queen in Council against the judgment of this Court pronounced on the 27th May, 1952.

2. That in the order granting conditional leave to appeal no conditions were imposed under rule 3 (b) of the schedule rule of the appeals (Privy Council) Ordinance, Chapter 85 other than the usual conditions.

3. That the defendant-appellant has :—

- 10 (a) On the 13th day of June, 1952, deposited with the Registrar of this Court the sum of Rs. 3,000/- being the security for costs of appeal under Rule 3 (a) of the schedule rules and hypothecated the said sum of Rs. 3,000/- by bond dated 13th June, 1952, for the due prosecution of the appeal and the payment of all costs that may become payable to the plaintiff-respondent in the event of the defendant-appellant not obtaining an order granting him final leave to appeal or of this appeal being dismissed for non-prosecution or of Her Majesty the Queen in Council ordering the defendant-appellant to pay the plaintiff-respondent's costs of appeal, and
- (b) On the 13th day of June, 1952, deposited the sum of Rs. 300/- in respect of the amounts and fees as required by paragraph 3 (a) of the Appellate Procedure (Privy Council) Order, 1921, made under section 4 (1) of the aforesaid Ordinance.

No. 15.
Application
for Final
Leave to
Appeal to
the Privy
Council.
16-6-52.
—continued.

Wherefore the defendant-appellant prays that he be granted leave to appeal against the said judgment of this Honourable Court dated 27th 20 May, 1952, to Her Majesty the Queen in Council.

(Sgd.) M. U. M. SALEEM,
Proctor for Defendant-Appellant.

No. 16.

**Decree of the Supreme Court Granting Final Leave to
Appeal to the Privy Council.**

ELIZABETH THE SECOND, QUEEN OF CEYLON

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

ASSENA MARIKAR MOHAMED FUARD, Proctor and Notary Public,
of 130, Hultsdorf Street, Colombo..... *Defendant-Appellant.*

against

30 ALFRED RICHARD WEERASURIYA of " Srinivasa ", Ambalangoda,
presently of Dehiwala..... *Plaintiff-Respondent.*

Action No. 18596 (S.C. 387 (Final).

District Court of Colombo.

In the matter of an application by the defendant above-named dated 19th June, 1952, for final leave to appeal to Her Majesty the Queen in Council against the decree of this Court dated 27th May, 1952.

No. 16.
Decree of the
Supreme
Court
Granting
Final Leave
to Appeal
to the Privy
Council.
28-8-52.

No.16.
Decree of the
Supreme
Court
Granting
Final Leave
to Appeal
to the Privy
Council.
28-8-52.

This matter coming on for hearing and determination on the 28th day of August, 1952, before the Hon. Sir Alan Edward Percival Rose, Kt., Q.C., Chief Justice, and the Hon. Mr. E. H. T. Gunasekara, Puisne Justice of this Court, in the presence of Counsel for the petitioner and respondent.

The applicant having complied with the conditions imposed on him by the order of this Court dated 12th June, 1952, granting conditional leave to appeal.

It is considered and adjudged that the applicant's application for final leave to appeal to Her Majesty the Queen in Council be and the same is hereby allowed. 10

Witness the Hon. Sir Alan Edward Percival Rose, Kt., Q.C., Chief Justice, at Colombo, the 3rd day of September, in the year of our Lord One thousand Nine hundred and Fifty-two and of Our Reign the First.

(Sgd.) W. G. WOUTERSZ,
Deputy Registrar, S.C.

PART II.**EXHIBITS****P70****Indenture No. 2110**

A. M. FWARD,
Notary Public.

Prior Registration : E. 101/ 339 Kandy.

No. 2110

Exhibits
No. P 70.
Indenture
No. 2110.
28-8-40.

Cancelled and surrendered :

(Sgd.) K. R. SAMARATUNGE.

(Sgd.) A. H. SUFI ISMAIL.

6th January, 1941.

This indenture made and entered into at Colombo on this twenty-eighth day of August, One thousand Nine hundred and Forty between
10 Kandekumbura Rajamantrige Samaratunge, presently residing at Panwila, Wategama, in the Central Province (hereinafter called and referred to as the said Lessor which expression as herein used shall where the context so requires or admits be taken to mean and include himself, his heirs, executors, administrators and assigns) of the one part and Ahamed Hardy Sufi Ismail of No. 29, Station Road, Wellawatte in Colombo, (hereinafter called and referred to as the said Lessee which expression as herein used shall where the context so requires or admits be taken to mean and include himself, his heirs, executors, administrators and assigns) of the other part, witnesseth as follows :—

20 Whereas the said Lessor is the owner and proprietor or otherwise well and sufficiently entitled to and seised and possessed of the estate and premises hereinafter fully described in the schedule hereto together with the tea plantations and the buildings and everything else standing thereon which estate is fully planted and bears registered No. S.C. 6052 in the office of the Tea Export Controller.

And whereas the Lessor hath agreed with the Lessee to let lease and demise unto the Lessee the aforesaid premises for the period commencing from the twenty-eighth day of August, One thousand Nine hundred and Forty and ending the thirty-first day of March, One thousand
30 Nine hundred and Forty-five for the consideration and subject to the terms, conditions, covenants and agreements hereinafter contained.

Now this Indenture witnesseth that the Lessor in consideration of the sum of Rupees Three hundred (Rs. 300/-) of lawful money of Ceylon being the rent in advance for the full period aforesaid well and truly paid to the Lessor by the Lessee at or before the execution of these presents (the receipt whereof the Lessor doth hereby admit and acknowledge) and of the covenants and agreements on the part of the Lessee to be done

Exhibits.
 No. P 70.
 Indenture
 No. 2110.
 28-8-40.
 —continued.

and performed doth hereby let lease and demise unto the Lessee all that and those the said premises in the schedule hereto fully described together with the plantations and the buildings and everything else standing thereon. To hold the said premises unto the Lessee for and during the said period commencing from the twenty-eighth day of August, One thousand Nine hundred and Forty and ending the thirty-first day of March, One thousand Nine hundred and Forty-five with all rights to apply for and obtain from the Tea Export Controller all coupons which may be issued in respect of the said premises hereby demised during the aforesaid period.

10

And the Lessor to the intent and purpose that the obligation hereby created may continue throughout the term of these presents covenant and agree with the Lessee as follows :—

1. That the premises hereby leased are free from all encumbrances whatsoever.
2. That the lessee shall be entitled to receive from the Tea Export Controller all coupons to be issued hereafter in respect of the said premises during the period aforesaid commencing from the twenty-eighth day of August, One thousand Nine hundred and Forty and ending the thirty-first day of March, One thousand Nine hundred and Forty-five and for that purpose the Lessor shall and will cause to be registered in the proper books of the Tea Export Controller the name of the Lessee as the owner of the said coupons.
3. That the Lessee shall and may hold and possess the said demised premises during the said term without any interruption on the part of the Lessor or any person or persons claiming through or under him.

And the Lessee doth hereby covenant and agree with the Lessor that on the expiration of the said term he shall and will peaceably and quietly surrender and yield up possession of the said premises to the Lessor.

In witness whereof the Lessor and the Lessee have hereunto and to two others of the same tenor and date as these presents set their respective hands at the place and on the day month and year in the beginning hereof written.

THE SCHEDULE ABOVE REFERRED TO.

All those undivided nineteen twentieth parts or shares of the land called Dodanwattetennehena (now garden) bearing registered No. S.C. 6052 in the Tea Export Controller's Office together with the tea plantation standing thereon situated at Pallegama in Pallegamapaha Korale of Lower Dumbara, in the District of Kandy, Central Province, bounded on the East by road, South by Malakandura of Duranilehena, West by

Appullannalagegedera and Kumburewella, and on the North by Kumburegedera Puncha's land and limit of Wehigalagederahena, containing two amunams and two pelas of paddy sowing extent ; which said land is otherwise described as follows :—

Exhibits.
No. P 70.
Indenture
No. 2110.
28-8-40.
—continued.

All that land called Dodanwattettenehena, situated at Pallegama aforesaid, and bounded on the East by old road and fence, South by ditch, West by Udagederawattekumburewella, and limit of Puncha's land, and on the North by limit of Horatala's chena containing in extent one Yelamunam of paddy sowing.

10 Witnesses :

We do hereby declare that we are well acquainted with the executants with-innamed & know their proper names occupations and residences } (Sgd.) K. R. SAMARATUNGE.
(Sgd.) SUFI ISMAIL.

(Sgd.) BOTEJUE.

(Sgd.) A. M. SHAMSUDEEN.

(Sgd.) A. M. FUARD.

I, Assena Marikar Mohamed Fuard of Colombo in the Island of Ceylon, Notary Public, do hereby certify and attest that the foregoing Instrument having been duly read over and explained by me the said 20 notary to the thereinnamed executants Kandekumbure Rajamantrige Samaratunge and Ahamed Hardy Sufi Ismail of whom the former is not known to me and the latter is known to me in the presence of Walatantrige Albert Botejue of Rajagiriya in Welikada and Assena Marikar Mohamed Shamsudeen of Hultsdorf, both in Colombo who have signed as W. A. Botejue and A. M. Shamsudeen respectively the subscribing witnesses hereto both of whom are known to me the same was signed by the said Kandekumbure Rajamantrige Samaratunge as K. R. Samaratunge and Ahamed Hardy Sufi Ismail as A. H. Sufi Ismail and by the said witnesses and also by me the said Notary in my presence and in the presence of 30 one another all being present together at the same time at Colombo aforesaid on this twenty-eighth day of August, One Thousand Nine hundred and Forty.

I further certify and attest that.....that the full consideration herein mentioned, viz. Rs. 300/- was paid in my presence by cheque bearing No. BB/4, 61142 dated this date and drawn by me on the Imperial Bank of India on behalf of the Lessee and that two stamps of the value of Rupees Four (Rs. 4/-) were affixed to the duplicate of this Instrument.

Date of attestation :

40 28th August, 1940.

(Sgd.) A. M. FUARD,
Notary Public.

Indenture No. 2111

Exhibits.

No. P 69.
Indenture
No. 2111.
28-8-40.

—continued.

A. M. FUARD,
Proctor and Notary.

Prior Registration: E. 101/339 Kandy.

No. 2111

Cancelled and discharged.

(Sgd.) A. H. SUFI ISMAIL.

6th February, 1941.

This Indenture made and entered into at Colombo on this twenty-eighth day of August, One thousand Nine hundred and Forty between Kandekumbure Rajamantrige Samaratunge presently residing at Panwila, Wattedagama, in the Central Province (hereinafter called and referred to as the party of the first part which expression as herein used shall where the context so requires or admits be taken to mean and include him, his heirs, executors, administrators and assigns) of the one part and Ahamed Hardy Sufi Ismail of No. 29, Station Road, Wellawatte in Colombo, (hereinafter called and referred to as the party of the second part which expression as herein used shall where the context so requires or admits be taken to mean and include him, his heirs, executors, administrators and assigns) of the other part witnesseth as follows :—

Whereas by an Indenture of Lease bearing No. 2110 dated the twenty-eighth day of August, One thousand Nine hundred and Forty and attested by the Notary attesting these presents the said part of the first part let leased and demised unto the party of the second part all that and those the estate and premises hereinafter in the schedule hereto fully described and bearing registered No. S.C. 6052 in the Tea Export Controller's Office, for the period commencing from the twenty-eighth day of August, One thousand Nine hundred and Forty and ending the thirty-first day of March, One thousand Nine hundred and Forty-five together with all rights to all the tea coupons to be issued by the Tea Export Controller in respect of the said demised premises during the period aforesaid.

And whereas under and by virtue of the said Indenture of Lease the said party of the second part entitled to have and receive from the Tea Export Controller all coupons to be issued in respect of the said estate and premises in the schedule hereto fully described aggregating to one thousand two hundred pounds (1,200 lbs.) tea coupons during the period aforesaid.

And whereas at the execution of the said Indenture of Lease the party of the second part paid to the said party of the first part the sum of Rupees Three hundred (Rs. 300/-) which said sum is the equivalent of advance upon the value of the said one thousand two hundred pounds (1,200 lbs.) tea coupons calculated at the rate of twenty-five cents per pound coupon.

And whereas it has been agreed by and between the parties hereto that the party of the second part shall sell the said one thousand two hundred pounds (1,200 lbs.) tea coupons or such quantity of coupons as he shall receive from the Tea Export Controller during the term aforesaid in respect of the said demised premises and shall after deducting from the net proceeds of sale as shown in the account sales hereinafter referred to the moneys hereinafter mentioned pay to the party of the first part any surplus then remaining.

Exhibits.
No. P 69.
Indenture
No. 2111.
28-8-40.
—continued.

And whereas as security for recovery by and/or repayment to the said party of the second part the said sum of Rupees Three hundred (Rs. 300/-) and all other moneys recoverable by and/or payable to the said party of the second part under these presents and any damage which the party of the second part may sustain by reason of the non-receipt for whatsoever cause by the said party of the second part of the full quantity of one thousand two hundred pounds (1,200 lbs.) tea coupons and the due performance by the party of the first part of all the covenant on his part to be performed and the said Indenture of Lease or herein set out the said party of the first part hath agreed to enter into and execute the mortgage and hypothecation hereinafter set forth.

Now this Indenture witnesseth and it is covenanted and agreed by and between the parties hereto as follows :—

That the said party of the second part shall within a period of thirty days after the receipt by him of each issue of tea coupons issued in respect of the said demised premises during the period commencing from the twenty-eighth day of August, One thousand Nine hundred and Forty and ending the thirty-first day of March, One thousand Nine hundred and Forty-five sell such issue of coupons through a recognised broker or brokers in Colombo at such price or prices in such quantity or manner and at such time or times or on such day or days within the aforesaid period of thirty days as the said party of the second part shall in his absolute discretion think fit the said broker or brokers shall be entitled to deduct from the gross proceeds of such sale his or their commission and an account sale of such broker or brokers relating to such sale shall be final and conclusive as to the sale price of such coupons, the deduction aforesaid and all matters arising out of or in any manner whatsoever relating to the said sale and the said party of the first part shall not be entitled to dispute or question the said sale the said account and/or sales in any respect or matter whatsoever.

2. Within one month of the receipt by the said party of the second part of the net proceeds of sale as shown in the account sale aforesaid the party of the second part shall from such net amount pay himself (a) twelve cents per pound coupon for such quantity of pounds coupons as is mentioned in the said account sale (b) twenty-five cents per pound coupon for such quantity of pounds coupons as is mentioned in the said account sale in liquidation of the said sum of Rupees Three hundred (Rs. 300/-) and (c) all expenses which the party of the second part might have incurred in connection with any information or return required by

Exhibits.
 No. P 69.
 Indenture
 No. 2111.
 28-8-40.
 —continued.

the Tea Export Controller in relation to the said demised premises during the aforesaid term and shall pay any surplus then remaining to the party of the first part.

3. That in case the value of the tea coupons going down the party of the first part shall supply to the party of the second part sufficient amount of such coupons to cover the said sum of Rupees Three hundred (Rs. 300/-) paid in advance and all other sum or sums of money payable under these presents.

4. That in the event of the said sum of Rupees Three hundred (Rs. 300/-) not being liquidated in the manner aforesaid on or before the 10 thirty-first day of March, One thousand Nine hundred and Forty-three, then and in such case the party of the first part shall immediately pay to the said party of the second part the balance amount then due and owing together with interest thereon at the rate of fifteen per centum per annum.

5. That the party of the first part shall be entitled to work up the demised premises at his own cost and expense and to take receive and appropriate the entirety of the produce income and profits thereof to his own use and benefit.

And this Indenture further witnesseth that for securing unto the said party of the second part the payment of the said sum of Rupees 20 Three hundred (Rs. 300/-) and the said sum of twelve cents per pound coupon on the said one thousand two hundred pounds (1,200 lbs.) tea coupons and the interest at the aforesaid rate of fifteen per centum per annum and all moneys payable to and/or recoverable by the said party of the second part under these presents but not exceeding the sum of Rupees Three hundred (Rs. 300/-) the said party of the first part doth hereby specially mortgage and hypothecate to and with the said party of the second part as a primary mortgage free from all encumbrances all these the said premises in the schedule hereto fully described together with the coupons that will be issued in respect of the said premises and 30 all and singular the rights ways easements privileges servitudes and appurtenances whatsoever to the said premises belonging or in anywise appertaining or usually held occupied used or enjoyed therewith or reputed to be or known as part and parcel thereof and all the estate right title interest property claim and demand whatsoever of the said party of the first part in to upon or out of the same.

And the said party of the first part doth hereby covenant and declare to and with the said party the second part that he hath good title to mortgage and hypothecate the said premises hereby mortgaged and hypothecated in manner aforesaid and that the said premises are free 40 from all encumbrances and that he shall and will during the continuance of the mortgage hereby effected at the request of the said party of the second part but at his own cost and expense make do and execute or cause to be made done and executed all such further and other acts deeds matters and things whatsoever which may be necessary for more perfectly assuring the said premises unto the said party of the second

part by way of mortgage and hypothecation in manner intended by these presents as by him shall or may be reasonably required.

Now the condition of the abovementioned bond or obligation and the mortgage is such that if the said sum of Rupees three hundred (Rs. 300/-) paid in advance as aforesaid is fully accounted and liquidated in the manner hereinbefore provided or if the party of the first part shall at any time during the continuance of the said lease pay to the party of the second part the said sum of Rupees Three hundred or so much thereof as shall remain due together with a further sum calculated at the rate of
 10 twelve cents per pound coupon on the said quantity of pounds coupons or on so much thereof to be issued during the residue of the unexpired period then and either of such cases the said Indenture of Lease shall stand cancelled and determined and the mortgage effected by these presents shall be absolutely null and void but otherwise the same shall be and remain in full force and virtue.

Provided however and it is hereby further covenanted and agreed by and between the parties hereto as follows :—

- (a) That the party of the second part shall and may hold and possess the said demised premises during the said term without any
 20 interruption on the part of the party of the first part or any person or persons claiming through or under him but without becoming in any manner whatsoever liable or accountable to the party of the first part for or in respect of the upkeep maintenance or management or cultivation of the said premises.
- (b) That the party of the first part shall and will at his own cost keep up and maintain the tea plantation on the said demised premises in a fit and proper state of management and cultivation.
- (c) That the party of the first part shall and will whenever required
 30 furnish all information returns and documents and evidence for the verification of such returns and informations that might be called for by the Tea Export Controller under the provisions of the Tea Control Ordinance in regard to the said demised premises.
- (d) That in case the party of the second part shall fail to receive tea coupons in respect of the demised premises by reason of any
 40 objection or claim being preferred by any person or persons whomsoever or by reason of suspension by the Tea Export Controller of the issue of coupons for neglecting to keep up and maintain the tea plantation on the said demised premises in a fit and proper state of management and cultivation or for any other cause whatsoever or in case the Tea Control ceases to be in force then and in that event the party of the first part shall immediately pay to the party of the second part full balance amount then unliquidated out of the said sum of Rupees Three hundred (Rs. 300/-) paid in advance at the execution of the said Indenture of Lease together with a further sum calculated at the rate of twelve cents per pound coupon on the said one thousand two hundred pounds (1,200 lbs.) tea coupons or on any

Exhibits.

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—continued.

Exhibits.
 No. P 69.
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 No. 2111.
 28-8-40.
 —continued.

balance thereof receiveable by the party of the second part in respect of the said demised premises during the residue then unexpired of the period granted under the said Indenture of Lease.

IN WITNESS whereof the parties hereto have hereunto and to two others of the same tenor and date as these presents set their respective hands at the place and on the day month and year in the beginning hereof written.

THE SCHEDULE ABOVE REFERRED TO.

All those undivided nineteen-twentieth parts or shares of the land called Dodanwattettenehena (now garden) bearing registered No. S.C. 6052 in the Tea Export Controller's Office together with the tea plantation standing thereon situated at Pallegama in Pallegampaha Korale of Lower Dumbara, in the District of Kandy, Central Province; bounded on the East by road, South by Malakandura of Duranilehena, West by Apullanalagedera and Kumburewella, and on the North by Kumburegedera Puncha's land and the limit of Wehigalagederahena, containing in extent two amunams and two pelas of paddy sowing, which said land is otherwise described as follows:—

All that land called Dodanwattettenehena situated at Pallegama aforesaid and bounded on the East by old road and fence, South by ditch, West by Udagederawattekumburewella and limit of Puncha's land, and on the North by limit of Horatala's chena containing in extent one Yelamunam of paddy sowing.

Witnesses :

We do hereby declare that we are well acquainted with the executants within- named & know their proper names, occupations and residences	}	(Sgd.) K. R. SAMARATUNGE. (Sgd.) A. H. SUFI ISMAIL.
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(Sgd.) Botejue.

(Sgd.) A. M. Shamsudeen.

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(Sgd.) A. M. FUARD.

I, Assena Marikar Mohamed Fuard of Colombo, in the Island of Ceylon, Notary Public, do hereby certify and attest that the foregoing Instrument having been duly read over and explained by me the said Notary to the thereinnamed executants Kandekumbure Rajamantrige Samaratunge and Ahamed Hardy Sufi Ismail of whom the former is not known to me and the latter is known to me in the presence of Welatantrige Albert Botejue of Rajagiriya in Welikada and Assena Marikar Mohamed Shamsudeen of Hultsdorf both in Colombo who have signed as W. A. Botejue and A. M. Shamsudeen respectively the subscribing witnesses thereto both of whom are known to me the same was signed by the said Kandekumbure Rajamantrige Samaratunge as K. R. Samaratunge and

Ahamed Hardy Sufi Ismail as A. H. Sufi Ismail and by the said witnesses and also by me the said Notary in my presence and in the presence of one another all being present together at the same time at Colombo aforesaid on this twenty-eighth day of August, One thousand Nine hundred and Forty.

Exhibits.
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Indenture
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—continued.

I further certify and attest that in the duplicate of this Instrument on page 1 in line 21 word Controller was deleted before the same was read over and explained as aforesaid and that three stamps of the value of Rupees Four and cents fifty (Rs. 4-50) were affixed to the duplicate of this Instrument.

Date of attestation :
28th August, 1940.

(Sgd.) A. M. FUARD,
Notary Public.

D3.

Deed No. 2147.

No. D 3.
Deed
No. 2147.
20-12-40.

Prior Registration : E. 101/339 Kandy.

No. 2147.

To all to whom these presents shall come Kandekumbure Rajamantrige Samaratunge presently residing at Panwila, Wattegama, in the Central Province.

SENDS GREETING :

Whereas Rantetgeduragedera Bilinda was under and by virtue of Deeds No. 6099 dated 14th February, 1894, attested by W. S. M. Punchibanda, Notary Public for the Kandy District and No. 3901 dated 1st November, 1905, attested by S. M. P. Wijeyatilleke, Notary Public for the Matale District the lawful owner and proprietor and was seised and possessed of or otherwise well and sufficiently entitled to all those premises in the schedule hereto fully described.

And whereas the said Rantetduragedera Bilinda was married to Rajamantrigedera Ukku and both of them died intestate several years ago leaving estates which require no administration and leaving them surviving as sole heir their son the said Kandekumbure Rajamantrige Samaratunge whereupon he became entitled to the said premises.

And whereas the said Kandekumbure Rajamantrige Samaratunge since the death of his father the said Rantetduragedera Bilinda entered into the exclusive undisturbed and uninterrupted possession of the said premises and is now the lawful owner and proprietor thereof.

And whereas the said Kandekumbure Rajamantrige Samaratunge having no paper title to the said premises is now desirous of executing these presents for the better manifestation of his title to the said premises,

Exhibits.
 No. D 3.
 Deed
 No. 2147.
 20-12-40.
 —continued.

Now know ye and these presents witness that the said **Kandekumbure Rajamantrige Samaratunge** for and in consideration of the above premises doth hereby declare that by right of paternal inheritance as aforesaid and by exclusive undisturbed and uninterrupted possession by a title adverse to and independent of that of any other person whomsoever the said **Kandekumbure Rajamantrige Samaratunge** is the sole and absolute owner and proprietor of and is entitled to all those premises in the schedule hereto fully described which are of the value of Rupees Two thousand (Rs. 2,000/-) of lawful money of Ceylon.

To Have and to Hold the said premises together with the appur-10 tenances thereunto belonging unto the said **Kandekumbure Rajamantrige Samaratunge** his heirs executors administrators and assigns absolutely and for ever.

And the said **Kandekumbure Rajamantrige Samaratunge** doth hereby further declare that the said premises in the schedule hereto fully described are free from all encumbrances whatsoever and that he hath not at any time heretofore made done or committed or been party or privy to any act deed matter or thing whatsoever whereby or by means whereof the said premises or any part thereof are is can shall or may be impeached or encumbered in title charge estate or otherwise howsoever 20 and that no other person has any right title interest or claim in to upon or out of the said premises or any part or portion thereof.

In witness whereof the said **Kandekumbure Rajamantrige Samaratunge** doth hereunto and to two others of the same tenor and date as these presents set his hand at Colombo on this twentieth day of December, One thousand Nine hundred and Forty.

THE SCHEDULE ABOVE REFERRED TO.

All those undivided nineteen-twentieth parts or shares of all that land called **Dodanwattettenehena** (now garden) together with the tea and other plantations standing thereon situated at **Pallegama** in **Palle-30 gampaha Korale** of Lower **Dumbara**, in the District of **Kandy**, Central Province; bounded on the East by road, South by **Malakandura** of **Duranilehena**, West by **Appullannegegedera** and **Kumburewella**, and on the North by **Kumburegedera Puncha's** land and limit of **Wehigalagederahena**, containing two amunams and two pelas of paddy sowing extent; which said land is otherwise described as follows:—

All that land called **Dodanwattettenehena**, situated at **Pallegama** aforesaid and bounded on the East by old road and fence, South by ditch, West by **Udagederawattetekumburewella** and limit of **Puncha's** land and on the North by limit of **Horatala's chena** containing one **Yela-40 munam** of paddy sowing extent.

2. All that land called **Medakotuwewatta** together with the tea plantation standing thereon situated at **Kandekumbure** in **Naranpanawa** in **Palis Pattu Korale** of **Pata Dumbara** aforesaid; bounded on the North

by limit of the land belonging to Kumburegedera Puncha, East by the garden of Kumburegedera Horatala, South by limit of the land belonging to Amunegedera Kaluwa, and on the West by Medakotuwa belonging to Rantetgedera Horatala containing in extent about two pelas and five lahas of paddy sowing extent.

Exhibits.
—
No. D 3.
Deed
No. 2147.
20-12-40.
—continued.

3. All that land called Pupalehena Udahawatta together with the tea plantation standing thereon, situated at Kandekumbure in Naranpanawa aforesaid; bounded on the North by ditch of the land belonging to Angara, East by ditch of the land belonging to Jamaldeen, South by
10 limit of Marieland Estate, and on the West also by limit of Marieland Estate, containing in extent about two pelas and five lahas of paddy sowing.

4. All that land called Medakotuwa together with the tea plantation standing thereon, situated at Kandekumbure in Naranpanawa aforesaid; bounded on the North by the land belonging to Rantetgedera Ukkuwa, East by the fence of Medakotuwewatte, South by limit of the land belonging to Amunegedera Kaluwa and on the West by the land belonging to Rantetgedera Horatala, containing in extent about eight lahas of paddy sowing.

20 5. An undivided half part or share of the land called Rantetgederawatte together with the tea plantation standing thereon, situated at Kandekumbure in Naranpanawa aforesaid; bounded on the north by Marieland Estate, East by Wella of Ambagahamulakumbure, South by the ditch and limit of Puncha's land, and on the West by Marieland Estate, containing in extent about two amunams of paddy sowing.

6. All that land called Pallehawatte together with the tea plantation standing thereon, situated at Kandekumbure in Naranpanawa aforesaid; bounded on the North by the limit of Rantetduragedera Hapumalie's garden, East by Kumburewella, South by the limit of Amunegedera
30 Puncha's garden, and on the West by the fence of Medakotuwe Sebancee's garden, containing in extent about nine lahas of paddy sowing.

Witnesses :

(Sgd.) A. M. SHAMSUDEEN.
(Sgd.) A. R. HASSAN.

(Sgd.) K. R. SAMARATUNGE.

(Sgd.) A. M. FUARD,
Notary Public.

I, Assena Marikar Mohamed Fuard of Colombo in the Island of Ceylon, Notary Public, do hereby certify and attest that the foregoing
40 instrument having been duly read over and explained by me the said Notary to the within named executant Kandekumbure Rajamantrige Samaratunge who signed as K. R. Samaratunge in the presence of Assena Marikar Mohamed Shamsudeen of Hultsdorf Street and Abdul Rahamen

Exhibits.
No. D 3.
Deed
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20-12-40.
—continued.

Hassan of Old Moor Street both in Colombo who signed as A. M. Shamsudeen and A. R. Hassan respectively, the subscribing witnesses hereto all of whom are known to me the same was signed by the said executant and by the said witnesses and by me the said Notary in the presence of one another all being present together at the same time at Colombo on this twentieth day of December One thousand Nine hundred and Forty.

* * * * *

Date of attestation :
20th December, 1940.

(Sgd.) A. M. FUARD,
Notary Public. 10



D25.

Bond No. 2198.

No. 2198.

No. D 25.
Bond
No. 2198.
20-5-41.

Know all men by these presents that I' Susai Wiswasam of Malwatte Estate, Kadugannawa, in Kandy District (hereinafter calling myself the obligor) am held and firmly bound unto Alfred Richard Weerasuriya of No. 126, Temple Road, Maradana in Colombo (hereinafter referred to as the obligee) in the sum of Rupees Thirteen thousand (Rs. 13,000/-) of lawful money of Ceylon well and truly to be paid to the said obligee his heirs executors administrators or assigns with interest and other charges 20 in manner hereinafter provided for which payment to be well and truly made I the said obligor do hereby engage and bind myself my heirs executors and administrators firmly by these presents and for securing unto the said obligee and his aforewritten the payment of the said principal sum of Rupees Thirteen thousand (Rs. 13,000/-) and all other sums of money that shall and may become due owing and payable under by virtue or in respect of these presents I the said obligor do hereby specially mortgage and hypothecate to and with the said obligee and his aforewritten as a first or primary mortgage all those the estate called and known as Malwatte Estate, Pimburuwatte Estate and Amukotuwehena 30 Estate and in the Schedule " A " hereto fully described and as a secondary mortgage all that estate called and known as Lammernoor Estate and all those the premises called and known as Theberton factory and in the Schedule " B " hereto fully described together with the buildings and plantations thereon and the stores factory plant and machinery fixture and equipment tools and impliments crops and produce and also the live and dead stock of or belonging to the said estate and premises and the tea coupons that shall or may be issued in respect of the said several estate and premises and the tea that shall be manufactured on the said estate and premises and together with and singular the appurtenances 40 belonging to the said estate and premises and all the estate right title and interest of me the said obligor in to upon or out of the same.

And I the said obligor do hereby covenant with the said obligee and his aforewritten that the several estate and premises fully described in the Schedule "A" hereto are not subject to any mortgage charge or encumbrance whatsoever and that the said estate and premises and the factory in the Schedule "B" hereto fully described are not subject to any mortgage charge or encumbrance whatsoever save and except the primary mortgages created by bond No. 1198 dated 6th November, 1940, and attested by D. E. Weerasooriya of Colombo, Notary Public, and the lease created by Indenture No. 1199 also dated 6th November, 1940, and attested by the said D. E. Weerasooriya, Notary Public, and that I have good right to mortgage the said several premises in manner aforesaid and that I shall and will at the request of the said obligee or his aforewritten but at my own cost and expense do and execute or cause to be done and executed all such further and other acts deeds assurances matters and things whatsoever for the better or more effectually assuring to the said obligee or his aforewritten by way of primary and secondary mortgages respectively the said several estates and premises in the Schedules "A" and "B" hereto as by the said obligee or his aforewritten shall or may be reasonably required and shall and will at all times during the continuance of these presents keep and maintain the said estates and plantations and the factory in a good and proper state of cultivation and in a husbandlike manner and the plant machinery and fixtures in good order and proper repair and shall and will allow and permit the said obligee or his aforewritten or agents to visit and inspect the said estate and premises hereby mortgaged at all reasonable hours and shall and will keep the existing insurance of the said factory in force and furnish all returns to the Tea Controller in respect of the said estates. Whereas the said obligor am indebted to the said obligee in the said sum of Rupees Thirteen thousand (Rs. 13,000/-) being money lent and advanced by the said obligee and borrowed and received by me the said obligor at the execution of these presents and it has been agreed that the said sum together with interest and other charges as hereinafter provided should be secured to the said obligee and his aforewritten in manner herein provided.

And whereas I the said obligor am executing in favour of the said obligee a lease of all those estates and premises in the Schedule "A" hereto fully described to enable the said obligee to register himself as the proprietor of the said estates and premises and to draw and receive from the Tea Controller the tea coupons to be issued by the Tea Controller in respect of the said estates and after paying himself the interest due under these presents and pay to me the said obligor the balance remaining after payment of the broker commission for the sale of the said coupons as hereinafter provided. Now the condition of the abovewritten bond or obligation is such that if I the above bounden obligor shall and will and truly pay or cause to be paid unto the said obligee or his aforewritten the said sum of Rupees Thirteen thousand (Rs. 13,000/-) on demand and shall and will in the meantime and until such repayment pay interest

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 —continued.

thereon at and after the rate of thirteen and half per centum per annum to be computed from the date hereof and payable on the date of issue of tea coupons by the Tea Controller in Colombo and shall and will duly pay and discharge all taxes due in respect of the said mortgaged premises and shall and will observe and perform the covenants and agreements contained in the said bond No. 1198 dated 6th November, 1940, and shall and will not suffer or permit the said several premises or any of them to be seized or taken in execution of any writ against me the said obligor then the above written bond or obligation and the mortgage hereby given and granted shall be null and void otherwise the same shall be and remain in full force and virtue. Provided that the said obligee shall by virtue of the indenture of lease hereinbefore mentioned receive from the Tea Controller all coupons to be issued in respect of the said estates and premises in the Schedule A hereto and sell the said coupons through a recognised broker or brokers in Colombo and after payment of the brokers' commission apply the proceeds in payment of the interest on the said principal sum of Rupees Thirteen thousand (Rs. 13,000/-) up to the date of next issue of coupons in respect of the said estates and pay to me the said obligor the balance proceeds and furnish an account sale to be issued by the said brokers for the sale of coupons and I the said obligor shall accept such account sales which shall be conclusive as to the sale price of tea coupons aforesaid. Provided further that on repayment of the said principal sum the lease executed by me the said obligor in favour of the said obligee as aforesaid shall be deemed null and void. Provided further that in the event of my desiring to repay the said principal sum I shall give to the said obligee four calendar months notice in writing signifying my intention to repay the same and likewise in the event of the said obligee recalling the said principal sum he shall give to the said obligor four calendar months notice signifying his intention to recall the said principal sum. Provided further that if the said obligee shall fail to receive tea coupons in respect of the said premises in the Schedule A hereto by reason of suspension by the Tea Controller of the issue of coupon for neglecting to keep up and maintain the said estates in the Schedule A hereto in a fit and proper state of management and cultivation or in case the tea control ceases to be in force or for any other cause whatsoever then and in that event I the said obligor shall immediately pay to the said obligee or his aforewritten the said principal sum of Rupees Thirteen thousand (Rs. 13,000/-) together with interest thereon at the rate of thirteen and half per centum per annum notwithstanding anything herein contained to the contrary. Provided lastly that if there shall be a breach by the said obligor or my aforewritten of any of the covenants or conditions on my part herein contained or if I the said obligor shall be adjudged bankrupt or insolvent then and in any of such cases it shall be lawful for the said obligee or his aforewritten at his or their option to sell for and recover all sums of money payable under these presents notwithstanding anything herein contained to the contrary. Any summons or other process of Court and any notice on me the said obligor shall be deemed sufficiently served if sent by post under registered

cover to me the said obligor addressed to Malwatte Estate at Kadugan-
 nawa or to any one of the other estates and premises hereby mortgaged.
 In witness whereof I the said obligor do hereunto and to two others of
 the same tenor and date as these presents set my hand at Colombo on
 this 20th day of May, One thousand Nine hundred and Forty-one.

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 —continued.

THE SCHEDULE " A " ABOVE REFERRED TO.

All those estates called and known as Malwatta Estate, Pimburewatta Estate and Amukotuwehena Estate and registered under Nos. T.C. 569 T.C. 687 and S.C. 24415 respectively at the office of the Tea Export Con-
 10 troller together with the tea plantations and the buildings, factories, fixtures and everything else standing thereon comprised of the following allotments of lands :—

1. An allotment of land called Gamegewatta in Arambagama Village in Medapolata of Yatinuwara in the District of Kandy, Central Province ; bounded on the North and West by ditch, on the East by Ella of Doradadiya, and on the South by the fence of Korale Mahatmaya's garden, containing five kurunies paddy sowing extent.

2. An allotment of land called Malwatte, situated at Pelimatalauwa village in Meda Palata aforesaid ; bounded on the North by Berawa
 20 Angakumbure, on the East by ditch of Payidakarayalegedarawatte, on the South by ditch of Rankondegederawatta, and on the West by limit of Punchiralagewatte and ditch containing two pelas paddy sowing extent.

3. An allotment of land called Gamigewatte *alias* Banagewatte, situated at Arambagama aforesaid ; bounded on the North by fields, on the East by Hunugederawatte, on the South by Kotakumburegederawatte, and on the West by Hunugederawatte, containing one pela paddy sowing extent.

4. All that land called Malwatte, comprising six allotments of lands
 30 forming one property and situated at Arambagama Pilimatalauwa aforesaid ; bounded on the North by land claimed by Tikiriappu, on the North-East by land claimed by Dingiribanda, on East by Berawa Anga, on the South-East by property claimed by M. Louisa and Kotakumburegederawatte, on the South by land belonging to Kapuwatte Walauwa, on the South-West by Manalpokuna, and on the West by property claimed by M. Kiri Banda, containing in extent six acres and two perches (A6. R0. P2.).

5. An allotment of land called Kiriwanaangewatte (middle portion of) in Arambagama Village aforesaid ; bounded on the North by the other portion of the same land belonging to Ran Naide, on the East by
 40 a path, on the South-West by other portion of the same land of Kiri Etana, and on the North-West by Kiriwanakumbure, containing in extent two roods and nine and a half perches (A0. R2. P9½).

6. All that southern portion of the allotment of land called Ambe-
 kumburewatte with the house standing thereon, situated at Arambagama

Exhibits. aforesaid ; bounded on the East by limit of the garden of Kirimuttu and
 No. D 25. Dintu, on the South by limit of Rankara's land, on the West by limit of
 Bond No. 2198. Ukku Banda's garden, and on the North by path of the remaining portion
 20-5-41. containing fifteen lahas of paddy sowing extent.

—continued.

7. All that land called Ambekumburewatte, situated at Arambagama aforesaid ; bounded on the North by Gavis land, on the East by Ambekumbure, on the South by the remaining portion of this land, and on the West by Malwatte, containing in extent fifteen lahas paddy sowing extent.

8. An allotment of land called Manelpokunchena *alias* Bogaha-10 mulahena in Wambagama Village aforesaid ; bounded on the East by fence of the chena of Bowantalhena and Agalheeriya, and on the South-West and North by ditch and fence containing in extent one amunam paddy sowing.

9. An allotment of land called Millagahakotuwa *alias* Kandewatte, situated at Arambagama Village aforesaid ; bounded on the North by S. Wiswasam's tea estate, East by Ranakkegederawatte claimed by Vedarala, South by the remaining portion of the same land claimed by Dingiri Menika, Bandara Menika and U. B. Walgampaya, and West by Kunji Moosa's tea estate, containing in extent three roods (A0. R3. P0)²⁰ all the above nine allotments of lands now form one property called and known as Malwatte Estate, situated at Arambagama and Pilimatalauwa Villages in Medapalata aforesaid ; bounded on the North by Kiriwana-angakumbura, Arambawatte, Medagedarawatte, Berawaangakumbure and Doradeniyakumbura, on the East by Doradeniyakumbura Ran-kadgedederawatte, South by Kunji Moosa's land and Georgiahamy's land, and West by lands belonging to Ranaheneya and A. M. Kiribanda and Kiriwanaangakumbura, containing in extent thirteen acres and three and one-fourth perches (A13. R0. P3¼) according to plan dated 20th January, 1935, compiled by H. Schokman, Special Licensed Surveyor. 30

10. An allotment of land called Budugewatte, situated at Pilimatalauwa aforesaid and bounded on the West by ditch and fence and East, South and North by Wela, containing three pelas paddy sowing extent and according to a recent survey one acre and twelve and one-fourth perches (A1. R0. P12¼).

11. An allotment of land called Rawadattalawwehena, situated at Arambagama aforesaid ; bounded on the East and South by Agalkiriya, West by Mala-Ela and on the North by Agalhiriya of Kankanie's land, containing in extent sixteen lahas paddy sowing.

12. All that allotment of land marked lot B in the plan of the land⁴⁰ called Gampolayakotuwa, situated at Arambagama or Pilimatalawa Village aforesaid ; bounded on the North by Mohandiramawatte, South by lot A of the same land, East by lot C of the same land and on the West by Talawadeniya, containing in extent twenty-eight perches (A0. R0. P28).

13. All these allotments of land called (1) Henegodahena, and (2) Imbulhitiyaya, both adjoining each other and can be included in one survey, situated at Govindala in Meda Palata aforesaid, the first land is bounded on the North by Pimburewatte of E. Basnayake, on the East by Imbulhitiyawehena of the Crown, on the South by Weeraluwekumbura of S. Ram Naide and others, Udahittara Pelikumbura of S. Muttuhenayaya Murutakumbure of A. Menik Etana and water-course, and on the West by water-course and chena land called Rutchaladala of D. A. Appuhamy, containing in extent five acres and one rood, and the second land is bounded on the North and East by land claimed by natives, on the South by land claimed by natives and T. P. 158350, and on the West by T.P. 158350, containing in extent three acres one rood and thirty-five perches.

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—continued.

14. An allotment of land called Pimburewatte, situated at Embulmingama in Medapalata aforesaid; bounded on the North by ditch of Barammane Koralegewatte, on the East by Pimburewekumbura, on the South by ditch of Dingirala's chena, on the West by village limit of Yatinuwara, containing one amunam paddy sowing extent and which said two lands number 13 and 14 above adjoin each other forming one property and can be included in one survey and are described as follows:—

20 All that allotment of land comprising two allotments of land called Pimburewatte and Henegodawatte, situated at Pilimatalawa aforesaid; bounded on the North by Pimburekumbure and Rengasamy's land, on the East by Rangesamy's land Maligawa fields and Deniya and Wevalakumbura, on the South by Weraluwakumbura Galangakumbura, and on the West by field of Gadaladeniya Dewala Bucharamullawatte and Nugangawatte, containing in extent twelve acres two roods and ten perches (A12. R2. P10) according to plan dated 23rd day of July, 1937, made by H. Schokman, Licensed Surveyor.

15. All that allotment of land called Amukotuwehena, situated at Arambagama aforesaid; bounded on the North by Ella, on the East and South by Agala, and on the West by Oya, containing two pelas paddy sowing extent and which said premises is according to a recent figure of survey described as being bounded on the North-East by Amukotuwa, on the South-East by Boosawatta, on the South by Kiriwana Anga, West by Kanda-Oya, and on the North-West by Talawadeniya, containing in extent two roods and nineteen and a half perches (A0. R2. P19½) according to the aforesaid plan dated 20th January, 1935.

THE SCHEDULE " B " ABOVE REFERRED TO.

40 All that estate called and known as Lammumoor and comprising all that allotment of land called Alu-Oya Egodakela, situated in Maskeliya valley in Ambaganuwa Korale in the District of Uda Bulatgama in the Central Province of the Island of Ceylon; bounded on the North-East by reservation, on the South-East by land described in Plan No. 105470 and Dotaluella-Oya, on the South-West by land described in Plan No. 105474, and on the North-West by land described in Plan No. 105474,

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 —continued.

containing in extent exclusive of the Gangawameda-Ela passing through the land one hundred and eighty-seven acres (A187. R0. P0) as described in diagram or map annexed to the Government Grant of the said premises dated 4th day of April, 1877, numbered 105472 authenticated by A. B. Fyers, Surveyor-General.

2. All that and those the premises called and known as Theberton Factory with the adjacent land and buildings depicted in the map or plan No. 1548 dated the 12th September, 1935, made by S. D. Amarassekera, Special Licensed Surveyor and Leveller, and annexed to the original copy of title deed No. 478 dated 6th November, 1935, and attested by W. K. S. Hughes, Notary Public, situated in Maskeliya Valley in Ambegamuwa Korale Uda Bulatgama aforesaid; and bounded on all sides by Theberton Estate, and containing in extent one rood and nine perches (A0. R1. P9) together with the right to use the water of certain streams flowing through Theberton Estate and the right to use the dam on the said estate.

Witnesses :

(Sgd.) A. M. SHERIFF.
 (Sgd.) A. R. HASSAN.

(Sgd.) S. WISWASAM. 20

(Sgd.) A. M. FUARD,
Notary Public.

I, Assena Marikar Mohamed Fuard of Colombo in the Island of Ceylon, Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me to the within-named executant Susai Wiswasam who signed as S. Wiswasam and is known to me in the presence of Abdul Rahaman Mohamed Sheriff, who signed as A. M. Sheriff and Abdul Rahaman Hassan, both of Old Moor Street in Colombo, the subscribing witnesses thereto both of whom are also known to me the same was signed by the said executant and by the said witnesses and by me the said Notary in the presence of one another all being present together at the same time at Colombo aforesaid on this twentieth day of May, One thousand Nine hundred and Forty-one.

* * * * *

I lastly certify and attest that the consideration within mentioned was paid as follows :—Rs. 4,500/- in cash and the balance sum of Rs. 8,500/- by two cheques bearing Nos. 39474 and 39475 both dated this day and drawn by the obligee in favour of the obligor on the Bank of Ceylon for the sum of Rs. 8,170/- and Rs. 330/- respectively.

Date of attestation :
 20th May, 1941.

(Sgd.) A. M. FUARD,
Notary Public.

40

D26.**Indenture No. 2199.****No. 2199.**

Exhibits.

No. D 26.
 Indenture
 No. 2199.
 20-5-41.

