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Judgment
4/1, 1956

25 1955

Supreme Court of Ceylon
No. 358 (Final) of 1951

District Court, Colombo
No. 5143

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

UNIVERSITY OF LONDON
FEB 1957
ADVANCED
LEGAL STUDIES

BETWEEN

46092

THE COLOMBO APOTHECARIES' CO., LTD.
of Prince Street, Fort, Colombo.....6th Defendant-Appellant

Versus

MARTHA AGNES PEIRIS of 99/2, Galkapanawatta Road,
Grandpass, Colombo.....Plaintiff-Respondent

AND

1. CLARA STEPHENIA PATHIVILLA nee RODRIGO
of Van Rooyen Street, Colombo
2. KURUPPUMULLAGE DONA THERESA of Alutgama
3. KURUPPUMULLAGE DONA LUCY
4. KURUPPUMULLAGE DON GABRIEL, and
5. KURUPPUMULLAGE DONA ROSLIN, all of Panadura
1st to 5th Defendants-Respondents

RECORD
OF PROCEEDINGS

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INSTITUTE OF ADVANCED
LEGAL STUDIES,
25, RUSSELL SQUARE,
LONDON,
W.C.1.

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XI Pedigree

PART I

No. 1

Journal Entries

No. 1
Journal
Entries
4-11-47
to
16-6-54

IN THE DISTRICT COURT OF COLOMBO

MARTHA AGNES PEIRIS nee RODRIGO of Grandpass,
Colombo *Plaintiff.*

No. 5143.

Class : VI.

Amount : Rs. 200,000/-.

10 Nature : Partition. vs.

Procedure : Regular.

CLARA STEPHENIA PATHIVILLA nee RODRIGO of
Kotahena and others..... *Defendants.*

JOURNAL

The 4th day of November, 1947.

Mr. Arthur H. Abeyratne, Proctor for Plaintiff, files appointment
and Plaint together with Pedigree and Abstract of Title.
Plaint accepted ; lispensens and survey fees on 18-2-48.

Sgd. S. S. J. GOONESEKERA,
Additional District Judge.

20

19-1-48. Proctor for Plaintiff tenders a memo of charges from Mr. H. W.
Fernando, Surveyor, for approval.
Issue paying-in voucher for Rs. 250/-.

Intd. S. S. J. G.,
A.D.J.

18-2-48. Mr. A. H. Abeyratne for Plaintiff.
1. Lispensens
2. Survey fees } tendered.

Issue summons and commission for 21/4.

30

Intd. S. S. J. G.,
A.D.J.

21-2-48. Summons issued on 1st and 6th defendants, and 2nd-5th defendants.

10-3-48. Commission issued to Mr. H. W. Fernando, Surveyor, returnable
21-4-48.

No. 1
Journal
Entries
4-11-47
to 16-6-54
—Continued

- 8-4-48. The Commissioner tenders Report, Plan and Field Notes and moves to draw his fees.
 - 1. File.
 - 2. Verity and pay.

Intd. S. S. J. G.,
A.D.J.

Eo die

Requisition No. 126 for Rs. 250/- issued in favour of Mr. H. W. Fernando, Surveyor.

Intd. Secy. Intd. S. S. J. G., 10
A.D.J.

- 21-4-48. 1. Return to Commission filed already.
- 2. Summons on 6th defendant served.
Messrs. Julius & Creasy file their Proxy.
- 3. Summons on 2nd-5th defendants not served.
Mr. N. J. S. Cooray files his proxy.
Re-issue for 14/7.
- 4. Summons on 1st defendant—no return.
Mr. K. V. A. Perera files proxy of the 1st defendant.

20

.....
Answer 2-6-48.

Intd. V. S. J.

- 2-6-48. Answers.
Of the 6th defendants—filed.
Trial on 11-4-49.
Notice of trial 22-9-48.

Intd. V. S. J.

22-9-48. Notice of trial not necessary.

- 10-3-49. As Mr. Misso, Counsel for Plaintiff, will be out of the Island and will not be back till the end of May, 1949, Proctor for Plain- 30
tiff moves Court to postpone the hearing of this case fixed for 11-4-49 to some other date convenient to Court. He further moves that the case be called on 16th instant to fix a date for trial. Proctors for 1st, 2nd, 3rd, 4th, 5th and 6th defendants consent.

Call 11-4-49 to re-fix trial.

Intd. V. S. J.,
A.D.J.

- 11-4-49. Case called to fix date of trial.
Trial 6 and 7 February.

40

Intd. M. C. S.

- 28-1-50. Proctor for 6th defendant files the list of witnesses and moves for summons on 2nd named witness. Proctor for Plaintiff received notice. Re Nos. 1 and 2 obtain certified copies. Allowed on others.
- No. 1
Journal
Entries
4-11-47
to 16-6-54
—Continued
- Intd. M. C. S.,
A.D.J.
- 10 31-1-50. With notice to Proctors for 2nd, 5th and 6th defendants, Proctor for Plaintiff files list of witnesses and documents. Copy not sent to Proctor for 1st defendant by registered post, and moves for summons on them. Re 1 and 2 obtain copies. Subject to this allowed.
- Intd.
A.D.J.
- 2-2-50. With notice to Proctor for 6th defendant, Proctor for Plaintiff files additional list of witnesses and documents and moves for summons. Issue summons.
- Intd. M. C. S.,
A.D.J.
- 20
- 2-2-50. Summons issued on 1 witness by Plaintiff. Summons issued on 2 witnesses by Plaintiff.
- 3-2-50. Mr. A. H. Abeyratne for Plaintiff. With notice to Proctor for Plaintiff, Proctor for 6th defendant files additional list of witnesses.
- Intd.
- 6-2-50. Trial
Vide proceedings. Further Trial 4th and 6th September.
- Intd. M. C. S.
- 30 8-2-50. Proctors for 6th defendant file 6th defendant's further list of witnesses with notice to Proctor for Plaintiff. File.
- Intd. M. C. S.,
A.D.J.
- 10-8-50. Proctor for Plaintiff files additional list of witnesses and documents with notice to the Proctors for 6th defendant. File.
- Intd.
A.D.J.

No. 1
Journal
Entries
4-11-47
to 16-6-54
Continued

- 14-8-50. Proctors for 6th defendant file an additional list of witnesses and move for summons on the 1st witness with notice to the Proctor for Plaintiff.
Allowed.
Intd. *A.D.J.*
- 31-8-50. Proctor for Plaintiff files additional list of witnesses and documents with notice to Proctor for 6th defendant and moves for summons.
Allowed. Obtain certified copies re 1. 10
Intd. V. S. J.
- 2-9-50. Proctor for Plaintiff files plaintiff's additional list of documents with notice to Proctor for 6th defendant.
Intd. *C.C.*
- 4-9-50. Mr. A. H. Abeyratne for plaintiff.
Trial vide proceedings.
Intd. V. M.,
A.D.J.
- 6-9-50. Mr. A. H. Abeyratne for plaintiff. 20
Trial. This case was re-fixed for addresses on 21-9-50.
Intd. V. M.
- 21-9-50. Trial vide proceedings.
Judgment 6-10-50.
Intd. V. M.,
A.D.J.
- 28-9-50. Proctor for Plaintiff files documents P 1 to P 13 with list.
- 6-10-50. Judgment not delivered.
Addresses 13-10-50.
Intd. V. M., 30
A.D.J.
- 13-10-50. Vide proceedings.
C.A.V. 25-10-50.
Intd. V. M.,
A.D.J.
- 25-10-50. Judgment delivered in the presence of Mr. Gomes for plaintiff and Mr. Bilimoria for 6th defendant.
Intd. V. M.

- No. 1
Journal
Entries
4-11-47
to 16-6-54
Continued—
- 6-11-50. Mr. K. V. A. Perera, Proctor moves to revoke the proxy granted to him by 1st defendant, who consents.
Allowed.
Intd. *A.D.J.*
- 6-11-50. Messrs. de Kretser and de Kretser, Proctors, file their appointment as Proctors for 1st defendant together with his revocation.
File.
Intd. *A.D.J.*
- 10 6-11-50. Proctors for Plaintiff file Petition of Appeal.
Petition of Appeal accepted.
Intd. *A.D.J.*
- 6-11-50. Proctors for Plaintiff file notice of tendering security to give security in Rs. 250/- on 15-11-50 for respondents' costs of appeal.
Proctors for 1st and 2nd—4th defendants take notice and waive security for costs. Proctors for 6th defendant take notice.
Proctors for Plaintiff apply for typewritten copies and move for a paying-in voucher for Rs. 12/-.
i. Call on 15-11-50 re security.
ii. Issue paying-in voucher for Rs. 12/-.
Intd. *A.D.J.*
- 20 15-11-50. Mr. A. H. Abeyratne for Plaintiff.
Case called.
Security tendered accepted.
Issue D.N. for Rs. 250/-.
Intd.
- 30 15-11-50. Proctor for appellant tenders Bond to Prosecute Appeal together with K. RR for Rs. 250/- and Rs. 12/- and notices of appeal.
i. File Bond and K.RR.
ii. Issue notice of appeal for 17-1-51.
Intd. *A.D.J.*
- 16-11-50. Notice of appeal issued.
- 40 17-1-51. Notice of appeal served on Proctor for respondents.
Forward record to S.C.
Intd. V. M.,
A.D.J.

No. 1
Journal
Entries
4-11-47
to 16-6-54
— *Continued*

- 18-1-51. Proctors for 6th respondent apply for two copies of typewritten copies and move for a paying-in voucher for Rs. 24/-.
Allowed.
Intd. V. M.,
A.D.J.
- 13-6-51. Mr. A. H. Abeyratne for plaintiff—absent.
Draft decree due—not filed.
Intd.
A.D.J.
- 20-7-51. Decree tendered. 10
Intd.
Asst. Secretary.
- 4-8-51. Record forwarded to Supreme Court with two copies of brief.
Intd.
Secretary.
- 29-4-54. The Registrar, Supreme Court, returns record.
It is considered and adjudged that this appeal be and the same is hereby allowed and the case is sent back with the direction that a decree for a sale under the provisions of the Partition Ordinance be entered on the basis that the plaintiff and the 20 1st defendant are each vested with a fiduciary interest in an undivided 1/4th share of the property and that the 6th defendant has acquired a prescriptive title to the remaining half share to the extent that it defeats the fiduciary interests of the 2nd to the 5th defendants. Before the decree for sale is entered of record, the District Judge must investigate and adjudicate upon the rights of the 6th defendant in respect of improvements effected on the property and the decree must also make suitable provision to safeguard future fidei commissari interests under the Deed P 1 dated 9th November, 30 1870.
And it is further ordered that the 6th defendant do pay to the plaintiff the costs of this appeal and half the costs of the contest in the Court below. All other costs should be borne pro rata between the plaintiff, the 1st defendant and the 6th defendant.
Call case on 16-6-54 with notice to Proctors.
Intd. M. M. I. K.,
A.D.J.
- 16-6-54. Mr. A. H. Abeyratne for plaintiff. 40
Messrs. de Kretser and de Kretser for 1st defendant
Case called vide Journal entry of 29-4-54.
Proctors absent. No order.
Intd.
A.D.J.

Plaint of the Plaintiff

IN THE DISTRICT COURT OF COLOMBO

MARTHA AGNES PEIRIS nee RODRIGO of 99/2, Galkapana-
watte Road, Grandpass, Colombo.....*Plaintiff.*

No. 5143/P.

vs.

Nature : Partition.

Procedure : Regular.

Class : VI.

10 Value of Land : Rs. 200,000/-.

1. CLARA STEPHENIA PATHIVILLA nee RODRIGO of
Mabel Villa, van Rooyen Street, Kotahena, Colombo
2. KURUPPUMULLEGE DONA THERESA of Alutgama
3. KURUPPUMULLEGE DONA LUCY
4. KURUPPUMULLEGE DON GABRIEL
5. KURUPPUMULLEGE DONA ROSLINE all of Kuruppu-
mulla in Panadura
- 6 THE COLOMBO APOTHECARIES COMPANY LIMITED
of Prince Street, Fort, Colombo.....*Defendants.*

20 On this 4th day of November, 1947.

The Plaintiff of the Plaintiff abovenamed appearing by Arthur Henry Abeyratne and his Assistant Edgar Lionel Gomes her Proctors practising jointly and severally states as follows :

1. The parties to this action reside at the respective places abovementioned and the land which is the subject matter of this action situated at Colombo within the jurisdiction of this Court.
2. The 6th defendant abovenamed is a Company with limited liability duly incorporated under the Companies Ordinance and having its registered office at Prince Street, Fort, Colombo.
- 30 3. One Manisge Solomon Rodrigo was the lawful owner and proprietor of an allotment of land bearing Assessment No. 12/29, Glennie Street, Slave Island and more fully described in the schedule hereto.
4. The said Manisge Solomon Rodrigo by a Deed No. 8550 dated the 9th November, 1870 attested by R. C. B. Perera, Notary Public transferred and conveyed the said property by way of a gift to his son Manisge Lorenzo Rodrigo subject to a fidei commissum in favour of his male and female descendants.
- 40 5. The said Manisge Lorenzo Rodrigo died in or about the year 1898 leaving as his heirs Manisge Madalena Rodrigo and Manisge Lawrence alias Lawrenti Rodrigo whereupon the said two children became entitled to an undivided half share of the life interest of the said land and premises

No. 2
 Plaint
 of the
 Plaintiff
 4-11-47
 Continued—

6. The said Manisge Madalena Rodrigo died in or about December 1934 leaving as her heirs four children namely ; the 2nd, 3rd, 4th and 5th defendants who thereby became entitled to an undivided $\frac{1}{8}$ th share of the life interest of the said land and premises.

7. The said Manisge Lawrence alias Lawrenti Rodrigo died in or about the 29th day of October 1939 leaving as his heirs the plaintiff and the 1st defendant abovenamed who became entitled each to an undivided $\frac{1}{4}$ th share of the life of the said land and premises.

8. The 6th defendant abovenamed is in the wrongful possession of the entire premises claiming certain rights in the said land and premises without 10 any source whatsoever and it too, is made a party to this action to enable it to establish its rights, if any, to and in the said land and premises.

9. The said land and premises is reasonably of the value of Rs. 200,000/-.

10. The parties to this action are now entitled to the said land and premises in the following shares to wit :—

The plaintiff	to an undivided $\frac{1}{4}$ th share	
The 1st defendant	to an undivided $\frac{1}{4}$ th	„
The 2nd defendant	to an undivided $\frac{1}{8}$ th	„
The 3rd defendant	to an undivided $\frac{1}{8}$ th	„
The 4th defendant	to an undivided $\frac{1}{8}$ th	„
The 5th defendant	to an undivided $\frac{1}{8}$ th	„

20

11. It is impracticable and inconvenient to possess the said land in common and it is not practicable to partition same.

Wherefore the plaintiff prays :

- (a) That the plaintiff and the 1st, 2nd, 3rd, 4th and 5th defendants be declared entitled to the said land and premises in the manner set out in para. 10 hereof.
- (b) That the said land and premises be sold under the provisions of the Partition Ordinance No. 10 of 1863 and the proceeds be brought into court to be divided between the plaintiff and 30 the defendants in the shares aforementioned.
- (c) For pro-rata costs, and
- (d) For such other and further relief in the premises as to this court shall seem meet.

Sgd. ARTHUR H. ABEYRATNE,
Proctor for Plaintiff.

Schedule Referred To

An allotment of land with the buildings standing thereon bearing Assessment No. 12/29 now No. 125 Glennie Street situated in Slave Island within the Municipal Limits of Colombo Western Province bounded on the 40 north by the Lake on the east by the property of Mrs. Von Possner bearing Assessment No. 13/28 south by Road (presently known as Glennie Street)

and on the west by garden of Mr. van Buren containing in extent Thirty decimal nought two perches (A0. Ro. P30, 2/100) which said premises are otherwise described as bounded on the north by the Lake, east by the property of Mrs. Von Possner bearing Assessment No. 13/28, south by Glennie Street and west by the property belonging to Colombo Ice and Cold Storage Company Limited bearing No. 11/30 containing in extent Thirty five and three fourth perches (A0. Ro. P35, 3/4th) according to Plan No. 396 made by J. G. Vandersmagt, Municipal Surveyor.

No. 2
Plaint
of the
Plaintiff
411-47
Continued—

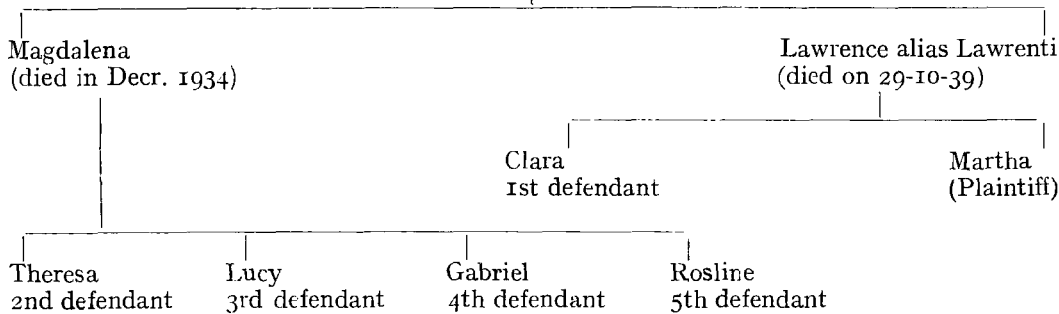
10

Sgd. ARTHUR H. ABEYRATNE,
Proctor for Plaintiff.

PEDIGREE

MANISGE SOLOMON RODRIGO
by deed of Gift
No. 8550

Manisge Lorenzo Rodrigo



Sgd. ARTHUR H. ABEYRATNE,
Proctor for Plaintiff.

ABSTRACT OF TITLE

No. and Date	Name of Notary	Nature of Deed	Grantor	Grantee	Description of Land
8550 of 9-11-1870	R. C. B. Perera	Deed of Gift	Manisge Solomon Rodrigo	Manisge Lorenzo Rodrigo	An allotment of land with the buildings standing thereon bearing Assessment No. 12/29 now No. 125 Glennie Street, Slave Island containing in extent Thirty five and three fourth perches

Colombo, 4th November, 1947.

Sgd. ARTHUR H. ABEYRATNE,
Proctor for Plaintiff.

Commission issued to Surveyor

Arthur H. Abeyratne
E. L. Gomes
Proctors for Plaintiff.

COMMISSION

IN THE DISTRICT COURT OF COLOMBO

MARTHA AGNES PEIRIS nee RODRIGO of 99/2 Galkapana-
watte Road, Grandpass, Colombo.....*Plaintiff.*

No. 5143/P.

vs.

10

1. CLARA STEPHENIA PATHIVILLA nee RODRIGO of
Mabel Villa, van Rooyen Street, Kotahena, Colombo
2. KURUPPUMULLEGE DONA THERESA of Alutgama
3. KURUPPUMULLEGE DONA LUCY
4. KURUPPUMULLEGE DON GABRIEL
5. KURUPPUMULLEGE DONA ROSLINE all of Kuruppu-
mulla in Panadura
6. THE COLOMBO APOTHECARIES COMPANY LIMITED
of Prince Street, Fort, Colombo.....*Defendants.*

To :

20

Mr. H. W. Fernando, Licensed Surveyor,
' Shangri-La ',
Mount Lavinia.WHEREAS the abovenamed Plaintiff has instituted the above styled
action for a partition of the lands to wit :—

An allotment of land with the buildings standing thereon bearing Assessment No. 12/29 now No. 125 Glennie Street, situated in Slave Island within the Municipal Limits of Colombo, Western Province bounded on the north by the Lake on the east by the property of Mrs. von Possner bearing Assessment No. 13/28 south by Road (and presently known as Glennie Street) and on the west by the garden of Mr. van Buren containing in extent thirty decimal nought two perches (Ao. Ro. P30, 2/100) which said premises are otherwise described as bounded on the north by the Lake, east by the property of Mrs. von Possner bearing Assessment No. 13/28 south by Glennie Street and west by the property belonging to Colombo Ice and Cold Storage Company Limited bearing No. 11/30 containing in extent thirty five and three fourth perches (Ao. Ro. P35, 3/4) according to Plan No. 396 made by J. G. Vandersmagt, Municipal Surveyor.

AND WHEREAS this Court by its order dated the 18th day of February 1948 appointed you as Commissioner to survey and make a preliminary plan of the above lands.

No. 3
Commission
issued to
Surveyor
10-2-48
—Continued

NOW KNOW YE AND THESE PRESENTS WITNESS THAT YOU are hereby appointed and empowered and authorised to proceed to the said lands and with due notice to the parties (after proclamation by beat of tom-tom) survey the same and thereupon make your return thereto on or before the 21st day of April, 1948.

GIVEN under my hand on this 10th day of February, 1948.
10 Sgd. V. S. JAYAWICKREMA,
Additional District Judge.

Drawn by me,
Proctor for Plaintiff.

No. 4

Commissioner's Report

No. 4
Commis-
sioner's
Report
6-4-48

Mt. Lavinia.
3rd April, 1948.

The Additional District Judge, Colombo.

D. C. Colombo 5143/P

20 Sir,

Pursuant to the commission dated 10th February 1948 issued to me in the above styled action and in conformity with the provisions of Ordinance No. 10 of 1863 by giving publicity by beat of tom-tom and affixing a written notice at Assessment No. 125 Glennie Street on 13-3-48 and after due notice in writing had been served on the parties concerned, I proceeded on the 30th day of March 1948 to the land and carried out the preliminary survey.

2. The plaintiff was represented by her son-in-law, Mr. M. V. Perera who pointed out the land and its boundaries to me on the ground together with
30 the 2nd, 3rd, 4th and 5th defendants, all of whom were present during the progress of the survey. The 1st and the 6th defendants were absent.

3. The land as surveyed by me agrees with the Assessment No. 12/29 Glennie Street as given in the commission. Its corresponding new assessment number is a part of 100 Glennie Street and not 125.

4. The northern abutting boundary which is said to be the lake according to the commission is at present reclaimed land owned by the Colombo Apothecaries Limited together with the western abutting boundary both of which form the other part of Assessment No. 100 Glennie Street. At present the western abutting boundary is not claimed by Mr. van
40 Buren or the Colombo Ice and Cold Storage Company but by the Colombo

No. 4
 Commis-
 sioner's
 Report
 6-4-48
 Continued—

Apothecaries Limited—vide information given in my Preliminary Plan No. 233 attached. Also the land I surveyed on this commission together with the buildings standing thereon are in the possession of the Colombo Apothecaries Limited at present.

5. The land I surveyed agrees with Mr. J. G. Vandersmagt, Municipal Surveyor's Plan No. 396 referred to in the commission, although there is a deficit of 0.42 perches according to my survey.

6. My Preliminary Plan No. 233 dated 30-3-1948 and a copy of Field notes of same date are attached.

7. I move that my costs be paid vide my bill of costs dated 7-11-1947. 10

I am, Sir,
 Your obedient servant,
 H. W. FERNANDO,
Commissioner.

I, Henry William Fernando, Licensed Surveyor and Leveller, do hereby affirm and state that the informations given in my Preliminary Plan No. 233 dated 30-3-1948 and the above report are to the best of my knowledge and belief correct.

H. W. FERNANDO,
Commissioner. 20

Signed and affirmed to at Colombo this 6th day of April 1948 before me.

Sgd. L. H. DE KRETSER,
Commissioner for Oaths.

S. JEGATHEESAN,
 LICENSED SURVEYOR & LEVELLER,
 10, CHARLES PLACE,
 KOTAHENA,
 COLOMBO 13.

*Property bearing part of
 Assmt. No. 100 Glennie Street of
 The Colombo Apothecaries Ltd.*

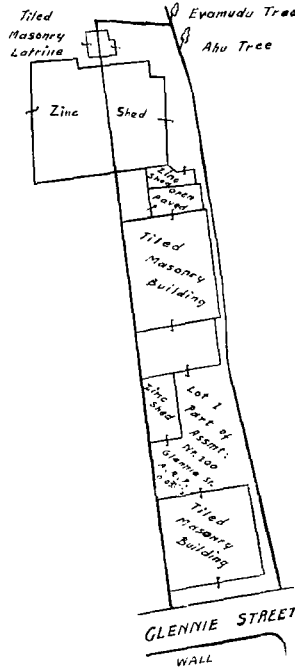
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No. 4
 Commis-
 sioner's
 Report
 6-4-48
 Contd.

No. 233

*Return to Commission in Case
 No. 5143/P. D. C. Colombo.*

*Property bearing part of
 Assmt. No. 100 Glennie Street
 of The Colombo Apothecaries Ltd.*



*Property bearing
 Assmt. No. 92 Glennie Street
 of Miss Von Possner*

Scale of 1 Chain to an Inch

Plan

— of —

An allotment of land with the buildings standing thereon bearing part of Assmt. No. 100 Glennie Street marked Lot 1 situated at Slave Island within the Municipal Limits of Colombo

COLOMBO DISTRICT

Western Province

Bounded as follows:—

North by property bearing part of Assmt. No. 100 Glennie St. of The Colombo Apothecaries Ltd.

East „ „ „ Assmt. No. 92 Glennie St. of Miss Von Possner

South „ Glennie Street

West „ property bearing part of Assmt. No. 100 Glennie St. of The Colombo Apothecaries Ltd.

Containing in Extent ^{A R P} o. o. 35.33

*Office:—11, Belmont Street,
 Hulftsdorp,
 Colombo, 16-8-1954.*

*Surveyed on the 30th day of March, 1948.
 Sgd. H. W. FERNANDO,*

*“ True Copy ”
 Sgd. S. JEGATHEESAN,
 Licensed Surveyor & Leveller,*

*Licensed Surveyor & Leveller, Commissione
 Shangri La,
 Mt. Avenue, Mount Lavinia,*

Answer of the 6th Defendant.

No. 5
 Answer
 of the 6th
 Defendant
 2-6-48

IN THE DISTRICT COURT OF COLOMBO

MARTHA AGNES PEIRIS nee RODRIGO of No. 99/2
 Galkapanawatte Road, Grandpass, Colombo.....*Plaintiff.*

No. 5143/P.

vs.

1. CLARA STEPHENIA PATHIVILLA nee RODRIGO of
 Mabel Villa, van Rooyen Street, Kotahena in Colombo
2. KURUPPUMULLAGE DONA THERESA of Alutgama
- 10 3. KURUPPUMULLAGE DONA LUCY
4. KURUPPUMULLAGE DON GABRIEL and
5. KURUPPUMULLAGE DONA ROSELINE all of Kuruppu-
 mulla in Panadura and
6. THE COLOMBO APOTHECARIES COMPANY LIMITED
 of Prince Street, Fort, Colombo.....*Defendants.*

On this 2nd day of June, 1948.

