

GLL 62

41, 1956

No. 25 of 1955.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF THE ISLAND OF CEYLON. 20 FEB 1957

UNIVERSITY OF LONDON
W.C.1

SCHOOL OF ADVANCED
LEGAL STUDIES

BETWEEN

THE COLOMBO APOTHECARIES' COMPANY
LIMITED (Defendant) *Appellant*

46093

AND

10 MARTHA AGNES PEIRIS née Rodrigo (Plaintiff)
CLARA STEPHENIA PATHIVILLA née Rodrigo
KURUPPUMULLAGE DONA THERESA
KURUPPUMULLAGE DONA LUCY
KURUPPUMULLAGE DON GABRIEL and
KURUPPUMULLAGE DONA ROSLIN
(Defendants) *Respondents.*

Case for the Appellant.

1. This is an Appeal, by leave of that Court, from a Judgment of the Supreme Court of Ceylon delivered on the 8th day of April 1954 and the formal decree entered in pursuance thereof on the 26th day of April 1954 reversing a Judgment and decree of the District Court of Colombo dated the 25th day of October 1950 which dismissed with costs the Plaintiff's (first Respondent's) action for a declaration of the title to an allotment of land with the buildings standing thereon being No. 125 Glennie Street Slave Island within the Municipal Limits of Colombo Western Province and for an Order that the said land and premises should be sold under the provisions of the Partition Ordinance No. 10 of 1863 and the proceeds brought into Court to be divided between the Plaintiff and the first five Defendants (the Respondents) in certain specified shares. App., p. 50.
App., p. 40 *et seq.*
App. pp. 43, 44.

2. The Supreme Court by its decree remitted the case to the District Court with a direction that a decree for sale under the provisions of the Partition Ordinance be entered on the basis that the Plaintiff and the first Defendant (the first and second Respondents) were each vested with a fiduciary interest in an undivided one-fourth share in the said land and premises and that the sixth Defendant (the Appellant) had acquired a prescriptive title to the remaining half share thereof to the extent that it defeated the fiduciary interests of the second to fifth Defendants (third to sixth Respondents) and with certain further ancillary directions. App., pp. 43, 44.

App., p. 31, ll. 43, 44.

App., pp. 51, 52, 53.

3. The said premises originally belonged to one Manissegey Solomon Rodrigo, who according to the copy of a Deed of Gift No. 8550 of 1870 (hereinafter called "the Deed of Gift") produced by the Respondents after reserving a life interest therein to himself thereby gave the said premises to his son Manissegey Lorenzo Rodrigo (hereinafter called "Lorenzo") subject to a *fidei-commissum* in favour of his said son's male and female descendants.

4. According to the law of Ceylon at the date of the Deed of Gift, the *fidei-commissum* could be made valid for four generations, the fifth generation of descendants taking their shares in the property absolutely and free of any further limitation. 10

App., p. 101 *et seq.*

5. The Deed of Gift was not registered according to the provisions of the Land Registration Ordinance No. 8 of 1863 which provided, *inter alia*, as follows :—

"38. From and after the time when this Ordinance shall come into operation, every Deed or other instrument of sale Purchase, Transfer, Assignment or Mortgage, of any land or other immovable property, or of Promise, Bargain, Contract or Agreement, for effecting any such object, or for establishing or transferring any security, interest or encumbrance affecting such land or property (other than a Lease at will or for any period not exceeding one month), or of Contract or Agreement for the future sale or purchase or transfer of any such land or property; and every Deed or Act of Release, Surrender or Annulment, of or affecting any such Deed or other instrument, and the Probate of any Will, and every grant of Administration affecting any such land or property and every Judgment or Order of Court affecting any such land or property shall, if executed made granted or pronounced after the time when this Ordinance shall have come into operation, be registered in the Branch Office of the District or Province in which such land or . . . property is situate . . ."