This Indenture made and entered into at Colombo on this twentieth day of May, One thousand Nine hundred and Forty-one between Susai Wiswasam of Malwatte Estate, Kadugannawa in Kandy (hereinafter called and referred to as the said Lessor which expression as herein used shall where the context so requires or admits be taken to mean and include him his heirs, executors, administrators and assigns) of the one part and
 10 Alfred Richard Weerasuriya of No. 126, Temple Road, Maradana in Colombo, (hereinafter called and referred to as the said Lessee which expression as herein used shall where the context so requires or admits be taken to mean and include him, his heirs, executors, administrators, and assigns) of the other part,

Witnesseth as follows :

Whereas the said Lessor is the owner and proprietor or otherwise well and sufficiently entitled to and is seized and possessed of the estates and premises hereinafter fully described in the schedule hereto together with the tea plantations and the buildings and everything else standing
 20 thereon which estates are fully planted and bear registered Nos. T.C. 569, T.C. 687, and S.C. 24415 in the Office of the Tea Controller.

And whereas the Lessor hath agreed with the Lessee to let lease and demise unto the Lessee the aforesaid premises for the period commencing from the twentieth day of May, One thousand Nine hundred and Forty-one and ending the thirty-first day of March, One thousand Nine hundred and Forty-six for the consideration and subject to the terms conditions covenants and agreements hereinafter contained.

Now this Indenture witnesseth that the Lessor in consideration of the sum of Rupees Five thousand (Rs. 5,000/-) of lawful money of Ceylon
 30 being the rent in advance for the full period aforesaid well and truly paid to the Lessor by the Lessee at or before the execution of these presents (the receipt whereof the Lessor doth hereby admit and acknowledge) and of the covenants and agreements on the part of the Lessee to be done and performed doth hereby let lease and demise unto the Lessee all that and these the said premises in the schedule hereto fully described together with the plantations and the buildings and everything else standing thereon. To hold the said premises unto the Lessee for and during the said period commencing from the twentieth day of May, One thousand Nine hundred and Forty-one and ending the thirty-first day of March,
 40 One thousand Nine hundred and Forty-six with all rights to apply for and obtain from the Tea Controller all coupons which may be issued in respect of the said premises hereby demised during the aforesaid period.

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—continued.

And the Lessor to the intent and purpose that the obligation hereby created may continue throughout the term of these presents covenant and agree with the Lessee as follows :—

1. That the premises hereby leased are free from all encumbrances whatsoever.

2. That the Lessee shall be entitled to receive from the Tea Controller all coupons to be issued hereafter in respect of the said premises during the period aforesaid commencing from the twentieth day of May, One thousand Nine hundred and Forty-one and ending the thirty-first day of March, One thousand Nine hundred and Forty-six and for that purpose the Lessor shall and will cause to be registered in the proper books of the Tea Controller the name of the Lessee as the owner of the said coupons.

3. That the Lessee shall and may hold and possess the said demised premises during the said term without any interruption on the part of the Lessor or any person or persons claiming through or under him.

And the Lessee doth hereby covenant and agree with the Lessor that on the expiration of the said term he shall and will peacefully and quietly surrender and yield up possession of the said premises to the Lessor.

20

In witness whereof the said Lessor and Lessee do hereunto and to two others of the same tenor and date as these presents set their respective hands at Colombo on the date aforesaid.

THE SCHEDULE ABOVE REFERRED TO.

All those estates called and known as Malwatte Estate, Pimburewatte Estate and Amukotuwahena Estate and registered under Nos. T.C. 569, T.C. 687 and S.C. 24415 respectively at the Office of the Tea Export Controller together with the tea plantations and the buildings, factories, fixtures and everything else standing thereon comprised of the following allotments of lands.

30

1. An allotment of land called Gamigewatte in Arambagama Village in Medapalata of Yatinuwara in the District of Kandy, Central Province ; bounded on the North and West by ditch, on the East by Ella of Doradeniya, and on the South by the fence of Korale Mahatmaya's garden, containing five kurunies paddy sowing extent.

2. An allotment of land called Malwatte, situated at Pilimatalawa Village in Medapalata aforesaid ; bounded on the North by Borawa Angakumbura, on the East by ditch of Payidakarayalagederawatte, on the South by ditch of Rankondegederawatte, and on the West by limit of Punchiralagewatte and ditch, containing two pelas paddy sowing 40 extent.

3. An allotment of land called Gamigewatte *alias* Banagewatte, situated in Arambagama aforesaid ; bounded on the North by fields, on

the East by Hunugederawatte, on the South by Kotakumburagederawatte, and on the West by Hunugederawatte, containing one pela paddy sowing extent.

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—continued.

4. All that land called Malwatte comprising six allotments of lands forming one property and situated at Arambagama and Pilimatalawa aforesaid ; bounded on the North by land claimed by Tikiriappu, on the North-East by land claimed by Dingiri Banda, on the East by Berawa Anga, on the South-East by property claimed by M. Louisa and Kotakumburegederawatte, on the south by land belonging to Kapuwatte
10 Walauwa, on the South-West by Manelpokuna and on the West by property claimed by M. Kiri Banda, containing in extent six acres and two perches (A6. R0. P2).

5. An allotment of land called Kiriwanaangawatte (middle portion of) in Arambagaha Village aforesaid ; bounded on the North by the other portion of the same land belonging to Ran Naide, on the East by a path, on the South-West by other portion of the same land of Kiri Etana, and on the North-West by Kiriwanakumbura, containing in extent two roods and nine and half perches (A0. R2. P9½).

6. All that southern portion of the allotment of land called Ambakumburewatte with the house standing thereon, situated at Arambagama
20 aforesaid ; bounded on the East by limit of the garden of Kiri Muttu and Dintu, on the South by limit of Rankira's land, on the West by limit of Ukku Banda's garden, and on the North by path of the remaining portion containing fifteen lahas of paddy sowing extent.

7. All that land called Ambakumburewatte, situated at Arambagama aforesaid ; bounded on the North by Gani land, on the East by Ambekumbura, on the South by the remaining portion of this land, and on the West by Malwatte, containing in extent fifteen lahas paddy sowing.

8. An allotment of land called Manelpokunchena *alias* Bogahamulaha
30 hena in Arambagama Village aforesaid ; bounded on the East by fence of the chena of Bowantahena and Agalheeriya, and on the South, West and North by ditch and fence containing in extent one amunam paddy sowing.

9. An allotment of land called Nelligahakotuwa *alias* Kandewatte, situated at Arambagama Village aforesaid ; bounded on the North by S. Wiswasam's tea estate, East by Ranakkagederawatte claimed by Vederala, South by the remaining portion of the same land claimed by Dingiri Bandara Menika, Bandara Menika and U. B. Walgampaya, and West by Kunji Moosa's tea estate, containing in extent three roods (A0. R3. P0).
40 All that above nine allotments of land now form one property called and known as Malwatte Estate, situated at Arambagama and Pilimatalawa villages in Medapalata aforesaid ; bounded on the North by Kiriwana-
angakumbura Arambawatte Medagederawatte Berawaangakumbura and Doradeniyakumbura, East by Doradeniyakumbura Rankaddegederawatte, South by Kunji Moosa's land and Georgiehamy's land, and West by lands belonging to Ranaheneya and A. M. Kiribanda and Kiriwana-

Exhibits. angakumbura, containing in extent thirteen acres and three and one-fourth perches (A13. R0. P3 $\frac{1}{4}$) according to plan dated 20th January, 1935, compiled by H. Schokman, Special Licensed Surveyor.

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—continued.

10. An allotment of land called Budugewatte, situated at Pilimalawa aforesaid and bounded on the West by ditch and fence and East, South and North by Wela, containing three pelas paddy sowing extent and according to a recent survey one acre and twelve and one-fourth perches (A1. R0. P12 $\frac{1}{4}$).

11. An allotment of land called Rawadattelawwehena, situated at Arambagama aforesaid; bounded on the East and South by Agalhiriya, 10 West by Mala-Ela, and on the North by Agalhiriya of Kankanie's land, containing in extent sixteen lahas paddy sowing.

12. All that allotment of land marked lot B in the plan of the land called Gampolayakotuwa, situated at Arambagama or Pilimalawa Village aforesaid; bounded on the North by Mohandiramwatte, South by lot A of the same land, East by lot C of the same land, and on the West by Talawadeniya, containing in extent twenty-eight perches (A0. R0. P28).

13. All those allotments of land called (1) Henegodehena, and (2) Imbulhitiyaya both adjoining each other and can be included in one 20 survey, situated at Govindala in Medapalata aforesaid; the first land is bounded on the North by Pimburawewatte of E. Basnayake, on the East by Imbulhitiyawehena of the Crown, on the South by Weeraluwakumbure of S. Ran Naide and others, Udabitterapelekumbura of S. Muttuhenyaya, Murutakumbura of A. Menik Etana and water-course, and on the West by water-course and chena land called Nutchaladula of D. A. Appuhamy, containing in extent five acres and one rood and the second land is bounded on the North and East by land claimed by natives, on the South by land claimed by natives and T.P. 158350, and on the West by T.P. 158350, containing in extent three acres one rood and thirty-30 five perches.

14. An allotment of land called Pimburewatte, situated at Embulmingoma in Medapalata aforesaid; bounded on the North by ditch of Berammana Korlagewatte, on the East by Pimburawekumbura, on the South by ditch of Dingirala's chena, on the West by village limit of Yatinuwara, containing one amunam paddy sowing extent and which said two lands numbered 13 and 14 above adjoin each other forming one property and can be included in one survey and are described as follows:— All that allotment of land comprising two allotments of land called Pimburewatte and Henegodawatte, situated at Pilimalawa aforesaid; 40 bounded on the North by Pimburekumbura and Rengasamy's land, on the East by Rengasamy's land Maligawa fields and Deniya and Weralukumbura, on the South by Weraluwekumbura Galangakumbura, and on the West by field of Gadaladeniya Dewala Rucharamullawatte and Nugangawatte, containing in extent twelve acres two roods and ten perches (A12. R2. P10) according to plan dated 23rd day of July, 1937, made by N. Schokman, Licensed Surveyor.

15. All that allotment of land called Amukotuwehena, situated at Arambagama aforesaid ; bounded on the North by Ella, on the East and South by Agala, and on the West by Oya, containing two pelas paddy sowing extent and which said premises is according to a recent figure of survey described as being bounded on the North-East by Amukotuwe, on the South-East by Boosawatte, on the South by Kiriwanaanga, West by Kuda-Oya and on the North-West Talawadeniya, containing in extent two roods and nineteen and a half perches (A0. R2. P19½) according to the aforesaid plan dated 20th January, 1935.

Exhibits.
No. D 26.
Indenture
No. 2199.
20-5-41.
—continued.

10 Witnesses :

(Sgd.) A. M. SHERIFF.
(Sgd.) A. R. HASSAN.

(Sgd.) S. WISWASAM.
(Sgd.) A. R. WEERASURIYA.

(Sgd.) A. M. FUARD,
Notary Public.

I, Assena Marikar Mohamed Fuard of Colombo in the Island of Ceylon, Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me to the within-named executants Susai Wiswasam and Alfred Richard Weerasuriya in the presence of Abdul Rahaman Mohamed Sheriff (who signed as A. M. Sheriff) and Abdul Rahaman Hassan both of Old Moor Street in Colombo, the subscribing witnesses thereto all of whom are known to me the same was signed by the said executants and by the said witnesses and by me the said Notary in the presence of one another all being present together at the same time at Colombo aforesaid on this twentieth day of May, One thousand Nine hundred and Forty-one.

I further certify and attest.....that no consideration passed in my presence and that the duplicate of the said instrument bears three stamps to the value of Rupees Forty-two (Rs. 42/-) and the original one of Rupee One (Re. 1/-).

30 Date of attestation :
20th May, 1941.

(Sgd.) A. M. FUARD,
Notary Public.

P35.

Indenture No. 2203.

No. P 35.
Indenture
No. 2203.
2-6-41.

Prior registration : F. 110/191 to 204.

No. 2203.

40

This indenture made and entered into at Colombo on this second day of June, One thousand Nine hundred and Forty-one between Kande-kumbure Rajamantrige Samaratunge of Medakotuwa in Panwila in the

Exhibits.
 No. P 35.
 Indenture
 No. 2203.
 2-6-41.
 —continued.

Central Province (hereinafter called and referred to as the said Lessor which expression as herein used shall where the context so requires or admits be taken to mean and include himself his heirs, executors, administrators and assigns) of the one part and Khemchand Moolchand of No. 149, Main Street in Colombo, (hereinafter called and referred to as the said Lessee which expression as herein used shall where the context so requires or admits be taken to mean and include himself his heirs, executors administrators and assigns) of the other part witnesseth as follows :—

Whereas the said Lessor is the owner and proprietor or otherwise well and sufficiently entitled to and is seized and possessed of the estate 10 and premises hereinafter fully described in the schedule hereto together with the tea plantations and the buildings and everything else standing thereon which estate and bears registered No. T.C. 12 in the Tea Export Controller's Office and which estate is partly planted. And whereas the Lessor hath agreed with the Lessee to let lease and demise unto the Lessee the aforesaid premises for the period commencing from the second day of June, One thousand Nine hundred and Forty-one and ending the second day of June, One thousand Nine hundred and Fifty-one for the consideration and subject to the terms conditions covenants and agree- 20 ments hereinafter contained.

Now this Indenture witnesseth that the Lessor in consideration of the sum of Rupees Thirty-five thousand (Rs. 35,000/-) of lawful money of Ceylon being the rent in advance for the full period aforesaid well and truly paid to the Lessor by the Lessee at or before the execution of these presents (the receipt whereof the Lessor doth hereby admit and acknowledge) and of the covenants and agreements on the part of the Lessee to be done and performed doth hereby let lease and demise unto the Lessee all that and those the said premises in the schedule hereto fully described together with the plantations and the buildings and everything else standing thereon. To hold the said premises unto the Lessee for and 30 during the said period commencing from the second day of June, One thousand Nine hundred and Forty-one and ending the second day of June, One thousand Nine hundred and Fifty-one with all rights to apply for and obtain from the Tea Export Controller all coupons which may be issued in respect of the said premises hereby demised during the aforesaid period. And the Lessor to the intent and purpose that the obligation hereby created may continue throughout the term of these presents covenant and agree with the Lessee as follows :—

1. That the premises hereby leased are free from all incumbrances whatsoever. 40

2. That the Lessee shall be entitled to receive from the Tea Export Controller all coupons to be issued hereafter in respect of the said premises during the period aforesaid commencing from the second day of June, One thousand Nine hundred and Forty-one and ending the second day of June, One thousand Nine hundred and Fifty-one and for that purpose the Lessor shall and will cause to be registered in the proper books of the

Tea Export Controller the name of the Lessee as the owner of the said coupons Exhibits.

3. That the Lessee shall and may hold and possess the said demised premises during the said term without any interruption on the part of the Lessor or any person or persons claiming through or under him.

No. P 35.
Indenture
No. 2203.
2-6-41.
—continued.

And the Lessee doth hereby covenant and agree with the Lessor that on the expiration of the said term he shall and will peaceably and quietly surrender and yield up possession of the said premises to the Lessor.

10 In witness whereof the Lessor and the Lessee do hereunto and to two others of the same tenor and date as these presents set their respective hands at the place and on the day, month and year in the beginning hereof written.

THE SCHEDULE ABOVE REFERRED TO.

All that one hundred and four acres one rood and eleven perches (A104. R1. P11) in extent according to the figure of survey dated 13th November, 1935, made by C. G. Kreltshain, Licensed Surveyor, of which seventy acres one rood and seventeen perches (A70. R1. P17) in extent is fully planted with tea and bears registered No. T.C. 12 in the Tea Export
20 Controller's Office out of all that estate called and known as Haraslulekele *alias* Fincham's land, containing in extent one hundred and sixteen acres and seven perches (A116. R0. P7) according to the survey and description thereof made by C. B. Jayasinghe of Kandy, Licensed Surveyor, in the month of December, 1923, situated at Kandegama in Gandeka Korale of the Uda Dumbara Division, in the District of Kandy, Central Province, which said one hundred and four acres one rood and eleven perches (A104. R1. P11) comprised of the following allotments of land with the plantations and buildings thereon, to wit :—

(1) All that allotment of land situated at Kandegama aforesaid ;
30 bounded on the North by Halgolla-Oya, on the South by land said to be owned by villagers, on the East by Halgolla-Oya, and on the West by Kobonella Estate and a road, containing in extent seventeen acres one rood and twenty-four perches (A17. R1. P24).

(2) All that allotment of land situated at Kandegama aforesaid ; bounded on the East by Halgolle-Oya, on the North by land said to be owned by villagers, on the South by the allotment of land of eleven acres and nine perches and an allotment of land of two acres and thirty perches and on the West by Kobonelle Estate, containing in extent thirteen acres three roods and thirty perches (A13. R3. P30).

40 (3) All that allotment of land situated at Kandegama aforesaid ; bounded on the North and North-East by allotment of land of thirteen acres three roods and thirty perches, on the South by allotment of land of three acres and twelve perches, on the East by the allotment of land of two acres and thirty perches, and on the West by Kobonella Estate, containing in extent eleven acres and nine perches (A11. R0. P9).

Exhibits.
 No. P 35,
 Indenture
 No. 2208,
 2-6-41.
 —continued.

(4) All that allotment of land situated at Kandegama aforesaid; bounded on the North by the allotment of land of thirteen acres three roods and thirty perches, on the East by lands claimed by villagers, on the South by Ela, and on the West by the allotment of land of eleven acres and nine perches containing in extent two acres and thirty perches (A2. R0. P30).

(5) All that allotment of land situated at Kandegama aforesaid; bounded on the North by the allotment of land of eleven acres and nine perches, on the South by the land said to be owned by villagers and by the allotment of land of seven perches on the East by allotment of land of eleven acres and nine perches, and on the West by land said to be owned by villagers and a road containing in extent three acres and twelve perches (A3. R0. P12).

(6) All that allotment of land situated at Kandegama aforesaid; bounded on the North, East and South by the allotment of land of eleven acres and nine perches, and on the West by Kobonella Estate, containing in extent thirty perches (A0. R0. P30).

(7) All that allotment of land situated at Kandegama aforesaid; bounded on the North by a road, on the East and South by land said to be owned by villagers, and on the West by Kobonelle Estate, containing in extent one acre three roods and eighteen perches (A1. R3. P18).

(8) All that allotment of land situated at Kandegama aforesaid; bounded on the North by the allotment of land of three acres and twelve perches, on the South and East by the land said to be owned by villagers and on the West by a road, containing in extent twenty-seven perches (A0. R0. P27).

(9) All that allotment of land situated at Kandegama aforesaid; bounded on the North by lands said to be owned by villagers, on the South by allotment of land of nine acres one rood and eighteen perches and land said to be owned by villagers, on the East by stone fence, and on the West by Kobonelle Estate, containing in extent twenty-three acres one rood and thirty perches (A23. R1. P30).

(10) All that allotment of land situated at Kandegama aforesaid; bounded on the North by the allotment of land of twenty-three acres one roods and thirty perches, on the East by old trench, on the South by Badulla Tree, and on the West by land owned by villagers and Kandura, containing in extent nine acres one rood and eighteen perches (A9. R1. P18).

(11) All that allotment of land situated at Kandegama aforesaid; bounded on the North and East by land said to be owned by villagers, on the South and West by the allotment of land of nine acres one rood and twenty perches, containing in extent five acres and twelve perches (A5. R0. P12).

(12) All that allotment of land situated at Kandegama aforesaid; bounded on the North by the allotment of land of three roods and three perches; on the East by the allotment of land of five acres and twelve

perches, on the South by the Oya, and on the West by Kobonella Estate, containing in extent nine acres one rood and twenty perches (A9. R1. P20). Exhibits.
No. P 35.

(13) All that allotment of land situated at Kandegama aforesaid ; bounded on the North by the land said to be owned by villagers, on the East by the allotment of land of five acres and twelve perches, on the South by allotment of land of nine acres one rood and twenty perches, and on the West by Kobonella Estate, containing in extent three roods and three perches (A0. R3. P3). Indenture
No. 2203.
2-6-41.
—continued.

(14) An allotment of land situated at Kandegama aforesaid ; bounded on the North by Oya, on the South by Oya, on the East by Oya, and on the West by Oya, containing in extent six acres one rood and twenty-eight perches (A6. R1. P28) which said one hundred and four acres one rood and eleven perches in extent forms part of all that estate called and known as Haraslulekele *alias* Fincham's land, containing in extent one hundred and sixteen acres and seven perches (A116. R0. P7). According to the survey and description thereof made by C. F. Jayasinghe, Licensed Surveyor, in the month of December, 1923, situated at Kandegama aforesaid and composed and made up of the following three allotments of land to wit :—

(A) An allotment of land situated at Kandegama aforesaid ; bounded on the North and North-East by Oya and Ensalwatte Estate, on the South and South-East by land claimed by villagers and Ela, and on the West by Horankanda Estate, containing in extent fifty-nine acres and thirty-four perches (A59. R0. P34).

(B) An allotment of land situated at Kandegama aforesaid ; bounded on the North, North-East and East by land claimed by villagers, on the South and South-West by Kobonelle Estate, and on the West by Horankanda Estate, containing in extent thirty-five acres three roods and ten perches (A35. R3. P10).

(C) An allotment of land situated at Kandegama aforesaid ; bounded on the North and East by land claimed by villagers, on the South and West by Oya and Kobonelle Estate, containing in extent twenty-one acres and three perches (A21. R0. P3) which said property is otherwise described as follows :—

- (a) The northern portion of three acres in extent from and out of all that allotment of land called Haraslulekelehena of fourteen acres in extent, situated at Kandegama aforesaid and which said northern portion is bounded on the East by Galhiriya, on the South by the land of Ukkurala and Ela, on the West by the limit of Kobonellawatte, and on the North by the limit of the chena belonging to Meddumarala.
- 40 (b) A portion of six acres in extent from and out of all that allotment of land called Haraslulekele of seventeen acres in extent, situated at Kandegama aforesaid and which said portion of six acres in extent is bounded on the East by the limit of the remaining portion, on the South by the land of Aratchi, on the West by the

Exhibits.
 No. P 35.
 Indenture
 No. 2203.
 2-6-41.
 —continued.

- limit of Kobonellewatte, and on the North by the limit of the portion of Dingurala.
- (c) All that northern portion of two acres in extent from and out of all that allotment of land called Haraslulekele of seventeen acres in extent, situated at Kandegama aforesaid, and which said northern portion is bounded on the East by Galpele-Ella, on the South by the limit of Kavarala's chena, on the West by Meeyapulle's land, and on the North by the Ella of Bulatwatte.
- (d) All that portion of thirty-five acres in extent from and out of all that allotment of land called Haraslulekele of one hundred and seventy-seven acres and two roods in extent, situated at Kandegama aforesaid, bounded on the North and East by Horaslule-10 Ella and the land of natives, on the South and East by the land belonging to natives and Horankanda-Oya, on the South and West by Horankande-Ella, and on the North and West by the land described in plan No. 50110.
- (e) All that portion of three acres in extent from and out of all that allotment of land called Horaslulekele of twenty-one acres in extent situated at Kandegama aforesaid and which said portion of three acres in extent is bounded on the East by Galhiriya, on the South by the land of Punchaduraya, on the West by limit of Kobonellawatte, and on the North by the limit of Nattaran-20 pottahena.
- (f) All that southern portion of three acres in extent from and out of all that allotment of land called Haraslulekele of one hundred and seventy-seven acres and two roods in extent, situated at Kandegama aforesaid and which said southern portion is bounded on the East by the remaining portion, on the South by the limit of the land which belonged to Meeyapulle, on the West by the limit of Kobonellawatte, and on the North by the limit of Nattaranpottahena.
- (g) All that western portion of four acres in extent from and out of 30 all that allotment of land called Haraslulekele of one hundred and seventy-seven acres and two roods in extent, situated at Kandegama aforesaid and which said western portion is bounded on the East by Manawa, on the South by the limit of the jungle belonging to Kira, on the West by the limit of the garden belonging to Gentleman, and on the North by the limit of the land of Kapurala.
- (h) All that portion of seven acres in extent from and out of all that allotment of land called Haraslulekele of one hundred and twenty-seven acres and two roods in extent, situated at Kandegama 40 aforesaid and which said portion of seven acres in extent is bounded on the East by the limit of the jungle belonging to Doraliyadde Appuhamy, on the South by the Maha-Oya, on the West by the limit of Kobonellewatte, and on the North by the limit of the garden of Steen.

- (i) All that allotment of land called Katupitulehena of about six acres in extent, situated at Kandegama aforesaid ; bounded on the East by Katukitule-Ella, on the South by Ella, on the West by the Ella of Kobokolagolle, and on the north by ditch.
- (j) All that portion of fifteen acres in extent from and out of a portion of twenty-one acres in extent from and out of all that allotment of land called Haraslulekele of one hundred and seventy-seven acres and two roods in extent, situated at Kandegama aforesaid and which said portion of fifteen acres in extent is bounded on the East by Haraslule-Ella and the land belonging to natives, on the South and East by the land belonging to natives and Horankande-Ella, on the South and West by Horankande-Ella, and on the North and West by the land described in plan No. 50110, and
- (k) An allotment of land called Katukitulekele, situated at Kandegama aforesaid ; bounded on the North by a stream and land claimed by natives, on the East by an Ella and a stream, on the South by a stream, and on the West by an Ella and Wetiakka-Ella, containing in extent five acres three roods and thirty perches.

Exhibits.
No. P 35.
Indenture
No. 2203.
2-6-41.
—continued.

Witnesses :

(Sgd.) A. M. SHAMSUDEEN
(Sgd.) D. JOACHIM NISSANGA.

(Sgd.) K. R. SAMARATUNGE.
(Sgd.) K. MOOLCHAND.

(Sgd.) A. M. FUARD,
Notary Public.

I, Assena Marikar Mohamed Fuard of Colombo in the Island of Ceylon, Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me the said Notary to the thereinnamed executants Kandekumbure Rajamantrige Samararatunge and Khemchand Moolchand both of whom are known to me in the presence of Assena Marikar Shamsudeen of No. 25, Gangodawila, Nugegoda, and Don Joachim Nissanga of Kottawa, Pannipitiya, who have signed as A. M. Shamsudeen and D. Joachim Nissanga respectively the subscribing witnesses thereto both of whom are also known to me the same was signed by the said first executant as K. R. Samararatunge and by the said second executant as K. Moolchand and by the said witnesses and also by me the said Notary in my presence and in the presence of one another all being present together at the same time at Colombo aforesaid on this second day of June, One thousand Nine hundred and Forty-one.

I further certify and attest that the full consideration herein-mentioned was paid in my presence as follows :—A sum of Rs. 30,000/- by cheque No. F.L. 869914 dated this date and drawn by the Lessee on the National Bank of India, Colombo, in favour of the Lessor and the

Exhibits. balance sum of Rs. 5,000/- in cash and that the duplicate of this instrument bears six stamps of the value of Rupees Two hundred and Eighty-two (Rs. 282/-) and the original a stamp of Rupee One (Re. 1/-).

No. P 35.
Indenture
No. 2203.
2-6-41.
—continued.

And I also certify and attest that both in the duplicate and original of this instrument on page 1 in line 11 words “fully planted and” and in the line 19 of the same page words “in the office of the” were deleted on page 2 in line 1, 2 and 3 of clause 3 words beginning with “but” and ending with “demised” on page 7 in line 2 word “northern” was typed on erasure and in line 33 of the same page letters “Es” and on page 8 line 7 word “by” were deleted before the same was read over and explained by me the said notary as aforesaid.

Date of attestation :
2nd June, 1941.

(Sgd.) A. M. FUART,
Notary Public.

P36.

Indenture No. 2204.

Prior Registration : F. 110/191 to 204, F. 96/56 to 60.

No. 2204

This Indenture made and entered into at Colombo on this second day of June, One thousand Nine hundred and Forty-one between Kande-kumbure Rajamantrige Samaratunge of Medakotuwa in Panwila in the Central Province (hereinafter called and referred to as the party of the first part which expression as herein used shall where the context so requires or admits be taken to mean and include him his heirs, executors, administrators and assigns) of the one part and Khemchand Moolchand of No. 149, Main Street in Colombo, (hereinafter called and referred to as the part of the second part which expression as herein used shall where the context so requires or admits be taken to mean and include him his heirs, executors, administrators and assigns) of the other part witnesseth as follows :—

Whereas by an Indenture of lease bearing No. 2203 dated the second day of June, One thousand Nine hundred and Forty-one and attested by the Notary attesting these presents the said part of the first part set leased and demised unto the party of the second part all that and those the estate and premises hereinafter in the Schedule “A” hereto fully described and bearing registered No. T.C. 12 in the Tea Export Controller’s Office for the period commencing from the second day of June, One thousand Nine hundred and Forty-one and ending the second day of June, One thousand Nine hundred and Fifty-one together with all rights to all the tea coupons to be issued by the Tea Export Controller in respect of the said demised premises during the period aforesaid.

And whereas under and by virtue of the said Indenture of Lease the said party of the second part entitled to have and receive from the Tea Export Controller all coupons to be issued in respect of the said estate and premises in the Schedule A hereto fully described aggregating to one hundred and forty thousand pounds (140,000) tea coupons during the period aforesaid.

Exhibits.
No. P 36.
Indenture
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2-6-41.
—continued.

And whereas at the execution of the said Indenture of Lease the party of the second part paid to the said party of the first part the sum of Rupees Thirty-five thousand (Rs. 35,000/- which said sum is the equivalent of advance upon the value of the said one hundred and forty thousand pounds (140,000) tea coupons calculated at the rate of twenty-five cents per pound coupon.

And whereas it has been agreed and between the parties hereto that the party of the second part shall sell the said one hundred and forty thousand pounds (140,000) tea coupons or such quantity of coupons as he shall receive from the Tea Export Controller during the term aforesaid in respect of the said demised premises and shall after deducting from the net proceeds of sale as shown in the account sales hereinafter referred to the moneys hereinafter mentioned credit pay to the party of the first part any surplus then remaining.

And whereas as security for recovery by and or repayment to the said party of the second part the said sum of Rupees Thirty-five thousand (Rs. 35,000/-) and all other moneys recoverable by and/or payable to the said party of the second part under these presents and any damage which the party of the second part may sustain by reason of the non-receipt for whatsoever cause by the said party of the second part of the full quantity of one hundred and forty thousand pounds (140,000) tea coupons and the due performance by the party of the first part of all the covenants on his part to be performed and the said Indenture of Lease or herein set out the said party of the first part hath agreed to enter into and execute the mortgage and hypothecation hereinafter set forth. Now this Indenture witnesseth and it is covenanted and agreed by and between the parties hereto as follows :—

That the said party of the second part shall within a period of thirty days after the receipt by him of each issue of tea coupons issued in respect of the said demised premises during the period commencing from the second day of June, One thousand Nine hundred and Forty-one and ending the second day of June, One thousand Nine hundred and Fifty-one sell such issue of coupons through a recognised broker or brokers in Colombo at such price or prices in such quantity or manner and at such time or times or on such day or days within the aforesaid period of thirty days as the said party of the second part shall in his absolute discretion think fit ; the said broker or brokers shall be entitled to deduct from the gross proceeds of such sale his or their commission and an account sale of such broker or brokers relating to such sale shall be final and conclusive as to the sale price of such coupons the deduction aforesaid and all matters

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 —continued.

arising out of or in any manner whatsoever relating to the said sale and the said party of the first part shall not be entitled to dispute or question the said sale the said account and or sales in any respect or matter whatsoever.

2. Within one month of the receipt by the said party of the second part of the net proceeds of sale as shown in the account sale aforesaid the party of the second part shall from such net amount pay himself (a) seventeen cents per pound coupon for such quantity of pounds coupons as is mentioned in the said account sale, (b) twenty-five cents per pound coupon for such quantity of pounds coupons as is mentioned in the said 10 account sale in liquidation of the said sum of Rupees Thirty-five thousand (Rs. 35,000/-) and (c) all expenses which the party of the second part might have incurred in connection with any information or return required by the Tea Export Controller in relation to the said demised premises during the aforesaid term and shall credit any surplus then remaining to the party of the first part.

3. That in case the value of the tea coupons going down the party of the first part shall supply to the party of the second part sufficient amount of such coupons to cover the said sum of Rupees Thirty-five thousand (Rs. 35,000/-) paid in advance and all other sum or sums of 20 money payable under these presents.

4. That in the event of the said sum of Rupees Thirty-five thousand not being liquidated in the manner aforesaid on or before the second day of June, One thousand Nine hundred and Forty-three then and in such case the party of the first part shall immediately pay to the said party of the second part the balance amount then due and owing together with interest thereon at the rate of twelve per centum per annum.

5. That the party of the first part shall be entitled to work up the demised premises at his own cost and expense and to take receive and appropriate the entirety of the produce, income and profits thereof to 30 his own use and benefit.

And this Indenture further witnesseth that for securing unto the said party of the second part the payment of the said sum of Rupees Thirty-five thousand (Rs. 35,000/-) and the said sum of seventeen cents per pound coupon on the said one hundred and forty thousand pounds (140,000) tea coupons and the interest at the aforesaid rate of twelve per centum per annum and all moneys payable to and or recoverable by the said party of the second part under these presents but not exceeding the sum of Rupees Thirty-five thousand the said party of the first part doth hereby specially mortgage and hypothecate to and with the said party 40 of the second part as a primary mortgage free from all encumbrances whatsoever all that the said estate in the Schedule A and the lands and premises in the Schedule B hereto fully described together with the coupons that will be issued in respect of the said premises and all and singular the rights, ways, easements, privileges, servitudes and appurtenances whatsoever to the said premises belonging or in any wise appertaining

or usually held, occupied, used or enjoyed therewith or reputed to be or known as part and parcel thereof and all the estate, right, title, interest, property, claim and demand whatsoever of the said party of the first part in to upon or out of the same.

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Indenture
No. 2204.
2-6-41.
—continued.

And the said party of the first part doth hereby covenant and declare to and with the said party of the second part that he hath good title to mortgage and hypothecate the said premises hereby mortgaged and hypothecated in manner aforesaid and that the said premises are free from all encumbrances and that he shall and will during the continuance
10 of this mortgage hereby effected at the request of the said party of the second part but at his own cost and expense make do and execute or cause to be done and executed all such further and other acts, deeds, matters and things whatsoever which may be necessary for more perfectly assuring the said premises unto the said party of the second part by way of mortgage and hypothecation in manner intended by these presents as by him shall or may be reasonably required.

Now the condition of the above written bond or obligation and the mortgage is such that if the said sum of Rupees Thirty-five thousand (Rs. 35,000/-) paid in advance as aforesaid is fully accounted and liqui-
20 dated in the manner hereinbefore provided or if the party of the first part shall at any time during the continuance of the said lease pay to the party of the second part the said sum or Rupees Thirty-five thousand or so much thereof as shall remain due together with a further sum calculated at the rate of seventeen cents per pound coupon on the said quantity of pounds coupons or on so much thereof to be issued during the residue of the unexpired period then and either of such cases the said Indenture of Lease shall stand cancelled and determined and the mortgage effected by these presents shall be absolutely null and void but otherwise the same shall be and remain in full force and virtue provided however and
30 it is hereby further covenanted by and between the parties hereto as follows :—

- (a) That the party of the second part shall and may hold and possess the said demised premises during the term thereby granted without any interruption on the part of the party of the first part or any person or persons claiming through or under him but without becoming in any manner whatsoever liable or accountable to the party of the first part for or in respect of the upkeep, maintenance, management or cultivation of the said premises.
- 40 (b) That the party of the first part shall and will at his own cost and expense keep up and maintain the tea plantation on the said demised premises in a fit and proper state of management and cultivation.
- (c) That the said party of the first part shall and will whenever required furnish all information, returns and documents and evidence for the verification of such returns and informations that might be called for by the Tea Export Controller under the

Exhibits.
 No. P 36.
 Indenture
 No. 2204.
 2-6-41.
 —continued.

provisions of the Tea Control Ordinance in regard to the said demised premises.

- (d) That in case the party of the second part shall fail to receive tea coupons in respect of the demised premises by reason of suspension by the Tea Export Controller of the issue of coupons for neglecting to keep up and maintain the tea plantation on the demised premises in a fit and proper state of management and cultivation or for any cause whatsoever or if the party of the first part fails to supply to the said party of the second part the said one hundred and forty thousand pounds (140,000) tea coupons within two years from this date as aforesaid or in case the tea control ceases to be in force then and in that event the party of the first part shall immediately pay to the party of the second part the full balance amount then unliquidated out of the said sum of Rupees Thirty-five thousand (Rs. 35,000/-) paid in advance at the execution of the said Indenture of Lease together with a further sum calculated at the rate of seventeen cents per pound coupon on the said one hundred and forty thousand pounds (140,000) tea coupons or on any balance thereof receivable by the said party of the second part in respect of the demised premises during the residue then unexpired of the period granted under the said Indenture of Lease.

In witness whereof the parties hereto have hereunto and to two others of the same tenor and date as these presents set their respective hands at the place and on the day, month and year in the beginning hereof written.

THE SCHEDULE " A " ABOVE REFERRED TO.

All that one hundred and four acres one rood and eleven perches (A104. R1. P11) in extent according to the figure of survey dated 13th November, 1935, made by C. G. Krelsheim, Licensed Surveyor, out of all that estate called and known as Haraslulekele *alias* Fincham's land, containing in extent one hundred and sixteen acres and seven perches (A116. R0. P7) according to the survey and description thereof made by C. D. Jayasinghe of Kandy, Licensed Surveyor, in the month of December, 1923, situated at Kandegama in Gandeka Korale of the Uda Dumbara Division in the District of Kandy, Central Province, which said one hundred and four acres one rood and eleven perches (A104. R1. P11) comprised of the following allotments of land with the plantations and buildings thereon; to wit :—

(1) All that allotment of land situated at Kandegama aforesaid; bounded on the North by Halgolla-Oya, on the South by land said to be owned by villagers, on the East by Halgolla-Oya, and on the West by Kobonella Estate and a road, containing in extent seventeen acres one rood and twenty-four perches (A17. R1. P24).

(2) All that allotment of land situated at Kandegama aforesaid; bounded on the East by Halgolla-Oya, on the North by land said to be owned by villagers, on the South by allotment of land of eleven acres and nine perches and an allotment of land of two acres and thirty perches, and on the West by Kobonella Estate, containing in extent thirteen acres three roods and thirty perches (A13. R3. P30).

Exhibits.
No. P 36.
Indenture
No. 2204.
2-6-41.
—continued.

(3) All that allotment of land situated at Kandegama aforesaid; bounded on the North and North-East by allotment of land thirteen acres three roods and thirty perches, on the South by allotment of land 10 of three acres and twelve perches, on the East by the allotment of land of two acres and thirty perches, and on the West by Kobonella Estate, containing in extent eleven acres and nine perches (A11. R0. P9).

(4) All that allotment of land situated at Kandegama aforesaid; bounded on the North by the allotment of land of thirteen acres three roods and thirty perches, on the East by the lands claimed by villagers, on the South by Ella, and on the West by the allotment of land of eleven acres and nine perches, containing in extent two acres and thirty perches (A2. R0. P30).

(5) All that allotment of land situated at Kandegama aforesaid; 20 bounded on the North by the allotment of land of eleven acres and nine perches, on the South by the land said to be owned by villagers and by the allotment of land of twenty-seven perches, on the East by allotment of land of eleven acres and nine perches, and on the West by land said to be owned by villagers and a road containing in extent three acres and twelve perches (A3. R0. P12).

(6) All that allotment of land situated at Kandegama aforesaid; bounded on the North-East and South by the allotment of land of eleven acres and nine perches, and on the West by Kobonella Estate, containing in extent thirty perches (A0. R0. P30).

30 (7) All that allotment of land situated at Kandegama aforesaid; bounded on the North by a road, on the East and South by land said to be owned by villagers, and on the West by Kobonella Estate, containing in extent one acre three roods and eighteen perches (A1. R3. P18).

(8) All that allotment of land situated at Kandegama aforesaid; bounded on the North by the allotment of land of three acres and twelve perches, on the South and East by the land said to be owned by villagers, and on the West by a road, containing in extent twenty-seven perches (A0. R0. P27).

40 (9) All that allotment of land situated at Kandegama aforesaid; bounded on the North by the lands said to be owned by villagers, on the South by allotment of land of nine acres one rood and eighteen perches, and land said to be owned by villagers, on the East by stone fence, and on the West by Kobonella Estate, containing in extent twenty-three acres one rood and thirty perches (A23. R1. P30).

Exhibits.
 No. P 36.
 Indenture
 No. 2204.
 2-6-41.
 —continued.

(10) All that allotment of land situated at Kandegama aforesaid ; bounded on the North by the allotment of land of twenty-three acres one rood and thirty perches, on the East by old trench, on the South by Badulla tree, and on the West by land owned by villagers and Kandura, containing in extent nine acres one rood and eighteen perches (A9. R1. P18).

(11) All that allotment of land situated at Kandegama aforesaid; bounded on the North and East by land said to be owned by villagers, on the South and West by the allotment of land of nine acres one rood and twenty perches, containing in extent five acres and twelve perches 10 (A5. R0. P12).

(12) All that allotment of land situated at Kandegama aforesaid ; bounded on the North by the allotment of land of three roods and three perches, on the East by the allotment of land of five acres and twelve perches, on the South by the Oya, and on the West by Kobonella Estate, containing in extent nine acres one rood and twenty perches (A9. R1. P20).

(13) All that allotment of land situated at Kandegama aforesaid ; bounded on the North by the land said to be owned by villagers, on the East by the allotment of land of five acres and twelve perches, on the South by allotment of land of nine acres one rood and twenty perches, 20 and on the West by Kobonella Estate, containing in extent three roods and three perches (A0. R3. P3).

(14) All that allotment of land situated at Kandegama aforesaid ; bounded on the North by Oya, on the South by Oya, on the East by Oya, and on the West by Oya, containing in extent six acres one rood and twenty-eight perches (A6. R1. P28).

Which said one hundred and four acres one rood and eleven perches (A104. R1. P11) in extent forms part of all that estate called and known as Haraslulekele *alias* Fincham's land, containing in extent one hundred and sixteen acres and seven perches (A116. R0. P7) according to the survey 80 and description thereof made by C. D. Jayasinghe, Licensed Surveyor, in the month of December, 1923, situated at Kandegama aforesaid and composed and made up of the following three allotments of land, to wit :—

- (A) An allotment of land situated at Kandegama aforesaid ; bounded on the North and North-East by Oya and Ensalwatte Estate, on the South and South-East by land claimed by villagers and Ella, and on the West by Horankande Estate, containing in extent fifty-nine acres and thirty-four perches (A59. R0. P34).
- (B) An allotment of land situated at Kandegama aforesaid ; bounded on the North, North-East and East by land claimed by villagers, 40 and on the South and South-West by Kobonella Estate, and on the West by Horankanda Estate, containing in extent thirty-five acres three roods and ten perches (A35. R3. P10), and
- (C) An allotment of land situated at Kandegama aforesaid ; bounded on the North and East by the land claimed by villagers, on the

South and West by Oya and Kobonella Estate, containing in extent twenty-one acres and three perches (A21. R0. P3).

Which said property is otherwise described as follows :—

Exhibits.

No. P 36.

Indenture
No. 2204.

2-6-41.

—continued.

- 10 (a) The northern portion of three acres in extent from and out of all that allotment of land called Haraslulekele of fourteen acres in extent, situated at Kandegama aforesaid and which said northern portion is bounded on the East by Galhiriya, on the South by the land of Ukkurala and Ella, on the West by the limit of Kobonellawatte, and on the North by the limit of chena belonging to Maddumarala.
- (b) A portion of six acres in extent from and out of all that land called Haraslulekele of seventeen acres in extent, situated at Kandegama aforesaid and which said portion of six acres in extent is bounded on the East by the limit of the remaining portion, on the South by the land of Aratchi, on the West by the limit of Kobonellawatte, and on the North by the limit of the portion of Dingurala.
- 20 (c) All that northern portion of two acres in extent from and out of all that allotment of land called Haraslulekele of seventeen acres in extent, situated at Kandegama aforesaid and which said northern portion is bounded on the East by Galpeli-Ella, on the South by the limit of Kawrerala's chena, on the West by Meeyapulle's land, and on the North by the Ella of Bulatwatte. —
- 30 (d) All that portion of thirty-five acres in extent from and out of all that allotment of land called Haraslulekele of one hundred and seventy-seven acres and two roods in extent, situated at Kandegama aforesaid; bounded on the North and East by Haraslule-Ella and the land of natives, on the South and East by the land belonging to natives and Harankanda-Oya, and on the South and West by Horankanda-Ella, and on the North and West by the land described in plan No. 50110.
- (e) All that portion of three acres in extent from and out of all that allotment of land called Haraslulekele of twenty-one acres in extent, situated at Kandegama aforesaid and which said portion of three acres in extent is bounded on the East by Galkiriya, on the South by the land of Puchaduraya, on the West by the limit of Kobonellawatte, and on the North by the limits of Mattaranpothahena.
- 40 (f) All that southern portion of three acres in extent from and out of all that allotment of land called Haraslulekele of one hundred and seventy-seven acres and two roods in extent, situated at Kandegama aforesaid and which said southern portion is bounded on the East by the remaining portion on the South by the limit of land which belonged to Meeyapulle, on the West by the limit of Kobonellawatte, and on the North by the limit of Nattaranpothahena.

Exhibits.
 No. P 36.
 Indenture
 No. 2204.
 2-6-41.
 —continued.

- (g) All that western portion of four acres in extent from and out of all that allotment of land called Haraslulekele of one hundred and seventy-seven acres and two roods in extent, situated at Kandegama aforesaid and which said western portion is bounded on the East by Manawa, on the South by the limit of the jungle belonging to Kira, on the West by the limit of the garden belonging to gentleman, and on the North by the limit of the land of Kapurala.
- (h) All that portion of seven acres in extent from and out of all that allotment of land called Haraslulekele of one hundred and seventy- 10 seven acres and two roods in extent, situated at Kandegama aforesaid and which said portion of seven acres in extent is bounded on the East by the limit of the jungle belonging to Doraliyadde Appuhamy, on the South by the Maha-Oya, on the West by the limit of Kobonellawatte, and on the North by the limit of the garden of Steen.
- (i) All that allotment of land called Katukitulehena of about six acres in extent, situated at Kandegama aforesaid ; bounded on the East by Katukitule-Ella, on the South by Ella, on the West by the Ella of Kobokolagolla, and on the North by ditch. 20
- (j) All that portion of fifteen acres in extent from and out of twenty-one acres in extent from and out of all that allotment of land called Haraslulekele of one hundred and seventy-seven acres and two roods in extent, situated at Kandegama aforesaid and which said portion of fifteen acres in extent is bounded on the East by Haraslulekele-Ela and the land belonging to natives on the South and East by the land belonging to natives and Horankande-Ela, on the South and West by Horankande-Ela, and on the North and West by the land described in plan No. 50110, and
- (k) An allotment of land called Katukitulekele, situated at Kande- 30 gama aforesaid ; bounded on the North by a stream and claimed by natives, on the East by an Ela and a stream, on the South by a stream, and on the West by an Ela and Watiakka-Ella, containing in extent five acres three roods and thirty perches.