The Answer of the 6th defendant abovenamed appearing by Geoffrey Thomas Hale, Frederick Claude Rowan, Joseph Francis Martyn and Henric Theodore Perera carrying on business in partnership under the name and style of JULIUS AND CREASY and their Assistants Hugh Ian Gibson,
 20 Alexander Nereus Wiratunga, John Peter Edmund Gregory, James Arelupar Naidoo, Alexander Richard Neville de Fonseka, Behram Kaishushroo Billimoria, Lena Charlotte Fernando and Mohamed Shereeff Mohamed Shabdeen, Proctors states as follows :—

1. Answering paragraph 1 of the plaint this defendant admits that the subject matter of this action is situated within the jurisdiction of this Court.
2. This defendant admits the averments in para. 2 of the plaint.
3. This defendant denies the averments all and singular in paras. 3
 30 and 4 of the plaint and specifically denies that Deed No. 8550 of 9th November 1870 was acted upon or that it creates a fidei commissum or that it was duly registered or that the fidei commissum extends beyond one generation.
4. This defendant admits that Lorenzo Rodrigo left the two children referred to in paragraph 5 of the plaint but denies that they had any interest in the premises sought to be partitioned.
5. The defendant puts plaintiff to the proof of the averments in paras. 6 and 7 of the plaint as it is unaware of them and therefore denies them. This defendant specifically denies that either the plaintiff or the first five
 40 defendants became entitled to any share of or the life interest in the said premises.

No. 5
 Answer
 of the 6th
 Defendant
 2-6-48
 —Continued

6. This defendant admits its possession of the said premises from 1926 to date but denies that such possession is unlawful or that it has no source whatever.

7. The defendant denies all and singular the averments in paragraph 9 of the plaint and state that the premises are worth Rs. 80,000/-.

8. This defendant denies the averments all and singular in paras. 10 and 11 of the plaint.

9. Further answering the plaint the defendant states that Lawrence Rodrigo who was the owner in possession of the said premises by his Deed No. 5249 of the 21st December 1895 sold and transferred his interests for 10 valuable consideration to Theobald Dias who duly registered the said Deed and this defendant claims the priority of such registration.

10. The said Theobald Dias by Bond No. 3722 of the 21st of January, 1910 mortgaged his interests in the said premises to F. E. Abeysundere who put the bond in suit in D.C. Colombo 35192 making one M. William Pieris a party to the said case as he purported to have purchased interests from Madelena and Lawrence alias Lawrenti the heirs of Manisgey Lorensz Rodrigo and had deeds registered in his favour

11. On the decree in the said case D.C. Colombo 35192 the said premises were sold by public auction and conveyance No. 534 of the 16th October 20 1914 issued in favour of F. E. Abeysundere.

12. Thereafter the said premises were sold for the non-payment of taxes due to the Municipal Council of Colombo and on Deed No. 197 of the 4th of May 1916 purchased by the aforesaid F. E. Abeysundere who was thus seized and possessed of the entire premises.

13. The said F. E. Abeysundere while being thus seized and possessed of the said premises sold and transferred it on Deed No. 5512 of the 12th of May 1917 to The Ceylon Rubber Mills Company Limited the liquidators of which company on Deed No. 703 of the 3rd of December, 1921 sold and transferred the said premises to Anthony Zarephe and put him in possession 30 thereof.

14. The said Anthony Zarephe on Deed No. 397 of the 26th of March 1926 sold and transferred the said premises to the 6th defendant company and put it in possession thereof.

15. The 6th defendant and its predecessors-in-title have been in long continuous and undisturbed possession of the said premises independent of and adverse to everyone else and has gained a prescriptive title thereto in terms of the Prescription Ordinance.

16. The defendant pleads as matters of law that :—

- (a) the deeds in its favour are duly registered and are entitled to 40 prevail over the plaintiff's deed by virtue of such prior registration.
- (b) this action is an abuse of the Partition Ordinance.
- (c) the deed pleaded by the plaintiff is inadmissible.

17. The defendant further pleads that the premises sought to be partitioned and the adjoining premises bearing No. 11/30 have been built on by the defendant and its predecessors-in-title as one building block and buildings erected thereon at a cost of Rs. 30,000/- which sum the defendant claims as compensation in the event of his not being declared entitled to the said premises.

No. 5
Answer
of the 6th
Defendant
2-6-48
—Continued

Wherefore the 6th defendant prays that the plaintiff's action be dismissed with costs and that the 6th defendant be declared entitled to the premises or to compensation in a sum of Rs. 30,000/- for costs of suit and for such further and other relief as to the court shall seem meet.

(Sgd.) JULIUS & CREASY,
Proctors for 6th defendant.

No. 6.

Issues Framed.

No. 6
Issues
Framed

6th February, 1950.

Plaintiff and 1st defendant present.

Adv. Mr. Renganathan for plaintiff instructed by Mr. A. H. Abeyratne.

Mr. K. V. A. Perera for 1st defendant.

Adv. Mr. C. E. S. Perera with Adv. Mr. T. B. Dissanayaka for 6th defendant instructed by Messrs. Julius and Creasy.

Mr. Renganathan suggests the following issues :

1. Was Solomon Rodrigo the former owner of the land sought to be partitioned.

2. Did he by deed No. 8550 of 9th November, 1870 gift the property to his son Lorenzo Rodrigo subject to a *fidei commissum* in favour of his male and female descendants.

3. Is the judgment or decree in case No. 11739 *res judicata* on the question involved in issues 1 and 2.

Mr. C. E. S. Perera objects to issues 3 as it is not pleaded. He suggests the following additional issues : —

4. (a) Was deed No. 8550 of 9th November, 1870 acted upon.

(b) Does it create a *fidei commissum*.

(c) If so, does the *fidei commissum* extend over one generation.

(It is admitted that deed No. 8550 has not been registered).

5. Was deed No. 5249 of 21st December, 1895 duly registered.

6. If so, are the 6th defendant's deeds entitled by virtue of prior registration to prevail over the plaintiff's title.

No. 6
Issues
Framed
—Continued

7. Have the 6th defendant and his predecessor-in-title prescribed to the said premises.

8. Have the 6th defendant and his predecessors- in-title improved the premises.

9. What compensation, if any, is he entitled to.

10. Were the said premises sold for non-payment of taxes due to the Municipal Council and purchased by F. E. Abeysundere the predecessor-in-title of the 6th defendant.

Mr. Renganathan suggests a further issue : —

11. Would the 6th defendant be precluded by the judgment or decree 10 in case No. 11739 from raising the issues 5 and 6.

Mr. C. E. S. Perera objects to issue 11. He suggests further :

12. Is the judgment and decree in case No. 24672/C res judicata to the rights of parties.

13. Is what is pleaded as deed No. 8550 of 9th November, 1870 admissible.

14. Is the decree in case No. 11739 relied on by the plaintiff registered.

15. If not, are the 6th defendant's deeds entitled to prevail by virtue of prior registration.

(Mr. Cyril Perera states that he is not prepared to meet the issue on 20 res judicata based on the decree in D.C. 11739. He wishes to reconsider his position in view of this plea. He says that certain other consequences may flow, such as registration of the decree. He asks for an opportunity to meet the new position. Mr. Renganathan has no objection).

All points of contest have now been framed and the parties know on what they have to get ready. There is no need therefore to amend the pleadings now. The trial will proceed on these points framed. I shall therefore re-fix the trial. If parties wish to raise further points of contest, timely notice must be given. Trial re-fixed for 4th and 6th September.

Sgd. M. C. SANSONI, 30

A.D.J.

6-2-50.

4-9-50.

Plaintiff present.

First, second, third and fifth defendants present. Fourth defendant absent.

Mr. Adv. Herath with Mr. Adv. Renganathan and Mr. Adv. Misso for the plaintiff.

Mr. Adv. Cyril E. S. Perera with Mr. Adv. Dissanayaka for the 6th defendant.

Mr. Herath refers to the point of contest, issue 11 framed on 6-2-50 and states that he wishes to recast it in this form ' Even if deed No. 5249 of 21-12-1895 and the subsequent deeds in the 6th defendant's chain of title are duly registered, does the judgment and decree in case No. 11759 operate as res judicata on the question of title of the plaintiff in this case '.

No. 6
Issues
Framed
—Continued

Mr. Perera has no objection. Issue 11 will be struck off and in its place will be the issue suggested by Mr. Herath today. Mr. Perera then moves to correct issue 13 by deleting ' in ' and inserting therefor ' as '. The application is allowed.



10

No. 7.

Plaintiff's Evidence.

No. 7
Plaintiff's
Evidence
C. S.
Pathuvilla
Examination

Mr. Herath calls :

CLARA STEPHENIE PATHUVILLA, sworn.

63 years, living at Van Rooyen St., Kotahena. I own the land sought to be partitioned in this case. It is depicted in Plan 233 dated 30th March, 1948, marked X. My great-grand-father is Manisge Solomon Rodrigo, who was the original owner of the land, by deed No. 8550 of 9-11-1870 gifted it to my grand-father. I produce a true copy of deed No. 8550 of 9-11-1870.

Mr. Herath states that this is a true copy filed in case D.C. 11759. In that case the original deed of gift was lost and the court upheld the contention that the copy produced in the hearing was a true copy. This opinion was upheld by the appellate court.

Mr. Herath states that he will produce the copy filed in the case through the Record Keeper of this court.

EXD. By deed of gift No. 8550 of 9-11-1870, attested by R. C. B. Perera, Notary Public, gifted this land to his son, Manisge Lorenzo Rodrigo, subject to certain conditions mentioned in that deed. The original deed of gift has been lost for a long time and his notary R. C. B. Perera died a good many years ago. I have tried to get a copy of that deed from the Registrar-General but the duplicates forwarded to the Registrar-General have also been lost, the protocol of the notary is also missing. I remember the case which my grand-father brought against Theobald Dias. That was a case relating to this land. For the purposes of that case a document was produced as a true copy of the lost deed. That true copy is filed of record in that case. I produce marked P1 a certified copy issued by the Chief Clerk C. Court, of the District Court of Colombo of the deed No. 8550 attested by R. C. B. Perera, Notary Public dated 9-11-1870 and filed of record in that case.

No. 7
Plaintiff's
Evidence
C. S.
Pathuvilla
Examination
—Continued

Mr. Perera states that this document be received subject to his objection that it will not be admitted in evidence unless the copy filed in the D.C. case is filed in evidence. The document is received subject to this objection.

EXD. My grand-father Lorenzo Rodrigo died some time after the other case was over. He died in 1899. He left two children, Magdalene and my father, Lawrence alias Lawrenti. My father Lawrence alias Lawrenti died on 29th October, 1939. I produce marked P2 a certified copy of his death certificate. He left two children me and the plaintiff, Martha. My aunt Magdalene died in December 1934, leaving four children the second to the fifth defendants. Under the terms of deed of gift P1 I am entitled to one-fourth share, the plaintiff to one-fourth share and the other half share in equal shares go to the second to the fifth defendants. Solomon Rodrigo was my great grand-father. My grand-father's father was Solomon Rodrigo. I also produce marked P3 a certified copy of the plaint in D.C. 11739 and D4 the answer of the first defendant in D.C. case 11739 and P5 a certified copy of the issues, P6 the judgment, P7 the decree of the Court of the first instance, P8 the judgment of the Supreme Court and P9 the decree of the Supreme Court. 10

At this stage Court adjourns for lunch.

20

Sgd. V. MANICKARASAGAR,

A.D.J.

4-9-50.

4-9-50 (After Lunch)

CLARA STEPHENIE PATHUVILLA, recalled, sworn

Examination continued.

I know the subject matter of this action. I lived in the house on this land. My grand-father Lorenzo built that house. This was a tiled house, the floors of which were cemented brick floors. It contained three rooms and a kitchen with out-houses. Behind this house is the Beira Lake. That house is still in existence. 30

Cross-examined.

C. S.
Pathuvilla
Cross-
Examination

Before my grand-father died we were living in that house. After his death we did not live in that house. My father is Laurenzo alias Lawrence. After my grand-father's death there was one Theobold Dias living in that house. Mr. Abeyundere may have lived there after my grand-father's death. I do not know whether there was some rubber mills there. During the 1914-1918 war I do not know whether there was a rubber mill on the land. I am unable to say who occupied the land during that period. As a matter of fact I cannot say who lived there after my grand-father's death. Neither I nor my aunt Magdalene lived there after my grand-father's death. Magdalene is older than my father. Her daughters are present in Court. They are about my age. Some of them are older than I am. I know that during the lifetime of my grand-father, he leased the entirety of this land to Theo- 40

bold Dias. At the time of the lease neither my grand-father nor my father lived on that land. They went to reside elsewhere, before the land was given on lease. P3a to P9 was a case instituted by my grand-father in respect of those leases. I now know that P1 is not registered. I now know that these lands were sold for the non-payment of taxes. It may have been purchased by Mr. Abeysundere. M. W. Peiris is not related to me. I do not know whether there was litigation between M. W. Peiris and Theobold Dias. Theobold Dias is not a relation of mine.

No. 7
Plaintiff's
Evidence
C. S.
Pathuvilla
Cross-
Examination
—Continued

Re-examined.

10 I produce marked P10 copy of the writ of possession in 11739 C against Theobold Dias, and a certified copy of the return to that writ marked P10.

C. S.
Pathuvilla
Re-
examination

Sgd. V. MANICKARASAGAR,

A. D. J.

4-9-50.

G. M. CHRISTIANSZ sworn.

Record Keeper D.C. Colombo. I am producing the record in D.C. 11739 C. In that record I have a true copy of deed No. 8550 of 9th November, 1870. I produce it marked P11.

G. M.
Christiansz
Examination

P1 is a certified copy of P11 issued by the Chief Clerk of this Court.

20 Cross-examined. Nil.

Sgd. V. MANICKARASAGAR,

A. D. J.

4-9-50.

F. D. N. PERIS sworn.

Clerk, Land Registry, Colombo. I have got with me the volume of duplicates of deeds attested by B. R. C. Perera for the years 1870 to 1872. The first deed attested by him according to this volume is deed No. 8537 of January, 1870 and the very next is deed No. 8549. Following this I find deed No. 8851. The duplicate deed of 9-11-70 No. 8550 is missing. I have also
30 got with me the copy of the notaries list for the years 1870. Due to age it is practically indecipherable. It shows against the date 9th November that a deed of transfer from M. Solomon Rodrigo in favour of M. Lorenzo Rodrigo had been attested by B. R. C. Perera, but the duplicate is missing. (Counsel moves to mark a copy of the notaries list as P12) I mark in evidence a certified copy of the Verification Register, Vol. 1 as P13. I have before me Vol. 1 of the Verification Registers. This register is used for this purpose—periodically—once in three years—we check up on the duplicates of deeds attested by various proctors and make a note of these verifications in the verification registers. In Vol. 1 of the Verification Registers I find
40 that deed No. 8550 of 8-11-70 which had been attested by B. R. C. Perera is missing. I cannot say when this entry was made. B. R. C. Perera is dead. When a notary dies his protocols are sent for registration. Mr. B. R. C. Perera's protocols were sent for registration. This volume speaks only to duplicates of deeds attested by him.

F. D. N.
Peris
Examination

No. 7. **XXD.** by Mr. Cyril E. S. Perera.

Plaintiff's Evidence
F. D. N. Peris
Cross-Examination
In the notaries monthly list deeds of gifts have been referred to there-
in as deeds of gifts and deeds of transfers have been referred to as deeds of
transfer.

Re-examined. Nil.

Sgd. V. MANICKARASAGAR,
A.D.J.
4-9-50.

Plaintiff's case closed.

Plaintiff leads in evidence P₁ to P₁₃.

Sgd. V. MANICKARASAGAR,
A.D.J.
4-9-50.

10

No. 8
Defendant's
Evidence

No. 8.

Defendant's Evidence.

Defendant's case.

Mr. Perera calls.

J. A. Honter
Examination

J. A. HONTER, sworn, 57, Secretary, Colombo Apothecaries' Co., Ltd., Colombo. Nugegoda. I have come here to produce the deeds in favour of the company. I produce deed of transfer No. 5249 of 21-12-95 by M. Laurenzo in favour of Theobold Dias, marked 6D1. The deed shows that Theobold Dias had mortgaged the premises to one J. E. Abeysundere, who put the bond in suit and by Fiscal's conveyance of 16th October, 1914 became the owner. I produce 6D2. I produce certificate of sale No. 197 of 4th May, 1916 (6D3) in favour of Abeysundere by the Chairman of the Municipal Council, Colombo. Attached to that deed is a reference to plan No. 396 of 6th July, 1949 (by J. G. Vandersmagt) marked 6D4. J. E. Abeysundere by deed 5512 of 12th May, 1919 transferred the premises to the Ceylon Rubber Mills Company Limited, marked 6D5. The Ceylon Rubber Mills Company Limited by deed 703 of 3-12-21 marked 6D6 transferred the premises to Anthony Zeraphi who by deed No. 397 of 26-3-26 marked 6D7 transferred it to the Colombo Apothecaries' Company Limited. I produce the extracts of Encumbrances marked 6D8 of folios A1097, A33/151 carried forward to A30/39. I produce 6D9 Encumbrance folios A30/39, A43/375, A5783/- A60/223, A69/152, A85/277, A99/266, A133/49, A200/229. I have been working in this company for about 11 years. The taxes have been paid.

J. A. Honter
Cross-Examination

XXD.

I am unable to say what the taxes amounted to. There is a house on these premises with roughly about three to four rooms. It is a fairly substantial house. This house is occupied by the store-keeper. This building

40

could be rented out at Rs. 50/- to Rs. 60/- per mensem. This land is situated in a good business area. Even the bare land would fetch a rental from Rs. 20/- to Rs. 35/- a month. This house which I referred to earlier was not put up by my firm.

Re-examined. Nil.

Sgd. V. MANICKARASAGAR,

A.D.J.

4-9-50.

ROSSLYN KOCH, sworn, 64, Managing Director, Colombo Apothecaries' Co., Ltd., M.P.

No. 8
Defendant's
Evidence
J. A. Honter
Cross-
Examination
—Continued

Rosslyn
Koch
Examination

The plan filed as 6D7 made by J. G. Vandersmagt gives the extent of the land as $35\frac{3}{4}$ perches. The plan filed in this case and marked X gives the extent as 35.33 perches. 6D7 is a survey plan of these premises made for the purposes of the company. I am now the Managing Director of Colombo Apothecaries. I have known these premises for about six or seven years. The Apothecaries after they became owners of the premises put up a garage and a lavatory at the expenses of Rs. 9,000/-. The lavatory was for the workmen. The garage was a big one to accommodate from five to six lorries. It was a steel structure and was put up by Walkers. A portion of the garage stands on the land in dispute. The garage is depicted as the zinc shed in the plan. There are two other buildings on this land. One is a house and this is occupied by our ex-store-keeper. It is not a very valuable house. The other building is a very substantial building the replacement value of which today could be estimated as Rs. 30,000/-. This is being used today as our carpentry shed downstairs and upstairs as a storage room. I believe it was put up by Mr. Zeraphi. Mr. Zeraphi is not in the Island today. The length of the carpentry shed would be from 70 to 80 feet and its breadth would be from 40 to 50 feet. (Counsel marks through this witness 6D10 copy of the Assessment Register).

30 Cross-examined.

The tiled masonry building which is occupied by the ex-store-keeper is abutting the road, (Glennie Street). The building the approximate length of which I gave is marked in the centre of the plan X. I do not know who put it up, nor do I know when it was put up. It is a modern building. I do not know how much was spent to put it up. Antony Zeraphi was on the list of witnesses for the company. I saw him in Ceylon about a week ago, and I presumed that he is not in Ceylon. The books of the company will show what was actually spent to put up the garage. The greater portion of the garage falls outside the land in dispute according to this plan X. According to the plan X $\frac{2}{5}$ th portion of the garage falls on the land in dispute and $\frac{3}{5}$ th of the garage falls outside the land in dispute. I would not say that this $\frac{2}{5}$ th portion would depreciate in value because it would depend on the use to which it is put. If it was to be used as a garage there would be no access to it. I would estimate the rental value of the house occupied by the ex-store-keeper at Rs. 50/- per mensem. It is difficult for me to estimate the value of the bare land as a place of storage. There are

Rosslyn
Koch
Cross-
Examination

No. 8 three firms interested in this land. I did not know anything about this land before we took over it. The replacement value of the building in the centre of the plan X could be estimated at Rs. 36,000/- even today.

Defendant's Evidence
Rosslyn Koch
Cross-Examination
Continued—

Rexd. Nil.

Sgd. V. MANICKARASAGAR,
A. D. J.
4-9-50.

B. K. Billimoria
Examination

B. K. BILLIMORIA. affd. Proctor, S.C.

I am the proctor for the 6th defendant. As such I examined the record in D.C. 24762 C (L). The plaint in that case was in its entirety, but it was in such a condition as a result of it being kept in a folded condition that there was every possibility of it getting torn in handling. I made notes from that plaint which I considered relevant for the purposes of this case. I produce 6D11 extracts of notes taken down by me from the plaint in D.C. 24762 C (L). I produce 6D12 the answer in the same case.

Court. Mr. Herath objects to the document 6D11. He states that the impression he got was that Mr. Billimoria had made a copy of the entire plaint and not extracts of the plaint. On a perusal of the document 6D11 Mr. Perera states that he is seeking to produce the document only as notes of extracts made from the plaint as made by the witness. I reject the document 6D11.

I produce a certified copy of the answer marked 6D12.

I produce as 6D13 judgment of the Lower Court.

I produce 6D14 the decree of the Lower Court.

I produce as 6D15 Supreme Court judgment.

I produce as 6D16 the Decree of the Supreme Court.

I produce as 6D17 the amended decree of the Supreme Court, date of amendment 5th September, 1910.

XXD. Nil.

Sgd. V. MANICKARASAGAR, 30
A. D. J.
4-9-50.

R. J. Thomas
Examination

ROBIN JAMES THOMAS, sworn, 53, Manager, Colombo Apothecaries' Printing Branch. The printing works is situated on the other side of Glenie Street. I have been working in this Company for the last 30 years. The premises which forms the subject matter of this action has been in our possession for the last 24 years. I cannot tell you who occupied this building before we took it over. When we took over the premises there was a rubber factory on it. I do not know who put up the rubber factory. The premises is at present being used by our furniture department.

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R. J. Thomas
Cross-Examination

XXD.

I can speak to this land only after the defendant company purchased it.

Sgd. V. MANICKARASAGAR,
A. D. J.
4-9-50.

REXD.

C. M. CHRISTIANSZ, re-called, sworn.

I produce the record in D.C. 24762 C (L). The right half of the plaint in the case is missing and the remaining portion is on the record. I produce a certified copy of what is remaining in the record. I produce it as 6D18.

XXD. Nil.

No. 8
Defendant's
Evidence
C. M.
Christiansz
Examination

Sgd. V. MANICKARASAGAR,
A D. J.
4-9-50.

10 Defendant's case closed.

Further hearing on 21-9-50.

Sgd. V. MANICKARASAGAR,
A D. J.
4-9-50.

No. 9.

Addresses to Court.

No. 9
Addresses
to Court

Submission of 6th defendant.

1. According to the evidence and admissions Madelena died in 1934 and this action having being instituted on 4th November, 1947, the 6th defendant has prescribed to the rights (if any) of the 2nd, 3rd, 4th and 5th defendants who claim as the children of Madelena.

2. There remains the claim of the plaintiff and 1st defendant who claim that their great-grand-father Solomon Rodrigo gifted the property to their grandfather Lorenzo subject to a fidei commissum by deed of gift 8550 of 9th November, '70.

(a) Admittedly 8550 of 9-11-70 is not registered.

(b) The 6th defendant who is a bona fide purchaser for value in 1926 searched the registers in the correct folio and not finding 8550 of 9-11-70 registered purchased the premises and has possessed it from 1926 to-date. He is thus placed in the same position as regards title to the land as if no such deed existed.
17 N.L.R. 76 at 81.

(c) In Ceylon an unregistered instrument containing a fidei commissum would by section 7 (1) of Cap. 107 be void as against all parties claiming an adverse interest for valuable consideration on a later instrument duly registered.

24 N.L.R. 175

30 N.L.R. 317

32 N.L.R. 353

No. 9
Addresses
to Court
—Continued

Nadarajah on fidei commissum p. 177.

Fidei commissaries have no rights against a bona fide purchaser from a fiduciaries who was allotted a share in a partition action.

46 N.L.R. 385 at 390.

3. If title has to be examined as if deed 8550 did not in fact exist (17 N.L.R. 76 at 81) Lorenzo's absolute title would on his death pass to his children Madelena aforesaid and Lawrence, father of plaintiff and 1st defendant.

(a) Lawrence's title would 5249 of 21-12-95 (6D1) and the subsequent deeds come to the 6th defendant. 10

(b) Though he had no title at the time of 6D1 his subsequent acquisition of title would enure to the benefit of his transferees.

20 N.L.R. 301

21 N.L.R. 495

22 N.L.R. 385.

4. D.C. No. 11739 was an action in 1898 (p3) by Lorenzo, the grandfather, Lawrence the father and Madelena the aunt of plaintiff and 1st defendant against Theobald Dias the transferee on 6D1 on the footing that they had leased the premises to Theobald Dias and he was over holding. There was no means by which the 6th defendant could have become aware of 20 decree P7 or the S.C. decree P9. None of which are registered.

5. D.C. No. 11739 of 1898 may have enabled the plaintiff to contend that as against the plaintiff Lorenzo, Lawrence and Madelena the defendant Theobald Dias in that case cannot set up title but the later case D.C. 24762 of 1907 establishes the rights of Theobald Dias who had purchased from Lawrence on 6D1.

(i) The plaintiff H. W. Peiris in D.C. 24762 claimed that Madelena's rights had on deed of 1899 and later deeds comes to him and that Lawrence's rights had on a deed of 1905 come to him (vide 6D18 as 6D11 was rejected). 30

Note: that these transfers shew that the fidei commissum was not acted upon by Madelena and Lawrence 33 N.L.R. 273.

(ii) The defendant Theobald Dias set up title on 6D1 (6D12).

(iii) The S.C. Decree dismissed plaintiff's action (6D16) but later plaintiff M. W. Peiris was declared entitled to 1/2 (6D17).

(iv) Probably M. W. Peiris has given Madelena 1 1/2 and Theobald Dias Lawrence 1/2, but the plaintiff and 1st defendant are not claiming these interests.

(v) M. W. Peiris' 1/2 seems never to have been possessed by him and was sold against him for non-payment of taxes in 1916 and purchased by F. E. Abeyesundere on 6D3. 40

Note : that 6D2 recites mortgage bond 3722 of 1910 in Abeyesundere's favour as having being put in suit in D.C. 35192 and to which M. W. Peiris was a party.

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(vi) Abeyesundere's title to the entirety of the premises passed on 6D5, 6D6 and 6D7 to the 6th defendant.