"39. Every Deed, Judgment, Order or other instrument as aforesaid, unless so registered, shall be deemed void as against all parties claiming an adverse interest thereto on valuable consideration, by virtue of any subsequent deed, judgment, order or other instrument, which shall have been duly registered as aforesaid. Provided however that fraud or collusion in obtaining such last mentioned deed, judgment, order or other instrument, or in securing such prior registration, shall defeat the priority of the person claiming thereunder, and that nothing herein contained shall be deemed to give any greater effect or different construction to any deed, judgment, order or other instrument registered in pursuance hereof, save the priority hereby conferred on it."

The said Ordinance was repealed and replaced by The Land Registration Ordinance No. 14 of 1891, which re-enacted the afore-recited provisions verbatim as Sections 16 and 17. This new Ordinance has since the 1st day of January 1928 been repealed and replaced by The Registration

of Documents Ordinance No. 23 of 1927 (Chapter 101—Legislative Enactments of Ceylon Revised Edition 1938) which provides *inter alia* as follows :—

10 “ 7. (1) An instrument executed or made on or after the first day of January, eighteen hundred and sixty-four, whether before or after the commencement of this Ordinance shall unless it is duly registered under this Chapter, or if the land has come within the operation of the Land Registration Ordinance 1877, in the books mentioned in section 26 of that Ordinance, be void as against all parties claiming an adverse interest thereto on valuable consideration by virtue of any subsequent instrument which is duly registered under this Chapter, or, if the land has come within the operation of the Land Registration Ordinance 1877, in the books mentioned in section 26 of that Ordinance.

(2) But fraud or collusion in obtaining such subsequent instrument or in securing the prior registration thereof shall defeat the priority of the person claiming thereunder.

20 (3) An instrument duly registered before the commencement of this Ordinance, under the Land Registration Ordinance 1891, or any Ordinance repealed by that Ordinance, shall be deemed to have been duly registered under this Chapter.

(4) Registration of an instrument under this Chapter shall not cure any defect in the instrument or confer upon it any effect or validity which it would not otherwise have except the priority conferred on it by this section.”

The Land Registration Ordinance 1877 dealt with another area and is not relevant to this case.

6. Manissegey Solomon Rodrigo died intestate in 1873 leaving him surviving his said son Lorenzo, the donee under the said Deed of Gift. App., p. 60, l. 26, p. 35, ll. 22, 23.

30 7. Lorenzo died intestate in 1899 leaving him surviving only two children Madalena Rodrigo (hereinafter called “ Madalena ”) who married Don Simon Appuhamy and Manissegey Lawrence (or Lawrenti) Rodrigo (hereinafter called “ Lawrenti ”). All his other children predeceased him without leaving issue. App., p. 20, ll. 5, 6, 7. App., p. 60, ll. 27-30.

40 8. By a Deed (No. 5249) dated the 21st day of December 1895 (hereinafter called “ the Conveyance ”) the said Lawrenti purported to convey the entirety of the said premises to one Theobald Dias (hereinafter called “ Dias ”) in consideration of the sum of 6,000 Rupees. This Deed was duly registered as required by Section 16 of the Land Registration Ordinance 1891 on the 31st day of December 1895 and was the first deed by which any title to the freehold of the said land passed to be registered. App., pp. 53, 54, 55. App., p. 105.

9. Dias had previously been a tenant of the said premises and upon the said Lorenzo becoming aware that Dias claimed to be in possession of the said premises by virtue of the Conveyance he commenced an action in the District Court of Colombo (Plaint No. 11739) on the 13th day of App., p. 104. App., pp. 55, 56.

September 1898 claiming a declaration of title to the said premises, a declaration that the Conveyance was a forgery and null and void ; possession ; damages ; mesne profits ; and costs, against Dias (who had been adjudicated an insolvent on or about the 24th day of May 1897) and his Assignee in insolvency one A. D. de Livera.

App., p. 56, ll. 18, 19,
20, p. 58, ll. 5, 6.