THE SCHEDULE " B " ABOVE REFERRED TO.

1. All that allotment of land called Gallassehena now a garden of about sixteen Nellies in Kurakkan sowing extent, situated at Udawelakande in Gandeka Korale of the Uda Dumbara Division in the District of Kandy, Central Province, and bounded on the East by Galkande Menikrala's hena, on the South by the limit of Wattuwa Duraya's chena, 40 on the West by below the stone of Patana, and on the North by Ela.

2. All that allotment of land called Warawehena now a garden of thirty Nellies in Kurakkan sowing extent, situated at Udawela in Gandeka Korale aforesaid and bounded on the East by the limit of Tikiri Menika's chena, on the South by the limit of Kurundugasmullehena and Muk-

kangehena, on the West by the limits of Ukkuwa Duraya's hena and Harathanigehena, and on the North by Ela Kandura.

Exhibits.
No. P 86.
Indenture
No. 2204.
2-6-41.
—continued.

3. All that allotment of land called Egodawewehena now a garden of about thirty seers in Kurakkan sowing extent, situated at Udawela aforesaid and bounded on the East by limit of Herathamy's chena and the Galkanda in Ukkuwavidanegehena, on the South by the ridge of stone in Ukkuwavidane's hena, and on the West by the limit of Mukkagehena, and on the North by Oya and the limit of Polgahakumburagederahena.

10 4. All that allotment of land called Kosgahamula Radullehena now a garden of thirty Nellies in Kurakkan sowing extent, situated at Udawela aforesaid and bounded on the East by Oya, on the South by Ela, on the West by Hinikata on Gamagedera Menikrala's chena, and on the North by the limit of Tikirala's chena.

5. All that allotment of land called Egodawewehena now a garden of about forty Nellies in Kurakkan sowing extent, situated at Udawela aforesaid and bounded on the East by Ela, on the West by the limit of Ensalwatte, on the North by Ela, and on the South by Appuhamy Aratchy's hena, the above described five allotments of land are said to
20 contain forty acres and thirty-two perches (A40. R0. P32) as per plan dated 5th and 6th September, 1928, made by D. V. Bartholomeusz of Kandy, Licensed Surveyor.

Witnesses :

(Sgd.) A. M. SHAMSUDEEN.
(Sgd.) D. Joachim Nissanga.

(Sgd.) K. R. SAMARATUNGE.
(Sgd.) K. MOOLCHAND.

(Sgd.) A. M. FUARD,
Notary Public.

I, Assena Marikar Mohamed Fuard of Colombo in the Island of Ceylon, Notary Public, do hereby certify and attest that the foregoing
30 Instrument having been duly read over and explained by me the said Notary to the therein-named executants Kandekumbure Rajamantrige Samaratunge and Khemchand Moolchand both of whom are known to me in the presence of Assena Marikar Shamsudeen of No. 25, Gangodawila, Nugegoda, and Don Joachim Nissanga of Kottawa, Pannipitiya, who have signed as A. M. Shamsudeen and D. Joachim Nissanga respectively the subscribing witnesses thereto both of whom are also known to me the same was signed by the said first executant as K. R. Samaratunge and the said second executant as K. Moolchand and by the said witnesses
40 and also by the said Notary in my presence and in the presence of one another all being present together at the same time at Colombo aforesaid on this second day of June, One thousand Nine hundred and Forty-one.

* * * * *

Date of attestation :
2nd June, 1941.

(Sgd.) A. M. FUARD,
Notary Public.

Exhibits.

No. D 2.

Deed
No. 2205.
2-6-41.

D2.

Deed No. 2205.

—continued. Prior Registration : F. 110/191—204.

No. 2205

Know all men by these presents that I, Kandekumbure Rajamantrige Samaratunge of Medakotuwa in Panwila in the Central Province (hereinafter calling myself and referred to as the said obligor) am held and firmly bound unto Assena Marikar Shamsudeen of No. 25, Gangodawila in Nugegoda in the sum of Rupees Two thousand Five hundred (Rs. 2,500/-) and unto Mrs. Umma Ryhan of No. 4, Summer Place, Borella in Colombo 10 in the sum of Rupees Three thousand Five hundred (Rs. 3,500/-) (hereinafter called and referred to as the said obligees) being money borrowed and received by me from the said obligees respectively (the receipt whereof I do hereby admit and acknowledge) to be paid to the said obligees respectively or to their respective heirs, executors, administrators or assigns without interest on receiving from or giving to the said obligees or their aforewritten one month previous notice in writing demanding payment or signifying the readiness to repay the same such notice however not to be given until after the expiration of three years from the date hereof for which payment to be well and truly made I the said obligor 20 bind myself my heirs, executors and administrators firmly by these presents.

And for securing unto the said obligees and their aforewritten the payment of all sums of money payable and recoverable under by virtue or in respect of these presents I the said obligor do hereby specially mortgage and hypothecate to and with the said obligees and their aforewritten as a secondary mortgage subject however to the primary mortgage created by Bond No. 2204 dated this date and attested by the Notary attesting these presents but free from any other encumbrance all that and those the estate and premises in the schedule hereto fully and particularly 30 described and set forth together with all rights privileges easements servitudes and appurtenances whatsoever thereunto belonging or in any wise appertaining or usually held, occupied, used or enjoyed therewith or reputed to be or known as part and parcel thereof and all the estate, right, title, interest, property, claim and demand whatsoever of me the said obligor into upon or out of the same.

And I the said obligor do hereby covenant and declare to and with the said obligees and their aforewritten that I have good right to mortgage the said estate and premises in the manner aforesaid and that the said estate and premises are (save and except as aforesaid) free from 40 encumbrance and that I the said obligor and my heirs, executors and administrators shall and will at all times during the continuance of these presents at the request of the said obligees or their aforewritten but at my own cost and expense do and execute or cause to be done and executed all such further and other the acts, deeds, matters and things whatsoever

which may be necessary or expedient for the better or more perfectly assuring the said estate and premises or any part or portion thereof by way of mortgage and by hypothecation unto the said obligees and their aforewritten as by them or either of them or their aforewritten shall or may be reasonably required.

Exhibits
No. D 2.
Deed
No. 2205.
2-6-41.
—continued.

And I the said obligor do hereby further covenant and declare to and with the said obligees and their aforewritten that I the said obligor and my heirs, executors and administrators shall and will during the continuance of these presents keep the said estate and premises in good
10 and proper state of cultivation and the buildings thereon in good order and repair and shall and will manage and conduct the said estate and premises in a good careful and husband like manner and shall and will allow and permit the said obligees or either of them or their aforewritten or their agents or servant to visit and inspect at all reasonable hours the state condition and cultivation of the said estate and premises.

Provided that the mortgage hereby created shall be taken to be a concurrent mortgage and that in the event of the said security being realized and the proceeds of such realization not being sufficient to satisfy the claims in fault of the said obligees and their aforewritten they shall
20 be entitled to claim *pro rata* only on such proceeds in proportion to the amounts of their respective claims but nothing herein contained shall prevent the said obligees or their aforewritten from recovering the whole or any balance of their claims from me the said obligor or my aforewritten.

In witness whereof I the said obligor do hereunto and to two others of the same tenor and date as these presents set my hand at Colombo on this second day of June, One thousand Nine hundred and Forty-one.

THE SCHEDULE ABOVE REFERRED TO.

All that one hundred and four acres one rood and eleven perches (A104. R1. P11) in extent according to the figure of survey dated 13th
30 November, 1935, made by C. G. Krelsheim, Licensed Surveyor, out of all that estate called and known as “ Haraslulekele *alias* Fincham’s land ”, containing in extent one hundred and sixteen acres and seven perches (A116. R0. P7) according to the survey and description thereof made by C. D. Jayasinghe of Kandy, Licensed Surveyor, in the month of December, 1923, situated at Kandegama in Gandeke Korale of the Uda Dumbara Division, in the District of Kandy, Central Province, which said one hundred and four acres one rood and eleven perches (A104. R1. P11) comprised of the following allotments of land with the plantations and buildings thereon, to wit:—

40 1. All that allotment of land situated at Kandegama aforesaid ; bounded on the North by Halgolla-Oya, on the South by land said to be owned by villagers, on the East by Halgolla-Oya and on the West by Kobonella Estate and a road containing in extent seventeen acres one rood and twenty-four perches (A17. R1. P24).

Exhibits.
 No. D 2.
 Decd
 No. 2205.
 2-6-41.
 —continued.

2. All that allotment of land situated at Kandegama aforesaid ; bounded on the East by Halgolla-Oya, on the North by land said to be owned by villagers, on the South by the allotments of land of eleven acres and nine perches and an allotment of land of two acres and thirty perches and on the West by Kobonella Estate, containing in extent thirteen acres three roods and thirty perches (A13. R3. P30).

3. All that allotment of land situated at Kandegama aforesaid ; bounded on the North and North-East by allotment of land of thirteen acres three roods and thirty perches, on the South by allotment of land of three acres and twelve perches, on the East by the allotment of land of two acres and thirty perches and on the West by Kobonella Estate, containing in extent eleven acres and nine perches (A11. R0. P9).

4. All that allotment of land situated at Kandegama aforesaid ; bounded on the North by allotment of land of thirteen acres three roods and thirty perches, on the East by the lands claimed by villagers, on the South by Ela and on the West by the allotment of land of eleven acres and nine perches, containing in extent two acres and thirty perches (A2. R0. P30).

5. All that allotment of land situated at Kandegama aforesaid ; bounded on the North by the allotment of land of eleven acres and nine perches, on the South by the land said to be owned by the villagers and by the allotment of land of twenty-seven perches, on the East by allotment of land of eleven acres and nine perches, and on the West by land said to be owned by villagers and a road, containing in extent three acres and twelve perches (A3. R0. P12).

6. All that allotment of land situated at Kandegama aforesaid ; bounded on the North-East and South by the allotment of land of eleven acres and nine perches and on the West by Kobonella Estate, containing in extent thirty perches (A0. R0. P30).

7. All that allotment of land situated at Kandegama aforesaid ; bounded on the North by a road, on the East and South by land said to be owned by villagers and on the West by Kobonella Estate, containing in extent one acre three roods and eighteen perches (A1. R3. P18).

8. All that allotment of land situated at Kandegama aforesaid ; bounded on the North by the allotment of land of three acres and twelve perches, on the South and East by the land said to be owned by villagers and on the West by a road, containing in extent twenty-seven perches (A0. R0. P27).

9. All that allotment of land situated at Kandegama aforesaid ; bounded on the North by the lands said to be owned by villagers, on the South by allotment of land of nine acres one rood and eighteen perches and land said to be owned by villagers, on the East by stone fence and on the West by Kobonella Estate, containing in extent twenty-three acres one rood and thirty perches (A23. R1. P30).

10. All that allotment of land situated at Kandegama aforesaid ; bounded on the North by the allotment of land of twenty-three acres one

rood and thirty perches, on the East by Old Trench, on the South by Badulla Tree and on the West by land owned by villagers and Kandura, containing in extent nine acres one rood and eighteen perches (A9. R1. P18).

Exhibits.
No. D 2.
Deed
No. 2205.
2-6-41.
—continued.

11. All that allotment of land situated at Kandegama aforesaid; bounded on the North and East by land said to be owned by villagers, on the South and West by the allotment of land of nine acres one rood and twenty perches, containing in extent five acres and twelve perches (A5. R0. P12).

10 12. All that allotment of land situated at Kandegama aforesaid; bounded on the North by the allotment of land of three roods and three perches, on the East by the allotment of land of five acres and twelve perches, on the South by the Oya and on the West by Kobonella Estate, containing in extent nine acres one rood and twenty perches (A9. R1. P20).

13. All that allotment of land situated at Kandegama aforesaid; bounded on the North by the land said to be owned by villagers, on the East by the allotments of land of five acres and twelve perches, on the South by allotment of land of nine acres one rood and twenty perches and on the West by Kobonella Estate, containing in extent three roods and
20 three perches (A0. R3. P3).

14. All that allotment of land situated at Kandegama aforesaid; bounded on the North by Oya, on the South by Oya, on the East by Oya, and on the West by Oya containing in extent six acres one rood and twenty-eight perches (A6. R1. P28).

Which said one hundred and four acres one rood and eleven perches (A104. R1. P11) in extent forms part of all that estate called and known as Haraslulekele *alias* Fincham's land, containing in extent one hundred and sixteen acres and seven perches (A116. R0. P7) according to the survey and description thereof made by C. D. Jayasinghe, Licensed Surveyor,
30 in the month of December, 1923, situated at Kandegama aforesaid and composed and made up of the following three allotments of land, to wit:—

(A) An allotment of land situated at Kandegama aforesaid; bounded on the North and North-East by Oya and Ensalwatte Estate, on the South and South-East by land claimed by villagers and Ela and on the West by Horankanda Estate, containing in extent fifty-nine acres and thirty-four perches (A59. R0. P34).

40 (B) An allotment of land situated at Kandegama aforesaid; bounded on the North, North-East and East by land claimed by villagers, on the South and South-East by Kobonella Estate, and on the West by Horankanda Estate, containing in extent thirty-five acres three roods and ten perches (A35. R3. P10), and

(C) An allotment of land situated at Kandegama aforesaid; bounded on the North and East by the land claimed by villagers, on the

Exhibits.
No. D 2.
Deed
No. 2205.
2-6-41.
—continued.

South and West by Oya and Kobonella Estate, containing in extent twenty-one acres and three perches (A21. R0. P3).

Which said property is otherwise described as follows :—

- (a) The northern portion of three acres in extent from and out of all that allotment of land called Haraslulekelehena of fourteen acres in extent, situated at Kandegama aforesaid and which said northern portion is bounded on the East by Galheeriya, on the South by the land of Ukkurala and Ela, on the West by the limit of Kobonellawatte, and on the North by the limit of chena belonging to Meddumarala. 10
- (b) A portion of six acres in extent from and out of all that land called Haraslulekele of seventeen acres in extent, situated at Kandegama aforesaid and which said portion of six acres is bounded on the East by the limit of the remaining portion, on the South by the land of Aratchi, on the West by the limit of Kobonellawatte, and on the North by limit of the portion of Dingurala.
- (c) All that northern portion of two acres in extent from and out of all that allotment of land called Haraslulekele of seventeen acres in extent, situated at Kandegama aforesaid and which 20 said northern portion is bounded on the East by Galpeli-Ela, on the South by the limit of Kawurala's chena, on the West by Meeyapulle's land and on the North by the Ella of Bulatwatte.
- (d) All that portion of thirty-five acres in extent from and out of all that allotment of land called Haraslulekele of one hundred and seventy-seven acres and two roods in extent, situated at Kandegama aforesaid; bounded on the North and East by Haraslule-Ela and the land of natives, on the South and East by the land belonging to natives and Horankanda-Oya, on the South and West by Horankanda-Ela, and on the South and 30 West by the land described in plan No. 50110.
- (e) All that portion of three acres in extent from and out of all that allotment of land called Haraslulekele of twenty-one acres in extent, situated at Kandegama aforesaid and which said portion of three acres is bounded on the East by Galheeriya, on the South by the land of Puchaduraya, on the West by limit of Kobonellawatte and on the North by the limit of Nattaranpotahena.
- (f) All that southern portion of three acres in extent from and out of all that allotment of land called Haraslulekele of one hundred 40 and seventy-seven acres and two roods in extent, situated at Kandegama aforesaid and which said southern portion is bounded on the East by the remaining portion, on the South by the limit of land which belonged to Meyapulle, on the West by the limit of Kobonellawatte and on the North by the limit of Nattaranpotahena.

- (g) All that western portion of four acres in extent from and out of all that allotment of land called Haraslulekele of one hundred and seventy-seven acres and two roods in extent, situated at Kandegama aforesaid and which said western portion is bounded on the East by Manawa, on the South by the limit of the jungle belonging to Kira, on the West by the limit of the garden belonging to gentleman, and on the North by the limit of the land of Kapurala. Exhibits. No. D 2. Decd No. 2205. 2-6-41. —continued.
- 10 (h) All that portion of seven acres in extent from and out of all that allotment of land called Haraslulekele of one hundred and seventy-seven acres and two roods in extent, situated at Kandegama aforesaid and which portion of seven acres in extent is bounded on the East by the limit of the jungle belonging to Doraliyadde Appuhamy, on the South by the Maha-Oya, on the West by the limit of Kobonellawatte, and on the North by the limit of the garden of Steen.
- 20 (i) All that allotment of land called Katukitulehena of about six acres in extent, situated at Kandegama aforesaid; bounded on the East by Katukitule-Ela, on the South by Ela, on the West by the Ela of Kobokatagolla, and on the North by ditch.
- (j) All that portion of fifteen acres in extent from and out of twenty-one acres in extent from and out of all that allotment of land called Haraslulekele of one hundred and seventy-seven acres and two roods in extent, situated at Kandegama aforesaid and which said portion of fifteen acres in extent is bounded on the East by Haraslule-Ela and the land belonging to natives, on the South and East by the land belonging to natives and Horankanda-Ela, on the South and West by Horankanda-Ela, and on the North and West by the land described in plan No. 50110, and
- 30 (k) An allotment of land called Katukitulekele, situated at Kandegama aforesaid; bounded on the North by stream and land claimed by natives, on the East by an Ela and a Stream, on the South by a Stream and on the West by an Ela and Watiakka-Ela, containing in extent five acres three roods and thirty perches.

Witnesses :

(Sgd.) D. JOACHIM NISSANGA.

(Sgd.) K. R. SAMARATUNGE.

(Sgd.) D. A. SIMON.

(Sgd.) A. M. FUARD,
Notary Public.

I, Assena Marikar Mohamed Fuard of Colombo, in the Island of
40 Ceylon, Notary Public, do hereby certify and attest that the foregoing
Instrument having been duly read over and explained by me the said
Notary to the thereinnamed executant Kandekumbure Rajamantrige
Samaratunge who has signed as K. R. Samaratunge and who is known
to me in the presence of Don Joachim Nissanga of Kottawa, Pannipitiya,
and Dunukeadikaramge Simon Singho of No. 130, Hultsdorf in Colombo,

Exhibits.
 No. D 2.
 Deed
 No. 2205.
 2-6-41.
 —continued.

who have signed as D. Joachim Nissanga and D. A. Simon respectively the subscribing witnesses thereto both of whom are also known to me the same was signed by the said executant and by the said witnesses in my presence and in the presence of one another all being present together at the same time at Colombo aforesaid on this second day of June, One thousand Nine hundred and Forty-one. I further certify and attest that the full consideration herein mentioned, viz., Rs. 6,000/- was paid in cash in my presence and that the duplicate of this Instrument bears four stamps of the value of Rupees Sixty-three (Rs. 63/-) and the original a stamp of Rupee One (Re. 1/-).

10

* * * * *

Date of attestation :
 2nd June, 1941.

(Sgd.) A. M. FUART,
Notary Public.

No. D 27.
 Bond
 No. 2218.
 18-7-41.

Prior Registration :
 B. 147/198 to 203
 and 48/42 and
 58 Kandy.

D27.

Bond No. 2218.

Know all men by these presents that I, Susai Wiswasam of Malwatte Estate, Kadugannawa in Kandy District (hereinafter calling myself the obligor) am held and firmly bound unto Alfred Richard Weerasuriya of No. 126, Temple Road, Maradana in Colombo (hereinafter referred to as the obligee) in the sum of Rupees Thirteen thousand (Rs. 13,000/-) of lawful money of Ceylon well and truly to be paid to the said obligee, his heirs, executors, administrators or assigns with interest and other charges in manner hereinafter provided for which payment to be well and truly made I the said obligor do hereby engage and bind myself, my heirs, executors and administrators firmly by these presents and for securing unto the said obligee and his aforewritten the payment of the said principal sum of Rupees Thirteen thousand (Rs. 13,000/-) and all other sums of money that shall or may become due owing and payable under by virtue or in respect of these presents I the said obligor do hereby specially mortgage and hypothecate to and with the said obligee and his aforewritten as a first or primary mortgage all those the estates called and known as Malwatte Estate, Pimburuwatte Estate and Amukotuwehena Estate and in the Schedule " A " hereto fully described and as a secondary mortgage all that estate called and known as Lammermoor Estate and all those the premises called and known as " Theberton " Factory and in the Schedule " B " hereto fully described together with the buildings and plantations thereon and the stores, factory, plant, machinery, fixtures and equipment, tools and implements, crops and produce and also the live and dead stock of or belonging to the said estates and premises and the tea coupons that shall or may be issued in respect of the said estates and premises and the tea that shall be manufactured on the said estates and premises and together with all and singular the appurtenances belonging to the said estates and premises and all the estate, right, title and interest of me the said obligor in to upon or out of the same.

And I the said obligor do hereby covenant with the said obligee and his aforewritten that the several estates and premises fully described in the Schedule "A" hereto are not subject to any mortgage charge or encumbrance whatsoever and that the said estate and premises and the factory in the Schedule "B" hereto fully described are not subject to any mortgage charge or encumbrance whatsoever and except the primary mortgage created by Bond No. 1081 dated 18th July, 1941, and attested by B. James St. V. Perera of Colombo, Notary Public, and that I have good right to mortgage the said several premises in manner aforesaid and that I shall and will at the request of the said obligee or his aforewritten but at my own cost and expense do and execute or cause to be done and executed all such further and other acts, deeds, assurances, matters and things whatsoever for the better or more effectually assuring to the said obligee or his aforewritten by way of primary and secondary mortgages respectively the said several estates and premises in the Schedules "A" and "B" hereto as by the said obligee or his aforewritten shall or may be reasonably required and shall and will at all times during the continuance of these premises keep and maintain the said estates and plantations and the factory in a good and proper state of cultivation and in a husbandlike manner and the plant, machinery and fixtures in good order and proper repair and shall and will allow and permit the said obligee or his aforewritten or agents to visit and inspect the said estates and premises hereby mortgaged at all reasonable hours and shall and will keep the existing insurance of the said factory in force and furnish all returns to the Tea Controller in respect of the said estates.

Whereas I the said obligor am indebted to the said obligee in the said sum of Rupees Thirteen thousand (Rs. 13,000/-) being money lent and advanced by the said obligee and borrowed and received by me the said obligor and it has been agreed that the said sum together with interest and other charges as hereinafter provided should be secured to the said obligee and his aforewritten in manner herein provided.

And whereas I the said obligor have executed in favour of the said obligee indenture of lease bearing No. 2199 dated 20th day of May, 1941, and attested by the Notary attesting these presents of all those estates and premises in the Schedule "A" hereto fully described to enable the said obligee to register himself as the proprietor of the said estates and to draw and receive from the Tea Controller the tea coupons to be issued by the Tea Controller in respect of the said estates and after paying himself the interest due under these presents and pay to me the said obligor the balance remaining after payment of the broker's commission for the sale of the said coupons as hereinafter provided now the condition of the abovementioned bond or obligation is such that if I the above bounden obligor shall and will and truly pay or cause to be paid unto the said obligee or his aforewritten the said sum of Rupees Thirteen thousand (Rs. 13,000/-) on demand and shall and will in the meantime and until such repayment pay interest thereon at and after the rate of thirteen and half per centum per annum to be computed from the date hereof

Exhibits.
No. D 27.
Bond
No. 2218.
18-7-41.
—continued.

Exhibits.
 No. D 27.
 Bond
 No. 2218.
 18-7-41.
 --- continued.

and payable on the due of issue of tea coupons by the Tea Controller in Colombo and shall and will duly pay and discharge all taxes due in respect of the said mortgaged premises and shall and will observe and perform the covenants and agreements contained in the said Bond No. 1081 dated 18th July, 1941, and shall and will not suffer or permit the said several premises or any of them to be seised or taken in execution of any writ against me the said obligor then the abovementioned bond or obligation and the mortgage hereby given and granted shall be null and void otherwise the same shall be and remain in full force and virtue. Provided that the said obligee shall by virtue of the Indenture of Lease hereinbefore mentioned received from the Tea Controller all coupons to be issued in respect of the said estates and premises in the Schedule " A " hereto and sell the said coupons through a recognised broker or brokers in Colombo and after payment of the brokers commission apply the proceeds in payment of the interest on the said principal sum of Rupees Thirteen thousand (Rs. 13,000/-) up to the date of next issue of coupons in respect of the said estates and pay to me the said obligor the balance proceeds and furnish an account sale to be issued by the said brokers for the sale of coupons and I the said obligor shall accept such account sale which shall be conclusive as to the sale price of tea coupons aforesaid : Provided further that on repayment of the said principal sum the lease executed by me the said obligor in favour of the said obligee as aforesaid shall be deemed null and void.

Provided further that in the event of my desiring to repay the said principal sum I shall give to the said obligee four calendar months notice in writing signifying my intention to repay the same and likewise in the event of the said obligee recalling the said principal sum he shall give to me the said obligor four calendar months notice signifying his intention to recall the said principal sum.

Provided further that if the said obligee shall fail to receive tea coupons in respect of the said premises in the Schedule " A " hereto by reason of suspension by the Tea Controller of the issue of coupons for neglecting to keep up and maintain the said estates in the Schedule " A " hereto in a fit and proper state of management and cultivation or in case the tea control ceases to be in force or for any other cause whatsoever then and in that event I the said obligor shall immediately pay to the said obligee or his aforewritten the said principal sum of Rupees Thirteen thousand (Rs. 13,000/-) together with interest thereon at the rate of thirteen and half per centum per annum notwithstanding anything herein contained to the contrary. Provided lastly that if there shall be a breach by me the said obligor or my aforewritten of any of the covenants or conditions on my part herein contained or if I the said obligor shall be adjudged bankrupt or insolvent then and in any of such cases it shall be lawful for the said obligee or his aforewritten at his or their option to sue for and recover all sums of money payable under these presents notwithstanding anything herein contained to the contrary. Any summons or other process of court and any notice on me the said obligor shall be

deemed sufficiently served if sent by post under registered cover to me the said obligor addressed to Malwatte Estate at Kadugannawa or to any one of the other estates and premises hereby mortgaged.

In witness whereof I the said obligor do hereunto and to two others of the same tenor and date as these presents set my hand at Colombo on this eighteenth day of July, One thousand Nine hundred and Forty-one.

Exhibits.
—
No. D 27.
Bond
No. 2218.
18-7-41.
—continued.

THE SCHEDULE "A" ABOVE REFERRED TO

All those estates called and known as Malwatte Estate, Pimburewatte Estate and Amukotuwehena Estate and registered under Nos. T.C. 569, 10 T.C. 687 and S.C. 24415 respectively at the Office of the Tea Export Controller's together with the tea plantations and the buildings, factories, fixtures, and everything else standing thereon comprised of the following allotments of lands :—

(1) An allotment of land called Gamigewatte in Arambagama Village in Medapalata of Yatinuwara in the District of Kandy, Central Province, bounded on the North and West by ditch, on the East by Ella of Doradeniya, and on the South by the fence of Korale Mahatmaya's garden, containing five kurunies paddy sowing extent.

(2) An allotment of land called Malwatte, situated at Pilimatalawa 20 Village in Medapalata aforesaid; bounded on the North by Berawa Angakumbura, on the East by ditch of Payidakarayalagegederawatte, on the South by ditch of Rankondegederawatte, and on the West by limit of Punchiralagewatte and ditch, containing two pelas paddy sowing extent.

(3) An allotment of land called Gamigewatte *alias* Banagewatte, situated at Arambagama aforesaid; bounded on the North by fields, on the East by Hunugederawatte, on the South by Kotakumburegederawatte, and on the West by Hunugederawatte, containing one pela paddy sowing extent.

80 (4) All that land called Malwatte comprising six allotments of lands forming one property and situated at Arambagama and Pilimatalawa aforesaid; bounded on the North by land claimed by Tikiriappu, on the North-East by land claimed by Dingiri Bandara, on the East by Berawa Anga, on the South-East by property claimed by M. Louisa and Kotakumburegederawatte, on the South by land belonging to Kapuwatte-walauwa, on the South-West by Manelpokuna, and on the West by property claimed by M. Kiri Banda, containing in extent six acres and two perches (A6. R0. P2).

40 (5) An allotment of land called Kiriwana Angewatte (middle portion of) in Arambagama Village aforesaid; bounded on the North by the other portion of the same land belonging to Ran Naide, on the East by a path, on the South-West by other portion of the same land of Kiri Etana, and on the North-West by Kiriwanakumbura, containing in extent two roods and nine and half perches (A0. R2. P9½).

Exhibits.
 No. D 27.
 Bond
 No. 2218.
 18-7-41.
 —continued.

(6) All that southern portion of the allotment of land called Ambakumburewatte with the house standing thereon, situated at Arambagama aforesaid ; bounded on the East by limit of the garden of Kiri Muttu and Dintu, on the South by limit of Rankira's land, on the West by limit of Ukku Banda's garden, and on the North by part of the remaining portion containing fifteen lahas of paddy sowing extent.

7. All that land called Ambekumburewatte, situated at Arambagama aforesaid ; bounded on the North by Ganis' land, on the East by Ambekumbura, on the South by the remaining portion of this land, and on the West by Malwatte, containing in extent fifteen lahas paddy sowing 10 extent.

8. An allotment of land called Manelpokunahena *alias* Bogahamulahena in Arambagama Village aforesaid ; bounded on the East by fence of the chena of Bawantalhena and Agalheeriya, and on the South-West and North by ditch and fence, containing in extent one amunam paddy sowing.

9. An allotment of land called Nelligahakotuwa *alias* Kandewatte, situated at Arambagama Village aforesaid ; bounded on the North by S. Wiswasam's tea estate, on the East by Ranakkegederawatte claimed by Vedarala, South by the remaining portion of same land claimed by Dingiri 20 Menika, Bandara Menika and M. B. Walgampaya, and West by Kunji Moosa's tea estate, containing in extent three roods (A0. R3. P0). All the above nine allotments of land now form one property called and known as Malwatte Estate, situated at Arambagama and Pilimalalawa villages in Medapalata aforesaid ; bounded on the North by Kiriwana-angakumbura-arambewatte, Medagederawatte, Berawa-angakumbura and Doradeniyakumbura, on the east by Doradeniyakumbura, Rankaddegederawatte, South by Kunji Moosa's land and Georgiahamy's land, and West by lands belonging to Ranahengeya and A. M. Kiribanda and Kiriwana-angakumbura, containing in extent thirteen acres and three 30 and one-fourth perches (A13. R0. P3¼) according to plan dated 20th January, 1935, compiled by H. Schokman, Special Licensed Surveyor.

10. An allotment of land called Budugewatte, situated at Pilimalalawa aforesaid and bounded on the West by ditch and fence and East, South and North by wela, containing three pelas paddy sowing extent and according to a recent survey one acre and twelve and one-fourth perches (A1. R0. P12¼).

11. An allotment of land called Rawadattatawwehena, situated at Arambagama aforesaid ; bounded on the East and South by Agalhiriya, West by Mala-Ela, on the North by Agalhiriya of Kankamos land, con- 40 taining in extent sixteen lahas paddy sowing.

12. All that allotment of land marked lot " B " in the plan of the land called Gampolayakotuwa, situated at Arambagama or Pilimalalawa Village aforesaid ; bounded on the North by Mohandiriamawatte, south by lot " A " of the same land, East by lot " C " of the same land, and on the West by Talawadeniya, containing in extent twenty-eight perches (A0. R0. P28).

13. All those allotments of land called (1) Henegodatena, and (2) Imbulhitiyawa both adjoining each other and can be included in one survey, situated at Grindala in Medapalata aforesaid; the first land is bounded on the North by Pimburewatte and Bamayake, on the East by Imbulhitiyawahena of Crown, on the South by Weraluwekumbura of S. Ran Naide and others, Udabittera, Pelakumbura of S. Muttuhenayaya, Murutakumbura of A. Menik Etana and water-course, and in the West by water-course and chena land called Rutchaladule of D. A. Appuhamy, containing in extent five acres and one rood and the second land is
 10 bounded on the North and East by land claimed by natives, on the South by land claimed by natives and T.P. 158350, and on the West by T.P. 158350, containing in extent three acres one rood and thirty-five perches.

Exhibits.
 No. D 27.
 Bond
 No. 2218.
 18-7-41.
 —continued.

14. An allotment of land called Pimburawawatte, situated at Embulmingama in Medapalata aforesaid; bounded on the North by the ditch of Barammanekoralagewatte, on the East by Pimburawakumbura, on the South by ditch of Dingirala's chena, on the West by village limit of Yatinuwara, containing one amunam paddy sowing extent and which said two lands numbered 13 and 14 above adjoin each other forming one property and can be included in one survey and are described as follows :—

20 All that allotment of land comprising two allotments of land called Pimburewatte and Henagodawatte, situated at Pilimalalawa aforesaid; bounded on the North by Pimburakumbura and Rengasamy's land, on the East by Rengasamy's land, Maligawa fields and Deniya and Weralukumbura, on the South by Weralukumbura, Galangakumbura, and on the West by the field Godaladeniya Dewala Bucharamullawatte and Nugangawatte, containing in extent twelve acres two roods and ten perches (A12. R2. P10) according to plan dated 23rd day of July, 1937, made by H. Schokman, Licensed Surveyor.

15. All that allotment of land called Amukotuwahena, situated at
 30 Arambagama aforesaid; bounded on the North by Ella, on the East and South by Agala, and on the West by Oya, containing two pelas paddy sowing extent and which said premises is according to a recent figure of survey described as being bounded on the North-East by Amukotuwe, on the South-East by Boosawatte, on the South by Kiriwana-anga, West by Kuda-Oya, and on the North-West by Talawadeniya, containing in extent two roods and nineteen and a half perches (A0. R2. P19½) according to the aforesaid plan dated 20th January, 1935.

THE SCHEDULE " B " ABOVE REFERRED TO.

40 All that estate called and known as Lammermoor and comprising all that allotment of land called Alu-Oya Egodakela, situated at Maskeliya Valley in Ambagamuwa Korale, in the District of Uda Bulatgama, in the Central Province of the Island of Ceylon; bounded on the North-East by reservation, on the South-East by land described in plan No. 105470 and Detaluela-Oya, on the South-West by land described in plan No. 105473, and on the North-West by land described in plan No. 105474,

Exhibits. containing in extent exclusive of the Gangawameda-Ela passing through
 No. D 27. the land one hundred and eighty-seven acres (A187. R0. P0) as described
 Bond in Diagram or Map annexed to the Government Grant of the said
 No. 2218. premises, dated 4th day of April, 1877, numbered 105472 authenticated
 18-7-41. by A. B. Fyers, Surveyor-General.
 —continued.

2. All that and those the premises called and known as Theberton Factory with the adjacent land and buildings depicted in the map or plan No. 1548 dated the 12th September, 1935, made by S. D. Amerasekera, Special Licensed Surveyor and Leveller, and annexed to the original copy of Title Deed No. 478 dated 6th November, 1935, and attested by 10 W. K. S. Hughes, Notary Public, situated in Maskeliya Valley, Ambergamuwa Korale Uda Bulatgama aforesaid ; and bounded on all sides by Theberton Estate and containing in extent one rood and nine perches (A0. R1. P9) together with the right to use the water of certain stream flowing through Theberton Estate and the right to use the dam on the said estate.

Witnesses :

(Sgd.) A. M. SHARIFF.

(Sgd.) S. WISWASAM.

(Sgd.) A. M. SHAMSUDEEN.

(Sgd.) A. M. FUART,
Notary Public.

20

I, Assena Marikar Mohamed Fuard of Colombo in the Island of Ceylon, Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me to the within-named executant Susai Visuvasam in the presence of Abdul Rahman Mohamed Sheriff of Old Moor Street and Assena Marikar Mohamed Shamsudeen of Hultsdorf Street both in Colombo who signed as " A. M. Sheriff and A. M. Shamsudeen " respectively the describing witnesses thereto all of whom are known to me the same was signed by the said executant and by the said witnesses and by me the said Notary in the 30 presence of one another all being present together at the same time at Colombo aforesaid on this eighteenth day of July One thousand nine hundred and forty-one. I further certify and attest that in the original and duplicate of the said Instrument on page 1 line 4 from bottom " and " interpolated line 10 from bottom " owing " typed on erasure page 4 line 4 " not " interpolated page 6 and line 6 from bottom " claimed by " interpolated and " called " deleted and on page 9 and line 9 " natives " typed on erasure and on page 10 line 5 " f " of " of " overtyped before the said instrument was read over and explained as aforesaid. I further certify that no consideration passed in my presence but the same was acknow-40 ledged to have been received on bond No. 2198 dated 20th May, 1941, and attested by me which was cancelled by the obligee herein to enable the obligor to enter into a fresh bond and give a primary mortgage of the lands and premises in the schedule " B " hereto.

I further certify that the duplicate of the said instrument bears four stamps to the value of Rupees one hundred and thirteen (Rs. 113/-) and the original one of Rupee one.

Exhibits.
No. D 27.
Bond
No. 2218.
18-7-41.
—continued.

Date of Attestation :
18th July, 1941.

(Sgd.) A. M. FUART,
Notary Public.

P41.

Prior Registration : E. 101/339 and 285/154—158 Kandy.

No. P 41.
Indenture
No. 2228.
20-8-41.

Indenture No. 2228.

10 This Indenture made and entered into at Colombo on this twentieth day of August, One Thousand Nine hundred and Forty-one between Kandakumbure Rajamantrige Samaratunge of Panwila, in the District of Kandy, (hereinafter called and referred to as the party of the first part which expression as herein used shall where the context so requires or admits be taken to mean and include him, his heirs, executors, administrators and assigns) of the one part and Mohamed Sulaiman Naina Marikar of Rayton, 16th Lane, Bambalapitiya in Colombo, hereinafter called and referred to as the party of the second part which expression as herein used shall where the context so requires or admits be taken to
20 mean and include him, his heirs, executors, administrators and assigns of the other part witnesseth as follows :—

Whereas by an Indenture of Lease bearing No. 2227 dated the twentieth day of August, One thousand Nine hundred and Forty-one and attested by the Notary attesting these presents the said part of the first part let leased and demised unto the party of the second part all that and those the estates and premises hereinafter in the schedule hereto fully described and bearing registered Nos. S.C. 6052, S.C. 5853, S.C. 6048, S.C. 38676, S.C. 5858 and S.C. 5857 at the Tea Controller's Office for the period commencing from the twentieth day of August, One thousand
30 Nine hundred and Forty-one and ending the thirty-first day of March, One thousand Nine hundred and Forty-seven together with all rights to all the tea coupons to be issued by the Tea Controller in respect of the said demised premises during the period aforesaid.

And whereas under and by virtue of the said Indenture of Lease the said party of the second part entitled to have and receive from the Tea Controller all coupons to be issued in respect of the estate and premises in the schedule hereto fully described period aforesaid.

And whereas at the execution of the said Indenture of Lease the party of the second part paid to the said party of the said part the sum
40 of Rupees Three thousand Seven hundred and Fifty (Rs. 3,750/-) which

Exhibits.
 No. P 41.
 Indenture
 No. 2228.
 20-8-41.
 —continued.

said sum is the equivalent of advance upon the value of the said fifteen thousand pounds (15,000 lbs.) tea coupons calculated at the rate of twenty-five cents per pound coupon.

And it has been agreed by and between the parties hereto that the party of the second part shall sell the said fifteen thousand pounds (15,000 lbs.) coupons or such quantity of coupons as he shall receive from the Tea Controller during the term aforesaid in respect of the said demised premises as shall after deducting from the net proceeds of sale as shown in the account sales hereinafter referred to the moneys hereinafter mentioned pay to the party of the first part any surplus then remaining. 10

And whereas as security for the recovery by and or repayment to the said party of the second part the said sum of Rupees Three thousand Seven hundred and Fifty (Rs. 3,750/-) and all other moneys recoverable by and or payable to the said party of the second part under these presents and any damage which the party of the second part may sustain by reason for the non-receipt for whatsoever cause by the said party of the second part of the full quantity of fifteen thousand pounds (15,000 lbs.) tea coupons and the due performance by the party of the first part of all the covenant on his part to be performed and the said Indenture of Lease or herein set out the said party of the first part hath agreed to enter into 20 and execute the mortgage and hypothecation hereinafter set forth.

Now this Indenture witnesseth and it is covenanted and agreed by and between the parties hereto as follows :—

That the said party of the second part shall within a period of thirty days after the receipt by him on each issue of tea coupons issued in respect of the said demised premises during the period commencing from the 20th day of August, One thousand Nine hundred Forty-one and ending on the thirty-first day of March, One thousand Nine hundred and Forty-seven sell such issue of coupons through a recognised broker or brokers in Colombo at such price or prices in such quantity or manner and at such 80 time or times or on such day or days within the aforesaid period of thirty days on the said party of the second part shall in its absolute discretion think fit the said broker or brokers shall be entitled to deduct from the gross proceeds of such sale or his or their commission and an account sale of such broker or brokers relating to such sale shall be final and conclusive as to the sale price of such coupons the deduction aforesaid and all matters arising out of or in any manner whatsoever relating to the said sale and the said party of the first part shall not be entitled to dispute or question the said sale the said account and on sale in any respect or matter whatsoever. 40

2. Within one month of the receipt by the said party of the second part of the net proceeds of sale as shown in the account sale aforesaid the party of the second part shall from such net amount pay himself (a) ten cents per pound coupon for such quantity of pounds coupon as is mentioned in the said account sale in liquidation of the said sum of Rupees Three thousand Seven hundred and Fifty (Rs. 3,750/-) and (c) all expenses

which the party of the second part might have incurred in connection with any information or return required by the Tea Controller in relation to the said demised premises during the aforesaid term and shall pay any surplus then remaining to the party of the first part.

Exhibits.
No. P 41.
Indenture
No. 2228.
20-8-41.
—continued.

3. That in case of the value of tea coupons going down the party of the first part shall supply to the party of the second part sufficient amount of such coupons to cover the said sum of Rupees Three thousand Seven hundred and Fifty paid in advance and all other sum or sums of money payable under these presents.

10 4. That in the event of the said sum of Rupees Three thousand Seven hundred and Fifty (Rs. 3,750/-) not being liquidated in the manner aforesaid on or before the twentieth day of July, One thousand Nine hundred and Forty-four then in and such case the party of the first part the balance amount then due and owing together with interest thereon at the rate of twelve per centum per annum.

5. That the party of the first part shall be entitled to work up the demised premises at his own cost and expense and to take, receive and appropriate the entirety of the produce, income and profits thereof to his own use and benefit.

20 And this indenture further witnesseth that for securing unto the said party of the second part the payment of the said sum of Rupees Three thousand Seven hundred and Fifty (Rs. 3,750/-) and the said sum of ten cents per pound coupon on the said fifteen thousand pounds (15,000 lbs.) tea coupons and the interest at the aforesaid rate of twelve per centum per annum and all moneys payable to and or recoverable by the second party of the second part under these presents but not exceeding the sum of Rupees Three thousand Seven hundred and Fifty (Rs. 3,750/-) the said party of the first part doth hereby specially mortgage and hypothecate to and with the said party of the second part as a primary mortgage
30 free from all encumbrances all those the said premises in the schedule hereto fully described together with the coupons that will be issued in respect of the said premises and all and singular the rights, ways, easements, privileges, servitudes and appurtenances whatsoever to the said premises belonging or in anywise appurtenant or usually held, occupied, used or enjoyed therewith or reputed to be or known as part and parcel thereof and all the estate right, title, interest, property claim and demand whatsoever of the said party of the first part unto upon or out of the same.

And the said party of the first part doth hereby covenant and declare to and with the said party of the second part that he hath good title to
40 mortgage and hypothecate the said premises hereby mortgaged and hypothecated in manner aforesaid and that the said premises are free from all encumbrances and that he shall and will during the continuance of the mortgage hereby affected at the request of the said party of the second part but at his own cost and expense make do and execute or cause to be made and executed all such further and other acts, deeds, matters and things whatsoever which may be necessary for more perfectly

Exhibits.
 No. P 41.
 Indenture
 No. 2228.
 20-8-41.
 —continued.

assuring the said premises unto the said party of the second part by way of mortgage and hypothecation in manner intended by these presents as by him shall or may be reasonably required.

Now the condition of the above written bond or obligation and the mortgage is such that if the said sum of Rupees Three thousand seven hundred and Fifty paid in advance as aforesaid is fully accounted and liquidated in the manner herein before provided or if the party of the first part shall at any time during the continuance of the said lease pay to the party of the second part the said sum of Rs. 3,750/- or so much thereof as shall remain due together with a further sum calculated at the 10 rate of ten cents per pound coupon on the said quantity of pounds coupons or on so much thereof to be issued during the residue of the unexpired period then and either of such cases the said Indenture of Lease shall stand cancelled and determined and the mortgage effected by these presents shall be absolutely null and void but otherwise the same shall be and remain in full force and virtue.

Provided however and it is hereby further covenanted and agreed by and between the parties hereto as follows :—

1. That the party of the first part shall and will supply to the said party of the second part a quantity of not less than four thousand three 20 hundred pounds (4,300 lbs.) tea coupons during the month of November, One thousand Nine hundred and Forty one from and out of the said quantity of 15,000 lbs. of tea coupons agreed to be supplied as aforesaid.

- (b) That the party of the second part shall and may hold and possess the said demised premises during the said term without any interruption on the part of the party of the first part or any person or persons claiming through or under him but without becoming in any manner whatsoever liable or accountable to the party of the first part for or in respect of the upkeep maintenance or agreement or management or cultivation of the said premises.
- (c) That the party of the first part shall and will at his own costs and expense keep and maintain the tea plantations on the said demised premises in a fit and proper state of management and cultivation.
- (d) That the party of the first part shall and will whenever required furnish all information returns and documents and evidence for the verification of such returns and informations that might be called for by the Tea Controller under the provisions of the Tea Control Ordinance in regard to the said demised premises. 40
- (e) That in case of the party of the second part shall fail to receive tea coupons in respect of the demised premises by reason of any objection or claim being preferred by any person or persons whomsoever or by reason of suspension by the Tea Controller of the issue of coupons for neglecting to keep up and maintain the tea plantation on the said demised premises in a fit and proper

state of management and cultivation or for any other cause whatsoever in case of the Tea Control Ordinance ceases to be in force then and in that event the party of the first part immediately pay to the party of the second part the full balance amount then unliquidated out of the said sum of Rupees Three thousand Seven hundred and Fifty (Rs. 3,750/-) paid in advance at the execution of the said Indenture of Lease together with a further sum calculated at the rate of ten cents per pound coupon on the said fifteen thousand pounds coupon or any balance thereof receivable by the said party of the second part in respect of the said demised premises during the residue then unexpired of the period granted under the said Indenture of Lease.

10

In witness whereof the said parties hereto do hereunto and to two others of the same tenor and date as these presents set their respective hands at Colombo on the date aforesaid.