6. The 6th defendant's own possession dates back to the date of his purchase in 1926 (vide 6D10) Lorenzo and his children and grand-children have had no possession for over 50 years.

7. The 6th defendant's deed is registered in the continuation of the 10 folio in which the earliest deed rg. 837 of 19-9-68 (vide 6D8) is registered vide 6D8 and 6D9 and is in the correct folio and it thus cannot be argued that he had searched a wrong folio and could not have been prejudiced by the non-registration of the instrument creating the alleged fidei commissum relied on by the plaintiff and 1st defendant.

13-10-50.

Mr. Adv. Herath for the plaintiff.

Mr. Adv. C. E. S. Perera for the defendant.

COURT :

This matter comes up before me at my request because I have misplaced 20 the notes of the submissions made by counsel on the last date.

Mr. Perera states that he has put down his argument in writing and submits same to Court which I mark X. Along with his argument he submits the pedigree which I mark XI. Mr. Herath has been supplied with a copy of these arguments.

Mr. Perera in answer to me states that he does not concede that the deed of 1870 creates a fidei commissum, but he has no doubt that the Court, in view of the earlier decisions would hold that it creates a fidei commissum good for four generations.

On the question of fidei commissum Mr. Herath cites 12 N.L.R. page 30 244, 34 N.L.R. page 190, 5 Times of Ceylon Law Reports page 131. He states that the 1st to the 5th defendants are the present fiduciaries. Lorenzo is the original fiduciary and the court will count four generations after Lorenzo and the fifth generation including Lorenzo will take the gift free.

As ten years have passed since the title accrued to the 2nd to 5th defendants, and during the past ten years possession has been with the 6th defendant the 6th defendant has acquired prescriptive title to the interests of the 2nd to the 5th defendants.

On the question of registration Mr. Herath states that the deed of 1870 40 is not registered nor is the decree in case No. 11739 of 1898. He submits that the principal of priority of registration is worked on this basis mentions the following illustration in support of his argument. A leases to B—the deed is unregistered. A leases the same property to C. C registers the lease. The crucial point of time is the time of registration of the 2nd deed: you

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ignore the earlier deed, and the registered deed gets priority, and the title that would remain in the transferor, passes to the vendee on the registered deed. That is the principle underlying the 17 N.L.R. case (*James vs. Carolis*). Applying that principle to the facts of the present case, priority of registration cannot be claimed on deed 6D1 of 1895. Applying the principles referred to by him, the resultant effect of the deed of gift of 1870, would be that Lawrenti would have title vested in him. The title would still be with Lorenzo Rodrigo, for this is not a case where one applies the ordinary principle of a deed of gift being given effect by reason of its priority of registration. He submits that the two cases relied on by Mr. Perera namely 30 10 N.L.R. at page 317 and the 32 N.L.R. at page 353 is really in his favour, and he is relying on them because the cases illustrate the principle contended by him: they were both cases where there was competition between instruments creating a fidei commissum and a transfer by the first fiduciary who also happened to be an intestate heir of the creator of the fidei commissum. Applying the principle of priority of registration the simple facts of the case would be : A gives property to be subject to a fidei commissum in favour of C. That instrument creating a fidei commissum was not registered. B the first fiduciary of the deed is also the heirs of A. B ignores the fidei commissum created by A, and transfers for a valuable consider- 20 ation to D, who duly registers the deed. Then D's deed would obtain priority and effect over the deed under which C claims.

In regard to para 2 of Mr. Perera's submissions, Mr. Herath states that the authorities relied on by Mr. Perera, namely *Nadarajah on Fidei Commissum* 177, and 46 N.L.R. ; those cases applied where there was a conflict between a final decree for partition and the fidei commissarii. In those cases the court showed a tenderness to the bona fide purchaser of value. Those principles do not apply in this case, because there is no question of partition decree arising in this case.

Replying to para 4 of Mr. Perera's submissions on the question of res 30 *judicata* Mr. Herath states. Lorenzo succeeded in establishing against Theobold Dias several things. That the copy of the deed of 1870 produced in the case was a true copy : the second that the deed creates a fidei commissum valid for four generations. On these matters there would be *res judicata* between Theobold Dias and Lorenzo. For the purpose of *res judicata* the plaintiff is the privy of Lorenzo. He cites 44 N.L.R. 376 at 377. He states that if that is *res judicata*, the next point is, can it be pleaded as *res judicata* although the decree itself was not registered. On that point he relies on the judgment in *Mohamed Ali vs. Weerasuriya*, 17 N.L.R. 417. In the present Ordinance, Chapter 101 preserves the definition obtaining in the 40 Ordinance of 1898 in regard to decrees and Judgments made before the commencement of the new Ordinance, i.e. 1927, but with regard to the orders made after 1927, the definition has been widened up, i.e. the principle enunciated in the 17 N.L.R. case at page 417 has been provided for. That principle

does not apply to this particular case, because this is a judgment of 1898. Mr. Herath states that he fails to see the relevance of the decree in case No. 24917, as that is a judgment in a case between Theobold Dias and one Peris: that judgment would be binding on anybody who claims under Peris. Peris is not a predecessor-in-title of the plaintiff. There is in fact no *res judicata* between the plaintiff and the 6th defendant.

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Replying to paras 5 and 6 of Mr. Perera's submission.

Mr. Herath states that Abeyesundere's title would only be title subject to *fidei commissum*, about in the sale held for the non-payment of rates by the Municipality. On the question of possession Mr. Herath states that if it is a valid *fidei commissum*, prescription should commence against each generation of *fidei commissarii* of Laurenti. He cites 28 N.L.R. page 92 at page 95, 42 N.L.R. page 62 at page 65 and Nadarajah at pages 170. The 2nd to the 5th defendants would be vested with title on the death of Madelena. On the question of compensation he states that if the Court holds with him, then in strict law a purchaser from a fiduciary would be entitled to claim compensation, provided of course, he was not aware of the *fidei commissum*. He cites 48 N.L.R. page 193, and 47 N.L.R. 361. Theobold Dias bought from a purchaser of a would be fiduciary and by law he is a bona fide purchaser. Then he will be entitled to the actual costs of improvement. In calculating the compensation to be paid to him the court will base its calculations from an objective standard. In this case would his client be benefited by taking over a string of lavatories: can those lavatories be put to any use than that which they were originally intended. Again would his client be benefited by taking over a part of a big building like a garage. To what use can his client put it. These factors should be taken into consideration when estimating compensation.

Mr. Perera states that what he intended to convey by para 2 of his submissions is in regard to Lorenzo's absolute title and not his title under the *fidei commissum*. Para 9 shows that the deed 6D1 was duly registered. In the decree of the Supreme Court in D.C. 11739, the S.C. deleted that part of the decree of the D.C. which declared that the deed in favour of Theobold Dias as being null and void.

Judgment 25-10.

Sgd. V. MANICKARASAGAR,
A.D.J.
13-10-50.

Judgment of the District Court.

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25-10-50.

JUDGMENT

This is an action to sell under the partition Ordinance, certain premises at Glennie Street, Slave Island, which is shown in the plan No. 233 of 30-3-48 by H. W. Fernando (vide exhibit X).

The 1st to 5th defendants who were disclosed as co-owners, filed no answer, and did not contest the plaintiff's claim ; the contest was with the 6th defendant, which is a limited liability company, and they claimed the 10 entirety of the premises by right of transfer and prescriptive possession.

A narrative of the undisputed facts are necessary before I consider the legal problems that were discussed at the hearing.

The original owner of the premises in suit was Manisge Solomon Rodrigo. In 1868 Solomon Rodrigo mortgaged the premises to John William Schokman: the document was registered (vide reference in exhibit 6D8). In November, 1870 Solomon Rodrigo by deed 8550 gifted the premises to his son Lorenzo Rodrigo: the deed reserved a life interest in the premises to the donor, and imposed the further condition, ' that Lorenzo Rodrigo should not sell, mortgage or in any other manner alienate, but the same 20 shall be possessed and enjoyed by Lorenzo Rodrigo, and his male and female descendants under the bond of Fidei Commisum '.

Solomon Rodrigo died leaving his son Lorenzo Rodrigo: Lorenzo died intestate in 1898 leaving as his heirs, his daughter Madelena, and a son Laurence alias Laurenti (whom I shall refer to hereafter as Laurenti). Madelena died in December, 1934 leaving behind her children the 2nd to 5th defendants: Laurenti died on 29-10-39, his children being the plaintiff and the 1st defendant.

Laurenti in 1895 by a deed 5249 of 1890 (6D1) that was duly registered, sold the entirety of the premises in suit, to Theobold Dias: the deed made 30 no reference to the deed of gift P1, and it recited that the vendor was ' seized and possessed, and otherwise well and sufficiently entitled to the premises '.

6D1 was executed when Laurenti's father Lorenzo was alive.

Theobold Dias mortgaged the premises by 3722 of 1910 to F. E. Abey-sundere, who put the bond in suit, and bought it at the Fiscal's sale: Fiscal's conveyance 534 of 1914 (6D2) was executed in his favour: the premises were thereafter sold for the non-payment of Municipal rates by Theobold Dias and another, and purchased by F. E. Abey-sundere on whom the premises were vested by certificate of sale 197 of 4-5-16 (6D3).

Abeyundere sold to the Ceylon Rubber Mills Co. Ltd. in 1919 (6D5) and the liquidators of the Company sold to Anthony Zaraphe (6D6) in 1921 : the latter sold to the 6th defendant in 1926 (6D7).

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All the deeds in the 6th defendant's chain of title have been fully registered : the 6th defendant company have been in possession of the premises since the date of their purchase.

Before I conclude this narrative, I shall refer to two actions filed in this court, relating to the premises in suit, that had been previously decided ; reference to them are necessary, as these have been pleaded as *res judicata* between the parties to the contest in this suit.

D.C. 11739 was instituted by M. Lorenzo Rodrigo against Theobold Dias: Lorenzo pleaded that he, and his children Laurenti and Madelena had leased the premises in suit to Dias for a period of five years; and pending this lease his son Laurenti had leased the premises for a further year, commencing from the expiration of the earlier lease, viz. 1-2-1897: he complained that Dias had been over-holding since 1-2-1898, and claimed to do so on deed 6D1: Lorenzo asked that he be declared entitled to the premises, for damages, and deed 6D1 be declared null and void (vide P3). In his answer Dias claimed that he was entitled to the premises on 6D1 (vide exhibit P4): one of the issues related to the execution to the deed of gift P1, and whether it created a *fidei commissum* : and another was whether Dias had a valid title to the premises on the deed (6D1) of 1895 (vide exhibit P5) : this court by its decree of 30-11-98 granted Lorenzo the prayer in his plaint (vide P6) ; the Supreme Court varied this decree by the excision of the words declaring the deed 6D1 of 1895 null and void, but otherwise affirmed the decree of this court (vide exhibit P9).

D.C. 24762 was the other action, between M. W. Peris and Theobold Dias: the plaint in this case is not readily available, and an attempt to produce excerpts made by Proctor Bilimoria was rejected: but it is clear from the other documents that were produced in evidence, that it was an action for declaration of title to the premises in suit: M. W. Peris's claim to the premises being on deeds executed by Laurenti, and Madelena (vide exhibit 6D13): Dias in his answer (6D12) claimed title to the premises on the deed 6D1: on 30-7-08, this court declared the plaintiff entitled to the premises, gave him damages and directed the eviction of the defendant (6D14) : the Supreme Court set aside the decree, and dismissed the plaintiff's action (6D15) : but on an application made by the plaintiff, M. W. Peris, on 1-8-1910 to amend the decree, the Supreme Court granted his application by varying the decree to the extent of declaring Peris entitled to a half share of the premises (vide 6D17).

The foregoing are the facts that have been proved in this action: and I shall now proceed to discuss the points of contest between the parties.

Issue one (1) must be answered in the affirmative ; it was at no stage disputed that Manisge Solomon Rodrigo was not the owner of the premises.

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Issue 2 raises the question as to whether the deed of gift P₁ created a fidei commissum ; Counsel for the 6th defendant did not concede that it does ; nor did he press any particular point of view : on a reading of the document, I have no doubt that it creates a fidei commissum, and the intention of the Donor was to preserve the property for the 'succeeding' male and female descendants of Lorenzo : the document creates a fidei commissum for the full period of four generations.

Issues 5 and 6 raise the question of priority by registration : the two deeds with which we are concerned are the unregistered deed of gift, and the conveyance 6D₁ which was duly registered. 10

The former is by the original owner Solomon Rodrigo ; Laurenti, his grandson, is a fiduciary under the deed of gift. The latter is a sale for valuable consideration by Laurenti.

The question I have to decide is whether, 6D₁ has priority over the deed of gift by reason of its being duly registered. The difficulty arises from the fact that at the time Laurenti conveyed to Dias by 6D₁, he had no title. If he had executed the conveyance after the death of his father Lorenzo, then this deed would have effectively shut out P₁, and prevailed over it, by the fact of its being duly registered: because Laurenti, though a fiduciary, was also the heir ab intestato of his father Lorenzo : this was the basis of the 20 decisions in the 30 N.L.R. 317 and 32 N.L.R. 353. The moot question in this case is whether the fact that 6D₁ was executed and registered at a time when Laurenti had no title, makes any difference: if for the moment, we leave out of consideration the deed of gift P₁, and the question of registration, then the fact of Laurenti having conveyed without any title would not ordinarily make a difference; for his subsequent acquisition of title on the death of his father, would enure to the benefit of Dias, as from the date of such acquisition: that is, the conveyance, and the equitable right conveyed by the Roman-Dutch law principle of exceptio rei vinditae, will combine to give the grantee Dias, the title subsequently acquired by his grantor, 30 Laurenti, without anything further being done ; there is no need for another conveyance after the subsequent acquisition of title by him ; because the title so acquired enures automatically to the grantee.

What I wish to emphasize is, that the same instrument though executed at a time when the grantor had no title, is made use of to complete the title of the grantee ; cannot then, this same instrument, though it had been duly registered before the grantor acquired his title, be made use of to give priority by registration over an earlier deed, which is not registered at all or registered subsequent to the acquisition of such title. My answer to this is in the affirmative. 40

If the subsequent instrument can be made use of to give title, why cannot the registration of the same instrument confer priority, provided all the other requirements to confer such priority, are present : the subsequent acquisition of title would not only give the benefit of such title to the instrument already executed, but would also in my opinion give the grantee

the benefit of priority by the registration of that instrument ; the position can however be different if the competing deed had been registered before the subsequent acquisition of title : but if the competing instrument remained unregistered at the time of the acquisition of title, then, I do think that the subsequent, but duly registered instrument prevails over the unregistered deed.

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In this connection there is a passage in Jayawardene on Registration at page 120. It occurs in a chapter entitled ' When registration is incomplete '. One of the instances referred to by the learned Author is where the grantor had no title at the date the instrument was executed ; he observes that ' the grantor of the subsequent deed should at the time of the execution of the registered deed have his title complete '.

This seems to be against the point of view I have expressed ; but I do think the next few lines support the opinion I have formed. It reads as follows: ' It is not sufficient that he should have had an inchoate title which is perfected after the execution of the registered conveyance and after the competing deed has been registered '. The underline is mine, and is made to emphasize the distinction ; for it does not deal with the instance, as afforded by the present case, where the inchoate title is perfected, (1) after the execution of the registered instrument, and (2) before the competing instrument has been registered.

The case of Kanapathipillai vs. Pina, reported in 9 Supreme Court Circular 36, and Marikar vs. Fernando, reported in 4 Balasingham Report of Cases 128, and referred to by Jayawardene, are certainly not against the opinion I have expressed and can be distinguished.

In the former case, one Garu in March, 1880, mortgaged a field to the plaintiff ; the instrument was registered in November, 1888 : in April, 1888 the field was sold in execution of a money decree against Garu, and purchased by Kiri Baiya ; on 2-5-88 Baiya sold to the contesting 4th defendant, before he got the Fiscal's conveyance in his favour. In this deed Baiya referred to the fact of his purchase at the execution sale, and covenanted with the contesting defendant to obtain and give the Fiscal's deed. The deed in favour of the contesting defendant was registered on 22-5-88. Baiya obtained the Fiscal's conveyance in July, 1989 (not 1888 as stated in Jayawardene) and it was registered on the same day : it will be seen that Baiya had no title at the time of his sale to the contesting defendant ; his conveyance was registered on 22-5-88 before he obtained the Fiscal's conveyance, on which he acquired title. The full Court held that the plaintiff was entitled to judgment on the bond sued by him. Clarence, J. in his judgment did not invoke the aid of the principle of exceptio rei vinditae ; but he made certain comments which appeared contrary to this principle, and which prompted Bertram, C.J. to observe in *Goonetilleke vs. Fernando* in 21 N.L.R. 257 at 267 as follows :

' It contains indeed, a dictum of Clarence, J., to the effect that a purchaser who has bought a property before his vendor acquires title has nothing more than a right to call upon his vendor for a conveyance when his vendor

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does acquire title, and has no title in himself by virtue of the subsequent title accruing to the vendor. This dictum, however (which was made without any reference to, or discussion of, the principles of law above explained) was in the circumstances purely obiter'.

The learned Chief Justice was here referring to the principle of *exceptio rei venditae* which he so fully discussed in the case.

The judgment of Clarence, J. however, was decided on the basis that Baiya had covenanted with the contesting defendant to obtain and give the Fiscal's deed, did not execute a deed in favour of the contesting defendant, after he obtained the Fiscal's conveyance, and therefore the latter had 10 no title.

This case is no authority for the bare proposition that the registration of a deed of transfer was inoperative where the transferor had no title at the date of the registration; though Bertram, C.J. in the case of *Goonetilleke vs. Fernando* (at page 267) opined that this was the *Ratio Decidendi* in Pinna's case. I am in respectful agreement with the interpretation of the judgment in that case, by Ennis, J. in 20 N.L.R. (at page 304) wherein the learned Judge says.

'But it is to be observed that the document evidencing the original transaction in that case did not purport to convey the dominium, the 20 vendor covenanting to obtain the legal title later'.

There are two points of difference between the facts in Pinna's case, and the present case; the first is that the deed by Baiya in favour of the contesting defendant did not convey title; it purported to sell what he had bought at the Fiscal's sale, and it covenanted to obtain and give the Fiscal's conveyance; the other is what I regard as relevant to the opinion I have expressed; i.e. the Mortgage bond, which is the competing instrument, was duly registered before the Fiscal's conveyance which gave the title to Baiya.

The case of *Marikar vs. Fernando* was an action for declaration of title; on 19-5-1892 Colonda Marikar, the owner transferred the land to Coorey 30 through whom the defendant claimed. This deed was registered on 22-2-94; after this transfer Marikar's interests were sold by the Fiscal in execution of a decree against him, and purchased by Ibrahim on 20-10-1893, who transferred to the plaintiff on 30-12-1893. The deed was registered before the registration of Marikar's conveyance to Coorey; the Fiscal's conveyance to Ibrahim was on 18-5-94. The defendant succeeded in the action because by the time Ibrahim acquired title, which was on the execution of the Fiscal's conveyance, the deed in favour of Coorey, which was the competing instrument, had been duly registered;

These cases do not decide that in any event the grantor of the subse- 40 quent deed should at the time of the execution of the registered document, have his title complete; for in Marikar's case the subsequent acquisition of interest by the plaintiff was after the competing deed was registered; and in Pinna's case the decision was on a different ground altogether. I think that if the competing deed remained unregistered or was registered after

the subsequent acquisition of interests by the grantor of the earlier deed, then the latter instrument is entitled to claim the benefit of priority by registration.

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I therefore hold that the deed 6D1 obtains priority over the deed of gift P1 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
10 title to a half share of the premises on Laurenti's deed 6D1 ; and this interest has devolved on the 6th defendant on the duly registered deeds pleaded by them.

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 Dias, the former was entitled to the premises ; and rightly so, because
20 deed 6D1 on which Dias relied for his title, could not have conveyed at that time any title, as Laurenti 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 of 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
30 on 6D1.

Issue 11 must therefore be answered in the negative and issue 3 in the affirmative.

Issue 14 which relates to the registration of the decree in D.C. 11739 is also answered in the negative ; an answer to issue 15 is not necessary ; suffice it to say that the decree in that case is not a registrable instrument.

I do not think that the decree in D.C. 24762, which was an action between M. W. Peris and Theobald Dias is *res judicata* as betwixt the parties to this suit ; Peris is not a predecessor-in-title of the plaintiff.

On the issue of prescription the 6th defendant Company has been in poss-
40 ession of the entire premises for the last 26 years ; in view of the decision I have reached that the 6th defendant is entitled to a half share of the premises by virtue of 6D1, and the succeeding deeds in their chain of title, they by their possession for 26 years have acquired a prescriptive title to the half share ; in regard to the balance half, the second to fifth defendants claim as fiduciaries under P1, on the death of Madelena in 1934 ; the 6th

No. 10
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defendant company has been in possession of these interests too for over 10 years; the company have therefore prescribed to the interests claimed by the 2nd to 6th defendants on Pt. Issue 7 is answered in the affirmative.

The question of compensation raised in issues 8 and 9 do not arise in view of the foregoing conclusions.

I answer the issues as follows:

1. Yes.
2. Yes.
3. Yes.
- 4a. No evidence in regard to this. 10
- b. Yes.
- c. Yes.
5. Yes.
6. Yes.
7. Yes. In so far as a half share is concerned: and also to the possession of the remaining half share as against the 2nd to the 5th defendants.
8. }
9. } Do not arise.
10. Yes. 20
11. No.
12. No.
13. This is rather misleading in its form. I would say the deed is admissible in evidence.
14. No.
15. Does not arise.

In the result I hold that the plaintiff has no interests in the premises in suit: his action is therefore dismissed with costs payable to the 6th defendant.

Sgd. V. MANICKARASAGAR, 30
A.D.J.
25-10-50.

Delivered in the presence of

A.D.J.
25-10-50.

Decree of the District Court.

No. 11
Decree of the
District
Court
25-10-50

D E C R E E

IN THE DISTRICT COURT OF COLOMBO

MARTHA AGNES PEIRIS of 99/2, Galkapanawatte Road,
Grandpass, Colombo.....*Plaintiff.*

No. 5143 Partition *vs.*

- 1. CLARA STEPHENIA PATHIVILLA of van Rooyen Street, Colombo,
- 10 2. K. DONA THERESA of Alutgama,
- 3. K. DONA LUCY,
- 4. K. DON GABRIEL, and
- 5. K. DONA ROSALINE all of Panadura, and
- 6. THE COLOMBO APOTHECARIES' COMPANY LIMITED of Prince Street, Fort, Colombo.....*Defendants.*

This action coming on for disposal before V. Manickavasagar, Esquire, Additional District Judge of Colombo, on the 25th day of October, 1950, in the presence of Mr. Arthur H. Abeyeratne, Proctor on the part of the plaintiff and of Mr. K. V. A. Perera, Proctor on the part of the 1st defendant,

20 Mr. N. J. S. Cooray, Proctor on the part of the 2nd, 3rd, 4th and 5th defendants and of Messrs. Julius & Creasy, Proctors on the part of the 6th defendant: It is ordered and decreed that the plaintiff's action be and the same is hereby dismissed with costs.

Sgd. L. W. DE SILVA,
A.D.J.

Drawn by me,

Sgd. ARTHUR H. ABEYERATNE,
Proctor for Plaintiff.

No. 12
Petition
of Appeal
to the
Supreme
Court
6-11-50

Petition of Appeal to the Supreme Court.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

MARTHA AGNES PEIRIS nee RODRIGO of 99/2, Galkapana-
watte Road, Grandpass, Colombo.....*Plaintiff.*

vs.

- 1. CLARA STEPHENIA PATHIVILLA nee RODRIGO of
'Mabel Villa', van Rooyen Street, Kotahena, Colombo,
- 2. KURUPPUMULLAGE DONA THERESA of Alutgama,
- 3. KURUPPUMULLAGE DONA LUCY, 10
- 4. KURUPPUMULLAGE DON GABRIEL, and
- 5. KURUPPUMULLAGE DONA ROSLINE all of Panadura,
- 6. THE COLOMBO APOTHECARIES' COMPANY
LIMITED of Prince Street, Fort, Colombo.....*Defendants.*

MARTHA AGNES PEIRIS of No. 99/2, Galkapanawatte
Road, Grandpass, Colombo.....*Plaintiff-Appellant.*

vs.

- 1. CLARA STEPHENIA PATHIVILLA of van Rooyen
Street, Colombo,
- 2. KURUPPUMULLAGE DONA THERESA of Alutgama, 20
- 3. KURUPPUMULLAGE DONA LUCY,
- 4. KURUPPUMULLAGE DON GABRIEL, and
- 5. KURUPPUMULLAGE DONA ROSLINE all of Panadura,
and
- 6. THE COLOMBO APOTHECARIES' CO., LTD.
of Prince Street, Fort, Colombo.....*Defendants-Respondents.*

TO THEIR LORDSHIPS THE CHIEF JUSTICE AND THE OTHER
JUDGES OF THE HONOURABLE THE SUPREME COURT OF THE
ISLAND OF CEYLON.

On this 6th day of November, 1950. 30

The Petition of Appeal of the Plaintiff-Appellant abovenamed appear-
ing by Arthur Henry Abeyaratne and his Assistant, Edgar Lionel Gomes
practising jointly and severally states as follows :—

- 1. The plaintiff-appellant brought this action for the partition of the
land described in the schedule to the plaint against the defendants-respon-
dents.

2. The chain of title pleaded by the plaintiff-appellant was as follows :
 One Solomon Rodrigo by Deed of Gift No. 8550 dated 9th November, 1870 marked P1 gifted the said land to Lorenzo Rodrigo subject to fidei commissum in favour of his male and female descendants. Lorenzo Rodrigo had two children Laurenti and a daughter Magdalena. Laurenti died in the month of October 1939, leaving two children, the plaintiff-appellant and the 1st defendant-respondent and the said Magdalena died leaving the 2nd to 5th defendants-respondents.

No. 12
 Petition
 of Appeal
 to the
 Supreme
 Court
 6-11-50
 —Continued

3. The plaintiff-appellant allotted to herself 1/4th share, 1/4th share
 10 to the said 1st defendant-respondent and the balance 1/2 share equally to the 2nd to 5th defendants-respondents.

4. The 6th defendant-respondent claimed the entire land on the following basis : —That Laurenti by Transfer No. 5249 of 21st December, 1895, conveyed the said land to one Theobold Dias and that the title of Theobold Dias came down to the 6th defendant-respondent. The 6th defendant-respondent stated that as the deed No. 8550 (P1) creating the fidei commissum was not registered, the plaintiff-appellant and the 1st to 5th defendants-respondents had no title because the transfer by Laurenti to Theobold Dias was only registered.

2) 5. The case went to trial on several issues and after hearing evidence, the learned District Judge entered judgment dismissing the action of the plaintiff-appellant.