App., p. 64 *et seq.*

10. By the Judgment and Decree of the said District Court (Dias A.D.J.) dated the 30th day of November 1898 in the said Action the Plaintiff was declared to be entitled to the said premises ; the Conveyance was declared null and void ; Dias was ordered to be forthwith ejected from the said premises and the Plaintiff restored to quiet possession ; and Dias 10 was ordered to pay damages, mesne profits and costs.

App., pp. 68, 69.

11. From this Judgment and Decree Dias appealed to the Supreme Court of Ceylon which by its Judgment and Decree dated the 20th day of September 1900 varied the said Judgment and Decree of the said District Court by striking out the declaration that the Conveyance was null and void, but affirmed the said Decree in all other respects.

App., p. 101 *et seq.*

12. Neither the Decree of the District Court nor the Decree of the Supreme Court was then nor has since been registered under the provisions of any Land Registration Ordinance.

App., p. 20, ll. 5, 6, 7.

13. Lorenzo died intestate during the pendency of the said appeal 20 on the 29th day of October 1899.

App., p. 67.

14. The Judgment of the said District Court in favour of Lorenzo for possession against Dias was executed on the 8th day of December 1898, when possession was delivered to him by the Fiscal's Officer. It is not in evidence at what date Dias re-entered into possession, but by the 25th day of March 1907 he was again in possession of the said premises claiming title thereto under the Conveyance and by right of prescription.

App., p. 69, l. 30,
p. 70, l. 4, p. 73,
ll. 14-20.

App., p. 107.

15. By a Conveyance (No. 7936) dated the 4th day of March 1899 Madalena and her husband Don Simon conveyed an undivided one half share of the said premises to one Mahatelge Andrew Peris in consideration 30 of the sum of 2,000 Rupees. By a Transfer (No. 10432) dated the 19th day of June 1900 the said M. A. Peris transferred the said undivided one half share of the said premises to the said Don Simon in consideration of the sum of 2,000 Rupees. By a Transfer (No. 1498) dated the 19th day of January 1904, the said Don Simon transferred the said undivided one half share of the said premises to one Minuwapitiyage William Peiris in consideration of the sum of 3,000 Rupees. All these said Deeds were duly registered as required by the Land Registration Ordinance 1891.

App., p. 108.

App., p. 109.

App., pp. 107, 108, 109.

App., p. 111.

16. By a Transfer (No. 2190) dated the 6th day of December 1905 Lawrenti purported to transfer an undivided one half share of the said 40 premises to the said M. W. Peiris. This transfer was also duly registered.

App., p. 69, ll. 28
et seq.
pp. 70, 71, 72.

17. On the 25th day of March 1907, the said M. W. Peiris commenced an action in the District Court of Colombo (Plaint No. 24762) against Dias claiming a declaration of his title to the entirety of the said premises ; possession ; damages ; mesne profits and costs.

18. By the Judgment and Decree of the said District Court (Loos, D.J.) dated the 24th day of August 1908, in the said action it was declared that the Plaintiff was entitled to the entirety of the said premises ; it was further ordered and decreed that the Defendant be ejected therefrom and the Plaintiff placed in possession thereof ; and the Defendant was ordered to pay mesne profits damages and costs. App., pp. 73 *et seq.*

19. From this Judgment and Decree Dias appealed to the Supreme Court of Ceylon which by its Judgment and Decree dated the 10th day of September 1909 set aside the said Decree of the 24th day of August 1908 and dismissed the Plaintiff's action. This said Decree of the Supreme Court was amended on the 5th day of September 1910 so as to vary the same by declaring the Plaintiff entitled to an undivided half share of the said premises ; ordering the Defendant to yield immediate possession of the said half share to the Plaintiff, and to put the Plaintiff in possession thereof ; and awarding the Plaintiff damages in respect of his exclusion from the said one half share. Neither the Decree dated the 24th day of August 1908 nor the subsequent Orders in Appeal were registered under the provisions of any Land Registration Ordinance nor have they since been registered at any time. App., pp. 78 *et seq.*
App., pp. 82, 83.