THE SCHEDULE ABOVE REFERRED TO.

All those undivided nineteen-twentieth part or shares of the land called Dodanwattettenehena (now garden) bearing registered No. S.C. 6052 at the Tea Controller's Office together with the tea plantations standing thereon, situated at Pallegama in Pallegampaha Korale of lower Dumbara in the District of Kandy, Central Province, bounded on the East by road, South by Malakandura of Duranillehena, West by Appullanalagegedera and Kumburewelle, and on the North by Kumburegederahena, containing two ammunams and two pelas paddy sowing extent which said land is otherwise described as follows :—

All that land called Dodanwattettenehena situated at Pallegama aforesaid and bounded on the East by old road and fence, South by ditch, West by Udagederawatte Kumburewella and limit of Puncha's land, and on North by limit of Horatala's chena, containing in extent one yelamanam of paddy sowing extent.

2. All that land called Medakotuwawatte together with the tea plantations standing thereon bearing registered No. S.C. 5853 at the Tea Controller's Office, situated at Kandekumbure in Narampanawa in Palispattu Korale of Pata Dumbara in the District of Kandy aforesaid; and bounded on the North by limit of the land belonging to Kumburegedera Puncha, East by the garden of Kumburegedera Horatala, South by limit of the land belonging to Amunegedera Kaluwa, and on the West by Medakotuwa belonging to Pantetgedera Horatala, containing in extent of about two pelas and fivs lahas of paddy sowing.

3. All that land Pupalahenandahawatte together with the tea plantations standing thereon bearing registered No. S.C. 6048 at the Tea Export Controller's Office, situated at Kandekumbure in Narampanawa aforesaid; bounded on the North by the ditch of the land belonging to Angara, East by ditch of the land belonging to Jamaldeen, South by the limit of the Marieland Estate, and on the West also by the limit of Marieland Estate, containing in extent about two pela and five lahas paddy sowing.

Exhibits.
No. P 41.
Indenture
No. 2228.
20-8-41.
—continued.

Exhibits.
 No. P 41.
 Indenture
 No. 2223.
 20-8-41.
 —continued.

4. All that land called Medakotuwa together with the tea plantations standing thereon bearing registered No. S.C. 38676 at the Tea Controller's Office, situated at Kandekumbure in Naranpanawa aforesaid; bounded on the North by land belonging to Rantetgedara Ukkuwa, East by fence of Medakotuwawatte, South by limit of the land belonging to Amunegedera Kaluwa, and on the West by the land belonging to Rantetgedera Horatala, containing in extent about eight lahas of paddy sowing.

5. An undivided half part or shares of the land called Rantetgederawatte together with the tea plantations standing thereon bearing registered No. S.C. 5858 at the Tea Controller's Office, situated at Kandekumbure 10 in Naranpanawa aforesaid; bounded on the North by Marieland Estate, East by Wella of Ambagahamulakumbure, South by the ditch and limit of Puncha's land, and on the West by Marieland Estate, containing in extent about two amunams of paddy sowing.

6. All that land called Palleshawatte together with the tea plantation standing thereon bearing registered No. S.C. 5857 at the Tea Controller's Office, situated at Kandekumbure in Naranpanawa aforesaid; bounded on the North by the limit of Rantetduragedera Hapurala's garden, East by Kumburewella, South by the limit of Amunegedera Puncha's garden, and on the West by the fence of Medakotuwa Sobanie's garden, contain- 20 ing in extent about nine lahas of paddy sowing.

Witnesses :

(Sgd.) A. M. SHAMSUDEEN.

(Sgd.) A. R. HASSAN.

(Sgd.) K. R. SAMARATUNGE.

(Sgd.) M. S. NAINA MARIKAR.

(Sgd.) A. M. FUARD,
Notary Public.

Assena Marikar Mohamad Fuard of Colombo in the Island of Ceylon, Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me to the within-named executant Kandekumbure Rajamantrige Samaratunge who signed as 30 K. R. Samaratunge and Mohamed Sulaiman Naina Marikar who signed illegibly in the presence of Assena Marikar Mohamed Shamsudeen who signed as A. M. Shamsudeen and Abdul Rahaman Hassan, both of Hultsdorf, Colombo, the subscribing witnesses thereto all of whom are known to me the same was signed by the said executant and also by the said witnesses and by me the said Notary in the presence of one another all being present together at the same time at Colombo aforesaid on this twentieth day of August, One thousand Nine hundred and Forty-one.

I further certify that..... that no consideration passed in my presence and that the duplicate of 40 the said instrument bears six stamps to the value of Rupees Thirty-nine and Cents Fifty (Rs. 39/50) and the original one of Rupee One.

Date of attestation :
 20th August, 1941.

(Sgd.) A. M. FUARD,
Notary Public.

P40.

Plaint in D.C. Colombo Case No. 532.
IN THE DISTRICT COURT OF COLOMBO

Exhibits.
 No. P 40.
 Plaint in
 D. C.
 Colombo.
 Case
 No. 532,
 20-2-42.

M. S. NAINA MARIKAR of "Reyton", 16th Lane, Bambalapitiya
 in Colombo.....*Plaintiff*.

No. 532/M.B., Class : III,

Amount : Rs. 4,990/-, *vs.*

Nature : Money. Pro. Reg.

K. R. SAMARATUNGE of Panwila in the District of Kandy.

10 On this 20th day of February, 1942.

The plaintiff of the plaintiff above-named appearing by A. M. Fuard;
 his proctor, states as follows :—

1. The defendant above-named executed Indenture No. 2228 dated
 the 20th August, 1941, and attested by A. M. Fuard of Colombo, Notary
 Public at Colombo, within the jurisdiction of this Court.

2. The plaintiff advanced to the defendant at Colombo aforesaid
 a sum of Rs. 3,750/- which sum was to be liquidated from the net proceeds
 obtained by the sale of 15,000 pounds tea coupons in the manner stated
 in the said Indenture. The defendant agreed to deliver or cause to be
 20 delivered to the plaintiff the said tea coupons in respect of the properties
 situated in the District of Kandy and fully described in the schedule
 hereto attached which the plaintiff prays may be read as part and parcel
 of this plaint.

3. As security for the recovery and/or repayment of the said sum
 of Rs. 3,750/- or so much thereof as shall be due and owing to the plaintiff
 and all sums of money recoverable by and/or payable to the plaintiff
 under the said Indenture and any damage which the plaintiff may sustain
 by reason of non-receipt by the plaintiff on its due dates for whatever
 cause of the said coupons for tea the defendant mortgaged and hypothe-
 30 cated by the said Indenture No. 2228 all those the said premises herein-
 after fully described in the said schedule.

4. It was *inter alia* provided by the said Indenture—

(a) that the plaintiff shall within a period of 30 days after receipt of
 any of the said tea coupons cause the same to be sold through a
 recognised broker in Colombo;

(b) that out of the net proceeds of the sale of the said coupons the
 plaintiff was entitled to deduct (1) 25 cents per pound tea coupon
 on such quantity as is sold in liquidation of the said sum of
 Rs. 3,750/- advanced to the defendant, (2) all expenses incurred
 by the plaintiff, and (3) 10 cents per pound tea coupon on such
 40 quantity of pounds tea coupons as is sold ;

(c) that the plaintiff shall be entitled to receive from the defendant
 a sum of 10 cents for a pound of tea coupon on the said quantity
 of coupons for 15,000 lbs. of tea.

Exhibits.
 No. P 40.
 Plaintiff in
 D. C.
 Colombo.
 Case
 No. 532.
 20-2-42.
 —continued.

(d) that the defendant shall and will also deliver or cause to be delivered to the plaintiff 4,500 lbs. tea coupons during the month of November, 1941.

5. The plaintiff received in respect of the said properties 709 pounds coupons and the plaintiff caused the said coupons to be sold and the net proceeds realised by the sale of the said coupons amounted to Rs. 212·70.

6. The plaintiff was entitled to take a sum of Rs. 70·90 to wit, at the rate of 10 cents on each pound coupon, and after deducting the said sum of Rs. 70·90 out of the net proceeds of sale of the said coupons there was a sum of Rs. 141·80 to be credited to the defendant on account of the 10 said contract.

7. The plaintiff was entitled to deduct the said sum of Rs. 141·80 in liquidation of the said debt of Rs. 3,750/- and after deducting the said amount there remains the sum of Rs. 3,608·20 (of the said principal sum of Rs. 3,750/-) due and owing from the defendant to the plaintiff.

8. The plaintiff did not receive 4,300 pounds of tea coupons during the month of November, 1941, or thereafter.

9. The defendant has failed and neglected to deliver or cause to be delivered to the plaintiff during the month of November, 1941, or thereafter the said quantity of 4,300 pounds of tea coupons. 20

10. By reason thereof the defendant has become liable to pay to the plaintiff the said sum of Rs. 3,608·20 (the amount due out of the said loan of Rs. 3,750/-) and a sum of Rs. 1,428·10 to wit, the amount recoverable and receivable by the plaintiff at the rate of 10 cents per pound coupon on the remaining 14,281 pounds coupons amounting in all to Rs. 5,036·30 which sum or any part thereof the defendant has failed and neglected to pay to the plaintiff though thereto often demanded. The plaintiff waives the sum of Rs. 46·30 and restricts his claim to Rs. 4990/-.

FOR AN ALTERNATIVE CAUSE OF ACTION

11. By reason of the defendant's failure to deliver or supply 4,300 80 lbs. of tea coupons during the month of November, 1941, and/or by reason of the 4,300 lbs. of tea coupons not being delivered to the plaintiff during November, 1941, on account of the defendant's acts, the defendant has failed and neglected to carry out the terms of the contract made with the plaintiff at the time of the advance of the said sum of money and the defendant has thereby repudiated his obligation under the said Indenture.

12. By reason of the said failure and neglect and the said repudiation the plaintiff has suffered damages amounting to Rs. 5,036·30 to wit, the said sum of Rs. 3,608·20 being the balance due out of the said principal advanced and the said sum of Rs. 1,428·10 profit which the plaintiff would 40 have made on 14,281 pounds coupons. The plaintiff waives the sum of Rs. 46·30 and restricted his claim to Rs. 4,990/-.

Wherefore the plaintiff prays—

(a) for judgment against the defendant for the said sum of Rs. 4,990/- together with interest thereon at 12 per cent. per annum from

date of action till date of decree and thereafter at the rate of 9 per centum per annum on the aggregate amount till payment in full and costs of this action payable on some day to be named by Court ;

Exhibits.
No. P 40.
Plaint in
D. C.
Colombo.
Case
No. 532.
20-2-42.
—continued.

(b) that all those premises mortgaged by the defendant and in the schedule hereto fully described and set forth be declared specially bound and executable for the payment of the said sum of Rs. 4,990/- interest and costs on the footing of the said Indenture No. 2228 dated 20th August, 1941, and attested by A. M. Fuard, Notary Public of Colombo that in default of payment of the said sum of Rs. 4,990/- interest and costs within such period the said premises declared specially bound and executable as aforesaid be sold by Mr. R. C. McHeyzer, Licensed Auctioneer of Colombo by public auction after such advertisement as he may consider sufficient upon the annexed conditions of sale or such other conditions of sale as may be prescribed by the Court the said auctioneer being directed and authorised to allow the plaintiff or any one else on his behalf to bid for and purchase the said premises at such sale and to do so upon such special terms as the Court may impose, if the Court imposes any, and in the event of the plaintiff becoming the purchaser to allow the plaintiff credit to the extent of his claim and costs, that the Secretary of this Court do execute the necessary conveyance in due form of law in favour of the purchaser or purchasers at such sale on his or their complying with the conditions of sale and on being satisfied if the purchaser be the plaintiff that he has been allowed credit and in the event of the purchaser or purchasers being a third party or parties that the purchase amount has been deposited in Court, that the proceeds of such sale be applied in and towards the payment of the said sum of Rs. 4,990/- interest and costs, that if the proceeds of such sale shall be not sufficient for payment in full of such amount the defendant be ordered to pay to the plaintiff the amount of the deficiency with interest thereon at 9 per cent. per annum until realization and that for that purpose all proper directions may be given and accounts taken by Court ; and

(c) for such other and further relief as to this Court shall seem meet.

(Sgd.) A. M. FUARD,
Proctor for Plaintiff.

THE SCHEDULE REFERRED TO.

All those undivided nineteen-twentieth parts or shares of the land called Dodanwattettenehena now garden bearing registered No. S.C. 6052 at the Tea Controller's Office together with the tea plantations standing thereon, situated at Pallegama in Pallegamapaha Korale of Lower Dumbara, in the District of Kandy, Central Province ; bounded

Exhibits.
 No. P 40.
 Plaint in
 D. C.
 Colombo.
 Case
 No. 532.
 20-2-42.
 —continued.

on the East by road, South by Malakandura of Duranilehena, West by Appullannalagegedera and Kumburewella, and on the North by Kumburegedera Puncha's land and limit of Wehigalagederahena, containing two ammunams and two pelas paddy sowing extent, which said land is otherwise described as follows :—

All that land called Dodanwattettenehena, situated at Pallegama aforesaid ; and bounded on the East by old road and fence, South by ditch, West by Udagederawattekumburewella and limit of Puncha's land; and on the North by limit of Horatala's chena, containing in extent one yelamunam of paddy sowing. 19

2. All that land called Medakotuwawatte together with the tea plantations standing thereon bearing registered No. S.C. 5853 at the Tea Controller's Office, situated at Kandekumbure in Naranpanawa in Palis Pattu Korale of Pata Dumbara in the District of Kandy aforesaid ; and bounded on the North by limit of the land belonging to Kumburegedera Puncha; East by the garden of Kumburegedera Horatala, South by the limit of the land belonging to Amunegedera Kaluwa, and on the West by Medakotuwa belonging to Rantetgedera Horatala, containing in extent about two pelas and five lahas of paddy sowing.

3. All that land called Pupalahena Udahawatte together with the 20 tea plantations standing thereon bearing registered No. S.C. 6048 at the Tea Export Controller's Office, situated at Kandekumbure in Naranpanawa aforesaid ; bounded on the North by ditch of the land belonging to Angara, East by ditch of the land belonging to Jamaldeen, South by limit of Marieland Estate, and on the West also by limit of Marieland Estate, containing in extent about two pelas and five lahas of paddy sowing.

4. All that land called Medakotuwa together with the two plantations standing thereon bearing registered No. S.C. 38676 at the Tea Controller's Office, situated at Kandekumbure in Naranpanawa aforesaid ; bounded 30 on the North by land belonging to Rantetgedera Ukkuwa, East by the fence of Medakotuwewatte, South by limit of the land belonging to Amunegedera Kaluwa, and on the West by the land belonging to Rantetgedera Horatala, containing in extent about eight lahas of paddy sowing.

5. An undivided half part or share of the land called Rantetgederawatte together with the tea plantations standing thereon bearing registered No. S.C. 5858 at the Tea Controller's Office, situated at Kandekumbure in Naranpanawa aforesaid ; bounded on the North by Marieland Estate, East by Wella of Ambagahamulakumbure, South by the ditch and limit of Puncha's land, and on the West by Marieland Estate, containing in 40 extent about two amunams of paddy sowing.

6. All that land called Pallegahawatte together with the tea plantations standing thereon bearing registered No. S.C. 5857 at the Tea Controller's Office, situated at Kandekumbure in Naranpanawa aforesaid ; bounded on the North by the limit of Rantetduragedera Hapumali's

garden, East by Kumburewella, South by the limit of Amunegedera Puncha's garden, and on the West by the fence of Medakotuwe Sobanie's garden, containing in extent about nine lahas of paddy sowing.

Exhibits.
No. P 40.
Plaint in
D. C.
Colombo.
Case
No. 532.
20-2-42.
—continued.

(Sgd.) A. M. Fuard,
Proctor for Plaintiff.

Documents Filed with the Plaintiff

1. Indenture No. 2228 dated 20th August, 1941, and attested by A. M. Fuard, Notary Public, marked " A " and referred to in the plaint.
2. Conditions of sale marked " B ".

10

(Sgd.) A. M. Fuard,
Proctor for Plaintiff.

P42.

Journal Entries in D.C. Colombo Case No. 532.

IN THE DISTRICT COURT OF COLOMBO

No. P 42.
Journal
Entries in
D. C.
Colombo.
Case
No. 532.
20-2-42 to
20-3-42.

M. S. MARIKAR *Plaintiff.*
No. 532/M.B., Class : III;
Amount : Rs. 4,990/-, vs.
Nature : M.B. Pro. Reg.
K. R. SAMARATUNGE *Defendant.*

20

JOURNAL

- (1) The 20th day of February, 1942.
Mr. A. M. Fuard files appointment (1a) and Plaint (1b) together with Bond (1c) No. 2228 dated 20th August, 1941, and conditions of sale (1d).

Plaint accepted subject to the power of the Court to give other or further directions under section 12 of the Mortgage Ordinance (Cap. 74) as to the terms on which the mortgagee may be allowed to purchase, etc.

Summons order for 4th May, 1942.

30

(Intd.) J. J.,
D. J.

- (2) 11- 3-42. SS tendered — not in order.
- (3) 11- 3-42. SS issued on defendant Kandy.

- Exhibits. (4) 26- 3-42. Original SS in this having been issued to the Fiscal of the Central Province, proctor for plaintiff moves for a duplicate summons to be issued to the Fiscal, Western Province, for service on the defendant as the defendant has left for Colombo in order to evade service of SS on him by the Fiscal, Central Province.
Issue duplicate SS.
(Intd.) J. J.
- No. P 42.
Journal
Entries in
D. C.
Colombo.
Case
No. 532-
20-2-42 to
20-3-43.
—continued.
- (5) 31- 3-42. Duplicate SS issued on defendant, Western Province.
- (6) 4- 5-42. SS not sd. not fd. 10
Address insufficient.
Proctor for steps.
(Intd.) J. J.,
A. D. J.
- (7) 14- 5-42. As the defendant is now resident at Fincham's land, Uugala, in the District of Kandy, proctor for plaintiff moves for a date to issue SS on defendant for service.
He also moves that a duplicate SS be issued to be served at Pettah, Colombo.
Application allowed. 20
Re-issue for 29/6.
(Intd.) J. J.,
A. D. J.
- (8) Received summons to re-issue.
(Sgd.) A. M. Fuard,
10-5-42.
- (9) 25- 5-42. SS re-issued on defendant, Kandy, and duplicate SS re-issued on defendant, Western Province.
- (10) 29- 6-42. Mr. A. M. Fuard for plaintiff.
SS not served on defendant either at the Kandy or the Colombo address.
At Kandy he is not known—at Colombo there is no one answering to his name.
Ascertain correct address and move.
(Intd.) J. J.,
A. D. J.
- Received summons and duplicate summons to re-issue.
(Sgd.) Illegibly.
2-7-42.
(Sgd.) A. M. Fuard. 40

- (11) 14- 7-42. For the reasons stated in the motion Mr. A. M. Fuard for plaintiff moves for a date to re-issue SS on defendant to his Urugala address and also for duplicate SS on him to the Colombo address given.
Alld. re-issue 17-8-42.
(Intd.) J. J.,
A. D. J.
- (12) 15- 7-42. SS re-issued on defendant, Kandy.
Duplicate SS re-issued to Western Province.
- 10 (18) 17- 8-42. Duplicate SS on defendant issued to Colombo not served.
No one answering to the name.
No return from Kandy.
Re-issue 21/9.
- Deft. is pt. and admits claim and asks for 9 months.
Enter decree. Order to sell not to issue for 6 months.
(Intd.) R. F. D.
17/8.
- (14) 12- 9-42. Decree entered.
- 20 (15) 30- 1-43. The defendant having paid to the plaintiff his claim and costs in full, proctor for plaintiff moves that satisfaction of decree be entered of record.
He also moves to take out of record the Bond sued on for registration of discharge and return.
Allowed. Discharged bond.
15/3.
(Intd.) J. J.,
A. D. J.
- Recd. Bond No. 2228 of 20-8-41.
- 80 (Sgd.) A. M. FUARD.
Proctor for Plaintiff.
- (16) 15- 3-43. Bond due — vide motion (16a) for 19/4.
(Intd.) J. J.
- (17) 20- 3-43. Proctor for plaintiff moves to return Mortgage Bond duly discharged.
File.
(Intd.) J. J.,
A. D. J.,

Exhibits.
No. P 42.
Journal
Entries in
D. C.
Colombo.
Case
No. 532.
20-2-42 to
20-3-43.
—continued.

Exhibits.

P48.

No. P 48.
Letter from
A. M. Shams
to Plaintiff.
17-11-42.

Letter from A. M. Shams to Plaintiff.

A. M. SHAMS,
C/o A. M. FUART,
Proctor and Notary.

130, Hultsdorf Street,
Colombo, 17th November, 1942.

Dear Mr. A. R. Weerasuriya,

After I met you at Main Street in Colombo, when I went to office in the noon I was surprise to find the client of ours whose business I casually suggested you. This client is one Mr. K. R. Samaratunge a long standing client of ours for the last nearly ten years or so. And he will pay interest 10 very regularly and do good business. Now he want Rs. 15,000/- on a primary mortgage of his house property with 3 acres of land and 15 acres fully planted tea near his home. This bungalow where he is reside now, it is a good one with water services, etc. These two properties were situated at Medakotuwa, Panwila, is only 13 miles from Kandy. Title is Crown. Further Mr. Fuard had suggested me to get another large estate of 146 acres tea belonging to him near about Kandy as secondary mortgage as an additional security; this estate is worth over Rs. 80,000/- it has a primary mortgage of Rs. 40,000/- and interest have been paid up to date. Out of this Rs. 15,000/- a sum of Rs. 5,000/- will be repaid 20 to you in six months time and the balance money will be paid back after an year. As he returning the money early in instalment he had agreed to pay you an int. of 9 (nine) per cent. This is a good business, he will be very regular in paying you the interest should you accept this. If so please let me know when you can conveniently inspect the land, I shall make all arrangement. This security does not appear as it sufficient enough, but if you will go to see you will realise. In the other hand the borrower is absolutely good and you will be more than satisfied.

Thanking you in anticipation.

Yours truly,
(Sgd.) Illegibly. 30

P49.

Letter from A. M. Shams to Plaintiff.

A. M. SHAMS.
A. M. FUART.
Proctor and Notary.

130, Hultsdorf Street,
Colombo, 23rd November, 1942.

A. R. Weerasuriya, Esq.,
"Sirisevene,"
Ambalangoda.

Dear Mr. Weerasuriya,

I am in receipt of your letter dated the 18th instant and I immediately communicated with my client having consulted Mr. Fuard. I have fixed up to inspect these properties of Mr. Samaratunge at Kandy on this 40

No. P 49.
Letter from
A. M. Shams
to Plaintiff.
23-11-42.

Sunday the 29th inst. Please be in Colombo at the Kandy bus stand at 5th Cross Street near the Municipal latrine between 7 and 8 in the morning. We got to inspect this property definitely on this Sunday. From Colombo we have to go by bus to Kandy and Mr. Samaratunge will be meeting us at the bus stand positively at Kandy and we will have to take breakfast at Kandy and then proceed to the estate by car.

Exhibits.
No. P 40.
Letter from
A. M. Shams
to Plaintiff.
23-11-42.
—continued.

Mr. Fuard highly recommends this loan.

With kind regards.

Yours sincerely,
(Sgd.) Illegibly.

10

P50.

Letter from A. M. Shams to Plaintiff.

No. P 50.
Letter from
A. M. Shams
to Plaintiff.
26-11-42.

A. M. SHAMS.
A. M. FUARD,
Proctor and Notary.

130, Hultsdorf Street,
Colombo, 26th November, 1942.

Dear Mr. Weerasuriya,

I received your letter dated the 24th inst. for which I thank you.

Re interest I have managed to fix up the rate of interest at 10% through Mr. Fuard, now it is O.K.

20 Hope to meet you on the 29th morning at the bus stand between 7 and 8.

Yours truly,
(Sgd.) A. M. SHAMS.

P51.

Telegram from Defendant to Plaintiff.

No. P 51.
Telegram
from Defen-
dant to
Plaintiff.
2-12-42.

TELEGRAM

Address : Weerasuriya,
Sirinivasa,
Nambimulla,
Ambalangoda.

No. 13.

80

DEEDS READY COME TOMORROW TEN.

Fuard.

P1.

Mortgage Bond No. 2308.

Prior Registration (Schedule A) E 290/118-123
 (Schedule B1) F 110/191-204
 (Schedule B2) F 95/56-60

No. 2308

Know all men by these presents that I, Kandekumbura Rajamantrige Samaratunge of Panwila in the District of Kandy (hereinafter calling myself and referred to as the obligor) am justly and truly held and firmly bound unto Alfred Richard Weerasuriya of "Siriniwasa", Nambimulla 10 in Ambalangoda, in the District of Galle (hereinafter called and referred to as the obligee) in the sum of Rupees Fifteen thousand (Rs. 15,000/-) of lawful money of Ceylon being money borrowed and received by me from the said obligee at or before the execution of these presents (the receipt whereof I do hereby expressly admit and acknowledge) to be paid to the said obligee or to his heirs executors administrators or assigns on demand with interest thereon at and after the rate of fifteen per centum per annum to be computed from this date for which payment to be well and truly made I the said obligor bind myself my heirs, executors and administrators firmly by these presents. 20

Provided however that if the payment of interest shall be made regularly monthly at the expiration of each and every succeeding month the first of such payments of interest being made on the third day of January, One thousand Nine hundred and Forty-three then and in any of such cases the said obligee shall accept the said interest calculated at the rate of ten per centum per annum in lieu and in satisfaction of the interest at the aforesaid rate of fifteen per centum per annum anything therein contained to the contrary notwithstanding, but no claim or reduction shall be made in respect of any monthly payment of interest not made on the day or days appointed for the payment of the same or 80 in a space of ten days from the date on which the same ought to be paid as aforesaid.

Provided further that I the said obligor shall pay to the said obligee the said principal sum of Rupees Fifteen thousand (Rs. 15,000/-) by monthly payments of not less than Rupees Five hundred (Rs. 500/-) commencing from the fifteenth day of March, One thousand Nine hundred and Forty-three, the said obligee shall be obliged to accept such monthly instalments and credit the moneys so paid to him on account of the said principal sum and whenever the said monthly payments shall amount to a sum of Rupees One thousand (Rs. 1,000/-) then and in any such cases 40 the interest shall be recovered only on the balance principal which shall then remain unpaid.

Exhibits.

No. P 1.
 Mortgage
 Bond
 No. 2308.
 8-12-42.

And for securing the payment unto the said obligee or his aforewritten of the said principal sum of Rupees Fifteen thousand (Rs. 15,000/-) with interest accruing thereon as aforesaid and all other sum or sums of money payable and recoverable under by virtue or in respect of these presents I the said obligor do hereby specially mortgage and hypothecate to and with the said obligee and his aforewritten as a first or primary mortgage free from all encumbrances whatsoever all those premises in the Schedule "A" hereto fully described and as a secondary mortgage subject however to the primary mortgage created by bond No. 2204 dated 2nd June, 10 1941, and attested by the Notary attesting these presents but free from any other encumbrance whatsoever all those premises in the Schedule "B1" and "B2" hereto described together with all right, privileges, easements, servitudes and appurtenances whatsoever thereunto belonging or in anywise appertaining or usually held occupied, used or enjoyed therewith or reputed to be or known as part and parcel thereof and all the estate, right, title, interest, property, claim and demand whatsoever of me the said obligor into upon or out of the same and every part thereof. And I the said obligor do hereby for myself, my heirs, executors and administrators covenant agree and promise to and with the said obligee 20 and his heirs, executors, administrators and assigns that I have good and legal right to make the foregoing mortgage in the manner aforesaid and that the said premises hereby mortgaged and hypothecated or any part or portion thereof are not (save and except as aforesaid) subject to any charge mortgage lease lieu Fiscal's seizure sequestration or other encumbrance whatsoever and that I and my aforewritten shall and will at all times during the continuance of these presents at the request of the said obligee or his aforewritten but at the cost and expense of me the said obligor and my aforewritten do and execute or cause to be done and executed all such further and other acts deeds matters and things what- 30 soever which may be necessary or expedient for the better and more perfectly and effectually assuring the said premises hereby mortgaged and hypothecated or expressed or intended so to be or any part thereof by way of mortgage and hypothecation unto the said obligee and his aforewritten as by him or them shall or may be reasonably required.

In witness whereof I the said obligor do hereunto and to two others of the same tenor and date as these presents set my hand at Colombo on this third day of December, One thousand Nine hundred and Forty-two.

THE SCHEDULE "A" ABOVE REFERRED TO.

1. All those undivided nineteen-twentieth parts or shares of the 40 land called Dodanwattetennchena now garden bearing registered No. S.C. 6052 at the Tea Controller's Office together with the tea plantations standing thereon, situate at Pallegama in Palle Gampaha Korale of Lower Dumbara, in the District of Kandy, Central Province; bounded on the East by road, South by Malakandura of Duranilehena, West by Appullannalagedera and kumbura wella, and on the North by Kumburagedera Puncha's land and limit of Wetigalagederahena and containing

Exhibits.
No. P 1.
Mortgage
Bond
No. 2308.
3-12-42.
—continued.

Exhibits.
 No. P 1.
 Mortgage
 Bond
 No. 2308.
 8-12-42.
 —continued.

in extent two amunams and two pelas of paddy sowing which said land is otherwise described as follows : All that land called Dodanwellatennenena, situated at Pallegama aforesaid ; and bounded on the East by old road and fence, South by ditch, West by Udagederawatte Kumburawella and limit of Puncha's land, and on the North by limit of Horatala's chena, containing in extent one yelamunam of paddy sowing.

2. All that land called Medakotuwewatte together with all the buildings and the tea plantations standing thereon bearing registered No. S.C. 5853 at the Tea Controller's Office, situated at Kandekumbura in Naranpanawa in Palis Pattu Korale of Pata Dumbara in the District of Kandy aforesaid ; and bounded on the North by limit of the land belonging to Kumburagedera Puncha, East by the garden of Kumburagedera Horatala, South by the land belonging to Amunegedera Kaluwa, and on the West by Medakotuwa belonging to Ranagedera Horatala and containing in extent about two pelas and five lahas of paddy sowing.

3. All that land called Pupalehena-Udahawatte together with the tea plantations standing thereon bearing registered No. S.C. 6048 at the Tea Export Controller's Office, situated at Kandekumbura in Naranpanawa aforesaid and bounded on the North by ditch of the land belonging to Angara, East by ditch of the land belonging to Jamaldeen, South by limit of Marieland Estate, and on the West by limit of Marieland Estate and containing in extent about two pelas and five lahas of paddy sowing.

4. All that land called Medakotuwa with the buildings and tea plantations standing thereon bearing registered No. S.C. 38675 at the Tea Controller's Office, situated at Kandekumbura in Naranpanawa aforesaid and bounded on the North by the land belonging to Rantetgedera Ukkuwa, East by fence of Medakotuwawatte, South by the limit of land belonging to Amunegedera Kaluwa, and on the West by the land belonging to Rantetgedera Horatala and containing in extent about eight lahas in paddy sowing.

5. An undivided half part or share of the land called Ranagederawatte together with all the buildings and the tea plantations standing thereon bearing registered No. S.C. 5858 at the Tea Controller's Office, situated at Kandekumbura in Naranpanawa aforesaid ; and bounded on the North by Marieland Estate, East by Wella of Ambagahamulakumbura, South by the ditch and limit of Puncha's land, and on the West by Marieland Estate, and containing in extent about two amunams of paddy sowing.

6. All that land called Pallehawatte together with the tea plantations standing thereon bearing registered No. S.C. 5857 at the Tea Controller's Office, situated at Kandekumbura in Naranpanawa aforesaid and bounded on the North by the limit of Rantetduragedera Hapumalie's garden, East by Kumburawella, South by limit of Amunegedera Puncha's garden, and on the West by the fence of Medakotuwa Sobanis garden and containing in extent about nine lahas of paddy sowing.

THE SCHEDULE "B" ABOVE REFERRED TO.

Exhibits.

No. P 1.
Mortgage
Bond
No. 2308.
3-12-42.
—continued.

All that one hundred and four acres one rood and eleven perches (A104. R1. P11) in extent according to the figure of survey of 13th November 1935, made by C. G. Krelezhein, Licensed Surveyor, out of all that estate called and known as "Haraslulekele" *alias* "Fincham's land", containing in extent one hundred and sixteen acres and seven perches (A116. R0. P7) according to survey and description thereof made by C. D. Jayasinghe of Kandy, Licensed Surveyor, in the month of December, 1923, situated at Kandegama in Gandeka Korale of Uda Dumbara
10 Division, in the District of Kandy, Central Province, which said one hundred and four acres one rood and eleven perches (A104. R1. P11) comprised of the following allotments of land with the plantations and buildings thereon to wit :

1. All that allotment of land situated at Kandegama aforesaid and bounded on the North by Halgolle-Oya, South by land said to be owned by villagers, East by Halgolle-Oya, and on the West by Kobonella Estate and a road, containing in extent seventeen acres one rood and twenty-four perches (A17. R1. P24).
2. All that allotment of land situated at Kandegama aforesaid
20 and bounded on the East by Halgolle-Oya, North by land said to be owned by villagers, on the South by allotment of eleven acres and nine perches and an allotment of land of two acres and thirty perches, and on the West by Kobonella Estate, and containing in extent thirteen acres three roods and thirty perches (A13. R3. P30).
3. All that allotment of land situated at Kandegama aforesaid ; and bounded on the North-East by allotment of land of thirteen acres three roods and thirty perches, on the South by allotment of land of three acres and twelve perches, on the East by the allotment of land of two acres and thirty perches, and on the West by Kobonella Estate, and containing
30 in extent eleven acres and nine perches (A11. R0. P9).
4. All that allotment of land situated at Kandegama aforesaid ; and bounded on the North by the allotment of land of thirteen acres three roods and thirty perches, on the East by the lands claimed by villagers, on the South by the Ela; and on the West by the allotment of land of eleven acres and nine perches, and containing in extent two acres and thirty perches (A2. R0. P30).
5. All that allotment of land situated at Kandegama aforesaid and bounded on the North by the allotment of land of eleven acres and nine perches, on the South by the land said to be owned by villagers, on
40 the East by allotment of land of eleven acres and nine perches, and on the West by land said to be owned by villagers and a road, containing in extent three acres and twelve perches (A3. R0. P12).
6. All that allotment of land situated at Kandegama aforesaid and bounded on the North, East and South by the allotment of land of

Exhibits.
 No. P 1.
 Mortgage
 Bond
 No. 2308.
 3-12-42.
 —continued.

eleven acres and nine perches, and on the West by Kobonella Estate, containing in extent thirty perches (A0. R0. P30).

7. All that allotment of land situated at Kandegama aforesaid and bounded on the North by a road, on the East and South by land said to be owned by villagers, and on the West by Kobonella Estate, and containing in extent one acre three roods and eighteen perches (A1. R3. P18).

8. All that allotment of land situated at Kandegama aforesaid and bounded on the North by the allotment of land of three acres and twelve perches, on the South and East by the land said to be owned by 10 villagers, and on the West by a road, containing in extent twenty-seven perches (A0. R0. P27).

9. All that allotment of land situated at Kandegama aforesaid and bounded on the North by the land said to be owned by villagers, on the South by allotment of land of nine acres one rood and eighteen perches and land said to be owned by villagers, on the East by stone fence, and on the West by Kobonella Estate, and containing in extent twenty-three acres one rood and thirty perches (A23. R1. P30).

10. All that allotment of land situated at Kandegama aforesaid and bounded on the North by the allotment of land of twenty-three acres 20 one rood and thirty perches, on the East by old trench, on the South by Badulla tree, and on the West by land owned by villagers and kandura, and containing in extent nine acres one rood and eighteen perches (A9. R1. P18).

11. All that allotment of land situated at Kandegama aforesaid and bounded on the North and East by land said to be owned by villagers, on the South and West by the allotment of land of nine acres one rood and twenty perches, and containing in extent five acres and twelve perches (A5. R0. P12).

12. All that allotment of land situated at Kandegama aforesaid 30 and bounded on the North by the allotment of land of three roods and three perches, on the East by the allotment of land of five acres and twelve perches, on the South by the Oya, and on the West by Kobonella Estate, and containing in extent nine acres one rood and twenty perches (A9. R1. P20).

13. All that allotment of land situated at Kandegama aforesaid and bounded on the North by the land said to be owned by villagers, on the East by the allotment of land of five acres and twelve perches, on the South by allotment of land of nine acres one rood and twenty perches, and on the West by Kobonella Estate, and containing in extent three roods 40 and three perches (A0. R3. P3.)

14. All that allotment of land situated at Kandegama aforesaid and bounded on the North by Oya, on the South by Oya, on the East by Oya, and on the West by Oya, and containing in extent six acres one rood and twenty-eight perches (A6. R1. P28).

Which said one hundred and four acres one rood and eleven perches (A104. R1. P11) in extent forms part of all that estate called and known as "Haraslulekele" *alias* "Fincham's land", containing in extent one hundred and sixteen acres and seven perches (A116. R0. P7) according to survey and description thereof made by C. D. Jayasinghe, Licensed Surveyor, in the month of December, 1923, situated at Kandegama aforesaid and composed and made up of the following three allotments of land, to wit :

Exhibits.
No. P 1.
Mortgage
Bond
No, 2808.
3-12-42.
—continued.

(A) An allotment of land situated at Kandegama aforesaid and bounded on the North and North-East by Oya and Emalwatte Estate, on the South and South-East by land claimed by villagers and Ela, and on the West by Horankanda Estate, and containing in extent fifty-nine acres and thirty-four perches (A59. R0. P34).

(B) An allotment of land situated at Kandegama aforesaid and bounded on the North, North-East and East by land claimed by villagers, and on the South and South-West by Kobonella Estate, and on the West by Horankanda Estate, and containing in extent thirty-five acres three roods and ten perches (A35. R3. P10).

(C) An allotment of land situated at Kandegama aforesaid and bounded on the North and East by the land claimed by villagers, and on the South and West by Oya and Kobonella Estate, containing in extent twenty-one acres and three perches (A21. R0. P3) and which said property is otherwise described as follows :—

- (a) The northern portion of three acres in extent from and out of all that allotment of land called Haraslulekelehena of fourteen acres in extent, situated at Kandegama aforesaid and which said northern portion is bounded on the East by Galheeriya, on the South by the land of Ukkurala and Ela, on the West by the limit of Kobonellawatte, and on the North by the limit of chena belong to Meddumarala.
- (b) A portion of six acres in extent from and out of all that land called Haraslulekele of seventeen acres in extent, situated at Kandegama aforesaid and which said portion of six acres in extent is bounded on the East by the limit of the remaining portion on the South by the land of Aratchi, on the West by the limit of Kobonellawatte, and on the North by the limit of a portion of Dingurala.
- (c) All that portion of two acres in extent from and out of all that allotment of land called Haraslulekele of seventeen acres in extent, situate at Kandegama aforesaid and which said portion is bounded on the East by Galpeli-Ella, on the South by the limit of Kawrala's chena, on the West by Meeyapulle's land, and on the North by the Ella of Bulatwatte.
- (d) All that portion of thirty-five acres in extent from and out of all that allotment of land called Haraslulekele of one hundred and

Exhibits.
 No. P 1.
 Mortgage
 Bond
 No. 2308.
 3-12-42.
 —continued.

seventy-seven acres and two roods in extent, situated at Kandegama aforesaid and bounded on the North and East by Haraslule-Ela and the land of natives, on the South and East by the land belonging to natives and Horankande-Oya, and on the South and West by Horankande-Ela, and on the North and West by the land described in plan No. 50110.

- (e) All that portion of three acres in extent from and out of all that allotment of land called Haraslulekele of twenty-one acres in extent, situated at Kandegama aforesaid and which said portion of three acres in extent is bounded on the East by Galheeriya, on the South by the land of Puchaduraya, on the West by the limit of Kobonellawatte, and on the North by the limits of Nattaranpothahena. 10
- (f) All that southern portion of three acres in extent from and out of all that allotment of land called Haraslulekele of one hundred and seventy-seven acres and two roods in extent, situated at Kandegama aforesaid and which said southern portion is bounded on the East by the remaining portion, on the South by the limit of land which belonged to Meeyapulle, on the West by the limit of Kobonellawatte, and on the North by the limit of Nattaranpothahena. 20
- (g) All that western portion of four acres in extent from and out of all that allotment of land called Haraslulekele of one hundred and seventy-seven acres and two roods in extent, situated at Kandegama aforesaid and which said western portion is bounded on the East by Manawa, on the South by the limit of the jungle belonging to Kira, on the West by the limit of the garden belong to gentleman, and on the North by the limit of the land of Kapurala.
- (h) All that portion of seven acres in extent from and out of all that allotment of land called Haraslulekele of one hundred and seventy-seven acres and two roods in extent, situated at Kandegama aforesaid and which said portion of seven acres in extent is bounded on the East by the limit of the jungle belonging to Doraliyadde Appuhamy, on the South by Maha-Oya, on the West by the limit of Kobonella, and on the North by the limit of the garden of Steen. 30
- (i) All that allotment of land called Katuketulehena of about six acres in extent, situated at Kandegama aforesaid and bounded on the East by the Katuketule-Ela, on the South by Ela, on the West by the Ela of Kobokelagolla, and on the North by ditch. 40
- (j) All that portion of fifteen acres in extent from and out of twenty-one acres in extent in and out of all that allotment of land called Haraslulekele of one hundred and seventy-seven acres and two roods in extent, situated at Kandegama aforesaid and which said portion of fifteen acres in extent is bounded on the East by

Haraslulekele-Ela and the land belonging to natives, on the South and East by the land belonging to natives and Horankanda-Ela, on the South and West by Horankande-Ela, and on the North and West by the land described in plan No. 50110, and

Exhibits.
No. P 1.
Mortgage
Bond
No. 2308.
3-12-42.

- (k) An allotment of land called Katuketulekele, situated at Kande-gama aforesaid and bounded on the North by a stream and land claimed by natives, on the East by an Ela and a stream, on the South by a stream, and on the West by an Ela and Watiakka-Ella, and containing in extent five acres three roods and thirty perches (A5. R3. P30).

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—continued.

THE SCHEDULE ABOVE REFERRED TO.

1. All that allotment of land called Galassehena now a garden of about sixteen nellies in kurakkan sowing extent, situated at Udawalankanda in Gandeka Korale of the Uda Dumbara Division in the District of Kandy, Central Province, and bounded on the East by Galkande Menikrala's chena, on the South by the limit of Wattuwaduraya's chena, on the West by below the stone of Patana, and on the North by Ela.
2. All that allotment of land called Warawehena now a garden of thirty nellies in kurakkan sowing extent, situated at Udawela in the Gandeke Korale aforesaid and bounded on the East by the limit of Tikiri-menika's chena, on the South by the limit of Kurundugasmullehena and Mukkangehena, on the West by the limit of Ukkuwaduraya's chena and Herathamgehena, and on the North by Elakandura.
3. All that allotment of land called Egodawewehena now a garden of about thirty seers of kurakkan sowing in extent, situated at Udawela aforesaid and bounded on the East by limit of Heratham's chena and Galkande in Ukkuwavidanagehena, on the South by the ridge of stone in Ukkuwavidane's chena, and on the West by the limit of Mukkangehena, and on the North by Oya and the limit of Polgahakumburegederahena.
4. All that allotment of land called Kosgahamulakadullehena now a garden of thirty nellies of kurakkan sowing extent, situated at Udawela aforesaid and bounded on the East by Oya, on the South by Ela, on the West by Hinikata on Gamagedera Menikrala's chena, and on the North by the limit of Tikirala's chena.
5. All that allotment of land called Egodawewehena now a garden of about forty nellies in kurakkan sowing extent, situated at Udawela aforesaid and bounded on the East by Ela, on the West by the limit of Linsalwatte, on the North by Ela, and on the South by Appuhamy-aratchy's chena, the above described five allotments of land are said to

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Exhibits.
No. P 1.
Mortgage
Bond
No. 2308.
8-12-42.
—continued.

contain forty acres and thirty-two perches (A40. R0. P32) as per plan dated 5th and 6th September, 1928, and made by O. V. Bartholomeusz of Kandy, Licensed Surveyor.

Witnesses :

(Sgd.) A. M. SHAMSUDEEN.
(Sgd.) D. JOACHIM NISSANGA.

(Sgd.) K. R. SAMARATUNGE.

(Sgd.) A. M. FUARD,
Notary Public.

I, Assena Marikar Mohamed Fuard of Colombo in the Island of Ceylon, Notary Public, do hereby certify and attest that the foregoing 10 instrument having been duly read over and explained by me the said Notary to the said thereinnamed executant Kandekumbure Rajamantrige Samaratunge who has signed this deed as " K. R. Samaratunge " and who is known to me in the presence of Assena Marikar Shamsudeen and Don Joachim Nissanga both of No. 130, Hultsdorf in Colombo who have signed as " A. M. Shamsudeen " and " D. Joachim Nissanga " respectively the subscribing witnesses thereto both of whom are also known to me the same was signed by the said executant and also by the said witnesses and also by me the said Notary in my presence and in the presence of one another all being present together at the same time at Colombo aforesaid 20 on this third day of December, One thousand Nine hundred and Forty-two.

And I further certify and attest that in the duplicate of this instrument..... the same was read over and explained by me the said Notary to the said executant as aforesaid and that the duplicate of this instrument bears five stamps of the value of Rupees One hundred and Forty-six (Rs. 146/-) and the original a stamp of One Rupee (Re. 1/-) and that the full consideration herein mentioned was paid in my presence by two cheques bearing Nos. 87515 and 87516 both dated this date and drawn 30 by the obligee on the Bank of Ceylon, Colombo.

Date of attestation :
3rd December, 1942.

Seal.

(Sgd.) A. M. FUARD,
Notary Public.

D5.

Bond No. 2310.

No. D 5.
Bond
No. 2310.
3-12-42.

Prior Registration : E. 290/118—123.

No. 2310

Know all men by these presents that I, Kandekumbure Rajamantrige Samaratunge of Panwila in the District of Kandy (hereinafter calling myself and referred to as the obligor) am justly and truly held and firmly 40 bound unto Mohamed Sulaiman Naina Marikar presently residing at Turret Road in Colombo (hereinafter called and referred to as the obligee)

in the sum of Rupees One thousand (Rs. 1,000/-) of lawful money of Ceylon being money borrowed and received by me the said obligor from the said obligee at or before the execution of these presents (the receipt whereof I do hereby expressly admit and acknowledge) to be paid to the said obligee or to his heirs, executors, administrators or assigns on demand with interest thereon at the rate of fifteen per centum per annum to be computed from this date for which payment to be well and truly made I the said obligor bind myself, my heirs, executors and administrators firmly by these presents.