6. Being aggrieved with the said judgment the plaintiff-appellant begs to appeal to Your Lordships' Court against the said judgment on the following among other grounds that may be urged by Counsel at the hearing of this appeal.

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

30 (b) It is respectfully submitted that as Lorenzo was alive at the date of the transfer by Laurenti to Theobold Dias, the mere registration of the said deed did not operate to give prior and better title to Theobold Dias and his successors-in-title against those claiming under the fidei commissum.

(c) The decree and judgment obtained by Lorenzo against Theobold Dias in D.C. Colombo case No. 11739 operated as res judicata between the plaintiff-appellant and the 6th defendant-respondent on the point that the deed in favour of Lorenzo creates a valid fidei commissum in favour of the descendants of Lorenzo Rodrigo and that title to the land in question will devolve according to that fidei commissum.

40 (d) Whatever rights which enured on Lorenzo's death to the benefit of Theobold Dias by virtue of the deed by Laurenti were merely the fiduciary rights of Laurenti.

No. 12
Petition
of Appeal
to the
Supreme
Court
6-11-50
Continued—

Wherefore the plaintiff-appellant prays :

(a) That Your Lordships' Court be pleased to set aside the said judgment of the learned District Judge and to grant the plaintiff-appellant the relief prayed for in her plaint.

(b) For costs, and

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

Sgd. ARTHUR H. ABEYRATNE,
Proctor for plaintiff-appellant.

No. 13
Judgment
of the
Supreme
Court
8-4-54

No. 13.

10

Judgment of the Supreme Court.

S.C. No. 358 of 1951

D.C. Colombo No. 5143

MARTHA AGNES PEIRIS.....*Plaintiff-Appellant.*

vs.

THE COLOMBO APOTHECARIES CO. LTD. .*6th Defendant-Respondent.*

Present : GRATIAEN, J. and GUNASEKARA, J.

Counsel : H. W. JAYAWARDENE with V. WIJETUNGE and P. RANASINGHE for the Appellant.

N. E. WEERASOORIYA, q.c. with C. E. S. PERERA, q.c., E. A. G. DE SILVA and T. B. DISSANAYAKE for the Res- 20
pondent.

Argued on : 24th and 25th March, 1954.

Decided on : 8th April, 1954.

GRATIAEN, J.

The plaintiff instituted this action on 4th November, 1947 for the sale under the Partition Ordinance of certain premises situated at Glennie Street, Slave Island, Colombo. According to his chain of title, he and the first defendant are fiduciary co-owners of the property to an extent of 1/4 share each, and the 2nd, 3rd, 4th and 5th defendants to an extent of 1/8 share each. The action was contested by the 6th defendant (a limited liability 30 company) which claimed to be the sole owner of the property by purchase under a notarial conveyance 6D7 dated 26th March, 1926; in the alternative, it claimed to have acquired prescriptive title by possession adverse to the interests of the plaintiff and all others. The learned Judge upheld both these contentions, and the action was accordingly dismissed with costs.

With regard to the dispute as to title, it has been conclusively established by the evidence that a person named Solomon Rodrigo had been the sole owner of the property in 1870. By a deed of donation P1 dated 9th November, 1870 he gifted the property to his son Lorenzo Rodrigo subject to (1) a life-interest in himself and (2) to a *fidei commissum* (valid for four generations under the Ceylon law applicable in 1870) in favour of Lorenzo's 'male and female descendants'. Solomon's life-interest came to an end in 1873.

No. 13
Judgment
of the
Supreme
Court
8-4-54
—Continued

Lorenzo Rodrigo died on 29th October, 1899 leaving a son named Lawrenti and a daughter named Madelena. Lawrenti died on 29th October, 1939 leaving two children who are the plaintiff and the 1st defendant. His sister Madelena pre-deceased him in December, 1934 leaving four children (the 2nd, 3rd, 4th and 5th defendants). There can be no question therefore that, if P1 does prevail over the conveyances relied on by the 6th defendant, the plaintiff and the 1st to the 5th defendants are now vested with fiduciary interests in the property subject to a *fidei commissum* in favour of their respective children as 'descendants' of Lorenzo—unless, of course, those interests (or any of them) have been extinguished by prescription or defeated by the operation of some other principle of law.

Let us now examine the title set up by the 6th defendant in opposition to the claim of the plaintiff and the other defendants under P1.

On 21st December 1895, i.e., during the lifetime of his father Lorenzo, Lawrenti purported, by conveyance 6D1, to sell the entire property to a person named Theobald Dias on the footing that he was the sole owner. Dias' interests were purchased by Fred Abeysundera under an auctioneer's conveyance 6D2 of 1914 and also under a subsequent certificate of sale 6D3 of 1916 executed under the provisions of the Municipal Councils Ordinance, 1910. Abeysundera sold the property in 1919 to the Ceylon Rubber Mills Company Limited and the liquidator of that Company in turn sold it in 1921 to Anthony Zarephe. Eventually, the 6th defendant purchased Zarephe's interests by 6D7 of 26th March, 1926, and has been in exclusive possession since that date.

The learned District Judge has held, and learned Counsel for the 6th defendant concedes, that the deed of gift P1 must be interpreted as having created a valid *fidei commissum* for four generations in favour of Lorenzo Rodrigo and his descendants. A vague issue was raised as to whether P1 had ever been 'acted upon'. It was certainly acted upon by the original fiduciary Lorenzo who accepted the donation and dealt with the property in his lifetime. Mr. Weerasooriya suggested that it had perhaps been intended to introduce the question whether Lorenzo's acceptance could also be regarded as a sufficient acceptance on behalf of his 'descendants'. There is no indication on the record, however, that anybody in the Court below understood that this particular matter was in dispute, and I am not disposed to entertain any discussion on the point at this stage of the proceedings. The question of law involved has been the subject of controversial decisions of this Court, and now awaits an authoritative ruling in an appeal against the judgment in *West vs. Abeywardena* (1951) 53 N.L.R.

No. 13
 Judgment
 of the
 Supreme
 Court
 8-4-54
 —Continued

217, which is pending before the Privy Council. But it certainly cannot be examined without an examination of facts which are not before us.

The main argument addressed to us on behalf of the 6th defendant was that Lawrenti's purported conveyance 6D1 of 1895 was entitled to prevail over the earlier deed P1 by virtue of prior registration. On this point, the learned Judge held in favour of the 6th defendant. In my opinion, however, the issue of prior registration has no application to the facts of this case. An earlier decree P6 of the District Court of Colombo, which was upheld by this Court on appeal, decided that P1 prevailed over 6D1, and this decision operates as *res adjudicata* against the 6th defendant who is the successor-in-10 title of the unsuccessful party in those proceedings.

The action to which I refer is D.C. Colombo No. 11739 which was instituted by Lorenzo Rodrigo (as the first fiduciary under P1) against Theobald Dias (the purported purchaser from Lawrenti under 6D1). Lorenzo sued Theobald Dias for a declaration of title to, and for ejection from the premises, and Dias' defence was that, upon his suggested interpretation of P1, Lawrenti became absolute owner of the property on attaining his thirtieth birthday, so that 6D1 operated to pass the entire title to Dias.

The effect and true meaning of P1 was prominently raised in issue between the parties to those proceedings. The basis of the decree against 20 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 6th 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 1st 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 6th defendant has 30 not defeated the fiduciary interests of either the plaintiff or the 1st defendant by adverse prescriptive possession.

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.

For these reasons, I take the view that the plaintiff should have been granted a decree for sale under the Partition Ordinance on the basis that he and the 1st defendant had a fiduciary interest in a 1/4 share in the premi- 40 ses to which this action relates.

There remains the question whether the 6th defendant has not at least acquired a prescriptive title which defeats the fiduciary interests which had vested in the 2nd to the 5th defendants when Lorenzo's daughter Madelena died in December 1934—i.e., nearly 13 years before this action

commenced. On this issue, it has been clearly established that throughout this period the 6th defendant openly possessed the entire property *ut dominus*, and I am therefore satisfied that the fiduciary interests of the 2nd to the 5th defendants have thus been extinguished by prescription.

No. 13
Judgment
of the
Supreme
Court
8-4-54
—Continued

I would allow the appeal and send the case back 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 1st defendant are each vested with a fiduciary interest in an undivided 1/4th share of the property, and that the 6th defendant has acquired a prescriptive title to the remaining
10 half share to the extent that it defeats the fiduciary interests of the 2nd to the 5th defendants. Before the decree for sale is entered of record, the learned Judge must investigate and adjudicate upon the rights of the 6th defendant in respect of improvements effected on the property, and the decree must also make suitable provision to safeguard future fidei commissary interests under the deed P1 dated 9th November, 1870.

The 6th defendant must pay to the plaintiff the costs of this appeal and half the costs of the contest in the Court below. All other costs should be borne *pro rata* between the plaintiff, the 1st defendant and the 6th defendant.

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

20 GUNASEKARA, J.

I agree.

Sgd. E. H. T. GUNASEKARA,
Puisne Justice.

No. 14.

Decree of the Supreme Court.

No. 14
Decree
of the
Supreme
Court
8-4-54

D. C. (F) $\frac{359L}{1951}$

ELIZABETH THE SECOND, Queen of Ceylon and of Her other Realms and Territories, Head of the Commonwealth

3) IN THE SUPREME COURT OF THE ISLAND OF CEYLON

MARTHA AGNES PEIRIS of No. 99/2, Galkapana-watte Road, Grandpass, Colombo.....*Plaintiff-Appellant.*

Against

1. CLARA STEPHENIA PATHIVILLA of van Rooyen Street, Colombo and others.....*Defendants-Respondents.*

Action No. 5143/Partition.

District Court of Colombo.

No. 14
Decree
of the
Supreme
Court
8-4-54
—Continued

This cause coming on for hearing and determination on the 24th and 25th March and 8th April, 1954 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 Appellant and Respondent.

It is considered and adjudged that this appeal be and the same is hereby allowed and the case is sent back 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 1st defendant are each vested with a fiduciary¹⁰ interest in an undivided 1/4th share of the property and that the 6th defendant has acquired a prescriptive title to the remaining half share to the extent that it defeats the fiduciary interests of the 2nd to the 5th defendants. Before the decree for sale is entered of record, the District Judge must investigate and adjudicate upon the rights of the 6th Defendant in respect of improvements effected on the property and the decree must also make suitable provision to safeguard future fidei commissari interests under the Deed Pr dated 9th November, 1870.

And it is further ordered that the 6th defendant do pay to the plaintiff the costs of this appeal and half the costs of the contest in the Court below.²⁰ All other costs should be borne *pro rata* between the plaintiff, the 1st defendant and the 6th defendant.

Witness the Hon. Sir Alan Edward Percival Rose, Kt., Q.C., Chief Justice at Colombo, the 26th day of April, in the year of Our Lord One thousand Nine hundred and fifty four and of Our Reign the Third.

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

No. 15
Application
for
Conditional
Leave to
Appeal to the
Privy Council
28-4-54

No. 15.

Application for Conditional Leave to Appeal to the Privy Council.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON 30

In the matter of an application for Conditional Leave to appeal under the provisions of the Appeals (Privy Council) Ordinance (Chapter 85).

MARTHA AGNES PEIRIS nee RODRIGO of No. 99/2,
Galkapanawatte Road, Grandpass, Colombo.....*Plaintiff.*

vs.

1. CLARA STEPHENIA PATHIVILLA nee RODRIGO of 'Mabel Villa', van Rooyen Street, Kotahena in Colombo,
 2. KURUPPUMULLAGE DONA THERESA of Alutgama,
 3. KURUPPUMULLAGE DONA LUCY,
 4. KURUPPUMULLAGE DON GABRIEL, and
 5. KURUPPUMULLAGE DONA ROSELINE, all of Kuruppumulla in Panadura, and
 6. THE COLOMBO APOTHECARIES' COMPANY LIMITED, of Prince Street, Fort, Colombo.....*Defendants.*
- 10 THE COLOMBO APOTHECARIES COMPANY LIMITED, of Prince Street, Fort, Colombo.....*Petitioner (6th Defendant-Respondent).*

No. 15
Application
for
Conditional
Leave to
Appeal to the
Privy Council
28-4-54
—Continued

vs.

1. MARTHA AGNES PEIRIS nee RODRIGO of No. 99/2, Galkapanawatte Road, Grandpass, Colombo.....*Respondent (Plaintiff-Appellant).*
2. CLARA STEPHENIA PATHIVILLA nee RODRIGO of 'Mabel Villa', van Rooyen Street, Kotahena, Colombo,
- 20 3. KURUPPUMULLAGE DONA THERESA of Alutgama,
4. KURUPPUMULLAGE DONA LUCY,
5. KURUPPUMULLAGE DON GABRIEL, and
6. KURUPPUMULLAGE DONA ROSELINE, all of Kuruppumulla in Panadura.....*Respondents (1st to 5th Defendants-Respondents).*

To,

The Hon'ble the Chief Justice and the other Judges of the Hon'ble the Supreme Court of the Island of Ceylon.

On this 28th day of April, 1954.

- 30 The Petition of the Petitioner abovenamed and the 6th Respondent in S.C. No. 358/P Final of 1951 and the 6th Defendant in case No. 5143/P D.C. Colombo appearing by Geoffrey Thomas Hale, Frederick Claude Rowan, Joseph Francis Martyn, Henric Theodore Perera, James Arelupar Naidoo and Alexander Richard Neville de Fonseka, carrying on business in partnership in Colombo under the name, style and firm of Julius & Creasy and their Assistants, John Patrick Rogan, Alexander Nereus Wiratunga, Lena Charlotte Fernando, Francis Luke Theodore Martyn, Rex Herbert Sebastian Phillips, Reginald Frederick Mirando, William Henry Senanayake, John Ajasath Rancoth Weerasinghe and Bertram Manson
- 40 Amarasekera, Proctors, states as follows :—

No. 15
Application
for
Conditional
Leave to
Appeal to the
Privy Council
28-4-54
—Continued

1. That feeling aggrieved by the Judgment and Decree of this Court pronounced on 8th day of April 1954, the said Petitioner abovenamed is desirous of appealing therefrom to Her Majesty the Queen in Council.

2. The said Judgment is a final Judgment and the matter in dispute on the appeal is far in excess of the value of Rupees five thousand (Rs. 5,000/-) and involves directly or indirectly some claim, or question to or respecting property or some civil right amounting to or in excess of the value of Rupees five thousand (Rs. 5,000/-). The questions involved in the appeal are questions which by reason of their great general or public importance or otherwise ought to be submitted to Her Majesty the Queen in Council for decision.

3. That notices of the intended application for leave to appeal were served on the Respondents in terms of Rule (2) of the Rules in the Schedule to the Appeals (Privy Council) Ordinance on the 23rd and 26th days of April 1954, respectively by sending notices to the Respondents abovenamed by :

- (a) Registered Post
- (b) Ordinary Post, and
- (c) Personal Service through the Fiscal, Western Province in pursuance of an Order of Your Lordships' Court made on the 24th day 20 of April 1954.

Wherefore the Petitioner prays that Your Lordships' Court be pleased to grant it Conditional Leave to Appeal against the said Judgment and Decree of this Court dated the 8th day of April, 1954 to Her Majesty the Queen in Council and for such other and further relief as to Your Lordships shall seem meet.

Sgd. JULIUS & CREASY,
Proctors for Petitioner,
(6th Defendant-Respondent).

30

Settled by

N. E. WEERASOORIYA, Q.C.,
CYRIL E. S. PERERA, Q.C.,
T. B. DISSANAYAKE,
Advocates.

No. 16
Decree
granting
Conditional
Leave
to Appeal
to the Privy
Council
10-5-54

No. 16

Decree granting Conditional Leave to Appeal to the Privy Council.

ELIZABETH THE SECOND, Queen of Ceylon and of Her other Realms
and Territories, Head of the Commonwealth

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

THE COLOMBO APOTHECARIES' COMPANY LIMITED of
 Prince Street, Fort, Colombo.....*Petitioner*
 (6th Defendant-Respondent).

No. 16
 Decree
 granting
 Conditional
 Leave
 to Appeal
 to the Privy
 Council
 10-5-54
 —Continued

vs.

1. MARTHA AGNES PEIRIS nee RODRIGO of No. 99/2,
 Galkapanawatte Road, Grandpass, Colombo.....*Respondent*
 (Plaintiff-Appellant).
2. CLARA STEPHENIA PATHIVILLA nee RODRIGO of
 ' Mabel Villa ', van Rooyen Street, Kotahena, Colombo,
- 10 3. KURUPPUMULLAGE DONA THERESA of Alutgama,
4. KURUPPUMULLAGE DONA LUCY,
5. KURUPPUMULLAGE DON GABRIEL, and
6. KURUPPUMULLAGE DONA ROSELINE, all of Kuruppu-
 mulla in Panadura.....*Respondents*
 (1st to 5th Defendants-Respondents).

Action No. 5143/P (S.C. 358—Final).

District Court of Colombo.

In the matter of an application dated 30th April, 1954, for Condi-
 tional Leave to Appeal to Her Majesty the Queen in Council
 by 6th Defendant-Respondent abovenamed against the decree
 dated 8th April, 1954.

This cause coming on for hearing and determination on the 10th day of
 May, 1954, before the Hon. Mr. M. F. S. Pulle, Q.C., Puisne Justice and the
 Hon. Mr. H. N. G. Fernando, Acting Puisne Justice, of this Court, in the
 presence of Counsel for the Appellant.

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).

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 esti-
 mated sum with the said Registrar.

No. 16
Decree
granting
Conditional
Leave
to Appeal
to the Privy
Council
10-5-54
—Continued

Witness the Hon. Sir Alan Edward Percival Rose, Kt., q.c., Chief Justice at Colombo, the 19th day of May, in the year of Our Lord One thousand Nine hundred and Fifty Four and of Our Reign the Third.

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

No. 17
Application
for Final
Leave to
Appeal to the
Privy Council
24-5-54

No. 17.

Application for Final Leave to Appeal to the Privy Council.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

MARTHA AGNES PEIRIS nee RODRIGO of No. 99/2
Galkapanawatte Road, Grandpass, Colombo.....*Plaintiff.* 10

No. 358/P. (Final) of 1951 *vs.*

D.C. Colombo No. 5143/P

1. CLARA STEPHANIA PATHIVILLA nee RODRIGO of
'Mabel Villa', van Rooyen Street, Kotahena in Colombo
2. KURUPPUMULLAGE DONA THERESA of Alutgama
3. KURUPPUMULLAGE DONA LUCY
4. KURUPPUMULLAGE DON GABRIEL and
5. KURUPPUMULLAGE DONA ROSELINE, all of Kuruppu-
mulla in Panadura, and
6. THE COLOMBO APOTHECARIES' COMPANY, LIMITED 20
of Prince Street, Fort, Colombo.....*Defendants.*

THE COLOMBO APOTHECARIES' COMPANY, LIMITED
of Prince Street, Fort, Colombo.....*Petitioner,*
(6th Defendant-Respondent).

vs.

1. MARTHA AGNES PEIRIS nee RODRIGO of No. 99/2
Galkapanawatte Road, Grandpass, Colombo..... *Respondent,*
(Plaintiff-Appellant).
2. CLARA STEPHANIE PATHIVILLE nee RODRIGO of
'Mabel Villa', van Rooyen Street, Kotahena, Colombo 30
3. KURUPPUMULLAGE DONA THERESA of Alutgama
4. KURUPPUMULLAGE DONA LUCY
5. KURUPPUMULLAGE DON GABRIEL and
6. KURUPPUMULLAGE DONA ROSELINE, all of Kuruppu-
mulla in Panadura.....*Respondents,*
(1st to 5th Defendants-Respondents).

To,

The Honourable the Chief Justice and the other Judges of the Honourable the Supreme Court of the Island of Ceylon.

No. 17
Application
for Final
Leave to
Appeal to the
Privy Council
24-5-54
—Continued

On this 24th day of May, 1954.

The humble Petition of the 6th Defendant-Respondent in the Supreme Court Case No. 358/P (Final) of 1951 and the Petitioner abovenamed appearing by Geoffrey Thomas Hale, Frederick Claude Rowan, Joseph Francis Martyn, Henric Theodore Perera, James Arelupar Naidoo and Alexander Richard Neville de Fonseka carrying on business in partnership
10 in Colombo under the name, style and firm of Julius and Creasy and their Assistants, John Patrick Rogan, Alexander Nereus Wiratunga, Lena Charlotte Fernando, Francis Luke Theodore Martyn, Rex Herbert Sebastian Phillips, Reginald Frederick Mirando, William Henry Senanayake, John Ajasath Rancoth Weerasinghe and Bertram Manson Amarasekera, Proctors, states as follows:—

1. That the 6th Defendant-Respondent in the Supreme Court Case No. 358/P (Final) of 1951 and the Petitioner abovenamed on the 10th day of May, 1954, obtained Conditional Leave from this Honourable Court to appeal to Her Majesty the Queen in Council against the Judgment of
20 this Court—pronounced on the 8th day of April, 1954.

2. That the 6th Defendant-Respondent in Supreme Court Case No. 358/P (Final) of 1951 and the Petitioner abovenamed has in compliance with the conditions on which such leave was granted deposited with the Registrar of this Court a sum of Rs. 3,000/- on the 19th day of May, 1954 and has by bond dated the 19th day of May, 1954 mortgaged and hypothecated the said sum of Rs. 3,000/- with the said Registrar.

3. That the 6th Defendant-Respondent in Supreme Court Case No. 358/P (Final) of 1951 and the Petitioner abovenamed has further deposited with the said Registrar a sum of Rs. 300/- in respect of fees.

30 Wherefore the 6th Defendant-Respondent in Supreme Court Case No. 358/P (Final) of 1951 and the Petitioner abovenamed prays that it be granted final leave to appeal against the said Judgment of this Court dated the 8th day of April, 1954 to Her Majesty the Queen in Council, and for such other and further relief in the premises as to Your Lordships' Court shall seem meet.

Sgd. JULIUS & CREASY,
Proctors for Petitioner,
(6th Defendant-Respondent).

No. 18.

No. 18
Decree
granting
Final Leave
to Appeal
to the Privy
Council
26-5-54

Decree granting Final Leave to Appeal to the Privy Council.

ELIZABETH THE SECOND, Queen of Ceylon and of Her other
Realms and Territories, Head of the Commonwealth

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

THE COLOMBO APOTHECARIES' COMPANY, LIMITED

of Prince Street, Fort, Colombo.....*Petitioner,*
(6th Defendant-Respondent).

vs.

1. MARTHA AGNES PEIRIS nee RODRIGO of No. 99/2, 10
Galkapanawatta Road, Grandpass, Colombo.....*Respondent,*
(Plaintiff-Appellant).
2. CLARA STEPHANIA PATHIVILLA nee RODRIGO of
'Mabel Villa', van Rooyen Street, Kotahena, Colombo
3. KURUPPUMULLAGE DONA THERESA of Alutgama
4. KURUPPUMULLAGE DONA LUCY
5. KURUPPUMULLAGE DON GABRIEL and
6. KURUPPUMULLAGE DONA ROSELINE, all of Kuruppu-
mulla in Panadura.....*Respondents,*
(1st to 5th Defendants-Respondents). 20

Action No. 5143 P (S.C. 358—Final).

District Court of Colombo.

In the matter of an application by the 6th Defendant abovenamed dated 24th May, 1954, for Final Leave to Appeal to Her Majesty the Queen in Council against the decree of this Court dated 8th April, 1954.

This cause coming on for hearing and determination on the 26th day of May, 1954, before the Hon. Mr. E. F. N. Gratiaen, q.c., Puisne Justice and the Hon. Mr. H. N. G. Fernando, Acting Puisne Justice, of this Court, in the presence of Counsel for the Applicant.

The Applicant having complied with the conditions imposed on him 30 by the order of this Court dated 10th May, 1954, 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.

Witness the Hon. Sir Alan Edward Percival Rose, Kt., q.c., Chief Justice at Colombo, the 2nd day of June, in the year of Our Lord One thousand Nine hundred and fifty four and of Our Reign the Third.

Sgd. W. G. WOUTERSZ,
Deputy Registrar, S.C. 40

PART II—EXHIBITS**P1.****Deed No. 8550.**

Exhibits

—
P1Deed
No. 8550
9-11-1870

P1. No. 8550.

Know all men by these presents that I, Manissege Solomon Rodrigo of Slave Island in Colombo for and in consideration of the natural love and affection which I have and bear unto my son Manissegey Lorenzo Rodrigo of Slave Island in Colombo and for various other good causes and consideration we hereunto specially moving have given granted assigned transferred
 10 and set over as I do hereby give grant assign transfer and set over unto the said Manissegey Lorenzo Rodrigo his heirs executors and administrators and assigns as a gift absolute and irrevocable but under and subject to the condition and restrictions hereinafter mentioned all that part of a garden with the building constructed thereon situated and lying at Slave Island within the gravets of Colombo bounded on the north by the lake on the east by the other part on the south by the road and on the west by the garden of Mr. van Buren, containing in extent thirty (30, 2/100) square perches according to the figure and survey thereof, bearing date the eleventh day of
 20 November, One thousand eight hundred and thirteen duly authenticated by Gualterus Schneider, Esquire, Land Surveyor General and attached to the title deed hereunto annexed together with all title deeds vouchers and writings respecting the same which said premises have been held and possessed by me the said Manissegey Solomon Rodrigo under and by virtue of the hereunto annexed title deed No. 1513 bearing date the twentieth day of August, One thousand eight hundred and thirty three attested by C. A. Morgan, Esquire, Notary.

To have and to hold the said premises with all and singular the appurtenances thereunto belonging being of the value of one hundred and fifty pounds (£150) sterling unto him the said Manissegey Lorenzo Rodrigo and
 30 his male descendants for ever, upon the conditions and restrictions following that is to say :

1st—That the said Manissegey Solomon Rodrigo during his natural life shall hold, enjoy and occupy the said part of the garden with the building hereby given and granted and shall take the rents, produce, profits, revenue, and income thereof.

2nd—That the said part of the garden with the buildings standing thereon hereby given and granted or any part thereof shall not at any time or under any circumstances whatever be sold, mortgaged, or in any other manner alienate but the same shall be possessed and enjoyed by the said
 40 Manissegey Lorenzo Rodrigo and his male and female descendants under the bond of Fidei Commissum.

3rd—That the rents issues profits revenue and income of the said part of the garden with the building shall not be liable to be attached seized or sold for the satisfaction of or on account of any debts or other liabilities of the

Exhibits

—
P1

Deed

No. 8550

9-11-1870

—Continued

said Manissegey Lorenzo Rodrigo or of any succeeding male and female heirs or descendants who may hereafter come in possession of the said property.