20. The undivided one-half share of Dias in the said premises was sold under a mortgage decree entered against him and the same was purchased by one Frederick Emmanuel Abeysundere and conveyed to him by a Deed (No. 534) dated the 16th day of October 1914 and duly registered. App., pp. 87 *et seq.*
App., p. 112.

21. On the 21st day of December 1915 the entirety of the said premises was sold under the provision of the Municipal Council Ordinance No. 6 of 1910 in default of payment of rates by the said M. W. Peiris and Dias to the said F. E. Abeysundere, and the same was duly vested free from all encumbrances in the said F. E. Abeysundere by Certificate of Sale No. 197 dated the 4th day of May 1916 and duly registered. App., p. 90.
App., p. 112.

22. The Appellant claims its title to the said premises from the said F. E. Abeysundere through a series of deeds for value and ultimately a Conveyance for value of the 26th day of March 1926 all of which have been duly registered in accordance with the provision of the Land Registration Ordinance 1891. At the date when the Appellant acquired its title in 1926 the Deed of Gift was still unregistered. The Appellant has been continuously in occupation of the said premises since 1926 and it and its predecessors in title have been in possession for over 30 years. App., p. 22, ll. 27-32,
pp. 92 *et seq.*, p. 113.
App., p. 24, ll. 35,
36, 37.

23. Madalena died in 1934 leaving four children, the second to fifth Defendants (third to sixth Respondents) to this action, Lawrenti died in 1939 leaving two children, the Plaintiff (first Respondent) and the first Defendant (second Respondent) in this action. App., p. 20, ll. 9, 10, 11.
App., p. 20, ll. 7, 8, 9.

24. This action was commenced by the Plaintiff (first Respondent) on the 4th day of November 1947 against her sister as first Defendant, the children of Madalena as second to fifth Defendants, and the Appellant as sixth Defendant. The Plaintiff (first Respondent) asserted that under and App., pp. 7, 8, 9.

by virtue of the Deed of Gift the Plaintiff and the first to fifth Defendants were entitled to the said premises in various undivided shares and that the Appellant was in wrongful possession of the same. She further asserted that it was impracticable and inconvenient to possess the said premises in common and that it was not practicable to partition the same, and claimed a declaration as to the entitlement of the Respondents to the said premises ; a sale under the provision of the Partition Ordinance No. 10 of 1863 ; and that the proceeds of such sale should be brought into Court to be divided between the Defendants in the shares stated.

25. The contentions of the Appellant at the trial were :— 10

App., p. 25, ll. 18-21.

(i) That as Madalena died in 1934 and this action was not commenced until the 4th day of November 1947, the Appellant had prescribed to the rights (if any) of the second to fifth Defendants (third to sixth Respondents) who claim as the children of Madalena, under the provisions of the Prescription Ordinance No. 22 of 1871 (Chapter 55 Ceylon Legislative Enactments Revised Edition 1938) which by Section 3 provides as follows :—

“ Proof of the undisturbed and uninterrupted possession by a defendant in any action, or by those under whom he claims, of lands or immovable property, by a title adverse to or independent 20 of that of the claimant or plaintiff in such action (that is to say, a possession unaccompanied by payment of rent or produce, or performance of service or duty, or by any other act by the possessor, from which an acknowledgment of a right existing in another person would fairly and naturally be inferred) for ten years previous to the bringing of such action, shall entitle the defendant to a decree in his favour with costs. And in like manner, when any plaintiff shall bring his action . . . proof of such undisturbed and uninterrupted possession as hereinbefore explained by such plaintiff . . . or by those under whom he claims, shall entitle such 30 plaintiff . . . to a decree in his favour with costs.

Provided that the said period of ten years shall only begin to run against parties claiming estates in remainder or reversion from the time when the parties so claiming acquired a right of possession to the property in dispute.”

App., p. 25, ll. 27-32.