Exhibits.
No. D 5.
Bond
No. 2310.
3-12-42.
—continued.

10. Provided however that if the payment of interest shall be made regularly monthly at the expiration of each and every succeeding month the first of each payments of interest being made on the third day of January, One thousand Nine hundred and Forty-three, then and in any of such cases the said obligee shall accept the said interest calculated at the rate of twelve per centum per annum in lieu and in satisfaction of the interest at the aforesaid rate of fifteen per centum per annum anything herein contained to the contrary notwithstanding but no claim or reduction shall be made in respect of any monthly payment of interest not made on the day or days appointed for the payment of the same or in a
20 space of ten days from the date on which the same ought to be paid as aforesaid.

And for securing the payment unto the said obligee or his aforewritten of the said principal sum and interest accruing thereon as aforesaid and all other sum or sums of money payable and recoverable under by virtue or in respect of these presents I the said obligor do hereby specially mortgage and hypothecate to and with the said obligee and his aforewritten as a secondary mortgage subject however to the primary mortgage created by bond No. 2308 dated this date and attested by the Notary attesting these presents but free from any other encumbrances whatsoever all those premises in the schedule hereto fully described together
80 with all rights, privileges, easements servitudes and appurtenances whatsoever thereunto belonging or in anywise appertaining or usually held, occupied, used or enjoyed therewith or reputed to be or known as part and parcel thereof and all the estate, right, title, interest, property, claim and demand whatsoever of me the said obligor into upon or out of the same and every part thereof.

And I the said obligor do hereby for myself, my heirs, executors and administrators covenant agree and promise to and with the said obligee and his heirs, executors, administrators and assigns that I have good
40 and legal right to make the foregoing mortgage in the manner aforesaid and that the said premises hereby mortgaged and hypothecated or any part or portion thereof are not (save and accept as aforesaid) subject to any charge, mortgage, lease, lieu, Fiscal's seizure, sequestration or other encumbrances whatsoever and that I and my aforewritten shall and will at any time during the continuance of these presents at the request of the said obligee or his aforewritten but at the cost and expense of me the said obligor and my aforewritten do and execute or cause to be done and

Exhibits.
 No. D 5.
 Bond
 No. 2310.
 8-12-42.
 —continued.

executed all such further and other acts, deeds, matters and things whatsoever which may be necessary or expedient for the better or more perfectly and effectually assuring the said premises hereby mortgaged and hypothecated or expressed or intended so to be or any part thereof by way of mortgage and hypothecation unto the said obligee and his aforewritten as by him or them shall or may be reasonably required.

In witness whereof I the said obligor do hereunto and to two others of the same tenor and date as these presents set my hand at Colombo this third day of December, One thousand Nine hundred and Forty-two.

THE SCHEDULE ABOVE REFERRED TO.

10

1. All those undivided nineteen-twentieth parts or shares of the land called Dodanwattetenahena now garden bearing registered No. S.C. 6052 at the Tea Controller's Office together with the tea plantations standing thereon, situated at Pallegama in Palle Gampaha Korale of Lower Dumbara in the District of Kandy, Central Province bounded on the East by road, South by Malakandura of Duranillehena, West by Appullanualagegedera and Kumburewella, and on the North by Kumburegedera Puncha's land and limit of Wehigalagederahena and containing in extent two amunams and two pelas of paddy sowing which said land is otherwise described as follows :—

20

All that land called Dodanwattetenahena, situated at Pallegama aforesaid and bounded on the East by old road and fence, south by ditch, West by Udagederawattekumburewella and limit of Puncha's land, and on the North by limit of Horatala's chena, and containing in extent one yelamunam of paddy sowing.

2. All that land called Medakotuwewatte together with all the buildings and the tea plantations standing thereon bearing registered No. S.C. 5853 at the Tea Controller's Office, situated at Kandekumbure in Naranpanawa in Palis Pattu Korale of Pata Dumbara in the District of Kandy aforesaid and bounded on the North by limit of the land 30 belonging to Kumburegedera Puncha, East by the garden of Kumburegedera Horatala, South by limit of the land belonging to Amunegedera Kaluwa, and on the West by Medakotuwa belonging to Rantetgedera Horatala, and containing in extent about two pelas and five lahas of paddy sowing.

3. All that land called Pupalehena Uдахawatte together with the tea plantations standing thereon bearing registered No. S.C. 6048 at the Tea Export Controller's Office, situated at Kandekumbure in Naranpanawa aforesaid and bounded on the North by ditch of the land belonging to Angara, East by ditch of the land belonging to Jamaldeen, South 40 by limit of Marieland Estate, and on the West by limit of Marieland Estate, and containing in extent about two pelas and five lahas of paddy sowing.

4. All that land called Medakotuwa with the buildings and tea plantations standing thereon bearing registered No. S.C. 8676 at the

Tea Controller's Office, situated at Kandekumbure in Naranpanawa aforesaid and bounded on the North by land belonging to Rantetgedera Ukkuwa, East by fence of Medakotuwawatte, South by limit of the land belonging to Amunegedera Kaluwa, and on the West by the land belonging to Rantetgedera Horatala, and containing in extent about eight lahas of paddy sowing.

Exhibits.
No. D 5.
Bond
No. 2310.
3-12-42.
—continued.

5. An undivided half part or share of the land called Rantetgederawatte together with all the buildings and the tea plantations standing thereon bearing registered No. S.C. 5858 at the Tea Controller's Office, 10 situated at Kandekumbura in Naranpanawa aforesaid ; and bounded on the North by Marieland Estate, East by Wella of Ambagahamulakumbure, South by the ditch and limit of Puncha's land, and on the West by Marieland Estate, and containing in extent about two amunams of paddy sowing.

6. All that land called Pallehawatte together with the tea plantations standing thereon bearing registered No. S.C. 5857 at the Tea Controller's Office, situated at Kandekumbure in Naranpanawa aforesaid and bounded on the North by the limit of Rantetduragedera Hapumalee's garden, East by Kumburewella, South by the limit of Amunegedera 20 Puncha's garden, and on the West by the fence of Medakotuwa Sobanis garden, and containing in extent about nine lahas of paddy sowing.

Witnesses :

(Sgd.) A. M. SHAMSUDEEN.

(Sgd.) K. R. SAMARATUNGE.

(Sgd.) D. JOACHIM NISSANGA.

(Sgd.) A. M. FUARD,

Notary Public.

I, Assena Marikar Mohamed Fuard of Colombo in the Island of Ceylon, Notary Public, do hereby certify and attest that the foregoing Instrument having been duly read over and explained by me the said Notary to the therein named executant Kandekumbure Rajamantrige 80 Samaratunge who has signed this deed as K. R. Samaratunge and who is known to me in the presence of Assena Marikar Shamsudeen and Don Joachim Nissanga both of No. 130, Hultsdorf in Colombo who have signed as A. M. Shamsudeen and D. Joachim Nissanga respectively the subscribing witnesses thereto both of whom are also known to me the same was signed by the said executant and by the said witnesses and also by me the said Notary in my presence and in the presence of one another all being present together at the same time at Colombo aforesaid on this third day of December, One thousand Nine hundred and Fortytwo.

40 I further certify and attest that..... that the consideration of Rupees One thousand (Rs. 1,000/-) herein mentioned was set off against a part payment of the claim and costs due by the said obligor to the said obligee in case No. 532/M.B. of the District Court of Colombo.

Date of attestation :
3rd December, 1942.

(Sgd.) A. M. FUARD,
Notary Public.

Exhibits.

D4.

No. D 4.
Writing
given by
K. R.
Samaratunge.
3-12-42.

Writing Given by K. R. Samaratunge.

Rs. cts.	Rs. cts.	
15,000·00	375·00	Costs.
11,250·00	375·00	Interest.
	4,500·00	M. S. N.
<u>3,750·00</u>	6,000·00	Shams.
	<u>11,250·00</u>	

Cheque to be issued as above.

(Sgd.) Illegibly. 10
3-12-42.

D13.

No. D 13.
Cheque
drawn by
Defendant
in favour
of Plaintiff
for Rs. 375.
3-12-42.

Cheque drawn by Defendant in favour of Plaintiff for Rs. 375.

No. BB6/37885.

Colombo, 3-12-42.

IMPERIAL BANK OF INDIA, COLOMBO.

Pay to A. R. Weerasuriya, Esq. or bearer Rupees Three hundred and Seventy-five only.

Rs. 375/-.

(Sgd.) A. M. FUARD.

(Sgd.) A. R. WEERASURIYA.

D14.

No. D 14.
Cheque
drawn by
Defendant
in favour
of K. R.
Samaratunge
for Rs. 3750.
4-12-42.

Cheque drawn by Defendant in favour of K. R. Samaratunge for Rs. 3,750/-.

No. BB6/37886.

Colombo, 4-12-42.

IMPERIAL BANK OF INDIA, COLOMBO.

Pay to K. R. Samaratunge, Esq. or bearer Rupees Three thousand Seven hundred and Fifty only.

Rs. 3,750/-.

(Sgd.) A. M. FUARD.

(Sgd.) K. R. SAMARATUNGE.

(Sgd.) A. M. SHAMS.

D15.

**Cheque drawn by Defendant in favour of K. R. Samaratunge
for Rs. 3,500/-.**

No. BB6/37890.

Colombo, 4-12-42.

IMPERIAL BANK OF INDIA, COLOMBO.

Pay to K. R. Samaratunge or bearer Rupees Three thousand Five
hundred only.

Rs. 3,500/-.

(Sgd.) A. M. FUART.

(Sgd.) K. R. SAMARATUNGE.

10 (Sgd.) A. M. SHAMS.

Exhibits.

No. D 15.
Cheque
drawn by
Defendant
in favour
of K. R.
Samaratunge
for Rs. 3500.
4-12-42.

D16.

**Cheque drawn by Defendant in favour of K. R. Samaratunge
for Rs. 2,500/-.**

No. BB6/37889.

Colombo, 4-12-42.

IMPERIAL BANK OF INDIA, COLOMBO.

Pay to K. R. Samaratunge or bearer Rupees Two thousand Five hundred
only.

Rs. 2,500/-.

(Sgd.) A. M. FUART.

(Sgd.) K. R. SAMARATUNGE.

20 (Sgd.) A. M. SHAMS.

No. D 16.
Cheque
drawn by
Defendant
in favour
of K. R.
Samaratunge
for Rs. 2500.
4-12-42.

D17.

**Cheque drawn by Defendant in favour of K. R. Samaratunge
for Rs. 4,500/-.**

No. BB6/37888.

Colombo, 4-12-42.

IMPERIAL BANK OF INDIA, COLOMBO.

Pay to K. R. Samaratunge or bearer Rupees Four thousand Five hundred
only.

Rs. 4,500/-.

(Sgd.) A. M. FUART.

(Sgd.) K. R. SAMARATUNGE.

30 (Sgd.) Illegibly.

No. D 17.
Cheque
drawn by
Defendant
in favour
of K. R.
Samaratunge
for Rs. 4500.
4-12-42.

P68.

Exhibits.

No. P 68.
Cheque
Book cover
showing
record of
Cheques
drawn.

Cheque Book cover showing record of Cheques drawn.

RECORD OF CHEQUES DRAWN.

No.	Date	Name	Amount
87501	16- 9-41	P. G. Hosp.	115
87502	17- 9-41	Cash	100
87503	17- 9-41	Dr. J. H. F. Jayasuriya	200
87504	24- 9-41	Pr. Gen. Hospital	168·10
87505	11-12-41	Cash	300
87506	18-12-41	"	50 10
87507	24-12-41	"	250
87508	16- 2-42	"	200
87509	25- 2-42	"	1,750
87510	27- 3-42	"	550
87511	Cancelled.		
87512	7- 7-42	Govt. Eastern Life Ass. Co.	100
87513	3- 9-42	H. V. de Silva	25
87514	3- 9-42	A. M. Fuard	50
87515	3-12-42	K. R. Samaratunge	14,625
87516	"	"	375 20
87517	8-12-42	Cash	1,125
87518	29-12-42	"	1,950
87519	23- 2-43	R. P. Arthur de Silva	100
87520	27- 3-43	Cash	1,750

P37.

No. P 37.
Indenture
No. 634.
15-1-43.

Indenture No. 634.

Prior Registration: Kandy F 116/139—152.

No. 634

This Indenture made and entered into at Colombo in the Island of Ceylon this fifteenth day of January, One thousand Nine hundred and 30 Forty-three, between Kandekumbure Rajamantrige Samaratunge of Medakotuwa in Panwila in the Island (hereinafter called and referred to as the party of the first part which expression as herein used where the context so requires or admits be taken to mean and include him, his heirs, executors, administrators and assigns) of the one part and Khemchand Moolchand of Colombo aforesaid (hereinafter called and referred to as the party of the second part which expression as herein used shall where the context so requires or admits be taken to mean and include

him, his heirs, executors, administrators and assigns) of the other part witnesseth as follows :—

The parties having carefully examined the accounts now between them in respect of the moneys due on mortgage bond No. 2204 dated 2nd June, 1941, attested by A. M. Fuard of Colombo aforesaid, Notary Public, affecting the lands in the schedule to the said bond and in the schedule hereto fully described do admit that a sum of Forty-four thousand Five hundred Rupees (Rs. 44,500/-) is now due from the party of the first part to the party of the second part.

Exhibits.
—
No. P 37.
Indenture
No. 634.
15-1-43.
—continued.

10 **2.** The parties do hereby covenant that the said admission is at all times hereafter binding and conclusive on them and that the accounts and statements shall not hereafter be opened or unravelled.

3. The party of the first part agrees to pay to the party of the second part the said sum of Forty-four thousand Five hundred Rupees (Rs. 44,500/-) with interest thereon at the rate of twelve per centum per annum as provided for in the said bond No. 2204 from 1st May, 1942, in manner following, namely, a sum of Rs. 2,000/- (Two thousand Rupees) on or before 2nd March, 1943, a sum of Rs. 6,000/- (Six thousand Rupees) and interest on the balance sum outstanding on or before 30th June,
20 1943, and thereafter a sum of Rs. 3,000/- (Three thousand Rupees) and interest on the balance sum outstanding half yearly.

Provided however that it shall be lawful for the party of the first part to pay interest at the rate of six per centum per annum if such payment is made on or before the due date.

4. In case any of the instalments and interest shall from any cause whatever not be paid upon the days hereinbefore mentioned for such respective payments then it shall be lawful for the party of the second part at once to sue on the said bond No. 2204 dated 2nd June, 1941 for the recovery of the said sum of Forty-four thousand Five hundred
30 Rupees (Rs. 44,500/-) and interest or of the balance then remaining unpaid out of the said sum of Rs. 44,500/- with interest.

In witness whereof the parties hereto have set their hands to these presents and to two others of the same tenor and date at Colombo aforesaid.

THE SCHEDULE ABOVE REFERRED TO.

All that one hundred and four acres one rood and eleven perches (A104. R1. P11) in extent according to the plan dated 13th November, 1935, made by C. G. Kelszhein, Licensed Surveyor, out of all that estate called and known as Haraslulekele *alias* Fincham's land, containing in
40 extent one hundred and sixteen acres and seven perches (A116. R0. P7) according to the plan made by C. D. Jayasinghe, Surveyor, in December, 1923, and situated at Kandegama in Gandeka Korale of the Uda Dumbara Division in the District of Kandy, Central Province, in the Island of Ceylon, which said one hundred and four acres one rood and

Exhibits.
 No. P 37.
 Indenture
 No. 634.
 15-1-43.
 —continued.

eleven perches (A104. R1. P11) comprised of the following allotments of land with the plantations and buildings thereon to wit :

(1) All that allotment of land situated at Kandegama aforesaid and bounded on the North and East by Halgolla-Oya, on the South by land said to be owned by villagers, and on the West by Kobonelle Estate and a road and containing in extent seventeen acres one rood and twenty-four perches (A17. R1. P24).

(2) All that allotment of land situated at Kandegama aforesaid and bounded on the North by land said to be owned by villagers, on the East by Halgolla-Oya, on the South by the allotment of land of eleven 10 acres and nine perches and an allotment of land of two acres and thirty perches, and on the West by Kobonella Estate, and containing in extent thirteen acres three roods and thirty perches (A13. R3. P30).

(3) All that allotment of land situated at Kandegama aforesaid and bounded on the North and North-East by an allotment of land of thirteen acres three roods and thirty perches, on the East by the allotment of land of two acres and thirty perches, on the South by an allotment of land of three acres and twelve perches, and on the West by Kobonella Estate, and containing in extent eleven acres and nine perches (A11. R0. P9). 20

(4) All that allotment of land situated at Kandegama aforesaid and bounded on the North by the allotment of land of thirteen acres three roods and thirty perches, on the East by the lands claimed by villagers, on the South by Ela, and on the West by the allotment of land of eleven acres and nine perches, and containing in extent two acres and nine perches, and containing in extent two acres and thirty perches (A2. R0. P30).

(5) All that allotment of land situated at Kandegama aforesaid and bounded on the North by the allotment of land of eleven acres and nine perches, on the East by the allotment of land of eleven acres and 30 nine perches, on the South by the land said to be owned by villagers and by the allotment of land of twenty-seven perches, and on the West by land said to be owned by villagers and a road and containing in extent three acres and twelve perches (A3. R0. P12).

(6) All that allotment of land situated at Kandegama aforesaid and bounded on the North-East and South by the allotment of land of eleven acres and nine perches, and on the West by Kobonella Estate, and containing in extent thirty perches (A0. R0. P30).

(7) All that allotment of land situated at Kandegama aforesaid and bounded on the North by a road, on the East and South by lands 40 said to be owned by villagers, and on the West by Kobonella Estate, and containing in extent one acre three roods and eighteen perches (A1. R3. P18).

(8) All that allotment of land situated at Kandegama aforesaid and bounded on the North by the allotment of land of three acres and twelve perches, on the East and South by the land said to be owned by

villagers, and on the West by a road, and containing in extent twenty-seven perches (A0. R0. P27).

(9) All that allotment of land situated at Kandegama aforesaid and bounded on the North by the lands said to be owned by villagers, on the East by stone fence, on the South by allotment of land of nine acres one rood and eighteen perches and land said to be owned by villagers and on the West by Kobonella Estate, and containing in extent twenty-three acres one rood and thirty perches (A23. R1. P30).

10 (10) All that allotment of land situated at Kandegama aforesaid and bounded on the North by the allotment of land of twenty-three acres one rood and thirty perches, on the East by old trench, on the South by Badulla tree, and on the West by land owned by villagers and Kandura, and containing in extent nine acres one rood and eighteen perches (A9. R1. P18).

(11) All that allotment of land situated at Kandegama aforesaid and bounded on the North and East by land said to be owned by villagers, and on the South and West by the allotment of land of nine acres one rood and twenty perches, and containing in extent five acres and twelve perches (A5. R0. P12).

20 (12) All that allotment of land situated at Kandegama aforesaid and bounded on the North by the allotment of land of three roods and three perches, on the East by the allotment of land of five acres and twelve perches, on the South by Oya, and on the West by Kobonella Estate, and containing in extent nine acres one rood and twenty perches (A9. R1. P20).

(13) All that allotment of land situated at Kandegama aforesaid and bounded on the North by the land said to be owned by villagers, on the East by the allotment of land of five acres and twelve perches, on the South by allotment of land of nine acres one rood and twenty perches, 30 and on the West by Kobonella Estate, and containing in extent three roods and three perches (A0. R3. P3.).

(14) All that allotment of land situated at Kandegama aforesaid and bounded on the North, East, South and West by Oya, and containing in extent six acres one rood and twenty-eight perches (A6. R1. P28).

Which said one hundred and four acres one rood and eleven perches (A104. R1. P11) in extent forms part of all that estate called and known as Haraslulekele *alias* Fincham's land, containing in extent one hundred and sixteen acres and seven perches (A116. R0. P7) according to plan made by C. D. Jayasinghe, Licensed Surveyor, in December, 1923, and 40 situated at Kandegama aforesaid and composed and made up of the following three allotments of land, to wit :—

(A) An allotment of land situated at Kandegama aforesaid and bounded on the North and North-East by Oya and Ensalwatte Estate, on the South and South-East by land claimed by villagers

Exhibits.

No. P 37.
Indenture
No. 634.
15-1-43.
—continued.

Exhibits.

No. P 37.
Indenture
No. 634.
15-1-43.

—continued.

and Ela, on the West by Horankanda Estate, and containing in extent fifty-nine acres and thirty-four perches (A59. R0. P34).

- (B) An allotment of land situated at Kandegama aforesaid and bounded on the North, North-East and East by land claimed by villagers, on the South and South-West by Kobonella Estate, and on the West by Horankanda Estate, and containing in extent thirty-five acres three roods and ten perches (A35. R3. P10).
- (C) An allotment of land situated at Kandegama aforesaid and bounded on the North and East by the land claimed by villagers, 10 on the South and West by Oya and Kobonella Estate, and containing in extent twenty-one acres and three perches (A21. R0. P3).

Signed in the presence of us :

(Sgd.) A. RATNAM CHETTY.

(Sgd.) K. D. D. EKANAYAKE.

(Sgd.) K. R. SAMARATUNGE.

(Sgd.) K. MOOLCHAND.

(Sgd.) S. KANAGARAJAH,
Notary Public.

I, Sabapathy Kanagarajah of Colombo in the Island of Ceylon, Notary Public, do hereby certify and attest that the foregoing agreement 20 having been read over by the said Kandekumbure Rajamantrige Samaratunge and the same having been read and explained by me the said Notary to the said Khemchand Moolchand both of whom are known to me and have signed it as K. R. Samaratunge and K. Moolchand respectively in the presence of Alagappa Chetty Ratnam Chetty, 58, Vincent Street, Colombo, aforesaid, and Kuruppu Appuhamilage Don Daniel Ekanayake of Kadalawella, Pamunugama, in the said Island, the subscribing witnesses hereto, both of whom are known to me the same was signed by the said Kandekumbure Rajamantrige Samaratunge by the said Khemchand Moolchand by the said witnesses and by me the said Notary in the presence of one another all being present together at 30 the same time at 282 (24), Dam Street, Colombo, aforesaid, this fifteenth day of January, One thousand Nine hundred and Forty-three.

And I further certify and attest that the duplicate bears nine stamps of the value of Rs. 358·50 and the original one stamp of the value of Re. 1/-.

Date of attestation :
15th January, 1943.

Which I attest :

(Sgd.) S. KANAGARAJAH,
Notary Public.

D6.

Letter from K. R. Samaratunge to Defendant.

Fincham's land,
Urugala, 12-4-43.

A. M. FUART, ESQ.,
130, Hultsdorf Street,
Colombo.

Dear Sir,

I thank you for reminding Mr. Weerasuriya's money.

10 I regret to mention that I had little delay in finally completing my timber order for want of trucks.

I have already mentioned this fact to Mr. Weerasuriya, but anyway I have fully completed my order now and I am expecting a payment voucher this week and no sooner I get it I will remit Mr. Weerasuriya's money direct.

I understand from the Forest Department, Nuwara Eliya, that probably I might get a voucher from the Conservator of Forests about the 17th or 19th inst.

Thanking you to be excused the little delay.

20

I am, Sir,
Yours faithfully,
(Sgd.) K. R. SAMARATUNGE.

D7.

Letter from K. R. Samaratunge to Defendant.

Fincham's land,
Urugala, 25-6-43.

A. M. FUART, ESQ.,
Proctor S.C.,
130, Hultsdorf Street.

30 Dear Sir,

I have negotiated and fixed for the sale of Fincham's land on the 20th July to one Mr. Warunakulasuriya of Mirissa. After the inspection, the copies of the title deeds were taken to his lawyer at Gampola. I understand from the broker that his lawyer has approved the title. The amount will first be sufficient to cover the three debts I owe on the properties.

Exhibits.

No. D 6.
Letter from
K. R.
Samaratunge to
Defendant,
12-4-43.

No. D 7.
Letter from
K. R.
Samaratunge to
Defendant.
25-6-43.

Exhibits.
 No. D 7.
 Letter from
 K. R.
 Samara-
 tunge to
 Defendant.
 25-6-43.
 —continued.

Mr. Warunakulasuriya's proctor, I presume one Wickremesooriya, will be paying the three debts direct to the parties concerned on the 20th or 21st July.

Kindly inform this to Messrs. Weerasuriya and Naina Marikkar.

The timber contract did not come up to my expectation. The transporting charges were heavy and hardly there was any profit.

Thanking you.

Yours faithfully,
 (Sgd.) K. R. SAMARATUNGE.

No. D 10.
 Draft of
 Letter from
 Defendant to
 K. R.
 Samara-
 tunge.
 19-8-43.

D10.

10

Draft of Letter from Defendant to K. R. Samaratunge.

19-8-43.

K. R. SAMARATUNGE,
 Fincham's land,
 Urugala.

Dear Sir,

Since the date your bond was signed I have failed to pay interest to my client Mr. Weerasooriya nor to Mr. M. S. Naina Marikar. Every time I write to you demanding the payment you are in the habit of giving some excuses. Ultimately on 5-6-43 you informed me that the amount due to my clients will be paid fully. As you have made arrangement to sell the property. Since then I have not heard anything further from you. I really cannot understand you. My clients are nervous and they have definitely instructed me to file action. This is the final letter I am writing to you on the subject. On your failure to send the full interest to my client Mr. Weerasuriya and the principal and interest to Mr. Naina Marikar within 7 days I am instructed to sue you to recover the full amount due.

No. D 9.
 Certificate
 of Posting.
 20-8-43.

D9.

Certificate of Posting.

30

Posted this date two letters addressed to:

1. K. R. Samaratunge, Fincham's land, Urugala.
2. K. R. Samaratunge, Panwila, Medakotuwa.

Colombo, 20-8-43.

Letter from K. R. Samaratunge to Defendant.

Fincham's land,
Urugala, 22-8-43.

Exhibits.
No. D 8.
Letter from
K. R.
Samaratunge to
Defendant
22-8-43.

A. M. FWARD, ESQ.,
130, Hultsdorf Street,
Colombo.

Dear Sir,

I am in receipt of your letter and thanks.

10 I have made all arrangements for the sale of my estate. The buyers are asking for a valuation report now and I have requested Mr. G. H. Tisson to give me one. The report will be forwarded in due course and I hope to come to a settlement within the next fortnight or so. Anyway, Sir, I shall thank you to give me time till end of September.

Trust that you will kindly do me this favour.

I am, Sir,

Yours faithfully,

(Sgd.) K. R. SAMARATUNGE.

P38.

20

Plaint in D. C. Colombo Case No. 941.

IN THE DISTRICT COURT OF COLOMBO.

No. 941/M.B.
Class : V.
Amount : Rs. 51,620/-.
Pro. Reg. Nature : Mortgage.

No. P 38.
Plaint in
D. C.
Colombo
Case
No. 941.
3-9-43

KHEMCHAND MOOLCHAND of 118, Main Street, Colombo.....*Plaintiff.*

vs.

KANDEKUMBURE RAJAMANTRIGE SAMARATUNGE of Medakotuwa,
Panwila.....*Defendant.*

30 **ALFRED RICHARD WEERASURIYA** of Sriniwasa, Nambiwela,
Ambalangoda.....*Necessary Party.*

On this 3rd day of September, 1943.

The plaint of the plaintiff above-named appearing by Leslie William Frederick de Saram, Stanley Frederick de Saram, James Aubrey Martensz, David Ernest Martensz and Percival Stephen Martensz, practising in partnership under the name, style and firm of F. J. & G. de Saram and

Exhibits.
 No. P 38.
 Plaintiff in
 D. C.
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 —continued.

their assistants William Henry Edwin Ludovici, Cyril Morgan George de Saram, George Neil Stewart de Saram, Clifford Trevor de Saram, Albert Reginald Tampoe, Ilex Frederick Malcolm Pullenayagam, Eric Douglas Toussaint, Victor Gunaratnam Cooke and Edward Ambrose Ludovici his proctors states as follows :—

1. The contract sought to be enforced in this action was entered into and the cause of action hereinafter set out arose at Colombo within the local limits of the jurisdiction of this Court.

2. By an indenture and bond or obligation in writing bearing No. 2204 dated 2nd June, 1941, and attested by A. M. Fuard of Colombo, 10 Notary Public (the original whereof is filed herewith marked "A" and pleaded as part of this plaintiff) the defendant specially mortgaged and hypothecated to and with the plaintiff as a primary mortgage free from all encumbrances all that the estate and the lands and premises in the Schedules "A" and "B" hereto and in the Schedules "A" and "B" to the said Indenture and bond No. 2204 fully described (which said estate, lands and premises are hereinafter referred to as "the said lands and premises") as security for the payment by the defendant to the plaintiff of the sum of Rs. 35,000/- advanced to the defendant by the plaintiff at the execution of the contemporaneous indenture bearing 20 No. 2203 also dated 2nd June, 1941, and attested by the said A. M. Fuard, Notary Public (the original whereof is filed wherewith marked "B" and pleaded as part of this plaintiff) and of such other monies as might become due and payable by the defendant to the plaintiff in terms of the said Indenture No. 2203.

3. On or about the 15th January, 1943, the plaintiff and the defendant looked into their accounts and entered into Indenture bearing No. 634 dated 15th January, 1943, and attested by K. Kanagarajah of Colombo, Notary Public (the original whereof is filed herewith marked "C" and pleaded as part of this plaintiff). 30

4. By the said Indenture No. 634 the defendant admitted that the amount then due to the plaintiff on the said Indenture and Bond No. 2204 was Rs. 44,500/-. The defendant further agreed in the said Indenture No. 634 to pay to the plaintiff the said sum of Rs. 44,500/- with interest thereon at 12% per annum from the 1st day of May, 1942, in manner following, namely, a sum of Rs. 2,000/- on or before 2nd March, 1943, a sum of Rs. 6,000/- and interest on the balance sum outstanding on or before 30th June, 1943; and thereafter a sum of Rs. 3,000/- and interest on the balance sum outstanding half yearly. It was also agreed in the said Indenture No. 634 that should the defendant make 40 default in the payment of any of the instalments when due to the plaintiff then the plaintiff was at liberty at once to sue on the said Indenture and Bond No. 2204 for the recovery of the said sum of Rs. 44,500/- and interest or of the balance then remaining unpaid out of the said sum of Rs. 44,500/- with interest as aforesaid.

5. The plaintiff states that the defendant has failed and neglected to pay to the plaintiff any one of the said instalments although the time for the payment of the first two instalments (totalling Rs. 8,000/-) and interest has expired, and there is now due owing and payable by the defendant to the plaintiff the said sum of Rs. 44,500/- together with interest thereon at the rate of 12% per annum from the 1st May, 1942, which sum or any part thereof the defendant has failed and neglected to pay though often requested.

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3-9-43
—continued.

6. A cause of action has therefore accrued to the plaintiff to sue the defendant for the recovery of the said sum of Rs. 44,500/- together with the sum of Rs. 7,120/- being interest thereon at 12% per annum from the 1st May, 1942 to the 31st August, 1943, aggregating to Rs. 51,620/- and for a decree for the sale the said lands and premises described in the Schedules "A" and "B" hereto and in the Schedules "A" and "B" to the said Indenture and Bond No. 2204.

7. The necessary party is made a party to this action under Section 6 of the Mortgage Ordinance (Cap. 74) he being a person having a secondary mortgage on, and, as such secondary mortgagee an interest in the said lands and premises mortgaged to and with the plaintiff by the said Indenture and Bond No. 2204 marked "A" to which the said secondary mortgage and interest the plaintiff's mortgage has priority.

Wherefore the plaintiff prays—

- (a) for judgment against the defendant in the said sum of Rs. 51,620/- and interest on Rs. 44,500/- at the said rate of 12% per annum from 1st September, 1943, till date of decree and thereafter on the aggregate amount of the decree at the legal rate of 9% per annum till date of payment in full ;
- (b) for costs of this action ;
- (c) for an order and decree against the defendant and the necessary party declaring all those the said lands and premises in the said Schedules "A" and "B" hereto fully described together with the buildings now standing and hereafter to be erected thereon and all rights, ways, easements, privileges, servitudes and appurtenances whatsoever to the said lands and premises belonging or in any wise appertaining or usually held, occupied, used or enjoyed therewith or reputed to be known as part and parcel thereof and all the estate, right, title, interest, property claim and demand whatsoever of the defendant and of the necessary party into upon or out of the said lands and premises specially and primarily bound and executable for the said sum of Rs. 51,620/- interest and costs on the footing of the said Indenture and Bond No. 2204 dated 2nd June, 1941, and the said Indenture No. 634 dated 15th January, 1943 ;
- (d) that the Court do order the defendant to pay to the plaintiff the said sum of Rs. 51,620/- interest and costs by a date to be fixed by the Court (if any) and in default of such payment that the

Exhibits-
 No. P 38.
 Plaintiff in
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said lands and premises in the said Schedules “ A ” and “ B ” hereto fully described, specially bound and executable as aforesaid be sold by Justin Gerhard Vandersmagt of Colombo aforesaid, Licensed Auctioneer, by public auction at his office in Colombo aforesaid upon the conditions of sale herewith filed marked “ X ” and pleaded as part of this plaintiff the said auctioneer being directed and authorised (1) to advertise the sale thereof in one issue of the Ceylon Government Gazette in one issue of the Ceylon Observer and in one issue of the Ceylon Daily News at least 20 days prior to the sale and by the distribution of hand 10 bills or circulars to such persons as he shall in his discretion consider to be likely bidders at least 10 days before the sale, and by beat of gong at his office at the time of the sale, (2) to put up the said lands and premises in the schedule hereto fully described for sale, first at the amount of the said auctioneer’s valuation, and in the event of there being no bidders at such amount, then immediately thereafter to the highest bidder, (3) to allow the plaintiff or any one else on his behalf, to bid for and purchase all or any of the said lands and premises at the sale for any sum whatever as the highest bidder, and, in the event 20 of the plaintiff becoming purchaser, to allow the plaintiff credit in any sum not exceeding the aggregate amount of his claim and costs and (4) that the Secretary of this Court for the time being be authorised to execute the necessary conveyance of the said lands and premises in favour of the purchaser at the sale on the purchaser complying with the said conditions of sale and producing (1) if the purchaser be the plaintiff an order of Court confirming that the plaintiff is at the date of confirmation of the sale, entitled to credit in the sum allowed by the said auctioneer, or—in the event of the purchaser being a third party—an order 30 of court declaring that the purchase money has been duly deposited in Court, and (ii) an order of Court confirming the sale ;

- (e) that the proceeds of the sale be applied in and towards the payment of the said sum of Rs. 51,620/- interest and costs, and, if such proceeds shall not be sufficient for the payment in full of such amount, that the defendant be decreed to pay to the plaintiff the amount of the deficiency with interest thereon at the said legal rate of 9% per annum until realization and for this purpose that all proper directions be given and accounts taken by the Court ; and 40
- (f) for such further and other relief in the premises as to this Court shall seem meet.

(Sgd.) F. J. & G. DE SARAM,
Proctors for Plaintiff.

THE SCHEDULE "A" ABOVE REFERRED TO.

Exhibits.

No. P 38.

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—continued.

All that one hundred and four acres one rood and eleven perches (A104. R1. P11) in extent according to the figure of survey dated 13th November, 1935, made by C. G. Krelsheim, Licensed Surveyor, out of all that estate called and known as "Haraslulekele" *alias* "Fincham's land", containing in extent one hundred and sixteen acres and seven perches (A116. R0. P7) according to the survey and description thereof made by C. D. Jayasinghe of Kandy, Licensed Surveyor, in the month of December, 1923, situated at Kandegama in Gandeke Korale of the Uda Dumbara Division, in the District of Kandy, Central Province, which said one hundred and four acres one rood and eleven perches (A104. R1. P11) comprised of the following allotments of land with the plantations and buildings thereon, to wit :

(1) All that allotment of land situated at Kandegama aforesaid ; bounded on the North by Halgolla-Oya, on the South by land said to be owned by villagers, on the East by Halgolla-Oya, and on the West by Kobonelle Estate and a road, containing in extent seventeen acres one rood and twenty-four perches (A17. R1. P24).

(2) All that allotment of land situated at Kandegama aforesaid : bounded on the East by Halgolla-Oya, on the North by land said to be owned by villagers, on the South by the allotment of land of eleven acres and nine perches and an allotment of land of two acres and thirty perches, and on the West by Kobonelle Estate, containing in extent thirteen acres three roods and thirty perches (A13. R3. P30).

(3) All that allotment of land situated at Kandegama aforesaid ; bounded on the North and North-East by allotment of land of thirteen acres three roods and thirty perches, on the South by allotment of land of three acres and twelve perches, on the East by the allotment of land of two acres and thirty perches, and on the West by Kobonelle Estate, containing in extent eleven acres and nine perches (A11. R0. P9).

(4) All that allotment of land situated at Kandegama aforesaid ; bounded on the North by the allotment of land of thirteen acres three roods and thirty perches, on the East by the lands claimed by villagers, on the South by Ela, and on the West by the allotment of land of eleven acres and nine perches, containing in extent two acres and thirty perches (A2. R0. P30).

(5) All that allotment of land situated at Kandegama aforesaid ; bounded on the North by the allotment of land of eleven acres and nine perches, on the South by the land said to be owned by villagers and by the allotment of land of twenty-seven perches, on the East by allotment of land of eleven acres and nine perches, and on the West by land said to be owned by villagers and a road, containing in extent three acres and twelve perches (A3. R0. P12).

(6) All that allotment of land situated at Kandegama aforesaid ; bounded on the North, East and South by the allotment of land of eleven

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 —continued.

acres and nine perches, and on the West by Kobonelle Estate, containing in extent thirty perches (A0. R0. P30).

(7) All that allotment of land situated at Kandegama aforesaid; bounded on the North by a road, on the East and South by land said to be owned by villagers, and on the West by Kobonelle Estate, containing in extent one acre three roods and eighteen perches (A1. R3. P18).

(8) All that allotment of land situated at Kandegama aforesaid; bounded on the North by the allotment of land of three acres and twelve perches, on the South and East by the land said to be owned by villagers, and on the West by a road, containing in extent twenty-seven perches 10 (A0. R0. P27).

(9) All that allotment of land situated at Kandegama aforesaid; bounded on the North by the lands said to be owned by villagers, on the South by allotment of land of nine acres one rood and eighteen perches and land said to be owned by villagers, on the East by stone fence, and on the West by Kobonelle Estate, containing in extent twenty-three acres one rood and thirty perches (A23. R1. P30).

(10) All that allotment of land situated at Kandegama aforesaid; bounded on the North by the allotment of land of twenty-three acres one rood and thirty perches, on the East by old trench, on the South 20 by Badulla tree, and on the West by land owned by villagers and Kandura, containing in extent nine acres one rood and eighteen perches (A9. R1. P18).

(11) All that allotment of land situated at Kandegama aforesaid; bounded on the North and East by land said to be owned by villagers, on the South and West by the allotment of land of nine acres one rood and twenty perches, containing in extent five acres and twelve perches (A5. R0. P12).

(12) All that allotment of land situated at Kandegama aforesaid; bounded on the North by the allotment of land of three roods and three perches, on the East by the allotment of land of five acres and twelve 30 perches; on the South by the Oya, and on the West by Kobonelle Estate, containing in extent nine acres one rood and twenty perches (A9. R1. P20).

(13) All that allotment of land situated at Kandegama aforesaid; bounded on the North by the land said to be owned by villagers, on the East by the allotment of land of five acres and twelve perches, on the South by the allotment of land of nine acres one rood and twenty perches, and on the West by Kobonelle Estate, containing in extent three roods and three perches (A0. R3. P3).

(14) All that allotment of land situated at Kandegama aforesaid; bounded on the North by Oya, on the East by Oya, on the South by Oya, 40 and on the West by Oya, containing in extent six acres one rood and twenty-eight perches (A6. R1. P28).

Which said one hundred four acres one rood and eleven perches (A104. R1. P11) in extent forms part of all that estate called and known as Haraslulekele *alias* Fincham's land, containing in extent one hundred and sixteen acres and seven perches (A116. R0. P7) according to the survey

and description thereof made by C. D. Jayasinghe, Licensed Surveyor, in the month of December, 1923, situated at Kandegama aforesaid and composed and made up of the following three allotments of land, to wit:

Exhibits.
No. P 38.
Plaint in
D. C.
Colombo
Case.
No. 941.
3-9-43.
—continued.

- (A) An allotment of land situated at Kandegama aforesaid ; bounded on the North and North-East by Oya Ensalwatte Estate, on the South and South-East by land claimed by villagers and Ela, and on the West by Horakanda Estate, containing in extent fifty-nine acres and thirty-four perches (A59. R0. P34).
- 10 (B) An allotment of land situated at Kandegama aforesaid ; bounded on the North, North-East and East by land claimed by villagers, on the South and South-West by Kobonella Estate, and on the West by Horakande Estate, containing in extent thirty-five acres three roods and ten perches (A35. R3. P10).
- (C) An allotment of land situated at Kandegama aforesaid ; bounded on the North and East by the land claimed by villagers, on the South and West by Oya and Kobonella Estate, containing in extent twenty-one acres and three perches (A21. R0. P3)

Which said property is otherwise described as follows :—

- 20 (a) The northern portion of three acres in extent from and out of all that allotment of land called Haraslulekehena of fourteen acres in extent, situated at Kandegama aforesaid and which said northern portion is bounded on the East by Galheeriya, on the South by the land of Ukkurala and Ela, and on the West by the limit of Kobonellewatte, and on the North by limit of chena belonging to Meddumarala.
- (b) A portion of six acres in extent from and out of all that land called Haraslulekele of seventeen acres in extent, situated at Kandegama aforesaid and which said portion of six acres in extent is bounded on the East by the limit of the remaining portion, on the South by the land of Aratchi, on the West by the limit of Kobonelle Estate, and on the North by limit of the portion of Dingurala.
- 80 (c) All that northern portion of two acres in extent from and out of all that allotment of land called Haraslulekele of seventeen acres in extent, situated at Kandegama aforesaid and which said northern portion is bounded on the East by Galpeli-Ella, on the South by the limit of Kawrala's chena, on the West by Meeyapulle's land, and on the North by the Ella of Bulatwatte.
- 40 (d) All that portion of thirty-five acres in extent from and out of all that allotment of land called Haraslulekele of one hundred and seventy-seven acres and two roods in extent, situated at Kandegama aforesaid ; bounded on the North and East by Haraslule-Ela and the land of natives, on the South and East by the land belonging to natives and Horakanda-Oya, on the South and West by Horakanda-Ela, and on the North and West by the land described in plan No. 50110.

Exhibits.
 No. P 38.
 Plaint in
 D. C.
 Colombo
 Case
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 3-9-43.
 —continued.

- (e) All that portion of three acres in extent from and out of all that allotment of land called Haraslulekele of twenty-one acres in extent, situated at Kandegama aforesaid and which said portion of three acres is bounded on the East by Galheeriya, on the South by the land of Punchaduraya, on the West by limit of Kobonellewatte, and on the North by the limit of Nattaranpothahena.
- (f) All that southern portion of three acres in extent from and out of all that allotment of land called Haraslulekele of one hundred and seventy-seven acres and two roods in extent, situated at 10 Kandegama aforesaid and which said southern portion is bounded on the East by the remaining portion, on the South by the limit of the land which belonged to Meeyapulle, on the West by the limit of Kobonellewatte, and on the North by the limit of Nattaranpothahena.
- (g) All that western portion of four acres in extent from and out of all that allotment of land called Haraslulekele of one hundred and seventy-seven acres and two roods in extent, situated at Kandegama aforesaid and which said western portion is bounded on the East by Manawa, on the South by the limit of the jungle 20 belonging to Kira, on the West by the limit of the garden belonging to gentleman, and on the North by the limit of the land of Kapurala.
- (h) All that portion of seven acres in extent from and out of all that allotment of land called Haraslulekele of one hundred and seventy-seven acres and two roods in extent, situated at Kandegama aforesaid and which said portion of seven acres in extent is bounded on the East by the limit of the jungle belonging to Doraliyadde Appuhamy, on the South by the Maha-Oya, on the West by the limit of Kobonellawatte, and on the North by the 30 limit of the garden of Steen.
- (i) All that allotment of land called Katukitulehena of about six acres in extent, situated at Kandegama aforesaid ; bounded on the East by Katukitule-Ela, on the South by Ela, on the West by the Ela of Kobonolagolla, and on the North by ditch.
- (j) All that portion of fifteen acres in extent from and out of twenty-one acres in extent from and out of all that allotment of land called Haraslulekele of one hundred and seventy-seven acres and two roods in extent, situated at Kandegama aforesaid and which said portion of fifteen acres in extent is bounded on the 40 East by Haraslule-Ela and the land belonging to natives, on the South and East by the land belonging to natives and Horakanda-Ela, on the South and West by Horakanda-Ela, and on the North and West by the land described in plan No. 50110 ; and
- (k) An allotment of land called Katukitulekele, situated at Kandegama aforesaid ; bounded on the North by a stream and land

claimed by natives, on the East by an Ela and a stream, on the South by a stream, and on the West by an Ela and Watiaka-Ela, containing in extent five acres three roods and thirty perches.

Exhibits.
No. P 38.
Plaint in
D. C.
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3-9-43.
—continued.

THE SCHEDULE " B " ABOVE REFERRED TO.

1. All that allotment of land called Gallassehena now a garden of about sixteen nellies in kurakkan sowing extent, situated at Udawelakanda in Gandeka Korale of the Uda Dumbara Division, in the District of Kandy, Central Province; and bounded on the East by Galkandemenikralagehena, on the South by the limit of Wattuwa Duraya's chena, on the West by the below the stone of Patana, and on the North by Ela.

2. All that allotment of land called Warawehena now a garden of thirty nellies in kurakkan sowing extent, situated at Udawela in Gandeka Korale aforesaid and bounded on the East by the limit of Tikiri Menika's chena, on the South by the limit of Kurundugasmullehena and Mukkagehena, on the West by the limits of Ukkuwa Duraya's hena and Herathamigehena, and on the North by Ela-Kandura.

3. All that allotment of land called Egodawewehena now a garden of about thirty seers in kurakkan sowing extent, situated at Udawela aforesaid and bounded on the East by the limit of Herathamy's chena and Galkanda in Ukkuwavidanegehena, on the South by ridge of stone in Ukkuwa Vidane's hena, on the West by the limit of Mukkagehena, and on the North by Oya and the limit of Polgahakumburegederahena.

4. All that allotment of land called Kosgahamulakadullehena now a garden of thirty nellies of kurakkan sowing extent, situated at Udawela aforesaid and bounded on the East by Oya, on the South by Ela, on the West by Hinikata on Gamagedera Menikrala's chena, and on the North by the limit of Tikirala's chena.