4th—That in the event of the said Manissegey Lorenzo Rodrigo's male and female descendants become extinct then the said property hereby given and granted shall revert back to Manissegey Joronis Rodrigo, and his male descendants under the bond of Fidei Commissum and I the said Manissegey Solomon Rodrigo for myself my executors administrators do covenant promise and agree to with the said Manissegey Lorenzo Rodrigo and his male and female descendants that I the said Manissegey Solomon Rodrigo have not at any time heretofore made done or committed any act whereby the hereby 10 granted and assigned premises or any part thereof is or may be impeached or incumbered in title charge estate or otherwise howsoever and that I the said Manissegey Solomon Rodrigo the said premises hereinbefore mentioned to assigned transferred and set over and every part thereof unto him the said Manissegey Lorenzo Rodrigo and his male and female descendants and assigns against all and every other person or persons whomsoever shall and will warrant and defend and the said Manissegey Lorenzo Rodrigo declared to have thankfully accepted the within mentioned gift.

In witness whereof the said Manissegey Solomon Rodrigo and Manissegey Lorenzo Rodrigo do set our hands and seals to three of the same tenor 20 and date at Colombo this ninth day of November in the year of Our Lord one thousand eight hundred and seventy.

Witnesses :

Sgd. D. G. Weerasinghe (in English)

Sgd. Don Johanis (in Sinhalese)

Sgd. Solomon Rodrigo (in Sinhalese)

Sgd. L. A. Rodrigo (in English).

I, Richard Charles Bartholomew Perera of Colombo in the Island of Ceylon, Notary Public by lawful authority duly admitted do hereby certify and attest that the foregoing instrument having been duly read over and 30 explained by me the said Notary to the said Manissegey Solomon Rodrigo and Manissegey Lorenzo Rodrigo therein named in the presence of the witnesses Don Gregoris Weerasinghe clerk of Messrs. Fowlie Richmond and Co's office, Fort, and Kankanigey Don Johannes Appuhamy of Slave Island in Colombo who are known to me and the same was signed by the said parties and also by the said witnesses and by me the said Notary in the presence of one another at Colombo on this ninth day of November in the year of Our Lord one thousand eight hundred and seventy.

Which I attest.

(SEAL)

40

Sgd. R. C. B. PERERA,
Notary Public.
Colombo.

True copy of Deed No. 8550 attested by Mr. R. C. B. Perera, Notary Public filed in D.C. Colombo Land Case No. 11739 C. Compared by me with the original fee charged. Rs. 2/62.

Exhibits
— P1
Deed
No. 8550
9-11-1870
—Continued

Sgd. U. LOOS,
Chief Clerk, ' C ' Court.
D.C. Colombo.
12th June, 1939.

P12.

Monthly List of Deeds attested.

P12
Monthly List
of Deeds
attested
Dec. 1870

- 10 List of Deeds attested by me during the month of November, A.D. 1870.
No. : 8550.
Dates : 9
Names of parties : Manissegey Solomon Rodrigo.
To : Manissegey Lorenzo Rodrigo.
Nature of deed : Deed of Transfer.
Amount : Rs. 150/-.

Colombo, 15th December, 1870.
Sgd. R. C. B. PERERA,
Notary Public.
Colombo.

20

6D1.

Deed No. 5249.

6D1
Deed
No. 5249
21-12-1895
Appl. No. 429.

6D1. No. 5249.

A $\frac{43}{375}$

To all to whom these presents shall come Manisgey Lawrence Rodrigo of Slave Island in Colombo Sends Greeting : Whereas the said Manisgey Lawrence Rodrigo is seized and possessed of or otherwise well and sufficiently entitled to all that part of a garden with the buildings constructed thereon situated and lying at Slave Island within the gravets of Colombo and herein-after more particularly described. And whereas the said Manisgey Lawrence Rodrigo has agreed with Theobald Dias of Slave Island in Colombo for the sale to him of the said Land and premises at or for the price or sum of Rupees Six thousand of lawful money of Ceylon.

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Exhibits
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6D1
Deed
No. 5249
21-12-1895
—Continued

Now therefore know ye and these presents witness that in pursuance of the said agreement and in consideration of the said sum of Rupees six thousand of lawful money of Ceylon well and truly paid to him by the said Theobold Dias (the receipt whereof the said Manisgey Lawrence Rodrigo doth hereby expressly admit and acknowledge) doth hereby grant, sell, assign, transfer, set over and assure unto the said Theobald Dias his heirs executors administrators and assigns. All that part of a garden with the buildings constructed thereon situated and lying at Slave Island within the Gravets of Colombo bounded on the north by the Lake on the east by the other part on the south by the road and on the west by the garden 10 of Mr. van Buren containing in extent 30, 2/100 square perches according to the Figure of survey thereof, bearing date the 11th day of November, 1812 duly authenticated by G. Schneider, Land Surveyor-General. Together with all rights privileges easements servitudes and appurtenances whatsoever to the said premises belonging or reputed or known as part and parcel thereof, and all the estate right title interest claim and demand whatsoever, to have and to hold the said land buildings and premises hereby sold and conveyed unto and to the use of the said Theobold Dias his heirs executors administrators and assigns absolutely for ever. And the said Manisgey Lawrence Rodrigo doth hereby for himself, his heirs 20 executors administrators covenant promise and agree to and with the said Theobold Dias and his heirs executors administrators and assigns that the said premises hereby sold and conveyed are free from encumbrances save and except to a lease executed by Manisgey Lawrence Rodrigo as per lease dated 10th February, 1893 and attested by W. G. F. W. Seneviratne, Notary, No. 1581 in favour of Theobold Dias for the term of one year and that he and his aforewritten shall and will always warrant and defend the title to the said premises unto him the said Theobold Dias and his aforewritten against all persons whomsoever.

In witness whereof the said Manisgey Lawrence Rodrigo has hereunto 30 and to two others of the same tenor and date set his hand at Colombo this twenty first day of December, 1895.

Sgd. LAW. RODRIGO.

Witnesses :

Sgd. D. Z. GUNAWARDENE.

Sgd. W. M. A. RAHEMAN.

Sgd. D. J. KULATUNGA.

I, Don Joseph Kulatunga of Colombo, 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 said Manissegey Lawrence Rodrigo 40 who is known to me in the presence of Messrs. Jachrias Gunawardene now of Dematagoda and Wapitcha Marikar Abdul Rahaman now of Layard's Broadway both in Colombo the subscribing witnesses thereto both of whom are known to me the same was signed by the said Manissegey Lawrence Rodrigo 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 at the same time and place at Colombo on this twenty first day of December, A.D. 1895.

I further certify and attest that the above consideration was acknowledged to have been received before the signing of these presents and that to the counterpart thereof are affixed two stamps to the value of thirty rupees and to the original a stamp of one rupee supplied by parties.
Dated, 21st day of December, 1895.

Exhibits
—
6D1
Deed
No. 5249
21-12-1895
—Continued

Sgd. D. J. KULATUNGA,
Notary Public.

(SEAL).

P3.

10

Plaint in D.C. Colombo Case No. 11739.

IN THE DISTRICT COURT OF COLOMBO

MANISGEY LORENZO RODRIGO of Slave Island presently at Panadura*Plaintiff.*

vs.

- 1. THEOBOLD DIAS of No. 29 Glennie Street, Slave Island
- 2. H. D. DE LIVERA of No. 51 Prince Street, Colombo

Defendants.

The 13th September, 1898.

Plaint of the plaintiff abovenamed appearing by Charles Pieris, his Proctor, states as follows :—

1. Manissegey Solomon Rodrigo of Slave Island was the owner and proprietor of all that part of a garden with the buildings thereon situated at Glennie Street Slave Island, Colombo bounded on the north by the lake, on the east by the other part on the south by the road and on the west by a garden of M. van Buren Coy. in extent 30, 2/100 square perches according to the figure of survey dated 11th November, 1813 authenticated by G. Schneider Surveyor-General and of the value of Rs. 3,500/-.

2. The said Manissegey Solomon Rodrigo by his deed of Gift No. 8550 dated 9th November, 1870 and attested by Richard Charles Bartholomeusz Perera Notary Public parted and transferred the said premises to the plaintiff to hold and enjoy the same during his natural life and directed that the same should at his death pass to his male and female descendants to be possessed by them under the bond of Fidei Commisum.

3. By an indenture of Lease No. 1403 dated the 16th and 23rd January, 1892 under attested by W. J. F. W. Seneviratne Notary Public entered between the plaintiff and Manissegey Madalena Rodrigo and Lawrenti Rodrigo,

P3
Plaint in
D.C.
Colombo
Case
No. 11739
13-9-1898

Exhibits
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P₃
Plaint in
D.C.
Colombo
Case
No. 11739
13-9-1898
—Continued

his daughter and son respectively of the one part and the 1st defendant of the other part the parties of the 1st part leased the said premises to the 1st defendant for a term of five years commencing from 1st February, 1892.

4. During the continuance of the said lease the said Lawrenti Rodrigo by lease No. 1581 dated 10th February, 1893 and attested by the said G. F. W. Seneviratne Notary Public leased the said premises to the 1st defendant for a term of one year to commence from the 1st February, 1897.

5. The 1st defendant entered into possession of the said premises under the 1st mentioned lease and continued in possession under the said two leases till the 31st January, 1898. 10

6. Since the 1st February, 1898 the 1st defendant has been in the unlawful and forcible possession of the said premises and has kept the plaintiff ousted therefrom claiming title to the said premises by virtue of a conveyance No. 5249 dated 21st December, 1895 and attested by Don Joseph Kulatinga Notary Public, which purports to have been executed by the plaintiff but which the plaintiff impeaches as a forgery he never having executed the same, to plaintiff's damage of Rs. 15/- per mensem.

7. The 1st defendant was in or about the 24th May, 1897 adjudicated an insolvent in case No. 1872 of this court and the 2nd defendant was on the 8th July, 1897 appointed assignee of his insolvent estate. 20

Wherefore the plaintiff prays :

- (a) for a declaration of title to the said premises.
- (b) for a declaration that the said deed No. 5249 dated 21st December, 1895 is a forgery as is therefore null and void and of effect.
- (c) for possession of the said premises.
- (d) for Rs. 120/- damage and further damage at Rs 15/- per month till plaintiff is restored into possession of the said premises.
- (e) for costs and such other and further relief as to this court shall seem meet.

Sgd. CHAS. PIERIS, 30
Proctor for Plaintiff.

Sgd. A. SENEVIRATNE,
Sgd. J. L. PIERIS,
Advocates.

Memorandum of documents relied by the Plaintiff.

1. Deed No. 8550 dated 9th November, 1870 and attested by Richard Charles Bartholomeusz Perera, Notary and connected title deeds and documents.
2. Lease No. 1403 dated 16th and 23rd January, 1892 and attested by W. J. F. W. Seneviratne, Notary. 40

- 3. Lease No. 1581 dated 10th February, 1893 and attested by W. G. F. W. Seneviratne, Notary.
- 4. Insolvency Case No. 1872 of this Court.

Exhibits
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P3
Plaint in
D.C.
Colombo
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No. 11739
13-9-1898
—Continued

Sgd. CHAS. PIERIS,
Proctor for Plaintiff.

Filed, Proxy and Plaintiff.
14/9/98.

P4.

Answer in D.C. Colombo Case No. 11739.

P4
Answer in
D.C.
Colombo
Case
No. 11739
10-10-1898

10 IN THE DISTRICT COURT OF COLOMBO.

MANISSEGEY LORENZO RODRIGO of Slave Island presently of Panadura.....*Plaintiff.*

v s.

- 1. THEOBOLD DIAS of No. 9, Glennie Street, Slave Island,
 - 2. A. D. DE LIVERA of No. 51, Prince Street, Colombo,
- Defendants.*

The 10th day of October, 1898.

The answer of the 1st defendant to the Plaintiff appearing by Arthur William Alwis and Francis Albert Prins, Junior, carrying on business in partnership under the name style and firm of Alwis and Prins, state as follows :—

- 1. The 1st defendant admits the truth of the matters and things stated on the 1st para. of the Plaintiff.
- 2. Answering to the 2nd para. of the plaintiff the 1st defendant denies that Solomon Rodrigo by his deed No. 8550 dated the 9th November, 1870, granted and transferred the premises described in the para. 1 of the plaintiff to the plaintiff to hold and enjoy the same during his natural life and directed that the same should at his death pass to his male and female descendants to be possessed by them under the bond of Fidei Commisum.
- 30 3. The 1st defendant admits the truth of the matter and things stated in para. 3, 4 and 5 of the plaintiff.
- 4. Answering to the para. 6 of the plaintiff the 1st defendant denies that since 1st February, 1898 or at any other time the 1st defendant has been in the forcible and unlawful possession of the said premises and has kept the plaintiff ousted therefrom the 1st defendant admitting possession of

Exhibits
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P4
Answer in
D.C.
Colombo
Case
No. 11739
10-10-1898
—Continued

the said premises claiming title thereto by virtue of conveyance No. 5249 dated 21st December, 1895 denies that the said conveyance purports to have been executed by the plaintiff or that the same is a forgery or that the plaintiff suffered damage as stated in the said para.

5. The 1st defendant admits the truth of the matters and things stated in the 7th para. of the plaint.

6. Further answering the 1st defendant says that by deed of Gift No. 8550 pleaded in para. 2 of the plaint M. Solomon Rodrigo named therein gifted the said premises to his grand-son Lawrence Rodrigo subject to the condition that the plaintiff who is the father of the said Lawrence Rodrigo 10 should possess the said premises and enjoy the rents and profits thereof until the attainment by the said Lawrence Rodrigo of his thirty years. The said Lawrence Rodrigo attained his thirtieth year about six years ago and then became the absolute owner and proprietor of the said premises, and he, thereafter to wit on the 21st December, 1895 by his deed bearing the said date and No. 5249 sold and conveyed the said premises to the 1st defendant and he has since been the owner and as such in possession of the same.

7. The 1st defendant further says that he accepted the lease pleaded in para. 3 of the plaint on the faith of the representative of the lessors that they were then entitled to the said premises but the said Lawrence Rodrigo 20 (Lawrenti Rodrigo in the 4th para. of the plaint) was the absolute owner of the said premises, at the date of the lease pleaded in para. 4 of the plaint and as such granted to the 1st defendant the said lease with the full knowledge of the plaintiff and without objection thereto by him.

The 1st defendant prays :

- (1) That the plaintiff's claim be dismissed.
- (2) That the 1st defendant be declared entitled to the said premises.
- (3) For costs.
- (4) For such further and other relief as to this court shall seem meet.

ALWIS & PRINS, 30
Proctors for Defendants.

P5.

Issues and evidence in D.C. Colombo Case No. 11739.

P5
Issues and
evidence in
D.C.
Colombo
Case
No. 11739
Nov. 1898

P5. D.C. Colombo 11739.

Parties present—The Plaintiff. The 1st and 2nd Defendants.

For Plaintiff—Adv. SENEVIRATNE JAMES PIERIS and PERERA instructed by Mr. CHARLES PEIRIS.

For 1st defendant—Adv. M. W. PERERA instructed by Mr. ARTHUR ALWIS—2nd defendant in person.

The 4th day of November, 1898.

It is admitted that Solomon Rodrigo was the original owner and that he executed a transfer of it bearing No. 8550 on the 9th November, 1870. The parties are not agreed as to the terms of the said transfer. I therefore frame the following issues :

Exhibits
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P5
Issues and
evidence in
D.C.
Colombo
Case
No. 11739
Nov. 1898
—Continued

1. Did Solomon Rodrigo by his deed No. 8550 of the 9th November, 1870 grant and transfer the land in claim to the plaintiff to be held and enjoyed by him during his natural life, with reversion to his male and female descendants to be possessed under the bond of Fidei Commissum.
2. Has the 1st defendant since 1st February, 1898 been in the forcible and unlawful possession of the land. The 1st defendant having pleaded that the deed No. 5249 under which he claims was not executed by the plaintiff but by his son, no issue need be framed under the 6th para. of the plaint. The plaintiff withdraws the charge of Forgery under the circumstances.
3. Did Solomon Rodrigo by his deed No. 8550 gift the said land to his grandson Lawrence Rodrigo son of the plaintiff subject to the condition that plaintiff should enjoy its rents and profits till Lawrence attained his 30th year.
4. Did the 1st defendant obtain a valid title to the land under deed No. 5249 of 21st December, 1895 executed by Lawrence Rodrigo the son.
5. What damages if any has plaintiff sustained.

F. R. DIAS,
A.D.J.

Mr. Peiris opens plaintiff's case and calls.

C. F. WIJESINGHE, sworn. I am a clerk in the Registrar General's office, under the orders of the Registrar General I produce the file containing the protocols of deeds attested by R. C. B. Perera, Notary Public of Colombo from July to December, 1870. Also the Registrar General's File containing the Duplicates of this notary's deeds attested during the same period. The notary is dead and his protocols are now in the charge of the Registrar General. The copies in both files are stitched up in consecutive order. I find that the copy of No. 8550 is missing from this file, as also those from 8545 to 8556. The date of 8544 is the 5th November, 1870. The date of No. 8556 is the 11th November, 76. I now turn to the file of Duplicates which are also filed in consecutive order. Here also I find deed No. 8550 missing both Nos. 8549 and 8551 are here. The date of 8549 is the 8th November, 70 and of 8551 the 10th November, 70. I also produce the monthly list of deeds sent in by the Notary—Notaries are bound by ordinance to send in such lists with their Duplicates—I refer to the list for November, 1870. It contains a reference to the deed No. 8550 dated 9th November, 1870. It is described as a transfer, value £150/- granted by

Exhibits
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P₅
Issues and
evidence in
D.C.
Colombo
Case
No. 11739
Nov. 1898
—Continued

Manissege Solomon Rodrigo to Manissege Lorenzo Rodrigo I know Zacharius Gunawardene. He was a clerk in our office and is now dead.

Cross-examined. Zacharius was a Deed Registering Clerk, he was afterwards in charge of the Returns so far as I am aware he had no access to these files, they are kept under lock and key by the Asst. Registrar General. I am not the custodian of Duplicates sent in by Notaries nor of Protocols of deceased Notaries sometimes deeds are found missing from files similar to these. To my knowledge large numbers are missing.

To Court—When lists are sent in every month with Duplicates the Notary would be called on to send up those that may have been omitted to be forwarded, which are referred to in the lists. These files are sometimes handed to the clerks for making copies on the application of parties. When I said that deeds were missing from the files I meant that such deeds had not been sent in, and so not filed, not that they had been abstracted from our files after they had once reached us. Till now I had not heard of a case of a document being removed from our files I can't say that No. 8550 came into our office, merely because its number appears in the Notary's list I don't know what practice was in 1870, but at the present day if a deed referred to in a Notary's list is not sent with it, the Notary would be called on at once to send it.

20

F. R. DIAS,
A.D.J.

MANISSEGE LORENZO RODRIGO, sworn. I am the plaintiff and am 75 years old, I am a Landing Waiter and have been a Government Pensioner, since 20 years ago since my retirement I have been living in Panadure, my father was Solomon Rodrigo who died in 1873. He was the owner of this house in Glennie Street now in claim. I was married and had 6 children, four of whom are now dead they died young and in 1870 I had only two children Lawrenti Rodrigo and Madelena—The latter was married in 1881 to Don Simon Appuhamy. My son, daughter and her husband are still alive. In 1870 my father granted this land to me upon a deed attested by one Chas. Perera, Notary of Barber Street, that Notary died more than ten years ago, I also signed that deed as donee accepting the Gift, the deed was witnessed by one Weerasinghe and Kankanige man whose name I forgot both these men are also now dead, I had the deed with me together with all the old deeds annexed to it, the deed also had its old figure of Survey after the grant to me I went and lived in this house for a few months, and then let it to some gentlemen. In 1881 I gave a lease of it for ten years Monica Hammy the wife of Don Bastian Weerasinghe. I produce a certified copy of the lease (marked P1) at the expiry of that lease I gave it on lease for 5 years to this 1st defendant from 1st February, 92 to 1st February, 97. The whole of the rent was paid by him in advance I produce a certified copy of that lease No. 1403 (marked P2). In both these leases my son Lawrenti, my daughter Madelena and her husband signed with me as lessors. For the preparation of this second lease I handed the title deeds to my son, and as I was ill at the time at Panadure they were retained in his possession. I

afterwards asked him for them several times, and he said he had them with him, or had given them to Theobald Dias or 'something like that'. At the expiration of this lease I went to 1st defendant and asked him if he wanted a further lease. He then said that he had taken another lease for one year from my son, I had no knowledge of such a thing before, I asked my son if this was so, and he said it was so. I said he should not have given any lease without my knowledge and took no further notice of it. At the expiration of this one year's lease I again went to 1st defendant he then claimed the house as his own by purchase from my son, the Notary who attested my leases was Fonseka, and so I made inquiries from him. He gave me certain information and I went to Kulatunga, Notary and the Registrar General's office my title deeds are now not forth coming my son says he gave them to 1st defendant at the time I gave my lease to my nephew's wife in 1881, I made a copy of my father's deed of gift to me—I copied it myself I can read and write English well, I made the copy because after that lease I handed the deeds to my son-in-law for safe keeping I produce the copy I so made (marked P3) I swear that this is an exact copy of the original deed No. 8550. This is a valuable house opposite Von Possner's Ice Mill, it is worth about Rs. 4,000/-. It used to give me a monthly rental of Rs. 15/-.

20 Cross-examined. I think my son was born about 1858, I received nothing from my son on account of the one year's lease I did not ask him for any of it, as about that time he was in need of cash and a child of his also died I asked 1st defendant for none of that rent.

The 3 documents P1, P2 and P3 having been tendered in evidence by plaintiff's counsel Mr. W. Perera objects to P3 on the ground that its existence had not been disclosed in the list of documents filed by the plaintiff. I over rule the objection as the defendant's Proctor was well aware of its existence. It was distinctly mentioned to the court when an application was made to fix an early date of the trial—The defendant's Proctor now admits the fact.

30

F. R. DIAS,
A.D.J.

At the date of the ten years lease to my nephew's wife I was living at Panadure after that lease was signed, I kept the title deeds with me for some time and afterward handed them to my son-in-law when my daughter was married to him—That was also in 1881, for 11 years the deeds were in my possession—The ten years lease was written at Colombo. For its preparations also I had handed the deeds to my son, I made my copy before I sent the deeds on that occasion to Colombo, I cannot remember whether it was on the very day that lease was signed that I gave the deeds to my son-in-law 40 I showed this copy to no one before I instructed my Proctor to bring the case. I then handed it to my Proctor I complained to no headman that my son had made away with my deeds, but I had told my son-in-law of it. I did not then try to get a copy from the Registrar's office, but I did so as soon as I heard of the sale.

F. R. DIAS,
A.D.J.

Exhibits
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P5
Issues and
evidence in
D.C.
Colombo
Case
No. 11739
Nov. 1898
—Continued

Exhibits — It being too dark now the further hearing is adjourned for 14th November.

P₅
Issues and
evidence in
D.C.
Colombo
Case
No. 11739
Nov. 1898
—Continued

F. R. DIAS,
A.D.J.

4-11-98.

28th November, 98. Parties present:

Messrs. Adv. Seneviratne, Jas Peiris and H. J. C. Pereira with Mr. Chas Peris for plaintiff.

Messrs. Alwis and Prins for 1st defendant the 2nd defendant in person.

M. L. Rodrigo (plaintiff recalled,) sworn. To court. I first heard of the disappearance of the deeds from the Registrar-General's office about 2 weeks 10 before I instructed my Proctor to start this action. I discovered it when I applied to the Registrar-General for a certified copy.

Cross-examined. No question.

F. R. DIAS,
A.D.J.

LAWRENTI alias LAWRENCE RODRIGO, sworn. I am a son of the plaintiff. I know the house in Glennie Street now in dispute. My father, my sister and I once gave a five years lease of it to the 1st defendant. That lease expired in January, 1897. The original deeds of the property were handed to me by my father about the time that lease was executed 20 viz. 1892. They remained in my hands after that. I have now been subpoenaed to produce them. I cannot produce them now because the 1st defendant obtain them from me about 2 years ago. Sometimes before the lease expired, he has the deeds with them still and has not returned them to me.

Cross examined—After the expiry of the 1st lease I gave 1st defendant another lease for a year, my father did not know of it at the time but I informed him of it afterwards. He did not object to what I had done.

To Court—I did not sell the land to 1st defendant in December, 1895 or at all I owed him some money and I told him I could not pay. He then proposed that I should give him an extension of the lease for 4 years I agreed 30 to do so at the increased rental of Rs. 150/-. He then prepared the deeds himself and got Notary Kulatunga to come to his office and attest them. The notary did not read or explain the documents to me before taking my signature. All he asked me was whether I had received the Rs. 600/- which was the 4 years rent. Before the notary arrived the 1st defendant pulled out a draft from his table drawer, and gave it to me to read. That was a lease for 4 years and it was all right till about 5 months ago I had no idea that the papers to which my signatures had been obtained before Kulatunga, Notary were conveyances.

Exhibits
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P6
Judgment
of the
District
Court
in D.C.
Colombo
Case
No. 11739
30-11-1898

**Judgment of the District Court
in D.C. Colombo Case No. 11739.**

P6.

30th November, 1908.

JUDGMENT.

This is an action for a declaration of title and the ejectment of the 1st defendant, Theobold Dias from a house in Glennie Street, Slave Island of which he claims to be the owner. The 2nd defendant is his assignee in bankruptcy. It is admitted that the property originally belonged to the plaintiff's father Manissegey Solomon Rodrigo, who by deed No. 8550 dated 10 the 9th November, 1870 settled it on his descendants. The plaintiff's name is Lorensu Rodrigo and he has a son who goes by the name of Lawrence alias Lawrenti and a daughter Madalena. The 1st defendant claims the property under an alleged conveyance No. 5249 dated the 21st December 1895 made by Lawrence.

The plaintiff says that under his father's deed he is entitled to the enjoyment of the premises during his natural life, and, in any case, his son Lawrence had no right to sell, as the land was subject to a Fidei Commissum in favour of his male and female descendants the defendant pleads that these were not the terms of Solomon's deed, but that the land had been gifted in 20 Fee simple to his grandson Lawrence with a right reserved to his father, the plaintiff to enjoy the rents and profits till the donee attained his thirtieth year. The original deed No. 8550 has mysteriously disappeared and the defendant makes no attempt whatever to prove the terms of this extraordinary bequest. The plaintiff has led evidence to prove that the deeds were lost in the possession of the 1st defendant and though called upon to produce them he does not do so. There is damning evidence against him shewing up as clear a piece of fraud and rascality as ever came before a Court but yet he does not dare to open his mouth in court and explain it. Not only is the original deed, which 1st defendant obtained possession of 30 from Lawrence not forthcoming now, but the duplicate filed in the Registrar General's office, and the Protocol Copy in the Notary's File have even been abstracted. The Notary, R. C. B. Perera who attested that deed has been dead for some years and his Protocols are therefore in the Registrar General's office. Both the volumes have been produced in court, and there can be no question as to the abstraction of the documents from them. Ten other deeds of November 1870 seem to have stolen from the Notary's File, and this has evidently been due to the fact that the deeds were not stitched up separately by the Notary but several at a time. It is impossible to prove who stole these documents or got them stolen, but suspicion points 40 too strongly at the 1st defendant and what is more one of the witnesses who signed the alleged conveyance in 1st defendant's favour has been one Zacharias Gunawardene (now dead) a clerk at the Registrar General's office,

**Judgment of the District Court
in D.C. Colombo Case No. 11739.**

Exhibits
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P6
Judgment
of the
District
Court
in D.C.
Colombo
Case
No. 11739
30-11-1898

P6.