(ii) That as the Deed of Gift was unregistered, the Appellant who was a *bona fide* purchaser for value on a later instrument duly registered was placed in the same position as regards its title as if no such Deed existed since such Deed is void under Section 7 (1) of the Registration of Documents Ordinance 1927 (Chapter 101) 40 and the earlier Registration Ordinances.

App., p. 26, ll. 5-7.

(iii) That disregarding the Deed of Gift the said premises would have descended on the intestacy of Manissegey Lorenzo Rodrigo to his two children Madalena and Lawrenti in equal shares.

App., p. 26, ll. 11,12.

(iv) That Lawrenti's subsequent acquisition of such title upon the death of his father would enure to the benefit of his transferee under the Conveyance.

(v) That by the Conveyance of the 4th day of March 1899 Madalena's similar interest in the said premises passed to the transferee thereunder. App., p. 26, ll. 22-42,
p. 27, ll. 1-8.

(vi) That the Appellant as successor in title to both such transferees upon a series of registered Deeds was entitled to the entirety of the said premises.

26. The Plaintiff (first Respondent) admitted that the Appellant had acquired a prescriptive title to the interests of the said 2nd to 5th Defendants (third to sixth Respondents) inclusive but contended at the trial :— App., p. 27, ll. 34-37.

10 (i) That as Lorenzo was alive at the date of the conveyance, and Lawrenti had thus no present title to the said premises, the mere registration of the Conveyance did not operate to give him prior and better title to Dias and his successors in title against those claiming under the Deed of Gift. App., p. 27, l. 38,
p. 28, l. 22.

(ii) That the decree and judgment obtained by Lorenzo against Dias in D.C. Colombo No. 11739 operated as *res judicata* between the Plaintiff (the first Respondent) and the sixth Defendant (the Appellant) upon the point that the Deed of Gift created a valid *fidei-commissum* in favour of the descendants of Lorenzo and that title to the land in question devolved according to such *fidei-commissum*. App., p. 28, l. 30-
p. 29, l. 1.

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(iii) That the only rights which enured pursuant to the Conveyance to Dias on Lorenzo's death were the fiduciary rights of Lawrenti. App., p. 29, ll. 8-12.

27. The trial Judge (Manickarasagar, A.D.J.) found for the Appellant both upon the effect to be given to the Conveyance and the question of *res judicata*. On the first point, after an analysis of the relevant cases he expressed himself as follows :—

30 “ I therefore hold that the deed 6D1 (the Conveyance) obtains priority over the deed of gift P1 (the Deed of Gift) by reason of the former being duly registered, and the latter being unregistered. The object of registration is the protection of *bona fide* purchasers ; neither Dias nor his successors-in-title would have been put wise as to the existence of the deed of gift, by a search of the Register. The deed of gift must be shut out, and Dias on the death of Lorenzo acquired title to a half share of the premises on Lawrenti's deed 6D1 ; and this interest has devolved on the 6th defendant on the duly registered deeds pleaded by them ” App., p. 35, ll. 4-12.

and he then proceeded to deal with the question of *res judicata* as follows :—

40 “ This brings me to a consideration of the effect of the decree in D.C. 11739 ; I have already alluded to the facts of the case ; I do not think that the judgment and decree in the case can operate as *res judicata* on the issue of title raised in this case ; apart from holding that the deed of gift P1 created a *fidei commissum* in favour of the male and female descendants of the donor ; all that it declared was, that as betwixt the plaintiff Lorenzo, and the defendant App., p. 35, ll. 13-30

Dias, the former was entitled to the premises; and rightly so, because deed 6D1 on which Dias relied for his title, could not have conveyed at that time any title, as Lawrenti had none to convey his father Lorenzo being then alive; whereas Lorenzo was entitled to the possession of the premises either as fiduciary or intestate heir to his father Solomon; the issue of title conferred by priority of registration did not arise in that case and could not have arisen, because at the time of that action, there could have been no competition between P1 and 6D1; it is also of the utmost significance that although the District Court declared 6D1 as being null and void, the Supreme Court, advisedly, deleted that part of the decree, thereby leaving open for subsequent decision, if it did arise, the question of any title that may accrue on 6D1.” 10

App., p. 35, l. 44-
p. 36, l. 3.