5. All that allotment of land called Egodawewehena now a garden of about forty nellies in kurakkan sowing extent, situated at Udawela aforesaid and bounded on the East by Ela, on the West by the limit of Ensalwatte, on the North by Ela, and on the South by Appuhamy Aratchi's hena; the above described five allotments of land are said to contain forty acres and thirty-two perches (A40. R0. P32) as per plan dated 5th and 6th September, 1928, made by O. V. Bartholomeusz of Kandy, Licensed Surveyor.

Together with all and singular the rights, ways, easements, privileges, servitudes and appurtenances whatsoever to the said estate and the said lands and premises belonging or in any wise appertaining or usually held, occupied, used or enjoyed therewith or reputed to be or known as part and parcel thereof and all the estate, right, title, interest, property, claim and demand whatsoever of the said Kandekumbure Rajamantrige Samaratunge into upon or out of the same.

(Sgd.) F. J. & G. DE SARAM,
Proctors for Plaintiff.

Exhibits.
No. P 38.
Plaint in
D. C.
Colombo
Case.
No. 941.
3-9-43.
—continued.

Documents Filed with the Plaintiff :

1. Original Indenture and Bond No. 2204 dated 2nd June, 1941 (A. M. Fuard, Notary Public) marked " A ".
2. Original Indenture No. 2203 dated 2nd June, 1941 (A. M. Fuard, Notary Public) marked " B ".
3. Original Indenture No. 634 dated 15th January, 1943 (S. Kanagarajah, Notary Public) marked " C ".
4. Conditions of sale marked " X ".

Documents Relied on by Plaintiff :

1. Plaintiff's books of account. 10
2. Correspondence, etc.

(Sgd.) F. J. & G. DE SARAM,
Proctors for Plaintiff.

Settled by :
(Sgd.) E. G. WICKREMANAYAKE,
Advocate.

P39.

Journal Entries in D. C. Colombo Case No. 941.

IN THE DISTRICT COURT OF COLOMBO.

No. P 39.
Journal
Entries in
D. C.
Colombo.
Case
No. 941.
8-9-43 to
5-6-44.

No. 941/M.B. 20

Class :
Amount : Rs. 51,620/-.
Nature : Mortgage Bond.
Pro. Regular.

K. MOOLCHAND*Plaintiff.*

vs.

K. R. SAMARATUNGE.....*Defendant.*

A. R. WEERASURIYA.....*Necessary Party*

JOURNAL.

The 8th day of September, 1943. 30

- (1) Messrs. F. J. & G. de Saram, Proctors, file appointment (1a) and plaint (1b) together with three Indentures " A ", " B " and " C " (1c), (1d) and (1e) respectively, and conditions of sale marked " X " (1f).

Plaint accepted subject to the power of the Court to give other or further directions under Section 12 of the Mortgage

Ordinance, 1927 (Chapter 74) as to the terms on which the mortgagee may be allowed to purchase, etc. Summons ordered for 18th October, 1943.

Exhibits.
No. P 39.
Journal
Entries in
D. C.
Colom' o.
Case
No. 941.
8-9-43 to
5-6-44.

(Intd.) S. J. C. S.,
A. D. J.

(2) 8-10-43. Summons issued on necessary party, Balapitiya, with precept returnable. —continued.

10 (3) 9-10-43. Proctors for plaintiff tender original warrant of attorney (3a) No. 635 executed by the defendant in favour of Mr. S. Somasunderam, Proctor, and moves that Court be pleased to direct the summons on the defendant be served on the said proctor.
Certified copy of warrant of attorney was filed with the Secretary on 28-1-43 as will be seen from receipt tendered.

Allowed.

(Intd.) S. J. C. S.

(4) 12-10-43. Summons on defendant issued to Fiscal, Western Province.

20 (5) 18-10-43. Messrs. F. J. & G. de Saram for plaintiff.
No return to summons on defendant and necessary party. They are—

Await and re-issue for 22-11-43.

Later.

Summons served on necessary party—he is absent.
Ex parte on 1st November.
Minute (5a) and (5b) of consent from Attorney of defendant filed.

(Intd.) S. J. C. S.

30 (6) 22-10-43. Proctors for plaintiff move for a date to issue summons on the necessary party and that *ex parte* order at (5) be vacated.

Order at (5) vacated. Issue summons on necessary party for 22/11.

(Intd.) S. J. C. S.

(7) 22-10-43. Summons re-issued on necessary party, Western Province.

- Exhibits. (8) 22-11-43. Messrs. F. J. & G. de Saram for plaintiff.
 No. P 39. Summons served on necessary party by being pointed
 Journal out. He is absent.
 Entries in Affidavit on 6/12.
 D. C. (Intd.) S. J. C. S.
 Colombo.
 Case
 No. 941.
 8-9-43 to
 5-6-44.
 —continued. (9) 6-12-43. Messrs. F. J. & G. de Saram for plaintiff.
 Affidavit of identity due—*vide* (8) filed (9).
Ex parte affidavit (9a) tendered.
 Enter judgment as prayed and order abs. against
 necessary party. 10
 (Intd.) S. J. C. S.
- (10) 17-12-43. Decree entered.
- (11) 12- 1-44. Proctors for plaintiff apply for execution of decree by
 issue of order to sell the mortgaged properties. Copy
 decree (11a) tendered.
 Allowed.
 (Intd.) S. J. C. S.
- (12) 10- 2-44. Proctor for plaintiff tenders plaintiff's bill of costs
 with notice to proctor for defendant who signs as
 attorney. 20
 Plaintiff's costs taxed at
 Incurred Rs. 499·25.
 Prospective Rs. 79·77.
 (Intd.) C. E.,
Secretary.
- (18) 15- 2-44. Order to sell issued. Returnable 15-2-45.
- (14) 13- 3-44. With reference to the commission issued in this case,
 Auctioneer states that he has fixed the sale for 29-4-44
 at 2 p.m. at his office and as the cost of publishing the
 full notice in the papers would be prohibitive, he moves 30
 for commission of Court to publish the amended notice
 (14a) annexed hereto.
 Allowed.
 (Intd.) S. J. C. S.
 13-3-44.

- (15) 18- 4-44. Proctors for plaintiff file the valuation (15a) report of the Commissioner valuing the mortgaged premises at Rs. 45,000/- and moves that the Auctioneer's commission be fixed at one per cent.
- I fix (one %).
(Intd.) R. F. D.
19/4.
- Exhibit. No. P 39.
Journal Entries in D C. Colombo. Case No. 941. 8-9-43 to 5-6-44.
—continued.
- (16) 1- 5-44. Paying in voucher for Rs. 192/- issued to Mr. J. G. Vandersmagt on account for poundage.
- 10 (17) 11- 5-44. Proctor for plaintiff tender Auctioneer's return (17a) together with the perfected conditions (17b) of sale for filing.
- Property purchased by plaintiff for Rs. 16,000/-
File.
(Intd.) S. J. C. S.,
A. D. J.
- (18) 1- 6-44. K.R.12/5 No. 56662 of 1-5-44 for Rs. 192/ filed.
- (19) 1- 6-44. Proctors for plaintiff move that the sale held on 29-4-44 in this case be confirmed as no application has been made to set aside the same. Stamps for order confirming sale tendered.
- 20
- Support.
(Intd.) S. J. C. S.
- (20) *Eo die.* The plaintiff having purchased the lands and premises sold under the order to sell for Rs. 16,000/- and the plaintiff having been given credit for the said sum in terms of the decree, proctors for plaintiff move for an order confirming credit allowed to the plaintiff by the Auctioneer to the extent of the said sum of Rs. 16,000/- and to direct the Secretary of this Court to execute the conveyance in favour of the plaintiff as purchaser.
- 30
- Support.
(Intd.) S. J. C. S.
A. D. J.
- (21) 5- 6-44. Mr. T. de Saram in support of motion at (19) and (20).
- (a) I confirm sale.
- (b) I confirm the credit allowed to the plaintiff and direct the Secretary to execute the conveyance in favour of the plaintiff.
- 40
- (Intd.) S. J. C. S.,
A. D. J.

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P53.

Exhibits.
No. P 53.
Letter from
Defendant
to Plaintiff.
18-11-48.

Letter from Defendant to Plaintiff.

A. M. FUART,
Proctor & Notary.

130, Hultsdorf Street,
Colombo, 18-11-48.

Mr. Weerasuriya,

I have looked into the case. I think you better file your proxy. Stamps required is Rs. 25/-.

Please sign the proxy and send Rs. 45/-.

Yours sincerely,
(Sgd.) A. M. FUART. 10

19-11-48.
No. 002175 (M.O.)

P54.

No. P 54.
Letter from
Defendant
to Plaintiff.
24-11-48.

Letter from Defendant to Plaintiff.

A. M. FUART,
Proctor & Notary.

130, Hultsdorf Street,
Colombo, 24-11-48.

Dear Mr. Weerasuriya,

I received your M. O. Rs. 45/- on the 22nd instant. I could not cash same on that date as the advice has not reached the post office.

The case will be called on the 6th December. I did not file your proxy on the 22nd. If necessary I shall file same on the 6th December and let you know. Mr. Samaratunge saw me on the 22nd in the Court and informed me that he will be in Colombo on the 25th to oppose the case. I shall watch the case and let you know.

Yours sincerely,
(Sgd.) A. M. FUART.

P55.

No. P 55.
Letter from
Defendant
to Plaintiff.
15-12-48.

Letter from Defendant to Plaintiff.

A. M. FUART,
Proctor & Notary.

130, Hultsdorf Street,
Colombo, 15-12-48. 30

Dear Mr. Weerasuriya,

This is to inform you that I did look into the D.C. case filed by Mr. Moolchand against Mr. Samaratunge. I find that the Court has not given

him time. Mr. Samaratunge was under the impression that Court has granted him time. I am also writing to him informing about this asking him to see me immediately.

Exhibits
No. P 55.
Letter from
Defendant
to Plaintiff
15-12-48.
—continued.

Yours sincerely,
(Sgd.) A. M. FUARD.

D1.

Valuation Report Filed in D. C. Colombo Case No. 941.

J. G. VANDERSMAGT.

20, Baillie Street,
Colombo.

No. D 1.
Valuation
Report filed
in D. C.
Colombo.
Case
No. 941.
12-4-44.

10

AUCTION SALE

IN THE DISTRICT COURT OF COLOMBO

No. 941/M.B.

KHEMCHAND MOOLCHAND of 118, Main Street, Colombo.....*Plaintiff.*

vs.

KANDEKUMBURE RAJAMANTRIGE SAMARATUNGE of Medakotuwa,
Panwila.....*Defendant.*

ALFRED RICHARD WEERASURIYA of "Srinivasa," Nambiwela,
Ambalangoda.....*Necessary Party.*

HIS HONOUR,
20 **THE DISTRICT JUDGE,**
Colombo.

Sir,

With reference to the commission issued to me in the above case to enable me to sell the property called Fincham's land, situated at Kande-gama, in the District of Kandy, Central Province.

I have fixed the sale for Saturday, 29th April, 1944, at 2 p.m. at my office No. 20, Baillie Street, Fort, Colombo.

The sale notice with the full Schedules "A" and "B" appears in the Government Gazette of the 10th March, 1944, this notice cost Rs. 150/-, 30 similar notices if published in the daily papers would cost Rs. 300/- each. In the terms of the commission issued to me I have to advertise the sale once in the Government Gazette, once in the Ceylon Observer and once

Exhibits.
 No. D 1.
 Valuation
 Report filed
 in D. C.
 Colombo.
 Case
 No. 941.
 12-4-44.
 —continued.

in the Ceylon Daily News. If the full schedule is published the cost will be prohibitive, in the circumstances I beg to apply for leave of Court to publish the annexed amended notice instead.

I am, Sir,
 Your obedient servant,
 (Sgd.) J. G. VANDERSMAGT,
Auctioneer & Commissioner.

10th March, 1944.

AUCTION SALE

IN THE DISTRICT COURT OF COLOMBO

No. 941/M.B.

10

KHEMCHAND MOOLCHAND of 118, Main Street, Colombo.....*Plaintiff.*

vs.

KANDEKUMBURE RAJAMANTRIGE SAMARATUNGE of Medakotuwa,
 Panwila.....*Defendant.*

ALFRED RICHARD WEERASURIYA of “Sriniwasa,” Nambiwela,
 Ambalangoda.....*Necessary Party.*

By virtue of the commission issued to me and the decree in the above action, notice is hereby given that on the 29th day of April, 1944, at 2 p.m. I shall sell at my office No. 20, Baillie Street, Fort, Colombo, the following lands and premises mortgaged with the plaintiff by Bond No. 2204 dated the 2nd day of June, 1941, attested by A. M. Fuard of Colombo, Notary Public, and declared specially bound and executable under the decree entered in the above action dated 6th December, 1943, for the recovery of a sum of Rs. 51,620/- (being principal and interest calculated up to the 1st day of August, 1943) with further interest on Rs. 44,500/- at the rate of twelve per centum per annum from the 1st September, 1943, till the date of the said decree and thereafter on the aggregate amount of the said decree at the rate of nine per centum per annum till date of payment in full and costs of suit taxed at Rs. 579.02.

SCHEDULE “ A ”

30

All the one hundred and four acres one rood and eleven perches (A104. R1. P11) in extent according to the figure of survey dated 13th November, 1935, made by C. G. Krelsheim, Licensed Surveyor, out of all that estate called and known as Haraslulekele *alias* Fincham’s land, containing in extent one hundred and sixteen acres and seven perches (A116. R0. P7) according to the survey and description thereof made by O. D. Jayasinghe of Kandy, Licensed Surveyor, in the month of December, 1923, situated at Kandegama in Gandeke Korale of the Uda Dumbara

Division, in the District of Kandy, Central Province (for a full description of the various allotments of land which comprised the said (A104. R1. P11) please see the Ceylon Government Gazette dated 10th March, 1944).

Exhibits.
—
No. D 1.
Valuation
Report filed
in D. C.
Colombo.
Case
No. 941.
12-4-44.
—continued.

SCHEDULE " B "

1. All that allotment of land called Gallassehena now a garden of about sixteen nellies in kurakkan sowing extent, situated at Udawelakanda in Gandeke Korale of the Uda Dumbara Division, in the District of Kandy, Central Province; and bounded on the East by Galkande's Menikrala's hena, on the South by the limit of Wattuwa Duraya's chena, 10 on the West by the below the stone of Patana, and on the North by Ela.

2. All that allotment of land called Warawehena now a garden of thirty nellies in kurakkan sowing extent, situated at Udawela in Gandeke Korale aforesaid and bounded on the East by the limit of Tikiri Menika's chena, on the South by the limits of Kurundugasmullehena and Mukkagehena, on the West by the limits of Ukkuwa Duraya's hena and Herathaligehena, and on the North by Ela Kanduwa.

3. All that allotment of land called Egodawewehena now a garden of about thirty seers of kurakkan sowing extent, situated at Udawela aforesaid and bounded on the East by the limit of Heratham's chena 20 and Galkanda in Ukkuwavidanage chena, on the South by ridge of stone in Ukkuwa Vidane's hena, on the West by the limit of Mukkagehena, and on the North by Oya and the limit of Polgahakumburegederahena.

4. All that allotment of land called Kosgahamulakadullehena now a garden of thirty nellies in kurakkan sowing extent, situated at Udawela aforesaid and bounded on the East by Oya, and on the South by Ela, on the West by Hinikata on Gamagedera Menikrala's chena, and on the North by the limit of Tikirala's chena.

5. All that allotment of land called Egodawewehena now a garden of about forty nellies in kurakkan sowing extent, situated at Udawela 30 aforesaid and bounded on the East by Ela, on the West by the limit of Ensalwatte, on the North by Ela, and on the South by Appuhamy aratchy's hena, and above described five allotments of land are said to contain forty acres and thirty-two perches (A40. R0. P32) as per plan dated 5th and 6th September, 1928, made by C. V Bartholomeusz of Kandy, Licensed Surveyor.

Together with and all singular the rights, ways, easements, privileges, servitudes and appurtenances whatsoever to the said estate and the said lands and premises belonging or in anywise appertaining or usually held, occupied, used or enjoyed therewith or reputed to be or known as part 40 and parcel thereof and all the estate, right, title, interest, property, claim

Exhibits.
 No. D 1.
 Valuation
 Report filed
 in D. C.
 Colombo.
 Case
 No. 941.
 12-4-44.
 —continued.

and demand whatsoever of the said **Kandakumbure Rajamantrige Samaratunge** into upon or out of the same.

For inspection of title deeds and other particulars apply to Messrs. **F. J. & G. de Saram**, Proctors, Colombo.

**20, Baillie Street,
 Fort, Colombo.
 Phone : 4985.**

**J. G. VANDERSMAGT,
 Auctioneer & Commissioner.**

D1

J. G. VANDERSMAGT.

**20, Baillie Street,
 Colombo.**

10

AUCTION SALE

IN THE DISTRICT COURT OF COLOMBO

No. 941/M.B.

KEMCHAND MOOLCHAND of 118, Main Street, Colombo.....*Plaintiff.*

vs.

KANDEKUMBURE RAJAMANTRIGE SAMARATUNGE of Medakotuwa,
 Panwila.....*Defendant.*

ALFRED RICHARD WEERASURIYA of "Srinivasa," Nambiwella,
 Ambalangoda.....*Necessary Party.*

By virtue of the commission issued to me in the above action, I 20 inspected the under-mentioned land called and known as Fincham's land more fully described below.

All that one hundred and four acres one rood and eleven perches (A104. R1. P11) in extent according to the figure of survey, dated 13th November, 1935, made by C. G. Krelsheim, Licensed Surveyor, out of all that estate called and known as Haraslulekele *alias* Fincham's land, containing in extent one hundred and sixteen acres and seven perches (A116. R0. P7) according to the survey and description thereof made by C. D. Jayasinghe of Kandy, Licensed Surveyor, in the month of December, 1923, situated at Kandegama in Gandeke Korale of the Uda Dumbara 30 Division, in the District of Kandy, Central Province.

SCHEDULE " B "

All that allotment of land called Gallassehena now a garden of about sixteen nellies in kurakkan sowing extent, situated at Udawelakanda in Gandeke Korala of the Uda Dumbara Division, in the District of

Kandy, Central Province; and bounded on the East by Galkande's Menikarala's hena, on the South by the limit of Wattuwa Duraya's chena, on the West by the below the stone of Patana and on the North by Ela.

Exhibits.
No. D 1.
Valuation
Report filed
in D. C.
Colombo.
Case
No. 941.
12-4-44.
—continued.

2. All that allotment of land called Warawehena now a garden of thirty nellies in kurakkan sowing extent, situated at Udawela in Gandeke Korale aforesaid; and bounded on the East by the limit of Tikiri Menika's chena, on the South by the limits of Kurundugasmullehena and Mukkagehena, on the West by the limits of Ukkuwa Duraya's hena and
10 Herathambigehena, and on the North by Ela Kandura.

3. All that allotment of land called Egodawewehena now a garden of about thirty seers of kurakkan sowing extent, situated at Udawela aforesaid; and bounded on the East by the limit of Herathamby's chena and Galkanda in Ukkuwavidange chena, on the South by ridge of stone in Udduwavidane's hena, on the West by the limit of Mukkagehena, and on the North by Oya and the limit of Polgahakumburegederahena.

4. All that allotment of land called Kosgahamulakadullehena now a garden of thirty nellies in kurakkan sowing extent, situated at Udawela aforesaid; and bounded on the East by Oya, and on the South by Ela,
20 on the West by Hinikata, on Gamagedera Menikarala's chena, and on the North by the limit of Tikirala's chena.

5. All that allotment of land Egodawewehena now a garden of about forty nellies in kurakkan sowing extent, situated at Udawela aforesaid; and bounded on the East by Ela, on the West by the limit of Ensalwatte, on the North by Ela, and on the South by Appuhamy Aratchy's hena; the above described five allotments of land are said to contain forty acres and thirty-two perches (A40. R0. P32) as per plan dated 5th and 6th September, 1928, made by C. V. Bartholomeusz of Kandy, Licensed Surveyor.

30 Together with and singular the rights, ways, easements, privileges, servitudes and appurtenances whatsoever to the said estate and the said lands and premises belonging or in anywise appertaining or usually held, occupied, used or enjoyed therewith or reputed to be or known as part and parcel thereof and all the estate, rights, title, interest, property, claim and demand whatsoever of the said Kandekumbure Rajamantrige Samaratunge into upon or out of the same.

I am of opinion that this land is reasonably worth Rupees Forty-five thousand (Rs. 45,000/-).

(Sgd.) J. G. VANDERSMAGT,
Commissioner.

40 12th April, 1944.

* * * * *

Exhibits. (14) 13-3-44. With reference to the Commission issued in this case, Auctioneer states that he has fixed the sale for 29-4-44 at 2 p.m. at his office and as the costs of publishing the full notice in the papers would be prohibitive, he moves for permission of Court to publish the amended notice (14a) annexed hereto.

No. D 1.
Valuation
Report filed
in D. C.
Colombo.
Case
No. 941.
12-4-44.
—continued.

Allowed.
(Intd.) S. S.
13-3-44.

P56.

10

No. P. 56.
Letter from
Defendant
to Plaintiff.
24-5-44.

Letter from Defendant to Plaintiff.

A. M. FUARD,
Proctor & Notary.

130, Hultsdorf Street,
Colombo, 24th May, 1944.

A. R. WEERASURIYA, Esq.,
"Srinivasa," Nambimulla,
Ambalangoda.

BOND NO. 2308—K. R. SAMARATUNGE.

Dear Mr. Weerasuriya,

When you are coming to see me regarding the above action please bring Rs. 263·30 being stamps and fees as per memo below. 20

Yours faithfully,
(Sgd.) A. M. FUARD.

	Rs.	cts.	
Proxy	15	00	
Plaint	15	00	
Summons	15	00	
Binding fees	0	50	
Translation of plaint and summons ...	7	50	
1 Schedule on necessary party ...	2	40	
Proctor <i>re</i> warrant of attorney ...	10	50	30
Lis pendens	5	00	
Draft decree	5	00	
Certified copy of decree	15	40	
Registration of decree	6	00	
Certified copy of decree to accompany order to sell	7	50	
Stamps thereon	15	00	
Order to sell	5	00	
2 Schedules thereto	4	80	
Bill of costs and 2 copies and notice ...	15	00	40
Stamps thereon	15	00	

			Rs.	cts.	
Notice of taxation	...	...	5	40	Exhibits. No. P 56. Letter from Defendant to Plaintiff. 24-5-44. —continued.
2 Schedule thereto	...	...	4	80	
Fees	...	...	52	50	
Counsel's fee for settling	...	...	31	00	
			263	30	
			45	00	
			218	30	

Received Rupees Two hundred Eighteen and Cents Thirty (Rs. 218·30).

10

(Sgd.) A. M. FUARD.
29-5-44.

P46.

Plaint in D. C. Colombo Case No. 1084.

IN THE DISTRICT COURT OF COLOMBO.

No. P 46.
Plaint in
D. C.
Colombo
Case
No. 1084.
1-6-44.

No. 1084/M.B.
Class : V.
Nature : M.B.
Amount : Rs. 17,765·62.
Pro. Regular.

20 ALFRED RICHARD WEERASURIYA of "Srinivasa," Nambimula
in Ambalangoda, in the District of Galle.....*Plaintiff.*

vs.

KANDEKUMBURE RAJAMANTRIGE SAMARATUNGE of Medakotuwa,
Panwila, in the District of Kandy.....*Defendant.*

MOHAMED SULAIMAN NAINA MARIKAR, presently of Moor Road,
Wellawatte in Colombo.....*Necessary Party.*

On this 1st day of June, 1944.

The plaint of the plaintiff above-named appearing by Assena Marikar
Mohamed Fuard his proctor, states as follows :—

30 1. By a writing obligatory or bond bearing No. 2308 dated 3rd
December, 1942, attested by A. M. Fuard, Notary Public, and executed
at Colombo within the Local Limits of the jurisdiction of this Court
herewith filed marked "A" and pleaded as part and parcel of this plaint

Exhibits.
 No. P 46.
 Plaint in
 D. C.
 Colombo
 Case.
 No. 1084.
 1-6-44.
 —continued.

the defendant above-named became held and bound unto the plaintiff in the sum of Rs. 15,000/- to be paid to the plaintiff on demand and in the meantime and until such repayment the defendant thereby further engaged and bound himself to pay interest thereon at the rate of 15 per cent. per annum to be computed from the date of the said bond.

2. For securing the payment unto the plaintiff of the said principal and interest the defendant did in and by the said bond *inter alia* mortgage and hypothecate with the plaintiff as a primary mortgage free from all encumbrances whatsoever all these premises in the schedule hereto fully and particularly described together with all the estate, right, title, interest, 10 property, claim and demand whatsoever of the said defendant into upon or out of the same.

3. The defendant has paid interest on the said bond up to 3rd March, 1943.

4. There is now due and owing from the defendant to the plaintiff on the said bond the sum of Rs. 15,000/- being the principal and Rs. 2,765·62 being interest thereon at 15 per cent. per annum from 3rd March, 1943, up to 24th May, 1944, both aggregating to the sum of Rs. 17,765·62 which sum or any part thereof the defendant has failed and neglected to pay to the plaintiff though thereto often demanded. 20

5. The plaintiff states that the defendant by bond No. 2310 dated 3rd December, 1942, and attested by the said A. M. Fuard, Notary Public, mortgaged and hypothecated as a secondary mortgage the said premises in the schedule hereto described to and with the above-named necessary party.

6. The plaintiff further states that the premises mortgaged by the defendant with the plaintiff as a secondary mortgage in and by the afore-said bond No. 2308 sold by public auction in execution of the decree in case No. 941/M.B. of this Court in respect of the primary mortgage created by bond No. 2204 dated 2nd June, 1941, attested by the said 30 A. M. Fuard, Notary Public, and the amount realised by the said sale is not sufficient to cover the claim and costs due under the said decree.

7. By reason of the above premises, a cause of action has accrued to the plaintiff to sue the defendant for the recovery of the said sum of Rs. 17,765·62. Wherefore the plaintiff prays :—

- (a) That the defendant be ordered to pay forthwith to the plaintiff the said sum of Rs. 17,765·62 together with further interest on Rs. 15,000/- at the rate of 15 per cent. per annum from 25th May, 1944, up to date of decree and thereafter on the aggregate amount of the decree at 9 per cent. per annum till payment in 40 full and costs of suit.
- (b) That the property in the schedule hereto described and mortgaged by the defendant together with all the estate, right, title, interest, claim and demand whatsoever of defendant into upon or out

of the same be declared specially bound and executable for the payment of the said sum of Rs. 17,765·62 interest and costs of suit on the footing of the said mortgage bond No. 2308 dated 3rd December, 1942, and attested by A. M. Fuard, Notary Public.

Exhibits.
No. P 46.
Plaint in
D. C.
Colombo
Case
No. 1084.
1-6-14.
—continued.

- 10 (d) That in default of payment of the said sum of Rs. 17,765·62 interest and costs of suit forthwith the said property declared specially bound and executable as aforesaid be sold by C. A. Krishnarajah of Colombo, Licensed Auctioneer by public auction after such advertisement as he may consider sufficient upon the conditions of sale herewith filed or such other conditions of sale as may be prescribed by the Court the said Auctioneer being directed and authorized to allow the plaintiff or any one else on his behalf to bid for and purchase the said property at such sale and to do so upon such special terms as the Court may impose, if the Court imposes any, and in the event of the plaintiff becoming the purchaser to allow the plaintiff credit to the extent of his claim and costs.
- 20 (d) That the Secretary of this Court do execute the necessary conveyance in due form of law in favour of the purchaser or purchasers at such sale on his or their complying with the conditions of sale and on being satisfied if the purchaser be the plaintiff that he has been allowed credit and in the event of the purchaser or purchasers being a third party or parties that the purchase amount has been deposited in Court.
- 80 (e) That the proceeds of such sale be applied in and towards the payment of the said sum of Rs. 17,765·62 interest and costs of suit and that if such proceeds shall not be sufficient for the payment of the said amount in full the defendant be ordered to pay to the plaintiff the amount of deficiency with interest thereon at the rate of 9 per cent. per annum until realization and that for that purpose all proper directions may be given and accounts taken by the Court.
- (f) And for such other and further relief as to this Court shall in the premises seem meet.

(Sgd.) A. M. Fuard,
Proctor for Plaintiff.

THE SCHEDULE ABOVE REFERRED TO.

1. All those undivided nineteen-twentieth parts or shares of the 40 land called Dodanwattetennehena now garden bearing registered No. S.C. 6052 at the Tea Controller's Office together with the tea plantation standing thereon, situated at Pallegama in Palle Gampaha Korale of

Exhibits.
 No. P 40.
 Plaintiff in
 D. C.
 Colombo
 Case
 No. 1084.
 1-6-11.
 —continued.

Lower Dumbara, in the District of Kandy, Central Province and bounded on the East by road, on the South by Malakandura of Durainnehena, on the West by Appullannalagegedera and Kumburewela, and on the North by Kumburegedera Puncha's land and limit of Wehigalagederahena and containing in extent two amunams and two pelas of paddy sowing which said land is otherwise described as follows :—

All that land called Dodanwattetennehena, situated at Pallegama aforesaid ; and bounded on the East by old road and fence, on the South by ditch, on the West by Udagederawattekumburewella and limit of Puncha's land, and on the North by limit of Horatala's chena and containing in extent one yolamunam of paddy sowing.

2. All that land called Medakotuwewatte together with all the buildings and the tea plantations standing thereon bearing registered No. S.C. 5853 at the Tea Controller's Office, situated at Kandekumbure in Naranpanawa in Palis Pattu Korale of Lower Dumbara aforesaid and bounded on the North by limit of the land belonging to Kumburegedera Puncha, on the East by the garden of Kumburegedera Horatala, on the South by limit of the land belonging to Amunegedera Kaluwa, and on the West by Medakotuwe belonging to Rantetgedera Herathala and containing in extent about two pelas and five lahas of paddy sowing.

3. All that land called Pupalahena Uдахawatte together with the tea plantation standing thereon bearing registered No. S.C. 6048 at the Tea Controller's Office, situated at Kandekumbure in Naranpanawa aforesaid and bounded on the North by ditch of the land belonging to Angara; on the East by ditch of the land belonging to Jamaldeen, on the South by limit of Marieland Estate, and on the West by limit of Marieland Estate and containing in extent about two pelas and five lahas of paddy sowing.

4. All that land called Medakotuwa with the buildings and the tea plantation standing thereon bearing registered No. S.C. 38676 at the Tea Controller's Office, situated at Kandekumbure in Naranpanawa aforesaid and bounded on the North by land belonging to Rantetgedera Ukkuwa, on the East by fence of Medakotuwawatte, on the South by the limit of the land belonging to Amunegedera Kaluwa, and on the West by the land belonging to Rantetgedera Heratala, and containing in extent about eight lahas of paddy sowing.

5. An undivided half part or share of the land called Rantetgederawatte together with the buildings and the tea plantations standing thereon bearing registered No. S.C. 5858 at the Tea Controller's Office, situated at Kandekumbure in Naranpanawa aforesaid and bounded on the North by Marieland Estate, on the East by Wela of Ambagahamulakumbure, on the South by the ditch and limit of Puncha's land, and on the West by Marieland Estate, and containing in extent about two amunams of paddy sowing.

6. All that land called Pallehawatte together with the tea plantations standing thereon bearing registered No. S.C. 5857 at the Tea Controller's Office, situated at Kandekumbure in Naranpanawa aforesaid

and bounded on the North by the limit of Rantetduragedera Hapumalie's garden, on the East by Kumburewella, on the South by the limit of Amunegedera Puncheda's garden, and West by the fence of Medakotuwa Sobani's garden, and containing in extent nine lahas of paddy sowing.

Exhibits.
No. P 46.
Plaint in
D. C.
Colombo.
Case
No. 1084.
1-6-44.
—continued.

(Sgd.) A. M. FUARD,
Proctor for Plaintiff.

P47.

Journal Entries in D. C. Colombo Case No. 1084.

JOURNAL.

P 47.
Journal
Entries in
D. C.
Colombo.
Case
No. 1084.
1-6-44 to
15-2-47.

10 The 1st day of June, 1944.

Mr. A. M. Fuard, Proctor, files appointment and plaint together with mortgage bond marked "A". Conditions of sale, warrant of attorney and minute of consent appended to motion (1) and moves that judgment be entered against the defendant in favour of the plaintiff as prayed for in the plaint.

Para 6 of plaint is not clear.

Support.
(Intd.) S. J. C. S.,
A. D. J.

20

P47A.

No. P 47 A.
Journal
Entry dated.
27-6-44.

27- 6-44. Mr. Fuard in support.
Enter judgment against defendant as prayed for in the
plaint.

Issue summons on necessary party for 24/7.

(Intd.) S. J. C. S.,
A. D. J.
27-6-44.

20- 7-44. SS 1 tendered. Time insufficient for service.

30 (4) 24- 7-44. Mr. A. M. Fuard for plaintiff.
SS on necessary party not issued.
Issue now for 4-9-44.

(Intd.) S. J. C. S.,
A. D. J.

(5) 8- 8-44. SS issued on necessary party.

(6) 4- 9-44. SS issued on necessary party. He is absent.

(Intd.) S. J. C. S.

- Exhibits. (7) 14-10-44. Decree entered.
- No. P 47. (8) 19-10-44. Proctor for plaintiff applies for execution of decree
Journal Entries in against the defendant by issue of commission to sell
D. C. Colombo. the mortgaged property.
Case No. 1084. Copy decree tendered.
1-6-44 to
15-2-47.
—continued.
- (9) 23-10-44. Commission issued. Returnable 9-10-45. Allowed.
(Intd.) S. J. C. S.
- (10) 8-10-44. Auctioneer files six sets of conditions of sale for approval
of Court. 10 Approved.
(Intd.) S. J. C. S.,
A. D. J.
- (11) 23-11-44. Auctioneer informs that the sale of properties in this
case has been fixed for 2-12-44 at the spot at 2·30 p.m.
re first land and at 3·45 p.m. at the other lands.
(Intd.) S. J. C. S.,
A. D. J.
- (12) 28-11-44. Auctioneer states that he has made a mistake in com-
puting the values of the properties and submits revised 20
valuation as stated in motion. Note revised valuation.
(Intd.) S. J. C. S.,
A. D. J.
- (13) *Eo-die*. Plaintiff having allowed the defendant six months time
to pay the claim and costs in this case proctor for
plaintiff moves that the Auctioneer be directed to stay
the sale of the mortgaged property fixed for 2-12-44 on
payment of his charges. If defendant fails to settle
the plaintiff's claim and costs within the said period 30
the sale to be re-fixed without notice to the defendant.
Defendant consents. Stamps for Rs. 5·40 for stay
sale order tendered. Allowed. Auctioneer to stay sale on his
charges being paid by the defendant.
(Intd.) S. J. C. S.,
A. D. J.
-
- No. P 47 B. (14) 15-12-45. Plaintiff moves to revoke the proxy granted by him to
Journal Entry dated 15-12-45. Mr. A. M. Fuard, Proctor, who consents. 40
File.
(Intd.) V. E. R.,
A. D. J.

- (15) 5- 1-46. Messrs. Weeraratne and Haseeb move to file the formal revocation of proxy from the plaintiff together with their appointment as proctor for the plaintiff and moves that the same be accepted.
- File.
(Intd.) W. S.;
A. D. J.
- Exhibits.
No. P 47.
Journal
Entries in
D. C.
Colombo.
Case
No. 1084.
1-6-44 to
15-2-47.
—continued.
- 10 (16) 12- 1-46. Proctors for plaintiff move to file plaintiff's affidavit in this case and move that the order to sell be re-issued for the sale of the mortgaged property by Mr. C. A. Krishnarajah, Licensed Auctioneer. They also move that notice on the defendant be dispensed with in view of the motion dated 28th November, 1944, filed in this case.
1. Re-issue order to sell.
 2. Notice on defendant dispensed with.
- (Intd.) S. J. C. S.,
A. D. J.
- 20 (17) 25- 1-46. Commission re-issued to Mr. C. A. Krishnarajah.
Returnable 22-1-47.
- (18) 27- 2-46. Commissioner notifies that the sale of the properties is fixed by him for Saturday, 9-3-46, at the spot commencing at 3 p.m.
- Noted.
(Intd.) V. E. R.,
A. D. J.
- 80 (19) 28- 2-46. The mortgaged property having been advertised for sale under the commission issued in this case, proctors for plaintiff move to direct the commissioner to allow the plaintiff or any one else on his behalf to bid for and purchase the same at the sale and in the event of his becoming the purchaser thereof to allow him credit to the extent of his claim and costs.
- Allowed.
Plaintiff not to buy below appraised value.
(Intd.) V. E. R.,
A. D. J.
- (20) 4- 3-46. Order to bid filed.
- 40 (21) 13- 3-46. D/Note No. 76380/13-3-46 for Rs. 225/- and paying in voucher No. 1218 for Rs. 27/- issued to Mr. C. A. Krishnarajah, Auctioneer.

- Exhibits. (22) 25- 3-46. Commissioner tenders sale report and poundage receipt for Rs. 27/-.
- No. P 47.
Journal
Entries in
D. C.
Colombo.
Case
No. 1084.
1-6-44 to
15-2-47.
—continued.
- (23) 26- 3-46. Commissioner tenders payer's slip of deposit note certified by the Kachcheri in proof of deposit of 1/10th purchase amount today.
- (24) 27- 3-46. K.R. K/6 No. 64646/26-3-46 for Rs. 225/- filed.
- (25) 6- 4-46. Mr. E. A. de Livera, Proctor, files proxy of L. Liyanage Danapala purchaser of the six allotments of lands sold under the common and moves for a deposit note for Rs. 2,025/- being balance purchase money due from him. Proctors for plaintiff consent.

Issue deposit note.
(Intd.) V. E. R.,
A. D. J.

Eo. die. D/N No. 76383 of 6-4-46 for Rs. 2,025/- issued to Mr. E. A. de Livera, Proctor.

- (26) 15- 4-46. K/R No. K/6 65727 dated 6-4-46 for Rs. 2,025/- filed.
- (27) 24- 4-46. Proctor for purchaser moves that as the purchase money has been paid in full and 30 days having elapsed from the date of sale, the sale in favour of the purchaser be confirmed and the secretary be ordered to execute the deed of conveyance in favour of the purchaser.
1. Sale confirmed.
 2. Certificate of sale to issue.

(Intd.) V. E. R.,
A. D. J.

Conveyance executed.
(Intd.) M. N.

- (28) 29- 5-46. Proctors for plaintiff move for an order of payment in favour of the plaintiff for Rs. 2,250/- being the proceeds of sale held on 9-3-46. Proctor for purchaser consents. Notice defendant and necessary party for 17/6.

(Intd.) V. E. R.,
A. D. J.

- (29) 10- 6-46. Notice issued on defendant, Nuwara Eliya, and necessary party, Western Province.

- (30) 17- 6-46. Messrs. Weeraratne and Haseeb for plaintiff. *Vide J/E.* Exhibits.
 (38) Notice to issue o/p served on necessary party. He is absent. No return to notice on defendant. He is absent. Await and re-issue if necessary for 8-7-46. (Intd.) S. C. S. No. P 47. Journal Entries in Colombo. Case No. 1084. 1-6-44 to 15-2-47. —continued.
- (31) 24- 6-46. Proctors for plaintiff move for a notice on the defendant under p. 219 of the C.P.C. Issue notice for 8-7-46.
- 10(32) 24- 6-46. Proctors for plaintiff move that their application for an order of payment in favour of the plaintiff for Rs. 2,250/- be allowed as the notices were served on the defendant and the necessary party and they failed to appear to show cause against the application. Notice served on defendant who was absent on being pointed out. Plaintiff's affidavit identifying service filed. Application is allowed. Issue order for payment for Rs. 2,250/- in favour of plaintiff. (Intd.) S. C. S. A. D. J.
- 20 24- 6-46. P.O.N. 81550 for Rs. 2,250/- issued in favour of plaintiff. (Intd.) M. N., Secretary.
- (33) 1- 7-46. 219 notice issued on defendant Badulla.
- (34) 8- 7-46. Messrs. Weeraratne and Haseeb for plaintiff. No return to 219 notice on defendant. He is absent. Await and re-issue if necessary for 22/7. (Intd.) S. C. S., A. D. J.
- 30(35) 12- 7-46. 219 notice re-issued on defendant Badulla.
- (36) 22- 7-46. No return to 219 notice on defendant. He is absent. Await and re-issue if necessary for 26-8-46. (Intd.) S. C. S., A. D. J.

- Exhibits. (37) 22- 7-46. The defendant states he received the notice but is unable to attend court as he is a cripple to move about as a result of a serious motor accident.
 Plaintiff's proctor to note.
 File.
 (Intd.) S. C. S.,
 A. D. J.
- No. P 47.
 Journal
 Entries in
 Colombo.
 Case
 No. 1084.
 1-6-44 to
 15-2-47.
 —continued.
- (38) 26- 8-46. Notice under Section 219 already served on defendant. Defendant is a cripple. *Vide J/E 37.*
 Let him file affidavit declaring property. 10
 Inform him 16/9.
- (39) 26-8. Lr. sent to defendant.
- (40) 16-9-46. Affidavit due from defendant—received. *Vide J/E/E/ (37) and (38).*
 (Intd.) N. S.
- (41) 27-11-46. Proctor for purchaser files Secretary's conveyance in favour of the purchaser and moves for an order for delivery of possession to the purchaser to be issued to Fiscal, Central Province.
 To be supported. 20
 (Intd.) S. C. S.
- (42) 2-12-46. Adv. G. T. Samarawickreme in support. Application allowed. Issue order for delivery of possession as requested.
 (Sgd.) S. C. SWAN.
- (43) 19-12-46. Order for delivery of possession. Issued to Kandy. Returnable 30-6-47.
- (44) 21- 1-47. The Deputy Fiscal, Kandy, reports that his officer delivered possession to Mr. H. M. D. Silva on behalf of the purchaser on 19-12-46. 30

- (45) 15- 2-47. Proctor for purchaser moves to withdraw from the case record the Secretary's conveyance filed by him.
Allowed return.

(Intd.) N. S.,
A. D. J.

Exhibits.
No. P 47.
Journal
Entries in
Colombo.
Case
No. 1084.
1-6-44 to
15-2-47.
—continued.

D30.

Deed No. 139.

No. D 30.
Deed
No. 139.
15-7-44.

No. 139

To all to whom these presents shall come Khemchand Moolchand
10 of 118, Main Street, Colombo, in the Island of Ceylon (hereinafter some-
times called and referred to as the said vendor).

SENDS GREETING :

Whereas the said vendor is under and by virtue of deed No. 618
dated 19th June, 1944, attested by C. T. de Saram of Colombo, Notary
Public, the owner and proprietor of and seized and possessed of otherwise
well and sufficiently entitled to all that and those the estate, lands and
premises in the first and second parts of the schedule hereto fully described
(which said estate, lands and premises are hereinafter sometimes referred
to as the said property and premises) and whereas the said vendor has
20 agreed with Lankamittra Devapriya Ratnasekera of "Tilakagiri," Hill
Street, Dehiwela, in the said Island (hereinafter called and referred to as
the said purchaser for the sale to him of the said property and premises
free from encumbrance at or for the price or sum of Rupees Thirty
thousand (Rs. 30,000/-) of lawful money of Ceylon.

Now know ye and these presents witness that the said vendor in
pursuance of the said agreement and in consideration of the said sum of
Rupees Thirty thousand (Rs. 30,000/-) of lawful money aforesaid well
and truly paid to the said vendor by the said purchaser (the receipt
whereof the said vendor doth hereby expressly admit and acknowledge)
30 doth hereby grant, convey, assign, transfer, set over and assure unto the
said purchaser, his heirs, executors, administrators and assigns all that
and those the said property and premises in the said schedule hereto
fully described and the buildings, trees and plantations standing thereon
together with all and singular the rights, ways, privileges, easements,
servitudes and appurtenances whatsoever to the said property and premises
belonging or in anywise appertaining or held, used or enjoyed therewith
or reputed to be or known as part and parcel thereof and all the estate,
right, title, interest, property, claim and demand whatsoever of the said
vendor into out of or upon the same and all deeds, documents and other
40 writings therewith or relating thereto.

Exhibits.
 No. D 30
 Deed
 No. 139.
 15-7-44.
 —continued.

To have and to hold the said property and premises in the said schedule hereto fully described hereby conveyed and assigned or expressed or intended so to be with all and singular the appurtenances thereunto belonging unto the said purchaser and his aforewritten absolutely for ever.

And the said vendor doth hereby for himself, his heirs, executors and administrators covenant and agree with the said purchaser and his aforewritten that the said purchaser and his aforewritten shall and may at all times hereafter peacefully and quietly possess and enjoy the said property and premises hereby conveyed and assigned and receive the 10 rents and profits thereof without any interruption or disturbance by the said vendor or his aforewritten or any other person or persons whomsoever lawfully claiming any right or title thereto and that the said vendor has good right to convey and assign the said property and premises in manner aforesaid and that the same are free from encumbrance and that the said vendor and his aforewritten shall and will at all times hereafter warrant and defend the title to the said property and premises and every part or portion thereof unto the said purchaser and his aforewritten against any and every persons or person whomsoever and shall and will at all times hereafter at the request cost and expense of the said purchaser 20 or his aforewritten do and execute or cause to be done and executed all such further and other acts, deeds, assurances and things as the said purchaser or his aforewritten shall or may reasonably require for more perfectly and effectually conveying and assuring the said property and premises or any part or portion thereof unto the said purchaser and his aforewritten.

In witness whereof the said Khemchand Moolchand doth hereunto and to two others of the same tenor and date as these presents set his hand at Colombo on this fourteenth day of July, One thousand Nine hundred and forty-four.

30

THE SCHEDULE ABOVE REFERRED TO

PART I.