30th November, 1908.

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who had access to these files. Another remarkable circumstance about the conveyance to 1st defendant is the fact that it and the duplicate and triplicate are in the 1st defendant's own handwriting. At least so says Lawrenti the alleged vendor and the 1st defendant has not dared to deny it. The Notary (D. J. Kulatunga) did no more than attest his signature without even reading the documents over. This is an irregularity of which I have no doubt the Registrar General will take due notice especially the Notary's conduct in attesting deeds not prepared by himself or another notary. I quite believe Lawrenti when he says that his signature to these documents
 10 was obtained by a trick the 1st defendant in February 1893, got a one year's lease of the house signed by Lawrenti alone, to run from 1st February 1897 to 1st February 1898. In December 1895 he proposed that he should be given a further extension of the lease for four years for the lump sum of Rs. 600/-. This proposal was accepted, and on the 21st December Lawrenti went to the 1st defendant's shop in the Fort when a draft of the lease was taken out of his drawer and given to Lawrenti to read. He says this draft was all right, and the 1st defendant then sent a carriage to Kulatunga's office in Maradana and got him up. In the meantime he was supplied with whisky, and he signed the papers that were placed before him after the Notary's arrival. Till
 20 a few months ago he had no idea that the papers he had actually signed were not in accordance with the draft lease he had been given to read. The conveyance in the defendant's favour has attached to it an old figure of survey dated 1812, which formed part of the missing deed, but he does not explain how that got in there nor has any suggestions been offered as to how 1st defendant came to buy so valuable a property as this without carefully inquiring into his vendor's title, and the deeds on which it was based. The conveyance in his favour actually contains no recitals at all as to the vendor's title except the bare statement that he was 'seized and possessed of and will and sufficiently entitled to' the premises but in the present case the
 30 1st defendant had no justification whatever in accepting such a title, as he well knew that the plaintiff and his daughter Madalena were interested in the property.

In January 1892 he had taken a five year's lease of the premises and his lessors were the plaintiff and his son and daughter. It is too absurd to suppose that, with such knowledge a man like the 1st defendant would have paid Rs. 6,000/- for a house in Colombo without inquiring into the title of his vendor as against his own father and sister, whose tenant the defendant then was.

The defendant's answer seems to suggest that he did satisfy himself
 40 that his vendor's title became absolute as soon as he attained the age of 30. He however does not try to prove how or where he obtained this information nor that his vendor is 30 years of age. The 30 year limitation is a myth, which has no foundation whatever for it. The plaintiff has been fortunate enough as to be able to lead secondary evidence the contents of the missing deed many years ago he seems to have been obliged to make a copy of the old deeds and this is now available. There can be no doubt as to its age and genuineness and it is in the plaintiff's own writing. I accept this is as a true

Exhibits

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Judgment
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District
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Colombo
Case:No. 11739
30-11-1898

—Continued

Exhibits
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P6
Judgment
of the
District
Court
in D.C.
Colombo
Case
No. 11739
30-11-1898
—Continued

copy of the original No. 8550 and it nowhere gives Lawrence alias Lawrenti the rights claimed for him by the 1st defendant on the contrary his name is nowhere mentioned in it, and the Lorenzo Rodrigo referred to is only the grantor Solomon's son, viz. the plaintiff. The deed gives him a life estate with a Fidei Commisum in favour of his male and female descendants, so that he is entitled to present possession.

I hold that Lawrence alias Lawrenti Rodrigo did not get an absolute right to his property under the above deed or at all and the 1st defendant did not acquire a title to the land under the alleged conveyance No. 5249. His possession since the 1st February 1898 has been unlawful, and I assess 10 the damages to plaintiff at Rs. 15/- per mensem.

Enter decree declaring the plaintiff to be entitled to the premises in claim, and that the deed No. 5249 dated 21st December 1895 is null and void. Let 1st defendant be forthwith ejected from the premises and plaintiff restored to quiet possession.

The 1st defendant will further be ordered to pay plaintiff's damages at the rate of Rs. 15/- per mensem from the 1st February 1898 until he is restored to possession together with the costs of this action.

Sgd. FELIX R. DIAS,
Additional District Judge. 20

P7.

Decree in D.C. Colombo Case No. 11739.

P7
Decree
in D.C.
Colombo
Case
No. 11739
30-11-1898

Enter decree declaring the plaintiff to be entitled to the premises in claim, and that the deed No. 5249 dated 21st December 1895 is null and void. Let 1st defendant be forthwith ejected from the premises and plaintiff restored to quiet possession.

The 1st defendant will further be ordered to pay plaintiff's damages at the rate of Rs. 15/- per mensem from the 1st February 1898 until he is restored to possession, together with the costs of this action.

Sgd. FELIX R. DIAS, 30
Additional District Judge.

**Writ of Possession and the Fiscal's Return
in D.C. Colombo Case No. 11739.**

P10. Writ for delivery of Immovable Property.
D.C. No. 11739.
To the Fiscal, Western Province, Colombo.

Exhibits
—
P10
Writ of
Possession
and the
Fiscal's
Return
in D.C.
Colombo
Case
No. 11739
6-12-1898

Whereas by a judgment of this Court dated the 30th day of November 1898 in the abovenamed action Theobold Dias the abovenamed 1st defendant was ordered to deliver to Manissege Lorenzo Rodrigo the abovenamed
10 plaintiff. All that part of a garden with the buildings thereon situated at Glennie Street, Slave Island, Colombo bounded on the north by lake, on the east by the other part, on the south by the road, and on the west by the garden of van Buren containing in extent 30, 2/100 square perches. These are to command you that without delay, you enter the same and cause the said Manissege Lorenzo Rodrigo, the plaintiff or such person as he shall authorise to receive possession to have possession of the said land buildings and premises, and in what manner you shall have executed this Writ make appear to this court immediately after the execution thereof and have you these this mandate.

20

Sgd. Illegibly.
District Judge.

The 6th day of December 1898.

Writ for delivery of Immovable Property.
No. C 11739.

By virtue hereof I caused my officer B. J. A. Perera to put the within named plaintiff in possession of the within described property as will appear from the affidavit of the said officer hereto annexed.

Fiscal's Office

Colombo 9th December 1898.

30

Sgd.
Dy. Fiscal.

I, B. J. A. Perera, Fiscal's officer make oath and say that I did on 8th December 1898 enter the within described property and deliver possession thereof to the plaintiff by ejecting therefrom the first defendant.

Signed and sworn before me at Colombo this 9th day of December 1898.

Sgd.

Dy. Fiscal.

So help me God.

Sgd. B. J. A. PERERA,
Fiscal's Officer.

40

Exhibits

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P8
Judgment
of the
Supreme
Court
in D.C.
Colombo
Case
No. 11739
20-9-1900

Judgment of the Supreme Court in

D.C. Colombo Case No. 11739.

P8.

Supreme Court Judgment.

BROWN, Acting P. Justice.

Apart from his arguments on the facts with which the learned District Judge dealt fully in his judgment, Appellant's counsel has urged before us chiefly two points that the copy deed produced by plaintiff and made by himself should not have been received in evidence and that the bill of sale by the plaintiff's son to the 1st defendant should not have been declared 10 null and void. In the 1st of documents filed with the plaint and relied on by the plaintiff he specified the original deed of donation executed by his father. He did not, however attend to the provisions of Sec. 32 and state in whose possession it was, when he knew it was not his own. It is however, in the discretion of the court to admit in evidence documents which have not been properly listed rectifying all technical objections by proper terms as to costs or otherwise. The object of the requirement is to give the opposite side due notice of the intended evidence to be produced against them, and the learned District Judge has recorded the 1st defendant has such notice especially given him. I do not see, therefore, that it was wrongly received in evidence. 20 As to the 2nd point I would eliminate from the decree the declaration that the deed of 21st December 1895 is null and void. Plaintiff did not pray for it, and his counsel says he does not desire it, and it has so happened that during the pendency of this appeal plaintiff himself has died intestate whereby the 1st defendant or the creditors of the 1st defendant if he has not as yet obtained a certificate of conformity in his Insolvency proceedings, may be entitled to the benefit the 1st defendant vendor has received thereof by inheritance. It is better therefore, to leave open all questions between plaintiff's son and 1st defendant's creditors to be disposed of in a separate action and the deed itself in its pristine condition, otherwise I would affirm 30 with costs.

MONCRIEFF, J.

I am of the same opinion.

Sgd. G. GRENIER,
Registrar.

**Decree of the Supreme Court in
D.C. Colombo Case No. 11739.**

Exhibits
—
Pg
Decree
of the
Supreme
Court
in D.C.
Colombo
Case
No. 11739
20-9-1900

D.C. Colombo No. 11739.

M. LORENZO RODRIGO.....*Plaintiff and Respondent.*

against

1. THEOBOLD DIAS

2. A. DE LIVERA assignee of the Insolvent Estate

of THEOBOLD DIAS.....*Defendant.*

1st Defendant-Appellant.

10

This case coming for hearing and determination on this day upon an appeal preferred by the defendants before the Hon. Frederick Charles Moncrieff, Justice and the Hon. Dodwell Browne, Acting Justice of this court in the presence of counsel for the appellant and the respondent.

It is considered and adjudged that the Decree made in this action by the District Court of Colombo, and dated the 30th day of November 1898 be and the same is hereby varied by excision of the words 'and that the deed No. 5249 dated 21st December 1895 attested by Don Joseph Kulatunga, Notary Public, is hereby declared null and void'. In other respects the said
20 Decree is affirmed and it is further ordered and decreed that the appellant do pay the respondent's taxed costs of this appeal.

Witness the Hon. Sir John Winfield Bonser, Knight, Chief Justice, at Colombo the 20th day of September in the year of Our Lord one thousand nine hundred and of Our Reign the sixty fourth.

Sgd. G. GRENIER,
Registrar.

6D11.

Notes of Plaintiff in D.C. Colombo 24762.

6D11. 24762 c.

30 Plaintiff dated 25-3-07.

Plaintiff: M. W. PEIRIS.

Defendant: THEOBALD DIAS.

Recites—Deed 8550 and that Solomon Rodrigo died several years ago and Lorenzo Rodrigo died about 5 years ago leaving Lorenti and Madalena.

Lawrenti transferred to plaintiff by deed 2190 of 6-12-05 (G. M. Silva).

6D11
Notes of
Plaint
in D.C.
Colombo
24762
1908

Exhibits
—
6D11
Notes of
Plaint
in D.C.
Colombo
24762
1908
—Continued

Madalena by 7936 of 4399 to M. A. Peiris. M. A. Peiris by Deed 10432 dated 19-6-1900 (M. P. Ranasinghe) transferred to K. Don Simon Appuhamy who by No. 1498 of 19-1-04 (G. M. Silva) transferred to plaintiff who entitled to entirety. Since 6-12-05, D in possn. to P's damage of Rs. 782 plus Rs. 50 p.m. hereafter.

D's Answer :

Unaware of 8550 and death of Solomon and Lorenzo and survivors.

Denies rt of Lawrenti to convey any portion to P.

Regarding transfer by Madalena D states P acqd. no title through deeds mentioned therein. 10

Regarding possession D states that by deed 5249 of 21-12-95 and prescriptive ponns. D is abs. owner and denies wrongful possn.

JUDGMENT

Admittedly Solomon Rodrigo owned Lawrenti grandson.

D denied that he knew or had any dealings with Lorenzo but he clearly proved (a) that he knew Lawrenzo and that Lawrenzo, Lawrenti and Madalena leased premises to D in 1892.

(b) that in 1898 Lawrenzo by action 11739 for declaration of title.

(c) that Lawrenzo obtd. judgment against D affd. by S.C.

(d) that D was ejected from premises by Ct. Process in December 1898, 20 clearly proved that Madalena was daughter of Lawrenzo and that she and Lawrenti only surviving children.

P claims on Deeds 2190 and 1498 Lawrenti and Madalena each claim one half on death of Lorenzo who was entld. under 8550.

8550 not forthcoming nor duplicate nor protocol—that deed 8550 was attested has been estd. by prod. of the list.

6D18.

Plaint in D.C. Colombo Case No. 24762.

6D18
Plaint
in D.C.
Colombo
Case
No. 24762
(undated)

6D18.

No. 24762.

30

This 25th day of March x
The plai x
named appearing by Gr x x x and Johannes x x x x x x x x x x x x x x x x x x
Peter Perera as Proctors under the x

	name his Proctor states as follows											Exhibits — 6D18
	I. One	x	x	x	x	x	x	x	x	x	x	X
	well and truly entitled to wit :											X
	All that part of	x	x		ing and plantations	x	x	x	x	x	x	X
	S	x	x	x	stan Glennie Street Slave	x	x	x	x	x	x	X
	Island jurisdiction of this court	x	x	x	x	x	x	x	x	x	x	X
	be bounded on the north by	x	x	x	x	x	x	x	x	x	x	X
	east by the property of	x	x	x	x	x	x	x	x	x	x	X
	by the road and on the	x	x	x	x	x	x	x	x	x	x	X
10	to van Buren contain	x	x	x	x	x	x	x	x	x	x	X
	two one hundredth (32/100)	x	x	x	x	x	x	x	x	x	x	X
	the value of Rs. 6,500/-	x	x	x	x	x	x	x	x	x	x	X
	2. The said	x	x	x	x	x	x	x	x	x	x	X
	Rodrigo by Deed No. 8550 attested	x	x	x	x	x	x	x	x	x	x	X
	by Richard Char Notary Public	x	x	x	x	x	x	x	x	x	x	X
	gifted fidei commi	x	x	x	x	x	x	x	x	x	x	X
	dants	x	x	x	x	x	x	x	x	x	x	X
	Rodrigo died several	x	x	x	x	x	x	x	x	x	x	X
	Rodrigo died about	x	x	x	x	x	x	x	x	x	x	X
20	erving two children in after	x	x	x	x	x	x	x	x	x	x	X
	referred to	x	x	x	x	x	x	x	x	x	x	X
	executed by deed No. 2190 attested	x	x	x	x	x	x	x	x	x	x	X
	by G. M. Silva transferred his	x	x	x	x	x	x	x	x	x	x	X
	interest the plaintiff	x	x	x	x	x	x	x	x	x	x	X
	Madalena with the Kuruppumullage	x	x	x	x	x	x	x	x	x	x	X
	Don Deed No. 7936 dated the 4th	x	x	x	x	x	x	x	x	x	x	X
	transferred her interest Mahatelge	x	x	x	x	x	x	x	x	x	x	X
	Andrew 10432 dated 19th June, 1900	x	x	x	x	x	x	x	x	x	x	X
	inghe Notary Public	x	x	x	x	x	x	x	x	x	x	X
30	Kuruppumullage Don who by Deed	x	x	x	x	x	x	x	x	x	x	X
	No. 1498 dated by G. M. Silva	x	x	x	x	x	x	x	x	x	x	X
	the same to the plaintiff entitled	x	x	x	x	x	x	x	x	x	x	X
	to the possession premises	x	x	x	x	x	x	x	x	x	x	X
	6th December, 1905 the still in the	x	x	x	x	x	x	x	x	x	x	X
	wrongful exercises to the plaintiff's	x	x	x	x	x	x	x	x	x	x	X
	782/- and further damages	x	x	x	x	x	x	x	x	x	x	X
	mensem	x	x	x	x	x	x	x	x	x	x	X
	the plaintiff prays are entitled	x	x	x	x	x	x	x	x	x	x	X
	to the premises	x	x	x	x	x	x	x	x	x	x	X

Exhibits
—
6D18
X Paint
in D.C.
Colombo
Case
X No. 24762
(undated)
X —Continued

Exhibits — 6D18 Plaint in D.C. Colombo Case No. 24762 (undated) —Continued	2. That defendant may be Plaintiff put in possession.	x	x	x	x	x	x	x	x
	3. For the said sum of Rs. 7 restored to the possession of	x	x	x	x	x	x	x	x
	4. For costs and	x	x	x	x	x	x	x	x
	5. For such other and further may seem meet	x	x	x	x	x	x	x	x

Settled by Mr. E. G. SAMARAWICKREME,
Advocate.

List of Documents

10

1. Deed of Gift No. 8550 dated by Richard Charles Bart. Public	x	x	x	x	x	x	x	x
2. Deed of Transfer No. 2190 attested by G. M. Silva, N.	x	x	x	x	x	x	x	x
3. Deed of transfer No. 793 attested by P. Simon Dias.	x	x	x	x	x	x	x	x
4. Deed of transfer No. 10432 by M. P. Ranasinghe Not.	x	x	x	x	x	x	x	x
5. Deed of transfer No. 1498 1904 attested by G. M. Silva	x	x	x	x	x	x	x	x

20

True copy of the plaint as it appears in the record in D.C. Colombo case No. 24762 C Land. Parts marked x x are torn in the original.

Sgd. Illegible.
Secretary, D.C. Colombo.

21-9-50.

6D12
Answer
in D.C.
Colombo
Case
No. 24762
19-6-1907

6D12.

Answer in D.C. Colombo Case No. 24762.

IN THE DISTRICT COURT OF COLOMBO

MINUWANPITIYAGE WILLIAM PEIRIS of Egoda
Uyana in Moratuwa in the District of Colombo.....*Plaintiff.* 30

No. 24762/C

vs.

THEOBOLD DIAS of No. 29, Glennie Street, Slave Island
in Colombo.....*Defendant.*

The 19th day of June 1907.

The Answer of the Defendant abovenamed appearing by Francis Albert Prins, Junior and Christopher Malloji Brito carrying on buisness in partnership under the name and style of " Prins and Brito " his Proctors states as follows :—

1. The defendant does not know and therefore denies the averments contained in the 1st, 2nd and 3rd paras. of the plaint.

2. Answering to the 4th para. of the plaint the defendant denies that Lawrenti had any right to convey any portion of the said premises as
10 therein alleged.

3. Answering to the 5th para. of the plaint the defendant says plaintiff acquired no title whatever to any portion of the said premises though the deeds therein mentioned.

4. Answering to the 6th para. of the plaint the defendant says that under and by virtue of Deed No. 5249 dated the 21st December, 1895 attested by D. J. Kulatunga of Colombo Notary Public and by right of prescriptive possession he is the absolute owner of the said premises and denies that he is in the wrongful possession thereof or that plaintiff has suffered any damages whatsoever.

20 Wherefore the defendant prays that plaintiff's action may be dismissed with costs and for such other relief in the premises as to this Court shall seem meet.

PRINS AND BRITO,
Proctors for Defendant.

6D13.

Judgment of the District Court in D.C. Colombo Case No. 24762.

IN THE DISTRICT COURT OF COLOMBO

M. WILLIAM PEIRIS of Colombo.....*Plaintiff.*

No. 24762

vs.

30 THEOBOLD DIAS of No. 29, Glennie Street, Slave Island... *Defendant.*

JUDGMENT

In this action the plaintiff seeks to be declared the owner of certain premises in Glennie Street, Slave Island, and to have the defendant ejected therefrom. He also claims Rs. 782/- as damages sustained by him owing to the defendant's wrongful possession of the premises since December 1905.

Defendant claims to be entitled to the premises under Deed No. 5249 dated 21st December, 1894 (D1) by which he states, M. Lawrenti Rodrigo who was then entitled to the premises conveyed them to him for the sum of Rs. 6,000/-; and by prescriptive possession.

40 The 9 issues appearing on the paper filed and marked A were settled as the issues to be tried, but when the trial commenced certain facts were admitted by both sides which disposed of the 1st, 8th and 9th issues.

Exhibits

6D12

Answer
in D.C.
Colombo
Case

No. 24762

19-6-1907

—Continued

6D13

Judgment
of the
District
Court
in D.C.
Colombo
Case

No. 24762

24-8-1908

Exhibits
—
6D13
Judgment
of the
District
Court
in D.C.
Colombo
Case
No. 24762
24-8-1908
—Continued

Admittedly one Solomon Rodrigo was the original owner of the premises in question and M. Lawrenti Rodrigo alias M. Lawrence Rodrigo was a son of Lorenzo Rodrigo who was a son of Solomon Rodrigo.

Defendant denied that he knew or has any dealings with Lorenzo Rodrigo, but it has been clearly proved (a) that he did know Lorenzo Rodrigo, and that the latter, together with his son Lawrenti and daughter Madalena leased these premises to defendant for a term of five years in January 1892, (b) that in 1898 Lorenzo Rodrigo sued the defendant in case No. 11739 of this court for a declaration of title to the premises in question, to which defendant claimed to be entitled under the same deed (D1) under which he 10 now claims, (c) that Lorenzo Rodrigo obtained Judgment against the defendant which judgment was affirmed by the Supreme Court on an appeal lodged against it by defendant and (d) that defendant was ejected from the premises in question by process of court in December 1898.

One of the issues raised was as to whether Madalena was a daughter of Lorenzo Rodrigo. It was not seriously contended at the trial that she was not, but the evidence of Lawrenti in this case and that of Lorenzo in case No. 11739 which has been put in evidence in this case, have no room for doubt in the matter and it is clear that Madalena is the daughter of Lorenzo and that he and Lawrenti were his only surviving children at the date of 20 his death. Plaintiff claims to be entitled to the premises under deeds No. 2190 dated 6th December, 1905 (P6) by which he purchased one half share of them from Lawrenti, and No. 1498 dated 19th January, 1904 (P9) by which he purchased the other half of the premises from K. Don Simon Appuhamy, the husband of Madalena. Madalena and her husband having by Deed No. 7936 dated 4th March, 1899 (P7) sold the one half to which Madalena was entitled to M. Andrew Peiris, who by deed No. 10432 dated 19th June, 1900 (P8) resold it to K. Don Simon Appuhamy, Lawrenti and Madalena each claimed to be entitled to one half of the premises after the death of their father Lorenzo who was entitled to them under Deed No. 8550 30 dated 9th November, 1870 a copy of which has been put in evidence, (P3), by which the premises were gifted to Lorenzo by his father Solomon Rodrigo subject to the conditions that they should not be sold, mortgaged or alienated by him but shall be possessed and enjoyed by them and his male and female descendants under the bond of fidei commissum.

The deed No. 8550 is not forthcoming, nor is the duplicate or the Notary's protocol copy. That a deed bearing No. 8550 and dated 9th November, 1870 was attested by Notary R. C. B. Perera has been established by the production from the Registrar General's office of the list furnished by the Notary showing which deeds has been attested by him in that month, and 40 that list also shows that the deed No. 8550 was executed by Solomon Rodrigo in favour of Lorenzo Rodrigo. The duplicate of the deed was filed in the Registrar General's office—and the Notary having died some years ago his protocol copies of deeds attested by him are also in the Registrar General's office, but both the duplicate and Protocol copy of deed No. 8550 have been abstracted from the files in which they were in the Registrar General's office. The duplicates of deeds No. 8549 and No. 8551 are in the file, and

there can be no doubt whatever that the duplicate and protocol copy of No. 8550 had been abstracted with a dishonest intention. Fortunately, however, Lorenzo, as appears from his evidence in case No. 11739 had himself made a copy of Deed No. 8550 and that copy was produced by him in that case and accepted both by this Court and the Supreme Court in evidence in that case, and I have no hesitation in accepting it in this case.

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—Continued

It is, then, proved that the premises in question were gifted to Lorenzo by his father subject to a fidei commissum in favour of the former's descendants by deed No. 8550.

10 A perusal of the defendant's answer in case No. 11739 shows that the defendant then admitted the existence of the deed No. 8550 he however there contended that the deed contained a gift to Lawrenti, of the premises, subject to the condition that Lorenzo should possess them until Lawrenti attained the age of 30 years, that Lawrenti attained that age about the year 1892 and was therefore entitled in 1895 to convey the premises to the defendant by deed No. 5249 (D1) and did so convey them. That the deed No. 8550 was subject to no such condition and that defendant was aware that it was not, is clear, for there is no other explanation of Madalena's being made a party to the lease No. 1403 (P2) by which the
20 premises were leased to defendant in January 1892.

The original title deeds of the premises are stated by Lawrenti to have been handed by him to defendant in 1893. They are not now forthcoming. Defendant says that the title deeds were never given to him and that at the time the deed (D1) was executed in 1895 he asked Lawrenti for the title deeds but was told there were none. He produces however an old Plan which he states Lawrenti handed him. There is no doubt in my mind that the plan in question was with the title deeds and that they were handed to defendant by Lawrenti. It is of course to defendant's interest not to produce the title deeds, among which no doubt the deed No. 8550
30 will be found, for there will be an end then of this case. The fact of the title deeds being missing, and of the duplicate and protocol copy of deed No. 8550 having been abstracted from the files in the Registrar General's office goes to show that it was to the interest of some person to get deed No. 8550 out of the way, and the only persons to whose interest it is that the deed in question should not be forthcoming is the defendant. It is also a curious coincidence that the insolvency proceedings relative to the defendant's insolvency should not be forthcoming.

Lorenzo died in the year 1899 leaving Lawrenti and Madalena surviving him in terms of deed No. 8550 they became entitled to the premises
40 in question and there was nothing to prevent them from disposing of them, as in fact they did; and I hold that by deeds No. 2190 (P6) and No. 1498 (P9) the plaintiff became legally entitled to the premises in question.

I shall now deal with the issue as regards the deed (D1) under which defendant claims title. The defendant would have it believed that the consideration for the deed (D1) was a sum of Rs. 6,000/- which he had lent to Lawrenti from time to time in various sums. I refuse to believe

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—Continued

that defendant would have allowed Lawrenti to borrow sums which aggregated to Rs. 6,000/- without any security whatever. It is absurd to suppose that defendant would not have got the deed executed long before the loans amounted to the sum of Rs. 6,000/- for in 1898 the premises in question were valued by Lorenzo at Rs. 3,500/- or Rs. 4,000/- and in 1895 the value was probably less so that defendant would not have waited till the loans amounted to double the value of the premises in question before getting Lawrenti to transfer the premises to him, that is, assuming that the transaction was a bona fide one—Nor is it at all even remotely probable that the defendant who appears to be particularly sharp man, would have accepted a property, 10 in payment of the Rs. 6,000/- for which there were no title deeds, and without making any inquiries about it although he was aware that two other persons—viz. Lorenzo and Madalena had an interest in it as evidenced by their being parties to the lease executed in his favour three years previously and which was actually substituting at the date of the alleged sale and transfer of the premises to him by the deed (D1). Lawrenti admits the execution by him of the document (D1) but states the circumstances under which it was executed. A statement which if believed, convicts the defendant of having committed a deliberate and clever fraud on the man Lawrenti. I have no hesitation in believing Lawrenti's evidence on the point. He 20 states that defendant had lent him various small sums of money and that when the aggregated Rs. 500/- he gave defendant the promissory note (P5) for Rs. 500/- produced by him, dated 16th December, 1895 and agreed to give defendant a lease of the premises for a term of four years to commence after the expiry of the term then running, at a rental of Rs. 150/- per annum, and that on 21st December, 1895 he went to defendant's office in order to sign the lease—that when he arrived there the defendant produced a lease, such as Lawrenti had agreed to sign, from his table drawer and asked him to read it—that he did so and handed it back to defendant who replaced it in his table drawer. He states that defendant then sent for the notary and 30 on his arrival, produced from his table drawer some papers which he assumed were the documents he had already read and the Notary then asked him (Lawrenti) whether he had read the documents and on his answering in the affirmative, he was asked to sign them and did so, under the belief that he was signing a lease in favour of the defendant and that it was not till long afterwards that he discovered that what he had signed was not a lease but the document (D1) which purports to transfer the premises in question to defendant.