28. As to the other half of the said premises, the trial Judge contented himself with holding that the Appellant had prescribed to the interests of the second to fifth Defendants (third to sixth Respondents).

App., p. 37.

App., pp. 38 *et seq.*

29. He accordingly dismissed the action with costs payable to the Appellant. From this Judgment and Decree the Plaintiff (first Respondent) appealed to the Supreme Court of Ceylon repeating the same arguments as in the Court below. 20

App., pp. 40 *et seq.*

30. On the 8th day of April 1954, the Supreme Court (Gratiaen and Gunasekera, JJ.) reversed the decision of the District Court solely upon the question of *res judicata*. Gratiaen, J. (with whom Gunasekera, J., agreed) expressed himself as follows:—

App., p. 42, ll. 19-37.

“ The effect and true meaning of P1 was prominently raised in issue between the parties to those proceedings [i.e., between the said Lorenzo and Dias]. The basis of the decree against Dias in favour of Lorenzo was (1) that P1 created a valid *fidei commissum* in favour of Lorenzo and his ‘ descendants ’ and (2) that Lawrenti had, at the time when 6D1 was executed during his father’s lifetime, only a contingent *fidei commissary* interest in the property. It follows that the sixth Defendant, as the successor in title of the purchaser under 6D1, is bound by the decision that P1 prevailed over 6D1. Upon the death of Lawrenti on 29th October 1939 his interests in the property came to an end, and his children, the Plaintiff and the first Defendant, being the descendants of Lorenzo, became fiduciary co-owners to the extent of 1/4 each. As this action commenced within ten years of the date of vesting, the sixth Defendant has not defeated the fiduciary interests of either the Plaintiff or the first Defendant by adverse prescriptive possession. 40

“ Upon these facts, there is no room in my opinion for the operation of the principle of prior registration. In view of the decree in D.C. Colombo No. 11739, 6D1 merely created a title which was subordinate to that previously created by P1, and no question of competition between deeds ‘ from the same source ’ arises.”

App., p. 43, ll. 1-4.

31. The Supreme Court saw no reason to disturb the District Judge’s conclusions upon the issue of prescription, and accordingly allowed the

appeal and remitted the case with a direction that a decree for sale under the provisions of the Partition Ordinance be entered on the basis that the Plaintiff (first Respondent) and the first Defendant (second Respondent) were each vested with a fiduciary interest in an undivided one-quarter share of the said premises and that the Appellant had acquired a prescriptive title to the remaining half share to the extent that it defeated the fiduciary interests of the second to fifth Defendants (third to sixth Respondents). It further directed that before the decree for sale was entered on record, the District Judge should investigate and adjudicate upon the rights of the Appellant in respect of improvements effected on the said premises and that the decree must also make suitable provision to safeguard future *fidei commissum* interest under the Deed of Gift. And it was further ordered that the Appellant should pay to the Plaintiff (the first Respondent) the costs of that appeal and half the costs of the contest in the District Court, and that all other costs should be borne *pro rata* between the Plaintiff, the first Defendant (the first and second Respondents) and the Appellant.

32. Against the Judgment and Decree of the Supreme Court this Appeal is now preferred final leave so to do having been granted by the Supreme Court on the 26th day of May 1954.

App., p. 50.

20 33. It is submitted that the decision of the Supreme Court was erroneous in that no question of *res judicata* arises out of the decision in the said action D.C. Colombo No. 11739.

(i) For the reasons given by the learned trial Judge and quoted in paragraph 27 hereof.

(ii) Because the effect and true meaning of the Deed of Gift formed no part of the *ratio decidendi* of the said case, save to the extent to which they refuted Dias' contention in the case that the Deed of Gift conferred an immediate absolute title upon Lawrenti upon the latter attaining his thirtieth birthday.