All that one hundred and four acres one rood and eleven perches (A104. R1. P11) in extent according to the figure of survey dated 13th November, 1935, made by C. G. Krelsheim, Licensed Surveyor, out of all that estate called and known as "Haraslulekele" *alias* "Fincham's land", containing in extent one hundred and sixteen acres and seven perches (A116. R0. P7) according to the survey and description thereof made by C. N. Jayasinghe of Kandy, Licensed Surveyor, in the month of December, 1923, situated at Kandegama in Gandeke Korale of the 40 Uda Dumbara Division, in the District of Kandy, Central Province, which said one hundred and four acres one rood and eleven perches (A104. R1. P11) comprised of the following allotment of land with the plantations and buildings thereon, to wit :—

1. All that allotment of land situated at Kandegama aforesaid ; bounded on the North by Halgolla-Oya, on the South by land said to be owned by villagers, on the East by Halgolla-Oya, seventeen acres one rood and twenty-four perches (A17. R1. P24).
2. All that allotment of land situated at Kandegama aforesaid ; bounded on the East by Halgolla-Oya, on the North by land said to be owned by villagers, on the South by the allotment of land of eleven acres and nine perches and an allotment of land of two acres and thirty perches, and on the West by Kobonella Estate, containing in extent 10 thirteen acres, three roods and thirty perches (A13. R3. P30).
3. All that allotment of land situated at Kandegama aforesaid ; bounded on the North and North-East by allotments of land of thirteen acres three roods and thirty perches; on the South by allotment of land of three acres and twelve perches, on the East by the allotment of land of two acres and thirty perches, and on the West by Kobonella Estate, containing in extent eleven acres and nine perches (A11. R0. P9).
4. All that allotment of land situated at Kandegama aforesaid ; bounded on the North by the allotment of land of thirteen acres three roods and thirty perches, on the East by the land claimed by the villagers 20 on the South by Ela, and on the West by the allotment of land of eleven acres and nine perches, containing in extent two acres and thirty perches (A2. R0. P30).
5. All that allotment of land situated at Kandegama aforesaid ; bounded on the North by the allotment of land eleven acres and nine perches, on the South by the land said to be owned by the villagers and by the allotment of land of twenty-seven perches, on the East by the allotment of land eleven acres and nine perches, and on the West by land said to be owned by villagers and a road, containing in extent three acres and twelve perches (A3. R0. P12).
- 30 6. All that allotment of land situated at Kandegama aforesaid ; bounded on the North-East and South by the allotment of land of eleven acres and nine perches; and on the West by Kobonella Estate, containing in extent thirty perches (A0. R0. P30).
7. All that allotment of land situated at Kandegama aforesaid ; bounded on the North by a road, on the East and South by land said to be owned by villagers, and on the West by Kobonella Estate, containing in extent one acre and three roods and eighteen perches (A1. R3. P18).
8. All that allotment of land situated at Kandegama aforesaid ; bounded on the North by the allotment of land of three acres and twelve 40 perches, on the South by villagers, and on the West by a road, containing in extent twenty-seven perches (A0. R0. P27).
9. All that allotment of land situated at Kandegama aforesaid ; bounded on the North by the lands said to be owned by villagers, on the South by allotment of land of nine acres one rood and eighteen perches

Exhibits.
 No. D 30.
 Deed
 No. 139.
 15-7-44.
 —continued.

Exhibits. and land said to be owned by villagers, on the East by stone fence, and
 No. D 30. on the West by Kobonella Estate, containing in extent twenty-three
 Deed acres, one rood and thirty perches (A23. R1. P30).
 No. 139.

15-7-44.
 —continued. 10. All that allotment of land situated at Kandegama aforesaid ;
 bounded on the North by the allotment of land of twenty-three acres
 one rood and thirty perches, on the East by old trench, on the South by
 Badulla tree, and on the West by land owned by villagers and Kandura,
 containing in extent nine acres, one rood and eighteen perches.

11. All that allotment of land situated at Kandegama aforesaid ;
 bounded on the North and East by land said to be owned by villagers, 10
 on the South and West by the allotment of land of nine acres, one rood
 and twenty perches, containing in extent five acres and twelve perches.

12. All that allotment of land situated at Kandegama aforesaid ;
 bounded on the North by the allotment of land of three roods and three
 perches, on the East by the allotment of land of five acres and twelve
 perches, on the South by the Oya, and on the West by Kobonella Estate,
 containing in extent nine acres, one rood and twenty perches.

13. All that allotments of land situated at Kandegama aforesaid
 bounded on the North by the land said to be owned by villagers, on the
 East by the allotment of land of five acres and twelve perches, on the 20
 South by allotment of land of nine acres and one rood and twenty perches,
 and on the West by Kobonella Estate, containing in extent three roods
 and three perches (A0. R3. P3).

14. All that allotment of land situated at Kandegama aforesaid ;
 bounded on the North by Oya, on the East by Oya, on the South by Oya,
 and on the West by Oya, containing in extent six acres, one rood and
 twenty perches (A6. R1. P28).

Which said one hundred and four acres, one rood and eleven perches
 (A104. R1. P11) in extent forms part of all that estate called and known
 as Haraslulekelle *alias* Fincham's land, containing in extent one hundred 30
 and sixteen acres and seven perches (A116. R0. P7) according to the survey
 and description thereof made by C. D. Jayasinghe, Licensed Surveyor,
 in the month of December, 1923, situated at Kandegama aforesaid and
 composed and made up of the following three allotments :—

- (A) An allotment of land situated at Kandegama aforesaid ; bounded
 on the North and North-East by Oya and Ensalwatte Estate,
 on the South and South-East by land claimed by villagers and
 Ela, and on the West by Horankanda Estate, containing in
 extent fifty-nine acres and thirty-four perches (A59. R0. P34).
- (B) An allotment of land situated at Kandegama aforesaid ; bounded 40
 on the North, North-East and East by land claimed by villagers,
 on the South and South-West by Kobonella Estate, and on the
 West by Horankanda Estate, containing in extent thirty-five
 acres three roods and ten perches (A35. R3. P10), and

- (C) An allotment of land situated at Kandegama aforesaid ; bounded on the North and East by the land claimed by the villagers, on the South and West by Oya and Kobonella Estate, containing in extent twenty-one acres and three perches (A21. R0. P3).

Exhibits.
No. D 80.
Deed
No. 139.
15-7-44.
—continued.

Which said property is otherwise described as follows :—

- 10 (a) The northern portion of three acres in extent from and out of all that allotment of land called Haraslulekehena of fourteen acres in extent, situated at Kandegama aforesaid and which said northern portion is bounded on the East by Galheeriya, on the South by the land of Ukkwala and Ela, on the West by the limit of Kobonellawatte, and on the North by the limit of chena belonged to Maddumarala.
- (b) A portion of six acres in extent from and out of all that land called Haraslulekele of seventeen acres in extent, situated at Kandegama aforesaid and which said portion of six acres in extent is bounded on the East by the limit of the remaining portion, on the South by the land of Aratchi, on the West by the limit of Kobonella Estate, and on the North by the limit of the portion of Dingurala.
- 20 (c) All that northern portion of two acres in extent from and out of all that allotment of land called Haraslulekele of seventeen acres in extent, situated at Kandegama aforesaid and which said northern portion is bounded on the East by Galpeli-Ela, on the South by the limit of Kewurala's chena, on the West by Meeyapulle's land, and on the North by the Ela of Bulatwatte.
- (d) All that portion of thirty-five acres in extent from and out of all that allotment of land called Haraslulekele of hundred and seventy-seven acres and two roods in extent, situated at Kandegama aforesaid ; bounded on the North and East by Haraslule-Ela and the land of natives, on the South and East by the land belonging to natives and Horankanda-Oya, on the South and West by Horakanda-Ela; and on the North and West by the land described in plan No. 50110.
- 80 (e) All that portion of three acres in extent from and out of all that allotment of land called Haraslulekele of twenty-one acres in extent, situated at Kandegama aforesaid and which said portion of three acres is bounded on the East by Galheeriya, on the South by the land of Punchaduraya, on the West by limit of Kobonellawatte, and on the North by the limit of Nattaran-pothahena.
- 40 (f) All that southern portion of three acres in extent from and out of all that allotment of land called Haraslulekele of one hundred and seventy-seven acres and two roods in extent, situated at Kandegama aforesaid and which said southern portion is bounded on the East by the remaining portion, on the South by the limit of land which belonged to Meeyapulle, on the West by the limit

Exhibits,
 No. D 80.
 Deed
 No. 189.
 15-7-44.
 —continued.

- of Kobonellawatte, and on the North by the limit of Nattaranpothahena.
- (g) All that western portion of four acres in extent from and out of all that allotment of land called Haraslulekele of one hundred and seventy-seven acres and two roods in extent, situated at Kandegama aforesaid and which said western portion is bounded on the East by Manawa, on the South by limit of the jungle belonging to Kira, on the West by the limit of the garden belonging to gentleman, and on the North by the limit of the land of Kapurala. 10
- (h) All that portion of seven acres in extent from and out of all that allotment of land called Haraslulekele of one hundred and seventy-seven acres and two roods in extent, situated at Kandegama aforesaid and which said portion of seven acres in extent is bounded on the East by the limit of the jungle belonging to Doraliyadde Appuhamy, on the South by the Maha-Oya, on the West by the limit of Kobonellawatte, and on the North by the limit of the garden of Steen.
- (i) All that allotment of land called Katukitulehena of about six acres in extent, situated at Kandegama aforesaid; bounded on 20 the East by Katukitule Ela, on the South by Ela, on the West by the Ela of Kobokolagolle and on the North by ditch.
- (j) All that portion of fifteen acres in extent from and out of twenty-one acres in extent from and out of all that allotment of land called Haraslulekele of one hundred and seventy-seven acres and two roods in extent, situated at Kandegama aforesaid and which said portion of fifteen acres in extent is bounded on the East by Haraslule-Ela and the land belonging to natives, on the South and East by the land belonging to natives and Harankande-Ela, on the South and West by Horankande-Ela, and on 30 the North and West by the land described in plan No. 50110, and
- (k) An allotment of land called Katukitulekele, situated at Kandegama aforesaid; bounded on the North by a stream and land claimed by natives, on the East by an Ela and a stream, on the South by a stream, and on the West by an Ela and Watiakka-Ela, containing in extent five acres, three roods and thirty perches.

PART II.

1. All that allotment of land called Gallassehena now a garden of about sixteen nellies in kurakkan sowing extent, situated at Udawela-40 kande in Gandeke Korale of the Uda Dumbara Division, in the District of Kandy, Central Province and bounded on the East by Galkande Manikvala's hena, on the South by the limit of Wattuwa Duraya's chena, on the West by the below stone of Patana, and on the North by Ela.

2. All that allotment of land called Warawehena now a garden of thirty nellies in kurakkan sowing extent, situated at Udawela in Gandeke Korale aforesaid and bounded on the East by the limit of Tikiri Menika's chena, on the South by the limit of Karundugasmullehena and Mukkangehera, on the West by the limits of Ukkuwa Duraya's chena and Herathamigehena, and on the North by Ela Kandura. Exhibits.
No. D 30.
Deed
No. 139.
15-7-44.
—continued.

3. All that allotment of land called Egodawewehena now a garden of about thirty seers in kurakkan sowing extent, situated at Udawela aforesaid and bounded on the East by the limit of Herathamy's chena and Galkande in Ukkuwavidanegehena, on the South by ridge of stone in Ukkuwa Vidane's hena, on the West by the limit of Mukkagehena, and on the North by Oya and the limit of Polgahakumburegederahena.

4. All that allotment of land called Kosgahamulakadullehena now a garden of thirty nellies of kurakkan sowing extent, situated at Udawela aforesaid and bounded on the East by Oya, on the South by Ela, on the West by Hinikata on Gamagedera Menikarala's chena, and on the North by the limit of Tikirala's chena.

5. All that allotment of land called Egodawewehena now a garden of about forty nellies in kurakkan sowing extent, situated at Udawela aforesaid and bounded on the East by Ela, on the West by the limit of Ensalwatte, on the North by Ela, and on the South by Appuhamy Aratchi's hena, the above described five allotments of land are said to contain forty acres and thirty-two perches (A40. R0. P32) as per plan dated 5th and 6th September, 1928, made by C. V. Bartholomeusz of Kandy, Licensed Surveyor.

Witnesses :

(Sgd.) Illegibly.

(Sgd.) K. MOOLCHAND.

(Sgd.) Illegibly.

(Sgd.) J. H. M. FERNANDO,
Notary Public.

80 I, John Henry Mathew Fernando of Colombo, in the Island of Ceylon, Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me to the within-named executant Khemchand Moolchand who signed as K. Moolchand in the presence of Thomas Mathew Fernando, J.P., U.M., Proctor, S.C. of Colombo, and Wannakuwattawaduge Alfred William Fernando of Dehiwela, both of whom signed illegibly the subscribing witnesses hereto and all of whom are known to me the same was signed by the said executant and also by the said witnesses and by me the said notary in my presence and in the presence of one another all being present together at the same time
40 at Colombo on this fourteenth day of July, One thousand Nine hundred and Forty-four.

And I further certify and attest

* * * * *

the foregoing instrument was read over as aforesaid by me the said notary to the said executant and that the full consideration was paid in my

Exhibits. presence by cheque No. N. 274183 drawn on the Mercantile Bank of India, Limited, by the purchaser in favour of the vendor and that the duplicate bears nine stamps of the value of Rs. 497/- and the original one stamp of the value of One Rupee.

No. D 30.
Deed
No. 139.
15-7-44.
—continued.

Date of attestation :
15th July, 1944.

(Sgd.) J. H. M. FERNANDO,
Notary Public.

D18.

Valuation Report Filed in D. C. Colombo Case No. 1084.

No. D 18.
Valuation
Report filed
in D. C.
Colombo.
Case
No. 1084.
23-11-44

This property is valued at Rs. 6,250/-.

CONDITIONS OF SALE.

10

Upon which Christopher Aloysius Krishnarajah, Licensed Auctioneer of Colombo by virtue of a commission issued to him in case No. 1084/M.B. of the District Court of Colombo will put up for sale by public auction at the respective spots commencing from 2·30 p.m. the day of—1944, after previous advertisement, the property in the schedule hereto fully described.

1. The highest bidder shall become the purchaser and in the event of dispute between two or more bidders as to their bid, the decision of the Auctioneer shall be final and the sale proceeded with.

2. Bids of less than Rupees One hundred will not be accepted and no bidding shall be retracted.

20

3. The purchaser shall immediately after the sale pay the full amount of purchase where the same does not exceed One hundred Rupees and where it exceeds that sum he shall pay one-tenth of the purchase amount to the Auctioneer.

4. The purchaser shall also at the same time pay to the Auctioneer his commission at the rate of two per cent. all advertisement and other charges and also the notary's fees and value of stamps for conditions of sale and costs of drawing conditions.

5. Where the purchase amount exceeds One hundred Rupees, the purchaser shall furnish two good and sufficient sureties if required by the Auctioneer who shall sign an agreement with him for the payments into Court of the balance money within thirty days from the date hereof and should that day fall on a public holiday or a Sunday then on the first office day next following.

6. In default of payment of the balance purchase money in manner mentioned in Clause 5 hereof, the amount of deposit shall be forfeited and such deposit shall be applied in reduction of the claim of the judgment-creditor, and the property shall be resold at the risk of the purchaser and his sureties who shall forfeit all claim, benefit and advantage in respect

of this sale and the property, and shall not be entitled to any advantage arising at such resale, but shall be liable in respect of any deficiency between it and the present sale.

7. The resale contemplated in Clause 6 herein shall take place upon fresh advertisements as provided for the first, sale and in the same manner and subject to the same conditions as the first sale.

8. The Auctioneer has the right to reject the bid of any person without assigning any reason therefor and he shall continue the sale as if no such bid had been made.

10 9. Should the highest bidder, being declared the purchaser fail to pay immediately the required amount and furnish satisfactory sureties, for the payment of the balance, then the next highest bidder may be declared the purchaser and be called upon to pay the required amount and furnish sureties as aforesaid, and in the same manner the other bidders in turn, and each person failing to make such payment and furnish sureties as aforesaid, shall be bound to pay the difference between the amount of his bid and the sum finally settled at the sale. The Auctioneer may however in the event of default of the highest bidder, instead of declaring the next highest bidder the purchaser immediately put up the
20 property for sale afresh, or postpone the sale, in which latter event the property shall again be advertised as previously.

10. If the price for the property is finally sold at the second or any subsequent sale is not less than the first sale, then money deposited by the purchaser at the first and other sales which proceeded the final sale, shall be paid to the execution creditor in satisfaction *pro tanto*, of the judgment, and in the event of such judgment being so satisfied and any surplus remaining, such surplus shall after deducting any expenses consequent on the sale be paid to the judgment-debtor.

30 11. The difference between the biddings of any person failing to make payment and furnish sureties, as mentioned in Clause 3, 4 and 5 hereof, and the amount finally settled at the sale, and also the difference between the amount of the final sale and the amount of previous sales shall be added to the purchase money of the final sale.

12. The Auctioneer does not warrant and defend the sale.

13. The purchaser shall pay the cost of preparing a plan figure of survey of the premises sold and to the transfer in his favour.

40 14. The purchaser shall deposit the amount of poundage at the rate of six cents on every five rupees or part thereof on the value of the property sold, not exceeding the amount of the judgment debt, in the nearest Kachcheri to the credit of revenue and shall produce to the Auctioneer the official receipt to be sent by him to Court with his report.

15. No error or mistake in description or in the extent of the property shall vitiate or render the sale void nor shall any compensation be allowed in respect thereof.

Exhibits.

No. D 18.
Valuation
Report filed
in D. C.
Colombo.
Case
No. 1084.
23-11-44.

—continued.

Exhibits. No. D 18. Valuation Report filed in D. C. Colombo. Case No. 1084. 28-11-44. —continued.	Names of Bidders	Amount of bids Rs. Cts.	Names of Bidders	Amount of bids Rs. Cts.
	I, Francis Fernandez Krishnapillai, Licensed Auctioneer of Colombo, do hereby declare that this day became the purchaser of the said premises for the sum of Rupees and that paid me the sum of Rupees in part payment of the purchase money aforesaid.			
	As witness my hand at Colombo on this		day of	
	One thousand Nine hundred and		10	
	<i>Auctioneer.</i>			

I, _____ of _____
I have this day purchased the premises for the sum of Rupees _____
do hereby acknowledge that in terms of the aforesaid conditions and
bind for the due performance thereof.

As witness hand at Colombo on this _____ day
One thousand Nine hundred and _____

Purchaser.

We, _____ do hereby
bind ourselves jointly and severally as sureties to the said purchaser for 20
the payment of the balance purchase money and the due performance
of all the aforesaid conditions hereby renouncing all privileges to which
we as sureties are otherwise by law entitled.

As witness our hands at Colombo on this _____ day of
One thousand Nine hundred and _____

Sureties.

THE SCHEDULE ABOVE REFERRED TO:

5. An undivided half part or share of the land called Rantetgederawatte together with the buildings and the tea plantations standing thereon bearing registered No. S.C. 5858 at the Tea Controller's Office, situated at Kandekumbure in Naranpanawa in Palis Pattu Korale of Lower Dumbara, in the District of Kandy, Central Province, on the North by Marieland Estate, on the East by Wella of Ambagahamulakumbura, on the South by ditch and limit of Puncha's land, and on the West by Marie-land Estate and containing in extent about two amunams of paddy sowing.

Witnesses :

I, _____ of _____ Exhibits.
 Notary Public, do hereby certify and attest that the foregoing instrument No. D 18.
 having been duly read over by the said Francis Fernandez, the Valuation
 auctioneer, purchaser and sureties above-named in the presence of the Report filed
 subscribing witnesses hereto both of whom are known to me the same was in D. C.
 signed by them and by the witnesses and by me the said notary in the Colombo.
 presence of one another, all being present at the same time, at Case
 on this _____ day of _____ One thousand Nine hundred No. 1084.
 and _____ I further certify 23-11-44.
 —continued.

10 Date of attestation :

Notary Public.

D19.

Valuation Report Filed in D. C. Colombo Case No. 1084.

This property is valued at Rs. 2,000/-.
 Registration.

No. D 19.
 Valuation
 Report filed
 in D. C.
 Colombo
 Case.
 No. 1084.
 23-11-44.

CONDITIONS OF SALE.

Upon which Christopher Aloysius Krishnarajah, Licensed Auctioneer,
 Colombo, by virtue of a commission issued to him in case No. 1084/M.B.
 of the District Court of Colombo, will put up for sale by public auction
 at the respective spots commencing from 2.30 p.m. on the _____ day
 20 of _____, 1944, after previous advertisement, the property in the
 schedule hereto fully described.

1. The highest bidder shall become the purchaser and in the event
 of dispute between two or more bidders as to their bid, the decision of
 the Auctioneer shall be final and the sale proceeded with.
2. Bids of less than Rupees One hundred will not be accepted and
 no bidding shall be retracted.
3. The purchaser shall immediately after the sale pay the full
 amount of purchase where the same does not exceed Rupees One hundred
 and where it exceeds that sum he shall pay one-tenth of the purchase
 30 amount to the Auctioneer.
4. The purchaser shall also at the same time pay to the Auctioneer
 his commission at the rate of two per cent. all advertisement and other
 charges and also the Notary's fees and value of stamps for conditions of
 sale and costs of drawing conditions.
5. Where the purchase amount exceeds One hundred Rupees, the
 purchaser shall furnish two good and sufficient sureties if required by the
 Auctioneer who shall sign an agreement with him for the payments into
 Court of the balance money within thirty days from the date hereof and
 should that day fall on a Public Holiday or a Sunday then on the first
 40 office day next following.

Exhibits.
 No. D 19.
 Valuation
 Report filed
 in D. C.
 Colombo
 Case.
 No. 1084.
 23-11-44.
 —continued.

6. In default of payment of the balance purchase money in manner mentioned in Clause 5 hereof, the amount of deposit shall be forfeited and such deposit shall be applied in reduction of the claim of the judgment-creditor, and the property shall be resold at the risk of the purchaser and his sureties who shall forfeit all claim, benefit and advantage in respect of this sale and the property and shall not be entitled to any advantage arising at such resale, but shall be liable in respect of any deficiency between it and the present sale.

7. The resale contemplated in Clause 6 herein shall take place upon fresh advertisement as provided for the first sale and in the same manner and subject to the same conditions as the first sale.

8. The Auctioneer has the right to reject the bid of any person without assigning any reason therefor and he shall continue the sale as if no such bid had been made.

9. Should the highest bidder being declared the purchaser fail to pay immediately the required amount and furnish satisfactory sureties, for the payment of the balance, then the next highest bidder may be declared the purchaser and be called upon to pay the required amount and furnish sureties as aforesaid, and in the same manner the other bidders in turn, and each person failing to make such payment and furnish sureties as aforesaid, shall be bound to pay the difference between the amount of his bid and the sum finally settled at the sale. The Auctioneer may however in the event of default of the highest bidder, instead of declaring the next highest bidder the purchaser immediately put up the property for sale, afresh, or postpone the sale, in which latter event the property shall again be advertised as previously.

10. If the price for the property is finally sold at the second or any subsequent sale is not less than the first sale, then money deposited by the purchaser at the first and other sales which proceeded the final sale, shall be paid to the execution creditor in satisfaction *protanto*, of the judgment, and in the event of such judgment being so satisfied and any surplus remaining, such surplus shall after deducting any expenses consequent on the sale be paid to the judgment-debtor.

11. The difference between the biddings of any person failing to make payment and furnish sureties, as mentioned in Clause 3, 4 and 5 hereof, and the amount finally settled at the sale, and also the difference between the amount of the final sale and the amount of previous sales shall be added to purchase money of the final sale.

12. The Auctioneer does not warrant and defend the sale.

13. The purchaser shall pay the costs of preparing a plan of survey of the premises sold and to the transfer in his favour.

14. The purchaser shall deposit the amount of poundage at the rate of six cents on every Five Rupees or part thereof on the value of the property sold, not exceeding the amount of the judgment debt, in the nearest Kachcheri to the credit of revenue and shall produce to the Auctioneer the official receipt to be sent by him to Court with his report.

15. No error or mistake in the description or in the extent of the property shall vitiate or render the sale void nor shall any compensation be allowed in respect thereof.

Exhibits.
No. D 19.
Valuation
Report filed
in D. C.
Colombo
Case
No. 1084.
28-11-44.
—continued.

Names of Bidders	Amount of bids.		Names of Bidders	Amount of bids.	
	Rs.	Cts.		Rs.	Cts.

I, Francis Ferdinand Krishnapillai, Licensed Auctioneer of Colombo, do hereby declare that this day became the purchaser of the said premises for the sum of Rupees and that
10 paid me the sum of Rupees in part
payment of the purchase money aforesaid.

As witness my hand at Colombo on this day of
One thousand Nine hundred and

Auctioneer.

I, of
I have this day purchased the premises for the sum of Rupees do
hereby acknowledge that in terms of the aforesaid conditions
and bind for the due performance thereof.

As witness hand at Colombo on this day of
20 One thousand Nine hundred and

Purchaser.

We, do hereby
bind ourselves jointly and severally as sureties to the said purchaser for
the payment of the balance purchase money and the due performance of
all the aforesaid conditions hereby renouncing all privileges to which we
as sureties are otherwise by law entitled.

As witness our hands at Colombo on this day of
One thousand Nine hundred and

Sureties.

30 **THE SCHEDULE ABOVE REFERRED TO.**

3. All that land called Pupalahena Udahawatte together with the tea plantation standing thereon bearing registered No. S.C. 6048 at the Tea Controller's Office, situated at Kandekumbure in Naranpanawa in the Palis Pattu Korale of Lower Dumbara, in the District of Kandy, Central Province, and bounded on the North by ditch of the land belonging to Angara, on the East by ditch of the land belonging to Jamaldeen,

Exhibts. on the South by the limit of Marieland Estate, and on the West by the
 No. D 19. limit of Marieland Estate and containing in extent about two pelas and
 Valuation Report filed in D. C. Colombo Case. five lahas of paddy sowing.

No. 1084.
 23-11-44.
 —continued.

Witnesses :

I, _____ of _____
 Notary Public, do hereby certify and attest that the foregoing instrument
 having been duly read over by the said Francis Fernandez purchaser
 and sureties above-named in the presence of the subscribing witnesses
 hereto both of whom are known to me the same was signed by them and
 by the witnesses and by me the said Notary in the presence of one another, 10
 all being present at the same time; at _____ on this _____ day
 of _____ One thousand nine hundred and _____

I further certify

Date of attestation :

Notary Public.

D20.

No. D 20.
 Valuation Report filed in D. C. Colombo Case No. 1084. 23.11-44.

Valuation Report Filed in D. C. Colombo Case No. 1084.

This property is valued at Rs. 700/-.
 Registration.

CONDITIONS OF SALE.

Upon which Christopher Aloysius Krishnarajah, Licensed Auctioneer 20
 of Colombo by virtue of a commission issued to him in case No. 1084/M.B.
 of the District Court of Colombo will put up for sale by public auction
 at the respective spots commencing from 2·30 p.m. on the _____ day
 of _____ 1944, after previous advertisement, the property in the
 schedule hereto fully described.

1. The highest bidder shall become the purchaser and in the event
 of dispute between two or more bidders as to their bid, the decision of the
 Auctioneer shall be final and the sale proceeded with.

2. Bids of less than Rupees One hundred will not be accepted and
 no bidding shall be retracted.

3. The purchaser shall immediately after the sale pay the full
 amount of purchase where the same does not exceed One hundred Rupees
 and where it exceeds that sum he shall pay one-tenth of the purchase
 amount to the Auctioneer.

4. The purchaser shall also at the same time pay to the Auctioneer
 his commission at the rate of two per cent. all advertisement and other
 charges and also the Notary's fees and value of stamps for Conditions of
 Sale and costs of drawing conditions.

5. Where the purchase amount exceeds One hundred Rupees, the purchaser shall furnish two good and sufficient sureties if required by the Auctioneer who shall sign an agreement with him for the payments into Court of the balance money within thirty days from the date hereof and should that day fall on a Public Holiday or a Sunday then on the first office day next following.

Exhibits-
No. D 20.
Valuation
Report filed
in D. C.
Colombo.
Case
No. 1084.
23-11-44.
—continued.

6. In default of payment of the balance purchase money in manner mentioned in Clause 5 hereof, the amount of deposit shall be forfeited and such deposit shall be applied in reduction of the claim of the judgment-
10 creditor, and the property shall be resold at the risk of the purchaser and his sureties who shall forfeit all claim, benefit and advantage in respect of this sale and the property, and shall not be entitled to any advantage arising at such resale, but shall be liable in respect of any deficiency between it and the present sale.

7. The resale contemplated in Clause 6 herein shall take place upon fresh advertisements as provided for the first sale and in the same manner and subject to the same conditions as the first sale.

8. The Auctioneer has the right to reject the bid of any person without assigning any reason therefor and he shall continue the sale as
20 if no such bid had been made.

9. Should the highest bidder, being declared the purchaser, fail to pay immediately the required amount and furnish satisfactory sureties, for the payment of the balance, then the next highest bidder may be declared the purchaser and be called upon to pay the required amount and furnish sureties as aforesaid, and in the same manner the other bidders in turn; and each person failing to make such payment and furnish sureties as aforesaid, shall be bound to pay the difference between the amount of his bid and the sum finally settled at the sale. The Auctioneer may however in the event of default of the highest bidder,
30 instead of declaring the next highest bidder the purchaser immediately put up the property for sale afresh, or postpone the sale, in which latter event the property shall again be advertised as previously.

10. If the price for the property is finally sold at the second or any subsequent sale is not less than the first sale, then money deposited by the purchaser at the first and other sales which preceded the final sale, shall be paid to the execution creditor in satisfaction *pro tanto*, of the judgment, and in the event of such judgment being so satisfied and any surplus remaining, such surplus shall after deducting any expenses consequent on the sale be paid to the judgment-debtor.

40 11. The difference between biddings of any person failing to make payment and furnish sureties, as mentioned in Clause 3, 4 and 5 hereof, and the amount finally settled at the sale, and also the difference between the amount of the final sale and the amount of previous sales shall be added to the purchase money of the final date.

12. The Auctioneer does not warrant and defend the sale.

Exhibits.
 No. D 20.
 Valuation
 Report filed
 in D. C.
 Colombo.
 Case
 No. 1084.
 23-11-44.
 —continued.

13. The purchaser shall pay the cost of preparing a plan figure of survey of the premises sold and to the transfer in his favour.

14. The purchaser shall deposit the amount of poundage at the rate of six cents on every five rupees or part thereof on the value of the property sold, not exceeding the amount of the judgment debt, in the nearest Kachcheri to the credit of revenue and shall produce to the Auctioneer the official receipt to be sent by him to Court with his report.

15. No error or mistake in the description or in the extent of the property shall vitiate or render the sale void nor shall any compensation be allowed in respect thereof. 10

Names of Bidders	Amount of bids		Names of Bidders	Amount of bids	
	Rs.	Cts.		Rs.	Cts.
I, Francis Ferdinandez Krishnapillai, Licensed Auctioneer of Colombo, do hereby declare that this day became the purchaser of the said premises for the sum of Rupees and that paid me the sum of Rupees in part payment of the purchase money aforesaid.					
As witness my hand at Colombo on this day of					
One thousand Nine hundred and 20					

Auctioneer.

I, _____ of _____ do hereby acknowledge that in terms of the aforesaid conditions and bind for the due performance thereof. I have this day purchased the premises for the sum of Rupees _____ do hereby acknowledge that in terms of the aforesaid conditions and bind for the due performance thereof.

As witness my hand at Colombo on this day of

One thousand Nine hundred

Purchaser.

We, _____ do hereby bind ourselves jointly and severally as sureties to the said purchaser for the payment of the balance purchase money and the due performance of all the aforesaid conditions hereby renouncing all privileges to which we as sureties are otherwise by law entitled.

As witnesses our hands at Colombo on this day of

One thousand Nine hundred and

Sureties.

THE SCHEDULE ABOVE REFERRED TO.

6. All that land called Pallehawatte together with the tea plantations standing thereon bearing registered No. S.C. 5857 at the Tea Controller's Office, situated at Kandekumbure in Naranpanawa in Pallis 40

Pattu Korale of Lower Dumbara, in the District of Kandy, Central Province, and bounded on the North by the limit of Rantetduragedara Kapumalie's garden; on the East by Kumburewella, on the South by the limit of Amunegedara Puncheda's garden, and on the West by the fence of Medakotuwa Sebanie's garden and containing in extent about nine lahas of paddy sowing.

Exhibits.
No. D 20.
Valuation
Report filed
in D. C.
Colombo.
Case
No. 1084.
23-11-44.
—continued.

Witnesses :

I, _____ of
Notary Public, do hereby certify and attest that the foregoing instrument
10 having been duly read over by the said Francis Fernandez Krishnapillai,
the Auctioneer, purchaser and sureties above-named in the presence of the
subscribing witnesses hereto both of whom are known to me the same was
signed by them and by the witnesses and by me the said Notary in the
presence of one another, all being present at the same time, at
on this _____ day of _____ One thousand Nine hundred
and _____

I further certify

Date of attestation :

Notary Public.

D21.

20 **Valuation Report Filed in D. C. Colombo Case No. 1084.**

The property is valued at Rs. 700/-.
Registration.

No. D 21.
Valuation
Report filed
in D. C.
Colombo.
Case
No. 1084.
23-11-44.

CONDITIONS OF SALE.

Upon which Christopher Aloysius Krishnarajah, Licensed Auctioneer, Colombo, by virtue of a commission issued to him in case No. 1084/M.B. of the District Court of Colombo, will put up for sale by Public Auction at the respective spots commencing from 2.30 p.m. on the _____ day of _____ 1944, after previous advertisement, the property in the schedule hereto fully described.

30 1. The highest bidder shall become the purchaser and in the event of dispute between two or more bidders as to their bid, the decision of the Auctioneer shall be final and the sale proceeded with.

2. Bids of less than Rupees One hundred will not be accepted and no bidding shall be retracted.

3. The purchaser shall immediately after the sale pay the full amount of purchase where the same does not exceed One hundred Rupees and where it exceeds that sum he shall pay one-tenth of the purchase amount to the Auctioneer.

Exhibits.
 No. D 21.
 Valuation
 Report filed
 in D. G.
 Colombo.
 Case
 No. 1084.
 23-11-44.
 —continued.

4. The purchaser shall also at the same time pay to the Auctioneer his commission at the rate of two per cent. all advertisement and other charges and also the Notary's fees and value of stamps for conditions of sale and costs of drawing conditions.

5. Where the purchase amount exceeds One hundred Rupees, the purchaser shall furnish two good and sufficient sureties if required by the Auctioneer who shall sign an agreement with him for the payments into Court of the balance money within thirty days from the date hereof and should that day fall on a Public Holiday or a Sunday then on the first office day next following.

10

6. In default of payment of the balance purchase money in manner mentioned in Clause 5 hereof the amount of deposit shall be forfeited and such deposit shall be applied in reduction of the claim of the judgment-creditor, and the property shall be re-sold at the risk of the purchaser as his sureties who shall forfeit all claim, benefit and advantage in respect of this sale and the property, and shall not be entitled to any advantage arising at such re-sale, but shall be liable in respect of any deficiency between it and the present sale.

7. The re-sale contemplated in Clause 6 herein shall take place upon fresh advertisements as provided for the first sale and in the same manner and subject to the same conditions as the first sale.

8. The Auctioneer has the right to reject the bid of any person without assigning any reason therefor and he shall continue the sale as if no such bid had been made.

9. Should the highest bidder, being declared the purchaser, fail to pay immediately the required amount and furnish satisfactory sureties, for the payment of the balance, then the next highest bidder may be declared the purchaser and be called upon to pay the required amount and furnish sureties as aforesaid, and in the same manner the other bidders in turn; and each person failing to make such payment and furnish sureties as aforesaid, shall be bound to pay the difference between the amount of his bid and the sum finally settled at the sale. The Auctioneer may however in the event of default of the highest bidder, instead of declaring the next highest bidder the purchaser immediately put up the property for sale afresh, or postpone the sale, in which latter event the property shall again be advertised as previously.

10. If the price for the property finally sold at the second or any subsequent sale is not less than the first sale, then money deposited by the purchaser at the first and other sales which preceded the final sale, shall be paid to the execution creditor in satisfaction *pro tanto*, of the judgment, and in the event of such judgment being so satisfied and any surplus remaining, such surplus shall after deducting any expenses consequent on the sale be paid to the judgment-debtor.

11. The difference between the biddings of any person failing to make payment and furnish sureties, as mentioned in Clause 3, 4 and 5 hereof, and the amount finally settled at the sale, and also the difference

between the amount of the final sale and the amount of previous sales shall be added to the purchase money of the final sale.

12. The Auctioneer does not warrant and defend the sale.

13. The purchaser shall pay the costs of preparing a plan figure of survey of the premises sold and to the transfer in his favour.

14. The purchaser shall deposit the amount of poundage at the rate of six cents on every Five Rupees or part thereof on the value of the property sold, not exceeding the amount of the judgment debt, in the nearest Kachcheri to the credit of revenue and shall produce to the
10 Auctioneer the official receipt to be sent by him to Court with his report.

15. No error or mistake in the description or in the extent of the property shall vitiate or render the sale void nor shall any compensation be allowed in respect thereof.

Exhibits.
No. D 21.
Valuation
Report filed
in D. C.
Colombo.
Case
No. 1084.
23-11-44.
—continued.

Names of Bidders	Amount of bids.		Names of Bidders	Amount of bids.	
	Rs.	Cts.		Rs.	Cts.

I, Francis Ferdinandez Krishnapillai, Licensed Auctioneer of Colombo, do hereby declare that this day became the purchaser of the said premises for the sum of Rupees and that paid me the sum of Rupees in part payment of the purchase money aforesaid.

As witness my hand at Colombo on this day of
20 One thousand Nine hundred and

Auctioneer.

I, of I have this day purchased the premises for the sum of Rupees do hereby acknowledge that in terms of the aforesaid conditions and bind for the due performance thereof.

As witness my hand at Colombo on this day of
One thousand Nine hundred and

Purchaser.

We, do hereby
30 bind ourselves jointly and severally as sureties to the said purchaser for the payment of the balance purchase money and the due performance of all the aforesaid conditions hereby renouncing all privileges to which we as sureties are otherwise by law entitled.

As witness our hands at Colombo on this day of
One thousand Nine hundred and

Sureties.

THE SCHEDULE ABOVE REFERRED TO.

4. All that land called Medakotuwa with the buildings and the tea plantation standing thereon bearing registered No. S.C. 38676 at the Tea

Exhibits.
No. D 21.
Valuation
Report filed
in D. C.
Colombo.
Case
No. 1084.
23-11-44.
—continued.

Controller's Office, situated at Kandekumbura in Naranpanawa in Palis Pattu Korale of Lower Dumbara, in the District of Kandy, Central Province, and bounded on the North by land belonging to Rantetgedera Ukkuwa, on the East by fence of Medakotuwawatte, on the South by the limit of the land belonging to Amunegedera Kaluwa, and on the West by land belonging to Rantetgedera Horatala and containing in extent about eight lahas paddy sowing.

Witnesses :

I, _____ of _____
Notary Public, do hereby certify and attest that the foregoing instrument 10 having been duly read over by the said Francis Fernandez Krishnapillai, the Auctioneer, purchaser and sureties above-named in the presence of the subscribing witnesses hereto both of whom are known to me the same was signed by them and by the witnesses and by me the said Notary in the presence of one another, all being present at the same time, at on this _____ day of _____ One thousand Nine hundred and _____

I further certify

Date of attestation :

Notary Public.

No. D 22.
Valuation
Report filed
in D. C.
Colombo.
Case
No. 1084.
23-11-44.

D22.

20

Valuation Report Filed in D. C. Colombo Case No. 1084.

This property is valued at Rs. 2,000/-.
Registration.

CONDITIONS OF SALE.

Upon which Christopher Aloysius Krishnarajah, Licensed Auctioneer of Colombo, by virtue of a commission issued to him in case No. 1084/M.B. of the District Court of Colombo will put up for sale by Public Auction at the respective spots commencing from 2.30 p.m. the _____ day of _____ 1944, after previous advertisement, the property in the schedule hereto fully described. 30

1. The highest bidder shall become the purchaser and in the event of dispute between two or more bidders as to their bid, the decision of the Auctioneer shall be final and the sale proceeded with.

2. Bids of less than Rupees One hundred will not be accepted and no bidding shall be retracted.

3. The purchaser shall immediately after the sale pay the full amount of purchase where the same does not exceed One hundred Rupees and where it exceeds that sum he shall pay one-tenth of the purchase amount to the Auctioneer.

4. The purchaser shall also at the same time pay to the Auctioneer his commission at the rate of two per cent. all advertisement and other charges and also the Notary's fees and value of stamps for conditions of sale and costs of drawing conditions.

5. Where the purchase amount exceeds One hundred Rupees, the purchaser shall furnish two good and sufficient sureties if required by the Auctioneer who shall sign an agreement with him for the payments into Court of the balance money within thirty days from the date hereof and should that day fall on a Public Holiday or a Sunday then on the first office day next following.

6. In default of payment of the balance purchase money in manner mentioned in Clause 5 hereof, the amount of deposit shall be forfeited and such deposit shall be applied in reduction of the claim of the judgment creditor, and the property shall be re-sold at the risk of the purchaser and his sureties who shall forfeit all claim, benefit and advantage in respect of this sale and the property, and shall not be entitled to any advantage arising at such re-sale, but shall be liable in respect of any deficiency between it and the present sale.

7. The re-sale contemplated in Clause 6 herein shall take place upon fresh advertisements as provided for the first sale and in the same manner and subject to the same conditions as the first sale.

8. The Auctioneer has the right to reject the bid of any person without assigning any reason therefore and he shall continue the sale as if no such bid had been made.

9. Should the highest bidder being declared the purchaser fail to pay immediately the required amount and furnish satisfactory sureties, for the payment of the balance, then the next highest bidder may be declared the purchaser and be called upon to pay the required amount and furnish sureties as aforesaid, and in the same manner as the other bidders in turn, and each person failing to make such payment and furnish sureties as aforesaid, shall be bound to pay the difference between the amount of his bid and the sum finally settled at the sale. The Auctioneer may however in the event of default of the highest bidder, instead of declaring the next highest bidder the purchaser immediately put up the property for sale afresh, or postpone the sale, in which latter event the property shall again be advertised as previously.

10. If the price for the property is finally sold at the second or any subsequent sale is not less than the first sale, then money deposited by the purchaser at the first and other sales which proceeded the final sale, shall be paid to the execution creditor in satisfaction *pro tanto*, of the judgment, and in the event of such judgment being so satisfied and any surplus remaining, such surplus shall after deducting any expenses consequent on the sale be paid to the judgment-debtor.

11. The difference between the biddings of any person failing to make payment and furnish sureties, as mentioned in Clause 3, 4 and 5 hereof, and the amount finally settled at the sale, and also the difference

Exhibits.
No. D 22.
Valuation
Report filed
in D. C.
Colombo.
Case
No. 1084.
23-11-44
—continued.

Exhibits.
 No. D 22.
 Valuation
 Report filed
 in D. C.
 Colombo.
 Case
 No. 1081.
 23-11-44.
 —continued.

between the amount of the final sale and the amount of previous sales shall be added to the purchase money of the final sale.

12. The Auctioneer does not warrant and defend the sale.

13. The purchaser shall pay the cost of preparing a plan figure of survey of the premises sold and to the transfer in his favour.

14. The purchaser shall deposit the amount of poundage at the rate of six cents on every five rupees or part thereof on the value of the property sold, not exceeding the amount of the judgment debt, in the nearest Kachcheri to the credit of revenue and shall produce to the auctioneer the official receipt to be sent by him to Court with his report. 10

15. No error or mistake in the description or in the extent of the property shall vitiate or render the sale void nor shall any compensation be allowed in respect thereof.

Names of Bidders	Amount of bids.		Names of Bidders	Amount of bids.	
	Rs.	Cts.		Rs.	Cts.

I, Francis Ferdinand Krishnapillai, Licensed Auctioneer of Colombo, do hereby declare that _____ this day became the purchaser of the said premises for the sum of Rupees _____ and that paid me the sum of Rupees _____ in part payment of the purchase money 20 aforesaid.

As witness my hand at Colombo on this _____ day of
 One thousand Nine hundred and _____

Auctioneer.

I, _____ of _____
 I have this day purchased the premises for the sum of Rupees _____ do hereby acknowledge that _____ in terms of the aforesaid conditions and _____ bind _____ for the due performance thereof.

As witness my hand at Colombo on this _____ day of
 One thousand Nine hundred and _____ 30

Purchaser.

We, _____ do hereby bind ourselves jointly and severally as sureties to the said purchaser for the payment of the balance purchase money and the due performance of all the aforesaid conditions hereby renouncing all privileges to which we as sureties are otherwise by law entitled.

As witness our hands at Colombo on this _____ day of
 One thousand Nine hundred and _____

Sureties.

THE SCHEDULE ABOVE REFERRED TO.

2. All that land called Medakotuwewatte together with all the buildings and the tea plantations standing thereon bearing registered No. S.C. 5853 at the Tea Controller's Office, situated at Kandekumbure in Naranpanawa in Palis Pattu Korale of Lower Dumbara, in the District of Kandy, Central Province, and bounded on the North by limit of the land belonging to Kumburegedera Puncha, on the East by the garden of Kumburegedera Horatala, on the South by the land belonging to Amunegedera Kaluwa, and on the West by Medakotuwa belonging to Rantegedera Horatala and containing in extent about two pelas and five lahas of paddy sowing.

Exhibits.
No. D 22.
Valuation
Report filed
in D. C.
Colombo.
Case
No. 1084.
23-11-44.
—continued.

Witnesses :

I, _____ of _____
Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over by the said Francis Fernandez, the Auctioneer, purchaser and sureties above-named in the presence of the subscribing witnesses hereto both of whom are known to me the same was signed by them and by the witnesses and by me the said Notary in the presence of one another, all being present at the same time, at
20 on this _____ day of _____ One thousand Nine hundred
and _____
I further certify

Date of attestation :

Notary Public.

D 23.

Valuation Report Filed in D. C. Colombo Case No. 1084.

This property is valued at Rs. 9,500/-.
Registration.

No. D 23.
Valuation
Report filed
in D. C.
Colombo.
Case
No. 1084.
23-11-44.

CONDITIONS OF SALE.

Upon which Christopher Aloysius Krishnarajah, Licensed Auctioneer of Colombo, by virtue of a commission issued to him in case No. 1084/M.B. of the District Court of Colombo will put up for sale by Public Auction at the respective spots commencing from 2·30 p.m. the _____ day of _____ 1944, after previous advertisement, the property in the schedule hereto fully described.

Exhibits.
 No. D 23.
 Valuation
 Report filed
 in D. C.
 Colombo.
 Case
 No. 1084,
 23-11-44.
 —continued

1. The highest bidder shall become the purchaser and in the event of dispute between two or more bidders as to their bid, the decision of the Auctioneer shall be final and the sale proceeded with.

2. Bids of less than Rupees One hundred will not be accepted and no bidding shall be retracted.

3. The purchaser shall immediately after the sale pay the full amount of purchase where the same does not exceed One hundred Rupees and where it exceeds that sum he shall pay one-tenth of the purchase amount to the Auctioneer.

4. The purchaser shall also at the same time pay to the Auctioneer 10 his commission at the rate of two per cent. all advertisement and other charges and also the Notary's fees and value of stamps for conditions of sale and costs of drawing conditions.