The notary admits that the document (D1) was not prepared by him or by any of his clerks—it was apparently drawn up by the defendant himself, but he states that he read it over to Lawrenti before he signed it. Lawrenti denies this, and it seems to me quite unlikely that the Notary did read it out, for he had known Lawrenti for about thirty years and was consequently quite aware that Lawrenti could read and write English and there would be no reason for his reading out the document to him. The Hon. Mr. Abdul Rahiman who was one of the attesting witnesses to the deed (D1) was called but he did not corroborate the Notary as to his having 40

read out the document to Lawrenti. All he states is that he read over the document to himself and that appears to me to corroborate the evidence of Lawrenti that the Notary did not read out the document for Mr. Abdul Rahiman would not have taken the trouble to read the document himself unless he knew that it was not going to be read out, and it is quite certain that he would not have read the document if the Notary had already read it out in his hearing. Whether the Notary who has since then been dismissed for irregularities committed by him, was acting in collusion with the defendant or was simply careless in not seeing that the attestation clause was correct and has so been compelled to make his evidence fit in with the statement in that clause, that the document was duly read over and explained to the person executing it, I am not prepared to say but that the man Lawrenti was the victim of a deliberate fraud. I entertain not the slightest doubt, and I hold that defendant did not acquire any interest in the premises under the deed No. 5249 dated 21st December, 1895 (D1).

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6D13
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—Continued

The issue as regards prescriptive possession must also be decided against the defendant for he has admitted that he was ejected from the premises on 9th December, 1898 and the present action was instituted in March 1907.

20 As regards damages it was agreed between the parties that they should be calculated at Rs. 30/- per mensem.

Let judgment be entered for plaintiff as prayed, save as to damages which are to be calculated at Rs. 30/- per mensem from 6th December, 1905 until plaintiff is placed in possession of the premises. The defendant will pay the plaintiff's costs.

Sgd. H. A. LOOS,
Ag. D.J.

Delivered in open Court in the presence of Adv. Samarawickrema for Plaintiff and of Mr. P. La Brooy for Proctor for Defendant.

30 Sgd. H. A. LOOS,
Ag. D.J.

6D14.

**Decree of the District Court in D.C. Colombo Case No. 24762.
DECREE**

No. 24762.

MINUWANPITIYAGE WILLIAM PEIRIS of Egoda
Uyana in Moratuwa in the District of Colombo.....*Plaintiff.*

vs.

40 THEOBALD DIAS of No. 29, Glennie Street, in Slave Island,
Colombo.....*Defendant.*

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District
Court
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Colombo
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No. 24762
24-8-1908
—Continued

This action coming on for final disposal before Hermann A. Loos, Esquire, District Judge of Colombo, on the 30th day of July, 1908 in the presence of Messrs. Advocates Weinman and Samarawickrema with Messrs. Silva and Perera, Proctors on the part of the Plaintiff, and of Messrs. Advocates Elliott and Tambyah with Mr. Dewapuraratne, Proctor, on the part of the defendant, it is ordered and decreed that the plaintiff be and he is hereby declared entitled to the following property, to wit :—

All that part of the garden with the buildings and plantations standing thereon situated at Glennie Street, Slave Island within the Municipality of Colombo and bearing assessment No. 29 and bounded on the north by the lake or beira, on the east by the property of Von Possner on the south by the road and on the west by the garden belonging to Van Buren containing in extent 30 and 2/100 square perches.

It is further ordered and decreed that the defendant be ejected therefrom and the plaintiff placed in possession thereof.

It is further ordered and decreed that the defendant do pay to the plaintiff damages at the rate of Rs. 30/- per mensem from the 6th day of December, 1905 till plaintiff is restored to possession of the said premises.

It is further ordered and decreed that the defendant do pay to the plaintiff the costs of this action as taxed by the officer of the Court. 20

Sgd. H. A. LOOS,
District Judge.

The 24th day of August, 1908.

6D15.

6D15
Judgment
of the
Supreme
Court
in D.C.
Colombo
Case
No. 24762
10-9-1909

Judgment of the Supreme Court in D.C. Colombo Case No. 24762.

D.C. (F) No. 306/1908.

EDWARD THE SEVENTH, by the Grace of God of the United Kingdom of Great Britain and Ireland, and the British Dominions beyond the Seas, King, Defender of the Faith.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON 30

M. W. PEIRIS *Plaintiff-Respondent.*
against

T. DIAS *Defendant-Appellant.*

Action No. 24762. District Court of Colombo.

This cause coming on for hearing and determination on the 1 and 2 days of September, 1909, and on this day, upon an appeal preferred by the Defendant before the Hon. Mr. John Page Middleton, and the Hon. Mr. Alexander

Wood Renton, Justices of this Court in the presence of the Counsel for the Exhibits
Appellant and the Respondent. — 6D15

It is considered and adjudged that the Decree made in this action by Judgment
the District Court of Colombo and dated the 24th day of August, 1908, be of the
and the same is hereby set aside and the Plaintiff's action is dismissed. Supreme
Court
in D.C.
Colombo
Case

And it is further ordered and decreed that the plaintiff-respondent do pay to the defendant-appellant his taxed costs of the appeal and one half
of his taxed costs of the action in the Court below. No. 24762
10-9-1909
—Continued

Witness the Hon. Joseph Turner Hutchinson, Kt., Chief Justice at
10 Colombo the tenth day of September in the year of Our Lord One thousand
nine hundred and nine and of Our Reign the ninth.

Sgd. H. W. NELSON,
Registrar.

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

MIDDLETON, J.

The evidence in this case, shows that in 1985 the Lawrenti executed a
deed of conveyance of the land in question for Rs. 6,000/- to the defendant
and subsequently sold the same land to the plaintiff in 1905 by a duly execu-
20 ted notarial conveyance.

The question was which of these two conveyances was to prevail. The
land had been settled in fidei commissum by Lawrenti's grandfather and
during the life of Lawrenti's father the then fidiciarius the defendant had
accepted a lease of it from him and also the conveyance in question from
the fidei commissarius Lawrenti.

The District Judge held that Lawrenti had been fraudulently induced
by the defendant to sign the conveyance to him under the belief it was a
lease only and that defendant did not acquire any interest under the deed.

It was admitted that Lawrenti had discovered that the conveyance
30 was not a lease in 1898, and that he could read and write English, and took
no steps to set aside the conveyance by legal proceedings.

The Notary who attested the document was called and stated that he
did not remember preparing it personally or by his clerks and the attest-
ation clause witnesses to the deed having been read over to Lawrenti
which the Notary affirmed.

Lawrenti's statement is that he was shown a deed of lease by the
defendant which he read and returned to the defendant who put it in a
drawer, and when the notary came substituted the impugned conveyance
which he did not read, and that he signed the deed believing it to be a lease.

40 One of the witnesses the Hon'ble Mr. Abdul Rahiman deposed to read-
ing the document and that the notary did not read it out.

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6D15
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Supreme
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10-9-1909
—Continued

It seem to me that on the facts as proved there is not sufficient evidence, taking into consideration all the points relied on by the learned District Judge as to the sharpness of the defendant the suspicion as regards the disappearance of Lawrenti's father's title deed No. 8550 and the defendant's pleadings in action No. 11739 to warrant a court in holding that Lawrenti is now entitled to repudiate his notarial deed of conveyance duly executed on the ground of fraud and misrepresentation.

We have had cited to us the case of Howatson *vs.* Webb 76 Law Journal Chancery Division, p. 347 and 77 Law Journal Chancery Division (C.A.) p. 32 which is said to exactly cover this case. In that case the court of 10 appeal unanimously upheld the judgment of Warrington J., in which that learned Judge said ' if a man knows that the deed is one purporting to deal with his property, and he executes it, it will not be sufficient for him in order to support a plea of non est factum to shew that a misrepresentation was made to him as to the contents of the deed '.

In that case the maker of the deed was not only a man who could read and write but a Solicitor, and the question was whether he an innocent man who had unwittingly signed a mortgage of a lease under the belief it was a transfer of the lease or an equally innocent assignee of the mortgage so signed, should suffer from the fraud of the person who procured the 20 signature to the mortgage in favour of another innocent person who subsequently assigned it.

Under Roman-Dutch Law (Grotius, 3-1-19. Introduction translated by Herbert, p. 274) no one is bound by any act performed while acting altogether under error or misled by fraud. A contract is also void without consent Vander Linden 1-14-2. Even if the deed in the present case is held to be the deed of Lawrenti yet he would be entitled to have it avoided from fraud if he would prove it. The Roman-Dutch Law authorities however to which I have access, do not appear very clearly to contemplate the distinction between a void and voidable obligation although Grotius, p. 274 30 *ubi supra* excepts the obligation of very young children and madmen as void from an absence of free will.

If the plea of non est factum is to succeed, the deed must be void altogether as not being the deed of the grantor.

The ruling in the English case seems to me to be that the plea of non est factum cannot succeed unless the persons signing be misled as to the nature and character of the deed, if he knew it related to his own property. It is not enough for him to be misled as to the contents of the deed if he is an educated person and might have satisfied by reading it as to what those contents were.

40

In the English case it was held there was a misrepresentation not as to the class of the deed but as to its contents. It purported to be a conveyance but a conveyance by way of mortgage.

In the present case if Lawrenti's story is true the deed was represented as a lease when in fact it was an out and out conveyance of the dominium.

But this Court has held 1 N.L.R., p. 217 that a lease is an alienation of the dominium pro ranto.

If this be so there was no misrepresentation as to the class of the deed, but only of its contents and the case would come within the ruling of Mr. Justice Warrington and the English court of appeal and the deed would not be void.

If this be so the deed of 1895 to the defendant must be held to prevail over the deed given to the plaintiff not only on the facts but on the law if the Roman-Dutch Law enables a similarity of reasoning. Under the circumstances I prefer to decide the case on the facts and the appeal must be allowed and the plaintiff's action be dismissed with costs in this court and in the court below, so far as the claim against the defendant under Lawrenti's deed is concerned, the plaintiff will pay the costs of the appeal and in the court below half the costs of the defendant.

WOOD RENTON, J.

I agree, and I only add a few words because we are differing from the learned District Judge. The execution by Lawrenti of the deed, under which the defendant-appellant claims, was admitted by Lawrenti himself. There was, therefore, apart altogether from the doctrine of *Howatson vs. Webb* (1907) 1 Ch. 537, (1908) 1 Ch. 1 a heavy burden of proof incumbent on the plaintiff-respondent, who bases his title on another deed from Lawrenti, if he impugned Lawrenti's deed to the appellant. I cannot think that that burden has been discharged. I put aside at once the suggestion made by Lawrenti in his evidence, but not raised in the pleadings or the issues, contradicted by the notary and Mr. Abdul Rahiman, an attesting witness, and abandoned by Mr. Samarawickrama at the argument of the appeal, that he was under the influence of intoxication at the time when the deed was executed. Even if the learned Judge, had accepted Lawrenti's statement on that point and he makes no allusion to in his judgment—it would have fallen far short of the kind of evidence that is necessary to establish such a plea. For the purposes of such a case as this, intoxication stands on the same legal footing as lunacy, and although Roman-Dutch Law (*Molyneuz vs. Natal Land and Colonisation Co.* (1905), A.C. 555) differs on some points from English Law (*Imperial Loan Co. vs. Stone* (1892) 1 Q.B. 599, *Molton vs. Camroux* (1846) 2. Ex. Rep. 487, (1849) 4 Ex. Rep. 17, *Matthews vs. Baxter* (1873) L.R. 8 Ex. 132) in regard to that subject it would certainly require some evidence that the intoxication relied upon was of such a character as to destroy contractual capacity.

There are undoubtedly in this case features of suspicion in the conduct of the appellant. They have been pointed out by my brother Middleton. But there is a very strong case on the other side. I need only refer to Lawrenti's admissions that—although as he says he was aware of the fraud that had been practised on him by the appellant in 1898—he took no proceedings to obtain the delivery up and the cancellation of the fraudulent deed, unless his alleged, and, if true, highly suspicious, transaction with Lye can be so described; that he used to sign documents and raise money

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—Continued

Exhibits
—
6D15
Judgment
of the
Supreme
Court
in D.C.
Colombo
Case
No. 24762
10-9-1909
—Continued

on the property in dispute whenever he was 'hard pressed'; and that he made no mention of any of those circumstances to the respondent, at the time of the execution of the conveyance under which he claims. It would be a serious thing for this Colony if deeds, the execution of which is admitted, and proved by perfectly reliable evidence could be set aside, where such points as those that I have just enumerated are to be found in the evidence impugning them.

Sgd. H. W. NELSON,
Registrar.

6D16
Decree of the
Supreme
Court
in D.C.
Colombo
Case
No. 24762
5-9-1910

6D16

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Decree of the Supreme Court in D.C. Colombo Case No. 24762

No. 306 D.C.F.

GEORGE THE FIFTH, by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

M. WILLIAM PEIRIS... .. *Plaintiff-Appellant.*

Action No. 24762 *against*

THEOBALD DIAS *Defendant-Respondent.*

In the matter of the application of the plaintiff abovenamed dated 1st 20 August, 1910 to amend Decree of the Supreme Court dated 10th December, 1909.

This matter coming on for hearing and determination on the 29th day of August, 1910 before the Hon. Sir Joseph Turner Hutchinson, Kt., Chief Justice, and the Hon. Mr. John Page Middleton, Justice of this court, in the presence of counsel for the appellant and respondent, and the Hon. Mr. Alexander Wood-Renton intimating his concurrence therein.

It is considered and adjudged that the Decree made in this action by the Supreme Court and dated the 10th day of September, 1909, be and the same is hereby amended as hereinafter ordered.

30

(1) It is ordered and decreed that for the words set aside and the plaintiff's action is dismissed' used in the said decree, the following words be substituted to wit : ' Varied and the plaintiff is hereby declared entitled to an undivided half share of all that part of the garden with the buildings and plantations standing thereon situated as Glennie Street, Slave Island, within the Municipality of Colombo, and bearing assessment No. 29 and bounded on the north by the lake or beira, on the east by the property of Von

Possner on the south by the road and on the west by the garden belonging to van Buren, containing in extent 30 and 12 100 square perches.

(2) It is ordered and decreed that the defendant do yield to the plaintiff immediate possession of the said half share and that the plaintiff be put placed and quieted in possession thereof.

(3) It is ordered and decreed the defendant do pay to the plaintiff damages at the date of Rs. 15 - per mensem from the 6th day of December, 1905, until plaintiff is restored to possession as aforesaid.

And it is further ordered and decreed that the defendant do pay the plaintiff's taxed costs of this application.

Witness the Hon. Sir Joseph Turner Hutchinson, Kt., Chief Justice, at Colombo the fifth day of September in the year of Our Lord One thousand nine hundred and ten and of Our Reign the first.

Sgd. F. C. LOOS (Jr.),
Acting Registrar.

Exhibits
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6D16
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of the
Supreme
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5-9-1910
—Continued

6D17

Decree of the Supreme Court in D.C.

Colombo Case No. 24762 (Restitutio in Integrum).

No. 306 D.C.F.

20 GEORGE THE FIFTH, by the Grace of God of the United Kingdom of Great Britain, and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith.

6D17
Decree
of the
Supreme
Court
in D.C.
Colombo
Case
No. 24762
(Restitutio
in Integrum)
11-11-1910

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

In the matter of the application for restitutio in integrum under Section 377(b) of the Civil Procedure Code.

Between

THEOBALD DIAS.....*Petitioner.*

Action No. 24762 *against*

M. WILLIAM PEIRIS.....*Respondent.*

30 This matter coming on for hearing and determination on the 7th day of November, 1910 and on this day, before the Hon. Sir Joseph Turner Hutchinson, Kt., Chief Justice, and the Hon. Mr. Alexander Wood-Renton, Justice of this Court, in the presence of Counsel for the petitioner and the respondent.

Exhibits
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Decree
of the
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Court
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(Restitutio
in Integrum)
11-11-1910
—Continued

It is considered and adjudged that this application be and the same is hereby refused.

And it is further ordered and decreed that the petitioner do pay to the respondent his taxed of this application.

Witness the Hon. Sir Joseph Turner Hutchinson, Kt., Chief Justice, at Colombo, the eleventh day of November, in the year of Our Lord One Thousand nine hundred and ten, and of Our Reign the First.

Sgd. Illegible.

Registrar.

The following is the Judgment of the Supreme Court, on the same date 10 pronounced by the Court :—

HUTCHINSON, C.J.

This is a petition by Theobald Dias, the Defendant in the action, for *restitutio in integrum*. The Plaintiff, H. W. Peiris, brought this action for declaration of title to and recovery of possession of certain land. The land had been conveyed by deed dated the 9th November, 1870 to Lorenzo Rodrigo ; the Plaintiff alleged that under the deed it was subject to a fidei commissum in favour of the descendants of Lorenzo, and that Lorenzo died leaving two children only, viz., a son Lawrenti and a daughter Madalena, who thereupon became entitled each to an undivided half of the land and that the 20 Plaintiff bought their interests and obtained transfers from them in 1904 and 1905. The defendant (the Petitioner) denied that Madalena was entitled to any share and said that under the deed of 1870 Lawrenti was entitled to the whole, and that he had bought Lawrenti's interest and obtained a transfer of it in 1895.

At the trial of the action it was proved that the original of the deed of 1870 was lost and that the duplicate and the Notary's copy had also disappeared, but a copy of it had been put in evidence in another case (No. 11739), and was filed as part of the record of that case, and the Court allowed the plaintiff in this action to put in evidence a certified copy of that copy. The Court 30 then held that the plaintiff had proved his title, and that the defendant's transfer from Lawrenti in 1895 was obtained by fraud and was therefore void as against the plaintiff, and Judgment was given for the plaintiff. On appeal this Court held that there was no sufficient evidence to prove that the defendant's deed of 1895 was fraudulent and void, and ordered that the decree of the District Court should be set aside and the plaintiff's action be dismissed ; this was on the 10th of September, 1909.

Then in July, 1910 the plaintiff moved this Court to amend its decree of the 10th September, 1909, and on the 5th September, 1910, the following order was made : That for the words " set aside and the plaintiff's action is 40 dismissed " used in the said decree the following words be substituted, viz., " varied, and the plaintiff is hereby declared entitled to an undivided half share of " the property.

There are no documents in the record to show the grounds on which the plaintiff applied for this amendment, or what took place on the hearing, or what was the reason for the amendment. But I gather from the affidavits filed on the present application that the grounds for the application for the amendment, and therefore probably the reason for the amendment, were that under the deed of 1870 Lawrenti only took one half of the land. The copy of that deed which had been put in evidence, and which was certified by the then Secretary of the District Court, to be a true copy of the copy which was filed in the earlier case, showed that the *habendum* in the deed was to Lawrenti
 10 'and his male and female descendants for ever, upon the conditions and restrictions following'. But the petitioner says that he afterwards discovered, and on production to us of the record in the former case, 11739, we see that it is the fact, that in the copy there the *habendum* is to Lawrenti 'and his male descendants', the words 'and female' having been added by some other hand in pencil. The Secretary of the Court who certified the document which was put in evidence in this case as a true copy is now dead, and there has been no explanation from him as to how he came to make the blunder.

But although the District Court and this Court have acted on an incorrect copy it would not be right for us to grant *restitutio in integrum* unless
 20 we thought that it is likely or at least possible that the construction which would be put on the deed when the Court should have the correct copy before it would be different from that which it adopted when it had only the incorrect copy; and accordingly the question of the true construction of the deed has been argued.

The deed, if we suppose—as we must do—that the copy filed in the former action was a correct copy, is very clumsily worded. It purports to grant the land to Lorenzo Rodrigo 'and his heirs', etc. subject to the following conditions, to hold to him 'and his male descendants', subject to the said conditions, and the conditions are that the land shall not be alienated
 30 but shall be possessed by Lorenzo Rodrigo 'and his male and female descendants under the bond of fidei commissum', and that it shall not be liable to be taken in satisfaction of any debts of Lorenzo Rodrigo 'or of any succeeding male and female heirs or descendants who may thereafter come in possession of the said property' and that 'in the event of the said Lorenzo Rodrigo's male and female descendants become extinct, then the said property hereby given and granted shall revert back to M. Juonis the grantor, and his male descendants under the bond of fidei commissum'. And the grantor covenants for title with Lorenzo Rodrigo 'and his male and female descendants'. I think that it is clear that the deed creates a fidei commissum in favour of
 40 the male and female descendants of Lorenzo Rodrigo. I would therefore refuse the application, with costs.

WOOD-RENTON, J.

It would clearly not be right for us to accede to the application for *restitutio in integrum*, which is now made on behalf of the defendant-appellant, unless there is some reasonable prospect that the District Judge would

Exhibits
 —
 6D17
 Decree
 of the
 Supreme
 Court
 in D.C.
 Colombo
 Case
 No. 24762
 (Restitutio
 in Integrum)
 11-11-1910
 —Continued

Exhibits
 6D17
 Decree
 of the
 Supreme
 Court
 in D.C.
 Colombo
 Case
 No. 24762
 (Restitutio
 in Integrum)
 11-11-1910
 —Continued

have come, and ought to have come, to a different conclusion, from that at which he arrived, if the correct copy of deed No. 8550 had been before him.

I do not think that, even on the terms of the correct copy of that deed itself, the District Judge could hold that Solomon Rodrigo had created a *fidei commissum* in favour of Lorenzo Rodrigo and his male descendants alone. It was admitted by Mr. Bawa that we were entitled to look, not merely to what would in English law be called the habendum clause, but to the deed as a whole, for the purpose of ascertaining the extent of the *fidei commissum* which it created. If that be so, it appears to me that the deed as a whole shows beyond all doubt that it was Solomon Rodrigo's¹⁰ intention to extend the benefits of the *fidei commissum* to the female as well as to the male descendants of Lorenzo. It is true that in what I call the habendum clause we find only the words 'male descendants'. But even the habendum clause expressly states that the property is to be held on the conditions and restrictions contained in the following paragraphs. The second clause prohibits the *fidei commissarii* from alienating the property, and then proceeds to provide that it shall be possessed and enjoyed by the said Lorenzo Rodrigo and his male and female descendants under the bond of *fidei commissum*. This is the express statement that the female descendants of Lorenzo come within the scope of the *fidei commissum*. Clause 3²⁰ contains a provision which, although ineffective for its purpose, throws further light on Solomon Rodrigo's intention—that the income of the property shall not be attachable for the debts of Lorenzo Rodrigo 'or of any succeeding male or female heirs or descendants, who may hereafter come in possession of the said property'. Clause 4 provides that, in the event of Lorenzo's male and female descendants becoming extinct, 'then the said property hereby given and granted' shall revert to one Jeronis Rodrigo and his male descendants. This passage contains an explicit statement that the property is given and granted to the female as well as to the male heirs of Lorenzo Rodrigo. In the same clause, Solomon Rodrigo proceeds to covenant³⁰ with Lorenzo Rodrigo and his male and female descendants against any act on his part in derogation of the rights conveyed by the deed. In my opinion when this instrument is looked at as a whole, it proves beyond all question, that a *fidei commissum* in favour of female as well as of male descendants was being created.

On these grounds, I think that the application for *restitutio in integrum* should be dismissed with costs.

Sgd. Illegibly.
 Registrar.

To all to whom these presents shall come Gangodawilage Emanuel Dabera of Colombo, Licensed Auctioneer.

SENDS GREETING :—

Whereas Theobald Dias of Glennie Street, Slave Island, Colombo was seized and possessed of or otherwise well and sufficiently entitled to the
10 property and premises in the schedule heretofully described.

And whereas by a bond or obligation and mortgage No. 3722 dated the 21st day of January, 1910 and attested by J. J. de Fry of Colombo Notary Public the said Theobald Dias became entitled to Frederick Emmanuel Abeysondere of Galle and of Colombo in the sum of Rupees ten thousand (Rs 10,000/-) lawful money of Ceylon the payment whereof was secured by the primary mortgage of the aforesaid premises.

And whereas the said Frederick Emmanuel Abeysondere caused the said mortgage bond of the 21st day of January, 1910 to be put in suit in action No. 35192^c of the District Court of Colombo against the said Theobald
20 Dias and one Muniwanpitiyage William Peiris.

And whereas by a decree entered in the said Action No. 35192 of the District Court of Colombo on the 16th day of October, 1913 it was decreed that the said Theobald Dias the first defendant in the said action to pay to the said Frederick Emmanuel Abeysondere the plaintiff in the said action the sum of Rupees twelve thousand, six hundred and eighty three and cents seventy six (Rs. 12,683/76) with interest on Rupees ten thousand (Rs. 10,000/-) at the rate of twelve per cent per annum from the 10th day of October, 1912 to the 16th day of October, 1913 and thereafter further interest on the aggregate amount at nine per cent per annum till payment in full and the costs of
30 the said action within one month from the date of the said decree and it was thereby further decreed inter alia that an undivided half part or share of the said property be and the same was thereby declared bound and executable for the said sum of Rupees twelve thousand six hundred and eighty three and cents seventy six (Rs. 12,683/76) with interest as aforesaid from the said date and the cost of the said action.

And whereas by an order of the said court dated the 22nd day of July, 1914 it was thereby further ordered inter alia that the sale of the said mortgaged premises be carried out by the said Gangodawilage Emanuel Dabera, Licensed Auctioneer and that the said Auctioneer be directed to give credit
40 to the said Frederick Emmanuel Abeysondere the said plaintiff in the said action to the extent of the amount of the decree in the event of his becoming the purchaser at such sale and that the said Auctioneer Gangodawilage Emanuel Dabera be directed to execute the necessary Conveyance in favour of the purchaser at such sale.