30 (iii) Because the Appellant relies upon a title which accrued subsequent to the Decree in the said case, namely, upon the death of Lorenzo.

34. It is further submitted that in any event the decision in the said action D.C. Colombo No. 11739 is not binding on this Appellant.

(i) Because both the Appellant and the Plaintiff (first Respondent) claim title through the same source; and

40 (ii) Because the Decree in the said action, not being registered in accordance with the provisions of the Land Registration Ordinance, 1891, is void as against any person claiming an adverse interest upon a subsequent deed for value from Dias (the Defendant in that action) which has been duly registered.

35. It is further submitted that the Judgment of the Supreme Court is also in error in so far as it decided that the Appellant had acquired only a prescriptive title which defeated the fiduciary interests of the second to fifth Defendants (third to sixth Respondents) to the remaining half

share of the said premises. It is submitted that the Deed of Gift, being unregistered is of no force or effect against all subsequent bona fide purchasers for value claiming a one half share in the said premises through the said registered Conveyance of the 24th day of March 1889 from Madalena and her husband to the said M. A. Peiris. No question of title by estoppel to this one half share arises, and the Appellant is a bona fide purchaser for value of this said one half share tracing its title through Deeds all of which are registered.

36. The Appellant will therefore humbly submit that the Judgment and Decree of the Supreme Court in the matter were wrong and ought to be set aside ; and that the Judgment and Decree of the District Court, subject only to the variation indicated in paragraph 35 hereof, ought to be restored for the following among other,

REASONS

- (1) BECAUSE when the Appellant acquired title to the entirety of the said premises in 1926 it did so as a *bona fide* purchaser for value without any knowledge or means of knowledge of the existence of the Deed of Gift upon the faith of a series of Deeds commencing some 31 years earlier all of which were registered and according to which the entirety of the said premises had been enjoyed for at least the previous fifteen years. 20
- (2) BECAUSE since the Deed of Gift was never registered in accordance with the requirements of the Land Registration Ordinance 1863 or any subsequent Ordinance no title accruing thereunder can prevail against the title of the Appellant as a *bona fide* purchaser for value tracing its title through a series of registered Deeds.
- (3) BECAUSE as the successor in title to the respective transferees under the said Conveyance dated the 21st day of December 1895 and 4th day of March 1899, the Appellant is entitled to the respective interests which Lawrenti and Madalena would have taken of and in the said premises had Lorenzo died intestate in respect thereof. 30
- (4) BECAUSE the Judgment and Decree in the case Colombo No. 11739 could not and did not create any estoppel binding upon the Appellant on the question of title now raised in issue in this case for the first time. 40
- (5) BECAUSE the title relied on by the Appellant came into existence only after the said Judgment and could not have been pleaded in that case, and, therefore, the said adjudication cannot bind the Appellant.

- (6) BECAUSE even if the said Judgment and Decree was capable of creating any such estoppel it could only do so if it were duly registered in accordance with the provisions of the Land Registration Ordinance 1891, or subsequent Ordinances and it never was so registered.
- (7) BECAUSE in the premises the Appellant had acquired an absolute title to the entirety of the property in suit.
- (8) BECAUSE the Judgment of the Supreme Court is wrong and ought to be set aside.
- (9) BECAUSE the Judgment and Decree of the District Court, subject to the variation indicated above, was right and ought to be restored.

10

RAYMOND WALTON.

In the Privy Council.

ON APPEAL
*from the Supreme Court of the Island
of Ceylon.*

BETWEEN
THE COLOMBO APOTHECARIES'
COMPANY LIMITED - - *Appellant*
AND
MARTHA AGNES PEIRIS *nee*
RODRIGO and OTHERS - - *Respondents*

Case for the Appellant

FARRER & CO.,
66 Lincoln's Inn Fields,
London, W.C.2,
Solicitors for the Appellant.