5. Where the purchase amount exceeds One hundred Rupees, the purchaser shall furnish two good and sufficient sureties if required by the Auctioneer who shall sign an agreement with him for the payments into Court of the balance money within thirty days from the date hereof and should that day fall on a Public Holiday or a Sunday then on the first office day next following.

6. In default of payment of the balance purchase money in manner 20 mentioned in Clause 5 hereof, the amount of deposit shall be forfeited and such deposit shall be applied in reduction of the claim of the judgment-creditor, and the property shall be re-sold at the risk of the purchaser and his sureties who shall forfeit all claim, benefit and advantage in respect of this sale and the property, and shall not be entitled to any advantage arising at such re-sale, but shall be liable in respect of any deficiency between it and the present sale.

7. The re-sale contemplated in Clause 6 herein shall take place upon fresh advertisements as provided for the first sale and in the same manner and subject to the same conditions as the first sale. 30

8. The Auctioneer has the right to reject the bid of any person without assigning any reason therefore and he shall continue the sale as if no such bid had been made.

9. Should the highest bidder, being declared the purchaser fail to pay immediately the required amount and furnish satisfactory sureties, for the payment of the balance, then the next highest bidder may be declared the purchaser and be called upon to pay the required amount and furnish sureties as aforesaid, and in the same manner the other bidders in turn, and each person failing to make such payment and furnish sureties as aforesaid, shall be bound to pay the difference between the 40 amount of his bid and the sum finally settled at the sale. The Auctioneer may however in the event of default of the highest bidder, instead of declaring the next highest bidder the purchaser immediately put up the property for sale afresh, or postpone the sale, in which latter event the property shall again be advertised as previously.

10. If the price for the property is finally sold at the second or any subsequent sale is not less than the first sale, then money deposited by the purchaser at the first and other sales which proceeded the final sale, shall be paid to the execution creditor in satisfaction *pro tanto*, of the judgment, and in the event of such judgment being so satisfied and any surplus remaining, such surplus shall after deducting any expenses consequent on the sale be paid to the judgment-debtor.

Exhibits.
No. D 23.
Valuation
Report filed
in D. C.
Colombo.
Case
No. 1084.
23-11-44.
—continued.

11. The difference between the biddings of any person failing to make payment and furnish sureties, as mentioned in Clause 3, 4 and 5 hereof, and the amount finally settled at the sale, and also the difference between the amount of the final sale and the amount of previous sales shall be added to the purchase money of the final sale.

12. The Auctioneer does not warrant and defend the sale.

13. The purchaser shall pay the cost of preparing a plan figure of survey of the premises sold and to the transfer in his favour.

14. The purchaser shall deposit the amount of poundage at the rate of six cents on every five rupees or part thereof on the value of the property sold, not exceeding the amount of the judgment debt, in the nearest Kachcheri to the credit of revenue and shall produce to the Auctioneer the official receipt to be sent by him to Court with his report.

15. No error or mistake in the description or in the extent of the property shall vitiate or render the sale void nor shall any compensation be allowed in respect thereof.

Name of Bidders	Amounts of bids.		Name of Bidders	Amounts of bids.	
	Rs.	Cts.		Rs.	Cts.

I, Francis Fernandez Krishnapillai, Licensed Auctioneer of Colombo, do hereby declare that this day became the purchaser of the said premises for the sum of Rupees and that paid me the sum of Rupees in part payment of the purchase money aforesaid.

As witness my hand at Colombo on this day of
One thousand Nine hundred and

Auctioneer.

Exhibits.
No. D 23.
Valuation
Report filed
in D. C.
Colombo.
Case
No. 1084.
23-11-44.
—continued.

I, _____ of _____ do
hereby acknowledge that _____ in terms of the aforesaid condi-
tions and _____ bind _____ for the due performance thereof.

As witness hand at Colombo on this _____ day of
One thousand Nine hundred and _____

Purchaser.

We, _____ do hereby
bind ourselves jointly and severally as sureties to the said purchaser for
the payment of the balance purchase money and the due performance of 10
all the aforesaid conditions hereby renouncing all privileges to which we
as sureties are otherwise by law entitled.

As witness our hands at Colombo on this _____ day of
One thousand Nine hundred and _____

Sureties.

THE SCHEDULE ABOVE REFERRED TO:

All those undivided nineteen-twentieth parts or shares of the land called Dodanwattettenehena now garden bearing registered No. 906052 at the Tea Controller's Office together with the tea plantations standing thereon, situated at Pallegama in the Palle Gampaha Korale of Lower 20 Dumbara, in the District of Kandy, Central Province, and bounded on the East by the road, on the South by Malakandura of Durainnehena, on the West by Appullannalagegedera and Kumburewella, and on the North by Kimburegedera Puncha's land and limit of Wehigalagederahena and containing in extent two amunams and two pelas of paddy sowing which said land is otherwise described as follows :—

All that land called Dodanwattettenehena, situated at Pallegama aforesaid and bounded on the East by old road and fence, on the South by ditch, on the West by Udagederawatte Kumburewella and limit of Puncha's land, and on the North by limit of Horatala's chena and con- 30 taining in extent one yelamunam of paddy sowing.

Witnesses :

I, _____ of _____ Exhibits.
 Notary Public, do hereby certify and attest that the foregoing instrument No. D 23.
 having been duly read over by the said Francis Fernandez, the Valuation
 Auctioneer, purchaser and sureties above-named in the presence of Report filed
 the subscribing witnesses hereto, both of whom are known in D. C.
 to me the same was signed by them and by the witnesses and by me the Colombo.
 said Notary in the presence of one another, all being present at the same Case
 time, at _____ on this _____ day of _____ No. 1084.
 thousand Nine hundred and _____ One 23-11-44.
 —continued.

10 I further certify

Date of attestation : _____ Notary Public.

D24.

Valuation Report Filed in D. C. Colombo Case No. 1084.

IN THE DISTRICT COURT OF COLOMBO.

No. D 24.
 Valuation
 Report filed
 in D. C.
 Colombo.
 Case
 No. 1084.
 23-11-44.

A. R. WEERASURIYA of Ambalangoda.....*Plaintiff.*

No. 1084/M.B. *vs.*

K. R. SAMARATUNGE of Kandy.....*Defendant.*

K. S. NAINA MARIKAR of Colombo.....*Necessary Party.*

I beg to inform Court that I have made a mistake in computing the 20 values of the properties under sale.

I beg to submit correct valuations of the properties in the order they appear in the decree.

1st property	...	...	...	Rs. 2,500·00
2nd property	...	...	...	„ 7,170·00
3rd property	...	...	...	„ 1,170·00
4th property	...	...	...	„ 475·00
5th property	...	...	...	„ 1,875·00
6th property	...	...	...	„ 425·00

(Sgd.) C. A. KRISHNARAJAH,
Auctioneer.

Colombo, 23rd November, 1944.

Exhibits.

No. P 48.
Letter from
K. R.
Samara-
tunge to
Plaintiff-
12-5-45.

Letter from K. R. Samaratunge to Plaintiff.

K. R. Samaratunge,
C/o The Postmaster,
Bandarawela,
12th May, 1945.

A. R. WEERASURIYA, Esq.,
" Sirisevena, " Nambimulla,
Ambalangoda.

Dear Mr. Weerasuriya,

10

I regret to mention that there appears to be a very many irregularities regarding the title of all my properties. I approached several people about effecting a sale and none appears to be interested over same.

The people round about here seem to be very mischievous in giving false hopes and vain promises about any type of sale. The titles are not perfect and I too feel the same over them now. Some say the lands are not divided and neither surveyed. The extents appear to vary with that of the Laha measurements mentioned in the deeds—in most cases very much less. The price of lands has fallen back considerably.

The house is very old and damp and so and so forth.

20

When I mentioned these facts to my son-in-law who is also of poor circumstances, he suggested me to sound you and find out whether you will agree upon a payment of Rs. 7,500/- in full settlement. The chances of collecting even this much at an auction are rather remote. In the circumstances instead of accepting this generous offer I personally do not think it advisable to adopt anything in the contrary.

I feel sorry for your hard earned money and I do not mind in my having to walk away with my children leaving behind for you all my properties : but in the long run I sincerely feel and know it perfectly well and you will never be able to collect even the above amount at any subsequent sale.

The people round about here are very unreliable and they are trying to hood wink you.

Thanking you with deep concern,

(Sgd.) K. R. SAMARATUNGE,

P44.**Letter from K. R. Samaratunge to Plaintiff.**

K. R. Samaratunge,
C/o Postmaster,
Bandarawela,
23-5-45.

Exhibits.

No. P 44.
Letter from
K. R.
Samaratunge to
Plaintiff.
23-5-45.

Dear Mr. Weerasuriya,

I wrote you a letter on 12th inst. and regret to find that no reply so far.

10 Will you please let me know your views immediately on receipt of this. I am afraid your lawyers have played you out very badly.

Reply early please.

Thanking you,
(Sgd.) K. R. SAMARATUNGE.

D11.**Certificate of Posting.**

No. D 11.
Certificate
of Posting.
25-5-45.

Posted this date two (letters) addressed to K. R. Samaratunge, C/o Postmaster, Bandarawela.

20 K. R. Samaratunge, C/o Sergeant Premasundara, Record Office, Diya-talawa.

Colombo, 25-5-45.

D12.**Draft of Letter from Defendant to K. R. Samaratunge.**

25-5-45.

No. D 12.
Draft of
Letter from
Defendant
to K. R.
Samaratunge.
25-5-45.

K. R. Samaratunge.

30 Your letter dated 12th May, 1945, addressed to my client Mr. A. R. Weerasuriya is tendered to me with instructions to inform you that you have at present taken on a new roll, namely, that of trying to lower the value of your land mortgaged to my client by running down the title and the value of the property.

When we gave you time my client and I finally believed that you were making honest endeavour to pay off the debt by selling privately some blocks as promised by you. Now I find that you are adopting dishonest attitude to deceive us all.

Exhibits.
No. D 12.
Draft of
Letter from
Defendant
to K. R.
Samaratunge,
25-5-45,
—continued.

My client wants to meet you a few days ago at Kandy and Panwila. He could not meet you, but he met your son-in-law and had a long talk.

In your said letter you have stated that your son-in-law has offered Rs. 7,500/-. When this letter was shown he was stunned and informed my client that he knew nothing about this.

In adopting similar dishonest tactics you lost a valuable land for a song. You seemed to have not learned a lesson from the previous experience. You are trying your best to ruin yourself by running down the property just as you did in the sale of the other property mortgaged to Moolchand. 10

If you are sincere and sell a portion and collect about Rs. 6 or 7 thousand I might be in a position to get you further time. Otherwise I will have to carry out the instructions of my client in re-fixing the sale.

I presume that you must have received my previous letter dated 21-3-45, but I did not receive any reply. This letter is final.

Yours faithfully,

P45.

Letter from Plaintiff to K. R. Samaratunge.

No. P 45.
Letter from
Plaintiff to
K. R.
Samaratunge,
28-5-45.

“ Sirisevena ”,
Nambimulla, Ambalangoda, 20
28th May, 1945.

Dear Mr. Samaratunge,

I have received your letter of the 12th and of the 23rd inst. I am surprised to see the proposal you have made to settle my loan of Rs. 15,000/- by making a payment of only Rs. 7,500/-. The interest itself on the loan has come to Rs. 3,750/- for the 2½ years. It is also surprising that you have found many irregularities in the title deeds of these properties only now which were not known to you before the transaction was effected. I am sorry to see that you have not taken steps to pay me even a part of the loan during the period of 6 months, the time you had obtained from me for settlement. I think it is a mistake that I have made in giving you time. I thought you were sincere and you would make every effort to settle this during this period.

It is not at all possible for me to agree to your proposal and the other alternative is to put up the properties for sale. If you are prepared to make a part payment of the principal and the interest I have no objection of giving you some more time, otherwise the sale will have to take place.

I have shown your letter of the 12th to Mr. Fuard and told him to reply to you stating that I am not agreeable to your proposal. Perhaps by this time you would have received his letter. 40

(Sgd.) A. R. WEERASURIYA.

Letter from Defendant to T. M. Perera.

No. P 71.
Letter from
Defendant
to T. M.
Perera.
28-5-45.

A. M. Fuard, Proctor, S.C.,
130, Hultsdorf Street,
Colombo, 28th May, 1945.

T. M. PERERA, ESQ.,
"The Retreat",
Charles Place, Moratuwa.

MORTGAGE BOND No. 2392.

10 Dear Sir,

Replying to your 1st para of your letter dated 24th May, 1945, and sent to me under registered cover. I write to inform you that when I recommended this transaction to you I never knew that there was any defect in the title. It was represented to me that the property originally belonged to the father of the present mortgagor. And that he died and the mortgagor in lieu of his share took the property for himself and since then he had been in possession of same. And he has been registered as the sole owner at Tea Controller Office. Further several years ago when I went to inspect the property. I met his mother and she in the presence of all of us told that her son the present mortgagor was the
20 owner.

The Crown grant in favour of mortgagor's father was registered and subsequently several mortgages and lease by the mortgagor executed by another proctor and myself were registered.

When you asked for my advice relating to this transaction, did I not advice you to inspect the said premises before consenting to lend any sum. Had you gone to inspect this property and made enquiries, you yourself would have been convinced as to the *bona fide* of my action.

I deny that I failed to exercise ordinary care and diligence in the investigation of title. In this matter I have exercised more than the
30 ordinary care and diligence. And I have duly searched encumbrance.

In this transaction I did not for a moment suspect that the title was defective. I honestly believed that it was genuine.

I have written the above not by way of my responsibility. It is written because your letter contained some veiled insinuation.

However let me assure you that I will hold myself personally liable to pay any damages you might sustain by reasons of this transaction. I am prepared to pay the amount you have invested. But I would request you to help me to filing this action against Gunasekera which I will do at my own costs.

40 I shall pay your amount on the 14th June, 1945, definitely.

Yours faithfully,
(Sgd.) A. M. FUARD.

266

Exhibits.

No. P 57.
Letter from
Plaintiff to
Defendant.
12-6-45.

P57.

Letter from Plaintiff to Defendant.

“ Sirisevena ”, Nambimulla,
Ambalangoda,
12th June, 1945.

Dear Mr. Fuard,

Will you please send me all the title deeds, etc. on the mortgage of Mr. K. R. Samaratunge including the Tea Coupon Cards with a list of same, under registered cover early.

Yours sincerely, 10
(Sgd.) R. WEERASURIYA.

P58.

Letter from Defendant to Plaintiff.

No. P 58,
Letter from
Defendant
to Plaintiff
18-6-45.

A. M. FUARD,
Proctor & Notary.
Dear Mr. Weerasuriya,

130, Hultsdorf Street,
Colombo, 18th June, 1945.

I am sending you the deeds, etc. as requested under registered cover the following documents :—

- Deed No. 712.
- Deed No. 2135 644. 20
- Deed No. 33482, 6099, 5325.
- No. 3901.
- Deed No. 2147 and 5 coupon cards.

Yours faithfully,
(Sgd.) A. M. FUARD.

P59.

Letter from Plaintiff to Defendant.

No. P 59.
Letter from
Plaintiff to
Defendant.
22-6-45.

“ Sirisevana ”, Nambimulla,
Ambalangoda,
22nd June, 1945. 30

Dear Mr. Fuard,

I have received your registered letter of the 18th instant together with the following documents :—

- Deed No. 712.
- Deed No. 2135, 644.
- Deed Nos. 33482, 6099, 5325, 3901.

Deed No. 2147.
 6 Tea Coupons Cards.
 and the following were handed to me yesterday:—
 Leases Nos. 2110, 2111, 2122, 2123, 2150.
 I have not received the discharged mortgage bonds of those properties.
 Please send them without delay.

Exhibits.
 No. P 59.
 Letter from
 Plaintiff to
 Defendant
 22-6-45.
 —continued.

Yours faithfully,
 (Sgd.) A. R. WEERASURIYA.

P60.

10

Letter from Plaintiff to Defendant.

No. P 60.
 Letter from
 Plaintiff to
 Defendant.
 12-11-45.

“Sirisevana”, Nambimulla,
 Ambalangoda,
 12th November, 1945.

A. M. FUART, Esq.,
 Proctor & Notary,
 130, Hultsdorf Street,
 Colombo.

Dear Sir,

You are aware that on your recommendation and advice I lent
 20 Rs. 15,000/- to Mr. K. R. Samaratunge. I was assured by you that the
 properties mortgaged to me as primary mortgage are worth over Rs.
 30,000/- and the lands mortgaged as secondary bond were also worth
 over Rs. 80,000/-. You assured me that the property mortgaged to the
 Indian merchant for Rs. 35,000/- is worth over Rs. 80,000/-.

When the Indian merchant filed action and summons were served
 on me also I handed the summons to you and sought your advice and I
 signed a proxy at your request. You advised me to keep quiet without
 appearing in Court as you would take necessary action and that the
 mortgaged premises will fetch at a sale over Rs. 80,000/- and that my
 30 entire claim could be recovered by the proceeds of the sale. I got alarmed
 when summons were served on me. Doubts came to my mind about the
 money due to me as well. I requested you to file action on my bond as
 well. You advised me not to file action as the properties are worth
 several times the money I have lent. As I had full confidence in your
 integrity and honesty I acted on your advice. Now I find I have been
 deceived and misled. The sum of Rs. 15,000/- I lent on your advice is
 all the savings throughout my life. From this sum Rs. 2,000/- represents
 borrowed money. In fact this is the money that have to go for my
 children's education and for the dowry of my daughter. The money
 40 was lent on the 3rd of December, 1942 (nearly 3 years ago). I have

Exhibits.
 No. P 60
 Letter from
 Plaintiff to
 Defendant.
 12-11-45
 —continued.

received up to date only 3 months interest. I understand that the money lent by your relations also, I believe on your advice, has been paid by Mr. Samaratunge. I am writing this letter to request you to take steps to settle the amount due to me.

Please favour me with an early reply.

(Sgd.) R. WEERASURIYA.

P61.

No. P 61.
 Letter from
 Defendant
 to Plaintiff.
 14-11-45.

Letter from Defendant to Plaintiff.

130, Hultsdorf Street,
 Colombo, 14th November, 1945. 10

A. R. WEERASINGHE, ESQ.,
 "Sirinivasa",
 Nambimulla, Ambalangoda.

Dear Sir,

I received your letter dated 12th November, 1945, and noted its contents.

Replying to the 1st para. of your letter, I deny that I recommended and advise you to lend Rs. 15,000/- to Mr. Samaratunge. In fact I never suggested that you should lend on his properties. And I never know that you were negotiating with Mr. Samaratunge until you informed me. Then I cautioned you when you were going out of my office with Samaratunge to inspect the land, that you should not lend unless you are certain that the big property is worth over Rs. 50,000/-. In fact I remember very well that I advise you not to place any value over his land at Medakotuwa, because it consisted of several small lots. Further I told you that you should lend Rs. 15,000/- only if the big tea estate is worth over Rs. 50,000/-.

When you inspected the property you saw me at my office and told me that you are satisfied with the big tea estate and that you did not even care to go to inspect the small one at Medakotuwa and thereafter instructed me to draw the bonds.

It is true that when the primary mortgagor filed action a summons was served on you, because you held a secondary mortgage. When you gave me the proxy I told you that the proxy need only be filed in case, if there are any money left over after the claim of the primary mortgage is satisfied. Further I advise you not to file the case until we know what the result of the sale under the primary mortgage. Immediately after the results of the sale are known, we filed the case. I don't think that you were deceived or misled. There is a veiled suggestion in your letter to the effect that I have induced you to lend the money to Mr. Samaratunge. I never introduced him to you nor did I ask you to lend

money to him. It is you who sought after him in the hope of getting a bigger rate of interest and brought him to me. And my advise immediately was that unless you are satisfied after the inspection by you that the big tea estate would be a sufficient security not to lend the money.

Prior to the lending of Rs. 15,000/- to Samaratunge you have lent on a secondary mortgage to another client on a higher rate. When the money was paid back to you you were in a feverish heat to invest. How many times you came to my office to speak to me about it. You were not willing to lend at lower rate. Thereafter you brought to me Mr. Samaratunge.

It is true I told you that in my opinion that tea estate will be worth at least 400 to 500 Rupees per acre. I remember very clearly we both calculated the jungle at Rs. 200/- the cardamoms block at Rs. 400/- and tea at Rs. 400/-, I think we arrived at a figure somewhere near Rs. 50,000/-.

I never told you that the property at Medakotuwa is worth about Rs. 30,000/-. I remember I valued the land and his residential house at Rs. 7,500/- or Rs. 10,000/-.

In your letter you seems to imagine lots of things to blame me. Still Mr. Samaratunge owes money to my relatives. And in the action you have filed we have made him the 2nd defendant.

You received several discharge bonds and deeds of Samaratunge some time ago. Now only thing we can do is to re-fix the sale. Only steps you can do to realise the amount due is by re-fixing the sale. I think you have given him ample time.

Yours faithfully,
(Sgd.) A. M. FUART.

P62.

Letter from Plaintiff to Defendant.

“ Sirisevena ”, Nambimulla,
Ambalangoda,
27th November, 1945.

30

A. M. FUART, ESQ.,
Proctor & Notary,
130, Hultsdorf Street,
Colombo.

Dear Sir,

I received your letter dated 14th inst. and I write to state that it contains all untrue statements and I can prove them so from correspondence and documents and other evidence. I lent the money entirely on your recommendation that the investment was absolutely safe. When summons were served on me I signed a proxy in your favour and requested

Exhibits.
No. P 61.
Letter from
Defendant
to Plaintiff,
14-11-45.
—continued.

No. P 62.
Letter from
Plaintiff to
Defendant,
27-11-45.

Exhibits.
No. P 62.
Letter from
Plaintiff to
Defendant,
27-11-45.
—continued.

you to take all necessary steps to safeguard my interest. It is quite clear that you have betrayed me. As I acted entirely on your advice I call upon you to pay me on or before the 30th instant the amount due to me. If this request is not complied with I shall forward all the papers to the Supreme Court.

Please favour me with an immediate reply.

Yours faithfully,
(Sgd.) R. WEERASURIYA.

No. P 63,
Letter from
Defendant
to Plaintiff.
30-11-45.

P63.

Letter from Defendant to Plaintiff.

10

A. M. FUART,
Proctor & Notary.

130, Hultsdorf Street,
Colombo, 30th November, 1945.

A. R. WEERASURIYA, ESQ.,
Ambalangoda.

Dear Sir,

Received your letter dated 27th March, 1945. In reply I write to inform you that all what I have stated in my several previous letters are It appears to me that you are now trying to place on my shoulders the responsibility for your lending your money by making several false allegations against me. I am not afraid of your threats you are at liberty to take any action you please.

It is utterly false for you to state that I recommended the loan, and that I have betrayed you. In fact I never knew you were going to lend till you spoke to me about it. Then I advised you that you should not lend unless you are sure that the security of a secondary mortgage of the Fincham's land is sufficient. However you are going out for inspection I cautioned you not to take into consideration the small land at Panwila. After inspection of the Fincham's land you told me that you were satisfied with the secondary mortgage of the same and that you did not come to inspect the land at Panwila. Thereafter you instructed me to draw the 30 bond.

It is entirely due to your anxiety to obtain a higher rate of interest which prompted you to lend your money. When things don't look rosy you are attempting to blame me.

You say that I betrayed you by not filing the proxy in the action in which the primary bond was put in suit. Even by filing your proxy nothing could have been done because the plaintiff bought the property with an order to bid. After receiving the proxy I informed you that it is useless filing same before the sale and informed you that if there is

any balance we can then file the proxy and obtain payment in satisfaction of your claim. You readily consented.

It appears to me now that you are making dishonest attempts to recover the amount due from Mr. Samaratunge from me.

I deny that you are entitled to recover the amount lent to Mr. Samaratunge from me.

In view of the allegations you have made against me I regret that I cannot act as your proctor in the case you have filed against Mr. Samaratunge.

Exhibits.
No. P 68.
Letter from
Defendant.
to Plaintiff.
30-11-45.
—continued.

10

Yours faithfully,
(Sgd.) A. M. FUART.

P64.

Letter from Plaintiff to Defendant.

No. P 64.
Letter from
Plaintiff to
Defendant.
7-12-45.

“ Sirisevena ”, Nambimulla,
Ambalangoda,
7th December, 1945.

Dear Sir,

I am in receipt of your letter dated 30th ultimo. So it is not possible that you should continue to act as my proctor in this case any longer on the face of the accusations I have made against you I am sending herewith a motion to revoke the proxy granted to you.

Please be good enough to return it having duly signed.

Yours faithfully,
(Sgd.) A. R. WEERASURIYA.

P65.

Letter from Defendant to Plaintiff.

No. P 65.
Letter from
Defendant
to Plaintiff.
10-12-45.

A. M. FUART,
Proctor & Notary.

130, Hultsdorf Street,
Colombo, 10th December, 1945.

A. R. WEERASURIYA, Esq.,
Ambalangoda.

30 Dear Sir,

I am sending herein enclosed the notice duly signed.

Yours faithfully,
(Sgd.) A. M. FUART.

Exhibits.

D28.

No. D 28.
Deed
No. 173.
21-6-46.

Deed No. 173.

To all to whom these presents shall come, Michael Norman Pieris, Secretary of the District Court of Colombo.

SENDS GREETINGS :

Whereas Kandekumbure Rajamantrige Samaratunge of Panwila, in the District of Kandy, was the owner and proprietor, and seized and possessed of or otherwise well and sufficiently entitled to the lands and premises in the Schedule hereto fully described.

And whereas the said Kandekumbure Rajamantrige Samaratunge¹⁰ by Bond No. 2308 dated 3rd December, 1942, attested by A. M. Fuard of Colombo, Notary Public, mortgaged and hypothecated the said several lands and premises to Alfred Richard Weerasuriya of "Srinivasa", Nambimulla in Ambalangoda, in the District of Galle, to secure the payment to him of the sum of Rupees Fifteen thousand (Rs. 15,000/-) with interest thereon at and after the rate of 15 per centum per annum from the date of the said bond payable monthly on and at the expiration of each and every month. It was also provided by the said bond that if interest was paid regularly on the due dates as aforesaid the said Richard Weerasuriya should accept the same at and after the reduced rate of 10²⁰ per centum per annum.

And whereas the said Alfred Richard Weerasuriya caused the said bond to be put in suit in case No. 1084/M.B. of the District Court of Colombo against the said Kandekumbure Rajamantrige Samaratunge and did on the 14th of September, 1944, obtain a decree whereby it was *inter alia* ordered and decreed that the said Kandekumbure Rajamantrige Samaratunge as defendant should pay to the said Alfred Richard Weerasuriya, as plaintiff, the sum of Rupees Seventeen thousand seven hundred and sixty-five and cents sixty-two (Rs. 17,765·62) together with interest on Rupees Fifteen thousand (Rs. 15,000/-) at the rate of fifteen per centum³⁰ per annum from the 25th day of May, 1944, up to date of decree and thereafter legal interest on the aggregate amount of nine (9) per centum per annum till the payment in full and costs of suit forthwith.

And whereas the said decree it was further ordered that in default of payment of the said sum of Rupees Seventeen thousand Seven hundred and Sixty-five and Cents Sixty-two (Rs. 17,765·62) and costs of suit as aforesaid, the mortgaged property in the Schedule hereto described be sold by C. A. Krishnarajah, Licensed Auctioneer of Colombo, by public auction at the spot upon conditions of sale approved by Court and the said Auctioneer being directed and authorised to allow plaintiff the said⁴⁰ Alfred Richard Weerasuriya or any one else on his behalf to bid for and in the event of the said Alfred Richard Weerasuriya as plaintiff becoming the purchaser to allow him credit to the extent of his claim and costs.

And whereas it was further ordered and decreed that the Secretary of District Court of Colombo, should execute the necessary conveyance in due form of law in favour of the purchaser at such sale on his or their complying with the conditions of sale and on being satisfied if the purchaser be the said plaintiff that he has being allowed credit and in the event of the purchaser being a third party the full purchase amount has been deposited in Court and that the proceeds of such sale be applied in and towards the payment of the said sum of Rs. 17,765·62 interest and costs and that if such proceed shall not be sufficient for the payment in full of
 10 such amount the said defendant shall pay to the said plaintiff the amount of deficiency with interest thereon at the rate of nine (9) per centum per annum.

Exhibits.
 No. D 28.
 Deed
 No. 173.
 21-6-46.
 —continued.

And whereas the said Auctioneer advertised the sale of the said properties by public auction for the 9th March, 1946, at the spot and at such sale Lekamwasam Liyanage Dhanapala, lorry driver of the Co-operative Wholesale Establishment, Colombo, did bid for the properties firstly, secondly, thirdly, fourthly, fifthly and sixthly described in the said Schedule hereto the sums of Rs. 350/-, 300/-, 550/-, 350/-, 300/-, and 400/- respectively, totalling the sum of Rupees Two thousand Two hundred
 20 and Fifty (Rs. 2,250/-) and being the highest bidder was declared the purchaser thereof at or for the said price or sum of (Rs. 2,250/-) upon conditions of sale bearing Nos. 1027, 1028, 1029, 1030, 1031 and 1032, all dated the 11th March, 1946, and attested by Martin Weeraratna of Colombo, Notary Public, and the said purchaser paid the Auctioneer one-tenths of the said purchase sum totalling Rs. 225/- and the Auctioneer's charges of the said 9th day of March, 1946, and the balance nine-tenth (9/10) of the said purchase money, to wit:—

The sum of Rupees Two thousand and Twenty-five has also been deposited in the Court by the purchaser to the credit of the said case on
 30 6-4-46.

And whereas the said purchaser having otherwise duly complied with the conditions of sale the Court has duly confirmed the said sale on 24-4-46 and has authorised and empowered the said Secretary of the District Court of Colombo, to execute a deed of conveyance in favour of the said purchaser Lecumwasam Liyanage Dhanapala of the said several lands and premises in the said Schedule hereto described fully and respectively.

Now know ye and these presents witness that the said Michael Norman Peiris as Secretary as aforesaid in pursuance of the said decree
 40 and the said orders of Court and in exercise of the powers enabling him in that behalf and in consideration of the said sum of Rs. 2,250/- duly accounted to Court by the said purchaser Lecumwasam Liyanage Dhanapala as aforesaid doth hereby grant, convey, assign, transfer and set over unto the said Lecumwasam Liyanage Dhanapala his heirs, executors,

Exhibits. administrators, and assigns the several lands and premises in the said
No. D 28. Schedule hereto fully described.

Deed To have and to hold the said several lands and premises unto
No. 173. the said Lecumwasam Liyanage Dhanapala and his aforewritten absolutely
21-6-46. and for ever.
—continued.

In witness whereof the said Michael Norman Peiris as Secretary of the said District Court of Colombo, doth hereunto and to two others of the same tenor and date as these presents set his hand at Colombo, on this twenty-first day of June, One thousand Nine hundred and Forty-six.

THE SCHEDULE ABOVE REFERRED TO.

10

(1) An undivided half part or share of the land called Rantetgederawatte together with all the buildings and the tea plantations standing thereon bearing registered No. S.C. 5858 at the Tea Controller's Office, situated at Kandekumbura, in Naranpanawa in the Pallis Pattu Korale of Pata (Lower) Dumbara in the District of Kandy, Central Province, bounded on the North by Marieland Estate, on the East by Wella of Ambagahamulakumbura, on the South by ditch and limit of Puncha's land, and on the West by Marieland Estate and containing in extent about two amunams of paddy sowing.

(2) All those undivided nineteen-twentieth parts or shares of the 20 land called Dodanwattetennehena now garden bearing registered No. S.C. 6052 at the Tea Controller's Office together with the tea plantations standing thereon, situated at Pallegama in Pallegampaha Korale of Lower Dumbara in the District of Kandy aforesaid; bounded on the East by road, on the South by Malakandura of Duranilehena, West by Appullanalagedera Kumburawella and on the North by Puncha's land and limit of Wehigalagederahena and containing in extent two amunams and two pelas of paddy sowing which said land is otherwise described as follows :—

All that land called Dodanwattetennehena, situated at Pallegama 30 aforesaid and bounded on the East by old road and fence, on the South by ditch, on the West by Udagederawattekumburewella and limit of Puncha's land and on the North by limit of Horatala's hena and containing in extent one yelamunam of paddy sowing.

(3) All that land called Pupalahena-Udahawatte together with the tea plantations thereon bearing registered No. S.C. 6048 at the Tea Export Controller's Office, situated at Kandekumbura in Naranpanawa aforesaid and bounded on the North by the ditch of the land belonging to Angara, on the East by the ditch of the land belonging to Jamaldeen, on the South by the limit of Marieland Estate and West by limit of Marieland 40 Estate and containing in extent about two pelas and five lahas paddy sowing.

(4) All that land called Pallehawatte together with the tea plantations standing thereon bearing registered No. S.C. 5857 at Tea Controller's

Office, situated at Kandekumbure in Naranpanawa aforesaid and bounded on the North by the limit of Rantetduragedera Hapumulie's garden, on the East by Kumburewella, on the South by the limit of Amunegera Puncha's garden and on the West by Madekotuwa Sobanis garden and containing in extent about nine lahas of paddy sowing.

Exhibits.
No. D 28.
Deed
No. 173.
21-6-48.
—continued.

(5) All that land called Medakotuwewatte together with all the tea plantations standing thereon bearing registered No. S.C. 5853 at the Tea Controller's Office, situated at Kandekumbura in Naranpanawa aforesaid and bounded on the North by the limit of the land belonging to
10 Kumburegedera Puncha, on the East by the garden of Kumburegedera Horatala, on the South by limit of the land belonging to Amunegera Kaluwa and on the West by Medakotuwa belonging to Rantetgedera Horatala and containing in extent about two pelas five lahas of paddy sowing.

(6) All that land called Medakotuwa with the buildings and tea plantations standing thereon bearing registered No. S.C. 38676 at the Tea Controller's Office, situated at Kandekumbura in Naranpanawa aforesaid and bounded on the North by land belonging to Rantetgedera Ukkuwa, on the East by the fence of Medakotuwewatte, on the South
20 by the limit of the land belonging to Amunegera Kaluwa and on the West by land belonging to Rantetgedera Horatala and containing in extent about eight lahas of paddy sowing.

Witnesses :

(Sgd.) E. SURaweera.

(2) M. N. PEIRIS.

(Sgd.) DUDLEY GUNAWARDANA.

(Sgd.) EDWARD A. DE LIVERA,
Notary Public.

I, Edward Arthur de Livera of Colombo, in the Island of Ceylon, Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over by Michael Norman Peiris the Secretary
30 of the District Court of Colombo (who signed as M. N. Peiris), in my presence and in the presence of Edmund Suraweera and Edward Dudley Gunawardana, both of District Court of Colombo (who signed as E. Suraweera and Dudley Gunawardana respectively) the subscribing witnesses thereto all of whom are known to the same was signed by the said Michael Norman Peiris and also by the said witnesses and by me the said Notary in my presence and in the presence of one another all being present together at the same time at Hultsdorf, Colombo, on this twenty-first day of June, One thousand Nine hundred and Forty-six.

I further certify and attest that
40 that the within named consideration having been deposited to the credit of case No. 1084/M.B. D.C. as stated in the body of this deed no part thereof passed in my presence, that the original of this instrument bears

Exhibits. stamp of One Rupee and the duplicate four stamps of the aggregate
 No. D 28. value of Rupees Forty-four (Rs. 44/-) which said stamps were supplied
 Deed by me.
 No. 173.
 21-6-46.

—continued. Date of attestation— Which I attest.
 21st June, 1946. —

(Sgd.) EDWARD A. DE LIVERA,
Notary Public.

No. D 29.
 Deed
 No. 1944,
 4-2-47.

D29.

Deed No. 1944.

Transfer : Rs. 6,000/-.

10

Know all men by these presents that, I Lecumwasam Liyanage Dhanapala of the Co-operative Wholesale Establishment, Colombo (hereinafter sometimes referred to as the said vendor) for and in consideration of the sum of Rupees Six thousand (Rs. 6,000/-) of lawful money of Ceylon well and truly paid to me by Waranage Roland Johannes de Fonseka of Udahamulla, Gangodawila (the receipt whereof I do hereby admit and acknowledge) have granted, bargained, sold, assigned, transferred and set over and do by these presents grant, bargain, sell, assign, transfer and set over unto the said Waranage Roland Johannes de Fonseka (hereinafter sometimes referred to as the said vendee) his heirs, executors, 20 administrators and assigns the premises fully described in the Schedule hereunder written free from all encumbrances together with all singular the rights, ways, easements, advantages, servitudes and appurtenances whatsoever to the said premises belonging or in any wise appertaining or usually held; occupied, used or enjoyed therewith or reputed or known as part or parcel thereof and together with all the estate, right, title, interest, property, claim, and demand whatsoever of the said vendor into or upon or out of the said premises and every part thereof and together with all the title deeds, vouchers and other writings therewith held or relating thereto which said premises have been held and possessed by me 30 the said vendor under and by virtue of Secretary's Conveyance No. 173 dated 21st June, 1946, attested by Edward A. de Livera of Colombo, Notary Public.

To have and to hold the said premises hereby sold and conveyed with the rights and appurtenances unto the said vendee his heirs, executors, administrators and assigns absolutely for ever.

And I the said vendor do hereby for myself and my heirs, executors, covenant, promise and declare with and to the said vendee his heirs, 40 executors, administrators and assigns that I have good right and full power to sell and convey the said premises as aforesaid and that the said premises hereby sold and conveyed are free from any encumbrance whatsoever and that I the said vendor have not at any time heretofore

made done or committed or been party or privy to any act deed, matter, or thing whatsoever whereby or by means whereof the said premises or any part thereof are is can shall or may be impeached or encumbered in title, charge, estate or otherwise howsoever and that I the said vendor and my aforewritten shall and will at all times hereafter warrant and defend the same and every part thereof unto the said vendee and his aforewritten against any person or persons whomsoever and further also shall and will at all times hereafter at the request and cost of the said vendee or his aforewritten do and execute or cause to be done and
 10 executed all such further and other acts, deeds, assurances, matters and things whatsoever for the further and more perfectly assuring the said premises hereby sold and conveyed and every part thereof unto the said vendee and his aforewritten as by the said vendee or his aforewritten may be reasonably required.

Exhibits.
 No. D 29.
 Deed
 No. 1944.
 4-2-47.
 —continued.

In witness whereof I the said vendor do hereunto and two others of the same tenor and date as these presents set my hand at Hultsdorf on this fourth day of February, One thousand Nine hundred and Forty-seven.

THE SCHEDULE ABOVE REFERRED TO :

- 20 1. An undivided half part or share of the land called Rantetgederawatte together with all the buildings and the tea plantations standing thereon bearing registered No. S.C. 5858 at the Tea Controller's Office, situated at Kandekumbura in Naranpanawa in the Pallis Pattu Korale of Pahala (Lower) Dumbara in the District of Kandy, Central Province, bounded on the North by Marieland Estate, on the East by Wella of Ambagahamulakumbura, on the South by ditch and limit of Puncha's land and on the West by Marieland Estate and containing in extent about two amunams of paddy sowing.
- 30 2. All those undivided nineteen-twentieth parts or shares of the land called Dodanwattetennehena now garden bearing registered No. S.C. 6052 at the Tea Controller's Office together with the tea plantations standing thereon, situated at Pallegama in the Pallegampaha Korale of Lower Dumbara, in the District of Kandy aforesaid ; bounded on the East by road, on the South by Malakandura of Duraimlchena, West by Appullanelagedara and Kumburawella and on the North by Kumburegedera Puncha's land and limit of Wehigalagedarahena and containing in extent two amunams and two pelas of paddy sowing which said land is otherwise described as follows :—All that land called Dodanwattetennehena, situated at Pallegama aforesaid and bounded on the East by old,
 40 road and fence, on the South by ditch, on the West by Udagedarawatte Kumburuwella and limit of Puncha's land, on the North by limit of Horatala's chena and containing in extent one yelamunam of paddy sowing.
3. All that land called Pupelchena Udahawatte together with the tea plantations standing thereon bearing registered No. S.C. 6048 at the

Exhibits.
 No. D 29
 Deed
 No. 1944.
 4-2-47.
 —continued.

Tea Export Controller's Office, situated at Kandekumbura in Naranpanawa aforesaid and bounded on the North by ditch of the land belonging to Augare, on the East by the ditch of the land belonging to Jamaldeen, on the South by the limit of Marieland Estate and West by limit of Marieland Estate and containing in extent about two pelas and five lahas of paddy sowing.

4. All that land called Pallehawatte together with the tea plantations standing thereon bearing registered No. S.C. 5857 at the Tea Controller's Office, situated at Kandekumbura in Naranpanawa aforesaid and bounded on the North by the limit of Rantetduragedara Hapumalie's 10 garden, on the East by Kumburewella, on the South by the limit of Ammegedara Puncha's garden and on the West by the fence of Hedakotuwa; Satana's garden and containing in extent about nine lahas of paddy sowing.

5. All that land called Medakotuwa together with all the buildings and the tea plantations standing thereon bearing registered No. S.C. 5853 at the Tea Controller's Office, situated at Kandekumbura in Naranpanawa aforesaid and bounded on the North by the limit of the land belonging to Kumburegedara Puncha, on the East by the garden of Kumburegedara Horatala, on the South by the limit of the land belonging 20 to Ammunegegedara Kaluwa and on the West by Medakotuwa belonging to Rantetgedara Horatala and containing in extent about two pelas and five lahas of paddy sowing.

6. All that land called Medakotuwa with the buildings and tea plantations standing thereon bearing registered No. S.C. 38676 at the Tea Controller's Office, situated at Kandekumbura in Naranpanawa aforesaid and bounded on the North by the land belonging to Rantetgedara Ukkuwa; on the East by fence of Medakotuwawatte, on the South by the limit of the land belonging to Ammunegegedara Kaluwa, and on the West by land belonging to Rantetgedara Horatala and con- 30 taining in extent about eight lahas of paddy sowing.

Witnesses :

(Sgd.) H. B. GOONERATNE.

(Sgd.) L. L. DANAPALA.

(Sgd.) EDWARD A. DE LIVERA.

(Sgd.) S. M. C. DE SOYSA,
Notary Public.

I, Stanistaus Marcus Casimer de Soysa of Colombo in the Island of Ceylon, Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me the said Notary to the within-named executant..... 40

I further certify and attest
 that the within mentioned consideration of Rs. 6,000/- was not paid in my presence but the same was acknowledged to have been received in full by the vendor prior to the execution of these presents ; that the

Exhibits. for the payment of Rs. 20,000/- as damages within 7 days hereof failing
 No. P 66. which our client will take such steps to obtain redress in a Court of law
 Letter from Plaintiff's as he may be advised.
 Proctor to Defendant,
 18-10-47.
 —continued.

Yours faithfully,
 (Sgd.) WEERARATNE & HASEEB.

P67.

Letter from Defendant to Plaintiff's Proctor.

No. P 67.
 Letter from Defendant to Plaintiff's Proctor.
 17-10-47.

A. M. FUARD,
 Proctor & Notary.

130, Hultsdorf Street,
 Colombo, 17th October, 1947.

MESSRS. WEERARATNE & HASEEB,
 Proctors and Notaries,
 Colombo.

10

Dear Sirs,

With reference to your letter dated 13th October, 1947, addressed to me on the instructions of your client Mr. A. R. Weerasuriya of Ambalangoda I write to inform you that I did not advise nor recommend to your client that he should lend the money to one K. R. Samaratunge, nor did I recommend the adequacy of the security.

In fact when Mr. Weerasuriya was going out to inspect the premises with the borrower he came to my office. I told him that unless he was 20 satisfied with the adequacy of the security of Fincham's land as a secondary mortgage he should not lend the money, and that he should not take into consideration the primary security of several small holdings at Pannala.

After the inspection your client informed me that he was satisfied with the adequacy of the security of Fincham's land and that he did not care to inspect the other land at Pannala.

I am aware of the facts stated in the 2nd paragraph of your letter.

Replying to the 3rd paragraph of your letter I deny that I was aware of the utter inadequacy of the security and deny that I recommended 30 to him to invest his money in order certain relatives of mine may be benefited to the detriment of your client.

Replying to the last paragraph of your letter I deny that my conduct constituted a dereliction of my professional duty and breach of any agreement to act as your client's legal adviser and lastly deny that your client is entitled to recover a sum of Rs. 20,000/- or any sum whatsoever as damages from me.

Yours faithfully,
 (Sgd.) A. M. FUARD.

original hereof bears a stamp of One Rupee and that the duplicate five stamps to the aggregate value of Rupees One hundred (Rs. 100/-) which said stamps were supplied by me.

Exhibits.
No. D 29.
Deed
No. 1944.
4-2-47.
—continued.

Which I attest.

Date of attestation :
4th February, 1947.

(Sgd.) STAN. M. C. DE SOYSA,
Notary Public.

P66.

Letter from Plaintiff's Proctor to Defendant.

No. P 66.
Letter from
Plaintiff's
Proctor to
Defendant.
18-10-47.

WEERARATNE & HASEEB,
10 Proctors & Notaries.
Tel. 2770.

No. 262, Hulstsdorf Street,
Colombo, 13th October, 1947.

A. M. M. FUART, Esq.,
Proctor & Notary,
No. 130, Hulstsdorf Street,
Colombo.

Sir,

We write on instructions from and on behalf of our client, Mr. A. R. Weerasuriya of Ambalangoda. Our client states that he sought your assistance as his proctor in the investment of a sum of Rs. 15,000/-. He states that you advised and recommended to him that he should lend the money to one K. R. Samaratunge on the primary mortgage of certain lands and on the secondary mortgage of an estate. You further recommended the debtor as well as the adequacy of the security.

You are aware that the primary mortgagee of the estate sold up the said estate and the amount realised was not even sufficient to cover the liability on the primary mortgage. On the sale of the lands subject to the primary mortgage in favour of our client only a sum of Rs. 2,250/- was realized.

Our client now realizes that you were all along aware of the utter inadequacy of the security especially in view of the previous transactions in respect of the estate and the said lands in which you have taken part. Our client is also now aware that you recommended to him to invest his money in a loan to Samaratunge in order that certain relatives of yours may be benefited to the detriment of our client.

Our client is advised that your conduct constitutes a dereliction of your professional duty to him and a breach of your agreement to act as his legal adviser. We are accordingly instructed to make demand of you

Supreme Court of Ceylon
No. 387 (Final) of 1950.

District Court, Colombo
No. 18596.

*In Her Majesty's Privy Council
on an Appeal from the Supreme Court of Ceylon*

BETWEEN

ALFRED RICHARD WEERASURIYA of
Ambalangoda.....*Plaintiff-Respondent.*

AND

ASSENA MARIKAR MOHAMED FUARD
Proctor and Notary of Colombo.....*Defendant-Appellant.*

RECORD
OF PROCEEDINGS