Exhibits

—
6D2

Deed No. 534

16-10-14

—Continued

And whereas the said Gangodawilage Emanuel Dabera in pursuance of the Order and directions of the said District Court of Colombo and after due advertisement caused an undivided half part or share of the said premises to be put up for sale by Public Auction on the twenty ninth day of August, 1914 subject to the said conditions of sale at which sale Frederick Emmanuel Abeysundere the said plaintiff in the said action bid for the same the sum of Rupees five thousand (Rs. 5,000/-) and being the highest bidder was declared the purchaser thereof as will appear on reference to the conditions of sale No. 109 dated the twenty ninth day of August, One thousand nine hundred and fourteen attested by E. G. Gratiaen of Colombo Notary Public. 10

And whereas the said Frederick Emmanuel Abeysundere was in terms of the said order of Court dated the 22nd day of July, 1914 allowed credit to the full amount of the said purchase price or sum of Rupees five thousand (Rs. 5,000/-).

Now know ye and these presents witness that the said Gangodawilage Emanuel Dabera in pursuance of the said orders of court made in the said action No. 35192^c of the District Court of Colombo and by virtue of the authority granted to him by the said District Court of Colombo and for and in consideration of the said sum of Rupees Five thousand (Rs. 5,000/-) for which amount the said Frederick Emmanuel Abeysundere as plaintiff in the said 20 action was allowed credit as aforesaid doth hereby grant convey assign transfer set over and assure unto the said Frederick Emmanuel Abeysundere his heirs, executors, administrators and assigns one undivided half part or share of and in all that the said property and premises in the schedule hereto fully described together with the buildings and plantations thereon and all and singular the appurtenances rights and easements thereof or thereto in any wise belonging or appurtenanting or used or enjoyed therewith or reputed or known as part and parcel thereof and all the estate right title interest claim and demand whatsoever of the said Theobald Dias and of him the said Gangodawilage Emanuel Dabera as auctioneer as aforesaid 30 in to upon or out of the same.

To have and to hold the said premises hereby conveyed or expressed so to be unto him the said Frederick Emmanuel Abeysundere his heirs, executors, administrators and assigns for ever.

In witness whereof the said Gangodawilage Emanuel Dabera doth set his hand to these presents and to two others of the same tenor and date at Colombo on this sixteenth day of October, one thousand nine hundred and fourteen.

Schedule above referred to.

All that garden with the buildings constructed thereon situated and 40 lying at Glennie Street Slave Island within the Municipality and the District of Colombo Western Province bounded on the north by the lake, on the east by the other part, on the south by the road and on the west by the garden of Mr. Van Buren containing in extent thirty square perches and two one hundredth of a square perches (A.O. Ro. P 30, 2/100) according to the figure and survey thereof bearing date the 11th day of November, 1812, authen-

ticated by G. S. Schneider, Surveyor-General and which said premises are described in the plan bearing No. 22 and dated the 12th August, 1905 and made by V. A. Van Cuylenberg, Licensed Surveyor as follows: An Allotment of land bearing Assessment No. 29 situated in Glennie Street, Slave Island within the Municipality and District of Colombo Western Province and bounded on the north by the Lake, on the east by the property of Mrs. Von Possner bearing Assessment No. 28, on the south by Glennie Street and on the west by the property of Mrs. Von Possner bearing assessment No. 30 containing in extent Thirty six ninety seven one hundredth square perches 10 (Ao. Ro. P 36, 97/100).

Exhibits
 —
 6D2
 Deed No. 534
 16-10-14
 —Continued

Sgd. G. EMANUEL DABERA,
 Sgd. W. E. V. DE ROOY,
Notary Public.

Witnesses

Sgd. W. DENIS DE VOS.
 Sgd. D. A. GUNASEKARA.

I, WILLIAM EDWARD vander SMAGT de ROOY of Colombo in the Island of Ceylon Notary Public do hereby certify and attest that the foregoing instrument having been read over by the within named Gangodawilage Emanuel Dabera in the presence of the subscribing witnesses, Walter Denis de Vos of Wellawatte Colombo and Don Aaron Gunasekera of Bellantara all of whom are known to me the same was signed by the said Gangodawilage Emanuel Dabera and also by the said witnesses in my presence and in the presence of one another all being present at the same time on the 16th day of October, One thousand nine hundred and fourteen at Colombo.

I further certify and attest that in the duplicate in line 24 of page 5 the figure 8 in the group of figures 1812 was written on erasure before the foregoing instrument was read over as aforesaid and that the original of this instrument bears a stamp of the value of Re. 1/- and the duplicate three stamps of the value of Rs. 25/- and that the said stamps were supplied by Messrs. de Vos and Gratiaen.

WHICH I ATTEST.

Sgd. W. E. V. DE ROOY,
Notary Public.

Date of Attestation :
 16th October, 1914.

(S E A L)

Exhibits
—
6D3
Certificate
of Sale
4-5-16

90

6D3

Certificate of Sale

MUNICIPAL COUNCIL OF COLOMBO

Schedule G

Certificate of Sale No. 197

(Section 143)

Whereas William Peries and Theobald Dias of Colombo were rated under ' The Municipal Councils ' Ordinance 1910 ', and become liable to the Municipal Council of Colombo in the sum of Rupees One hundred and ninety-five and cents forty-four (Rs. 195/44), inclusive of costs, and made default in 10 the payment thereof. And whereas warrant of distress was issued in conformity with the said Ordinance, and the property of the said William Peries and Theobald Dias, to wit :

A block of land with the buildings thereon bearing Assessment No. 12/29 Glennie Street, situated in Slave Island within the Municipal Limits of Colombo Western Province, bounded as follows: North by the lake east by the property of Mrs. Von Possner bearing Assessment No. 13/28, south by Glennie Street and west by the property belonging to the Colombo Ice and Cold Storage Company Limited bearing No. 11/30, containing in extent Thirty-five and three-fourths perches (Ao. Ro. P. 35, 3/4) according to Plan No. 396 20 made by J. G. Vandersmagt, Municipal Surveyor, was sold on the 21st December, 1915 and the same was purchased by P. E. de Costa of No. 52 Prince Street for and on behalf of Fred. Abeysundere, M.M.C., Galle, for Rupees Two hundred and fifteen, which sum has been duly paid by the said Fred. Abeysundere.

Now know ye that I, Robert Lewis Waller Byrde, the Chairman of the said Municipal Council by virtue of the power in me vested by the said Ordinance, do hereby certify that such sale and purchase have duly taken place, and that the property above described is and shall henceforward be vested free from all encumbrances in the said Fred. Abeysundere his heirs, 30 executors, administrators and assigns for ever.

Given under my hand at Colombo, this 4th day of May, 1916.

Sgd. R. W. BYRDE,
Chairman, Municipal Council
and Mayor of Colombo.

Witnesses :

1. Sgd. J. A. WALKER.
2. Sgd. LAWRIE C. ALWIS.

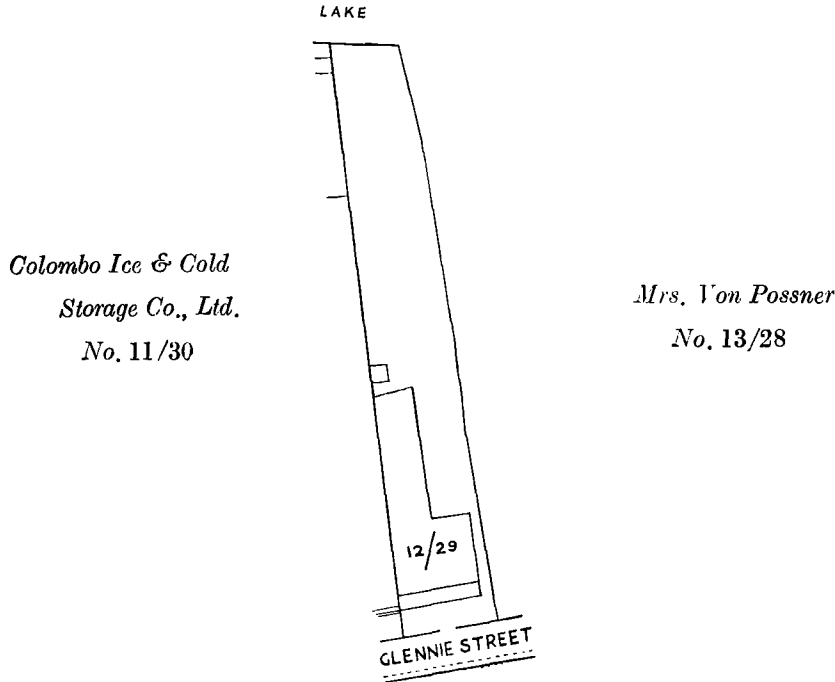
6D4.
Plan No. 396.



"True Copy"

No. 396

6D4.
Plan No. 396
6-7-14



Scale of 1 Chain to an Inch

Plan

— of —

*A block of land with the buildings thereon bearing Assessment No. 12/29
Glennie Street, Situated in the Slave Island Ward
within the Municipal Limits of*

COLOMBO

Western Province

Bounded as follows:—

North by The Lake.

East ,, The property of Mrs. Von Possner bearing Assmt. No. 13/28

South ,, Glennie Street

West ,, The property belonging to the Colombo Ice & Cold Storage Co., Ltd. bearing No. 11/30

Containing in Extent o. o. $35\frac{3}{4}$

Boundaries as shown by Tax Collector.

*Office:— 11, Belmont Street,
Hulftsdorp,*

Colombo 16-8-1954.

*"True Copy"
Sgd. S. JEGATHEESAN,
Licensed Surveyor & Leveller.*

*Surveyed & Plotted by J. G. Vander Smargh
Assessment Surveyor Licensed and Registered
Surveyor & Leveller, C.M.C.
Colombo 6th July, 1914.*

Deed No. 5512

This Indenture made the twelfth day of May, One thousand nine hundred and nineteen Between Frederick Abeysundere of Galle in the Island of Ceylon of the one part and The Ceylon Rubber Mills Company, Limited a Company duly incorporated under the Indian Companies Act, 1913 and having its Registered office in Calcutta (hereinafter referred to as the said Company) of the other part.

Whereas the said Frederick Abeysundere is under and by virtue of a certificate of sale No. 197 dated the fourth day of May, One thousand nine hundred and sixteen under the hand of R. W. Byrde, Esquire, Chairman, Municipal Council and Mayor of Colombo in the said certificate referred to as Fred. Abeysundere seized and possessed of or otherwise well and sufficiently entitled to All that and those the property and premises bearing assessment No. 12/29 situate at Glennie Street, Slave Island within the Municipality and District of Colombo Western Province and in the schedule hereto morefully described.

And whereas the said Frederick Abeysundere has agreed with the said company for the sale to the said Company of the said property and premises at or for the price or sum of Rupees Twenty thousand (Rs. 20,000/-) free from all encumbrances.

Now This Indenture Witnesseth that in pursuance of the said agreement and in consideration of the said sum of Rupees Twenty thousand (Rs. 20,000/-) by the said Company to the said Frederick Abeysundere well and truly paid on or before the execution of these presents (the receipt whereof is hereby acknowledged). We the said Frederick Abeysundere doth hereby grant bargain sell assign transfer convey assure and set over unto the said Company its successors and assigns all that and those the property and premises bearing assessment No. 12/29 situate at Glennie Street, Slave Island within the Municipality and District of Colombo Western Province and in the Schedule hereto morefully described together with all the buildings rights ways easements privileges servitudes and appurtenances whatsoever to the said property and premises belonging or in anywise appertaining or held to belong or be appurtenant thereto or used or enjoyed therewith And All the estate right title interest property claim and demand whatsoever of him the said Frederick Abeysundere of into upon or out of the said property and premises To Have and to hold the said property and premises together with all appurtenances thereto belonging unto and to the use of the said Company its successors and assigns absolutely for ever. And the said Frederick Abeysundere doth hereby for himself his heirs, executors and administrators covenant with the said Company its successors and assigns that he the said Frederick Abeysundere now hath good right full power and authority to grant and convey the said property and premises hereby granted and conveyed or expressed or intended so to be unto and to the use of the said Company its successors

and assigns in manner aforesaid and that the said Company its successors and assigns shall and may at all times hereafter peaceably and quietly possess and enjoy the said property and premises and receive the rents and profits thereof without any interruption or disturbance by him the said Frederick Abeysondere his heirs, executors, administrators and that free from all encumbrances and further that he the said Frederick Abeysondere his heirs, executors and administrators and all persons having or lawfully claiming any estate or interest in the said property and premises from under or in trust for him shall and will always warrant and defend the said property and premises and the title thereof against any person or persons whomsoever and shall and will at the request and cost of the said Company its successors or assigns do and execute or cause to be done and executed all such acts deeds and things for further and more perfectly assuring the said property and premises unto and to the use of the said Company its successors and assigns as shall or may be reasonably required.

Exhibits
6D5
Deed
No. 5512
12-5-19
—Continued

Schedule above referred to.

A block of land with the buildings thereon bearing assessment No. 12/29 situate at Glennie Street within the Municipality and District of Colombo Western Province bound on the north by the Lake, east by the property of Mrs. Von Possner bearing assessment No. 13/28, south by Glennie Street and west by the property belonging to the Colombo Ice and Cold Storage Company Limited bearing No. 11/30 containing in extent Thirty five perches and three-fourth of a perch (Ao. Ro. P. 35, 3/4) according to the Plan No. 396 made by J. G. Vandersmagt, Municipal Surveyor Registered A. 99/266 in the Colombo District Land Registry Office.

In Witness Whereof the said Frederick Abeysondere hath hereunto and to two others of the same tenor and date as these presents set his hand at Colombo this twelfth day of May, One thousand nine hundred and nineteen.

30 Witnesses

Sgd. FRED. ABEYSUNDERE.

Sgd. Illegible.

Sgd. B. S. PERERA.

Sgd. V. A. JULIUS,
Notary Public.

I, Villiers Alexander Julius of Colombo in the Island of Ceylon Notary Public do hereby certify and attest that the foregoing instrument having been duly read over by the therein named Frederick Abeysondere (who has signed this instrument as 'Fred Abeysondere') the same and two others of the same tenor and date were signed by the said Frederick Abeysondere and by Archibald Richard Nelson and Benjamin Leobold Pereira both of Colombo aforesaid the subscribing witnesses thereto (and all of whom are known to me) in my presence and in the presence of one another all being present at the same time at Colombo aforesaid this twelfth day of May, One thousand

Exhibits
—
6D5
Deed
No. 5512
12-5-19.
—Continued

nine hundred and nineteen. And I do further certify and attest that the consideration Rupees Twenty thousand was paid in my presence by a cheque and that two stamps of the value of Rupees two hundred are affixed to the duplicate of this instrument and one stamp of the value of One rupee to the original thereof which stamps were supplied by me.

Which I Attest.

Sgd. V. A. JULIUS,
Notary Public.

Dated, 12th May, 1919.

6D6
Deed
No. 703
3-11-21

6D6

10

Deed No. 703

Prior Registration
Colombo A 133/49
Registered A 133/49
Colombo, 4 November, 1921.

Sgd. Illegible.

No. 703

Registrar.

To all to whom these presents shall come, George Harold Montgomery, Liquidator of The Ceylon Rubber Mills Company Limited, a Company duly incorporated under the Indian Companies Act 1913 and having its registered office in Calcutta (hereinafter referred to as 'the said company').

SEND GREETING :

Whereas the said Company is under and by virtue of Deed No. 5512 dated 12th May 1919 and attested by V. A. Julius of Colombo Notary Public seized and possessed of or otherwise well and sufficiently entitled to All that allotment of land with the buildings thereon bearing assessment No. 12/29 situate at Glennie Street within the Municipality and District of Colombo Western Province and hereinafter more particularly described.

And whereas at an Extraordinary General Meeting of the members of the said Company held on the 25th day of October, 1920 at 4, Fairlie Race, Calcutta, India it was resolved by a special resolution duly passed and confirmed that the said Company should be wound up voluntarily and the said George Harold Montgomery be appointed the Liquidator of the said Company for the purpose of such winding up.

And whereas the said George Harold Montgomery as such Liquidator as aforesaid and on behalf of the said Company has agreed with Anthony Zarephe of 'Kinfland Lodge' Colpetty, Colombo (hereinafter called the

purchaser) for the absolute sale and conveyance to him of the said premises free from all encumbrances at or for the price or sum of Twenty thousand Rupees (Rs. 20,000/-).

Exhibits

—
6D6

Deed

No. 703

3-11-21

—Continued

Now Know ye and these presents Witness that the said George Harold Montgomery as such Liquidator as aforesaid by virtue of all and every the powers vested in him as aforesaid and in pursuance of the said agreement and for and in consideration of the premises and the said sum of Twenty thousand Rupees (Rs. 20,000/-) of lawful money of Ceylon well and truly paid to him by the said Purchaser (the receipt whereof the said Liquidator doth hereby expressly admit and acknowledge) doth hereby grant convey assign transfer set over and assure unto the said Purchaser his heirs, executors, administrators and assigns free from all encumbrances. All that allotment of land with the buildings thereon bearing assessment No. 12/29 situate at Glennie Street, Slave Island within the Municipality and District of Colombo Western Province, Bounded on the north by the Lake, east by the property of Mrs. Von Posner bearing assessment No. 13/28, south by Glennie Street and west by the property belonging to the Colombo Ice and Cold Storage Company Limited bearing No. 11/30 containing in extent Thirty five perches and three fourths of a perch (oA. oR. 35, 3/4 P) according to the Plan No. 396 made by J. G. Vandersmagt Municipal Surveyor together with all the buildings rights ways easements privileges servitudes and appurtenances whatsoever to the said premises and property belonging or in anywise appertaining or held to belong or be appurtenant thereto or used or enjoyed therewith and all the estate right title interest property claim and demand whatsoever which the said Company and the said George Harold Montgomery as Liquidator as aforesaid now have in and to the said premises and every part thereof.

To Have and to hold the said premises hereby sold and conveyed or intended so to be and every part thereof and the appurtenances thereto belonging unto the said Purchaser his heirs, executors, administrators and assigns for ever.

And the said George Harold Montgomery as Liquidator as aforesaid doth hereby covenant with the said Purchaser and his aforewritten that he has not at any time heretofore made done or committed or knowingly or willingly permitted or suffered or been party or privy to any act deeds matter or things whatsoever whereby the said premises or any part thereof are is can or may be encumbered or prejudicially affected in title charge estate or otherwise howsoever.

In Witness Whereof the said George Harold Montgomery as Liquidator as aforesaid doth hereunto and to two others of the same tenor and date as these Presents set his hand at Colombo this third day of November, one thousand nine hundred and twenty one.

Sgd. G. H. MONTGOMERY,
Liquidator.

Exhibits

Witnesses

—
6D6
Deed
No. 703
3-11-21
—Continued

Sgd. C. J. HUDSON.

Sgd. P. A. DE SILVA.

Sgd. LESLIE MACK,
Notary Public.

I, Leslie Mack of Colombo, Notary Public, do hereby certify and attest that the foregoing deed having been read over by George Harold Montgomery therein named in the presence of Charles James Hudson residing at Rodling Street, Colombo and Pettigama Aladin de Silva residing at No. 10, Fifth Cross Street, Colombo the subscribing witnesses thereto all of whom 10 are known to me the same was signed by the said George Harold Montgomery and also by the said witnesses in my presence and in the presence of one another all being present at the same time at Colombo this third day of November, One thousand nine hundred and twenty one.

I further certify and attest that in the Duplicate of the said deed page 1 line 14 the word ' at ' was interpolated before the said deed was read over as aforesaid.

I also certify and attest that out of the consideration of the said deed to wit the sum of Twenty thousand rupees (Rs. 20,000/-) a sum of nineteen thousand seven hundred and eleven rupees and sixty seven cents (Rs. 19,711/67) 20 was paid by a cheque dated this day and drawn on the Imperial Bank of India Limited, Colombo by Messrs P. D. A. Mack and Sons, in favour of George Harold Montgomery therein named and the balance sum of Two hundred and eighty eight rupees and thirty three cents (Rs. 288/33) was retained for taxes and repairs.

I lastly certify and attest that the original of the said deed bears a stamp of the value of one rupee and the duplicate thereof eight stamps of the value of three hundred and nineteen rupees (Rs. 319/-) which stamps were supplied by me.

Date of Attestation :

3rd November, 1921.

30

Sgd. LESLIE MACK,
Notary Public.

Deed No. 397.

Exhibits
—
6D7
Deed
No. 397
26-3-26

Colombo A 133/49, 126/45.

THIS INDENTURE made the Twenty sixth day of March One thousand nine hundred and twenty six Between Anthony Zaraphe of The Grand Oriental Hotel Colombo in the Island of Ceylon of the one part and The Colombo Apothecaries' Company Limited a Company duly registered under the Ceylon Joint Stock Companies Ordinances and having its Registered office in Colombo aforesaid (hereinafter referred to as the said Company which
10 term shall where the context so requires or admits mean and include the said The Colombo Apothecaries' Company Limited its successors and assigns) of the other part.

Whereas the said Anthony Zaraphe is seised and possessed of or otherwise well and sufficiently entitled to all those allotments of land with the Buildings thereon bearing Assessment Nos. 12/29 and 11/30 Glennie Street within the Municipality and District of Colombo Western Province and in the Schedule hereto firstly and secondly respectively morefully described (hereinafter referred to as the said properties and premises).

AND whereas the said Anthony Zaraphe has agreed with the said
20 Company for the sale to the said Company of the said properties and premises at or for the price or sum of Rupees Eighty five thousand (Rs. 85,000/-) free of all encumbrances.

Now This Indenture Witnesseth that in pursuance of the said agreement and in consideration of the said sum of Rupees Eighty five thousand (Rs. 85,000/-) by the said Company to the said Anthony Zaraphe well and truly paid at or before the execution of these presents (the receipt whereof is hereby acknowledged) We the said Anthony Zaraphe doth hereby grant bargain sell assign transfer convey assure and set over unto the said Company All those
30 the said properties and premises in the schedule hereto morefully described Together with all buildings and plantations thereon and all rights ways easements servitudes and appurtenances whatsoever to the said properties and premises belonging or in anywise appertaining or held to belong or be appurtenant thereto or used or enjoyed therewith And All the estate right title interest property claim and demand whatsoever of him the said Anthony Zaraphe of into upon or out of the said properties and premises To Have and To Hold the said properties and premises unto and to the use of the said Company absolutely for ever And the said Anthony Zaraphe doth hereby for himself his heirs executors and administrators covenant with the said Company that he the said Anthony Zaraphe hath not at any time done
40 or knowingly suffered or been party or privy to any act deed matter or thing whereby the said properties and premises or either of them or any part thereof are is can or may be encumbered or prejudicially affected in title charge estate or otherwise howsoever And that he now hath good right full power and autho-

Exhibits
—
6D7
Dead
No. 397
26-3-26
--Continued

rity to grant bargain sell assign convey assure and set over the said properties and premises hereby granted and conveyed or expressed or intended so to be unto and to the use of the said Company in manner aforesaid And that the said Company shall and may at all times hereafter peaceably and quietly possess and enjoy the said properties and premises without any interruption or disturbance by him the said Anthony Zaraphe his heirs executors and administrators And that free of all encumbrances And further that he the said Anthony Zaraphe his heirs executors and administrators and all persons having or lawfully claiming any estate or interest in the said properties and premises from under or in trust for him shall and will always warrant 10 and defend the said properties and premises and the title thereof against any person or persons whomsoever and shall and will at the request and cost of the said Company do and execute or cause to be done and executed all such acts deeds and things as shall or may be reasonably required for further and more perfectly assuring the said properties and premises unto and to the use of the said Company.

The Schedule referred to.

First—All that allotment of land with the buildings thereon bearing assessment No. 12/29 situate at Glennie Street in Slave Island within the Municipality and District of Colombo Western Province bounded on the 20 north by the Lake east by the property of Mr. Von Possner bearing assessment No. 13/28 south by Glennie Street and west by the property belonging to The Colombo Ice and Cold Storage Company Limited bearing No. 11/30 containing in extent thirty five perches and three-fourths of a perch according to the Plan No. 396 made by J. G. Vandersmagt Municipal Surveyor Registered A 133/29 in the Colombo District Land Registry Office.

Second—All that part of a garden with the buildings standing thereon bearing assessment No. 11/30 situated and lying in Glennie Street aforesaid bounded on the north by the Lake on the east by the garden of Anna Maria on the south by the new road (now known as Glennie Street) and on the 30 west by the garden of Mr. G. Gursu containing in extent twenty eight and forty four one hundredth square perches (0. 0. 28, 44/100) according to the figure of survey bearing date the 21st January, 1826 duly authenticated by G. Schneider Land Surveyor-General but according to a survey and Description thereof No. 638 bearing date the eighth day of February, 1901 made by Juan de Silva Licensed Surveyor containing in extent thirty five and a half perches Registered A 126/45 in the Colombo District Land Registry Office.

In Witness Whereof the said Anthony Zaraphe hath hereunto and to two others of the same tenor and date as these presents set his hand at 40 Colombo this twenty sixth day of March, One thousand nine hundred and twenty six.

Sgd. A. ZARAPHE.

Witnesses:

1. LESLIE MACK.
2. CHAS. H. PEIRIS.

Sgd. O. P. MOUNT,
Notary Public.

Exhibits
—
6D7
Deed
No. 397
26-3-26
—Continued

I, Oscar Perez Mount in the Island of Ceylon Notary Public do hereby certify and attest that the foregoing instrument having been duly read over by the therein named Anthony Zaraphe the same and two others of the same tenor and date were signed by the said Anthony Zaraphe and by Leslie Mack and Charles Henry Peiris both of Colombo aforesaid the subscribing witnesses thereto and all of whom are known to me in my presence and in the presence of one another all being present at the same time at Colombo aforesaid this Twenty sixth day of March, One thousand nine hundred and twenty six.

And I do further certify and attest that in the original page 2 line 38 the word 'from' was deleted and the word 'of' written above it line 42 the words 'from under or in, trust for, him shall and will always warrant and defend the said properties and premises' were interpolated and in page 3 line 33 the word 'February' was written on erasure and in the duplicate page 1, line 7 the word 'ordinances' was written over erasure before the same was read over as aforesaid, that the consideration was paid in my presence and that seven stamps of the value of rupees one thousand three hundred and sixty are affixed to the duplicate of this instrument and one stamp of the value of one rupee to the original thereof which stamps were supplied by me.

Which I attest,

Sgd. O. P. MOUNT,
Notary Public.

Dated 26th March, 1926.

Certificate of Death

P₂
Certificate
of Death
29-10-39

Western Province, Colombo District, No. 5, New Bazaar, Division.

1. Date and Place of Death : 29th October, 1939. 19, Van Rooyen Street, St. Paul's Ward North.
2. Name in full : Manisge Lawrence Rodrigo.
3. Sex and Race : Male, Singhalese.
4. Age : Eighty-three years.
5. Rank or Profession : Government Pensioner.
6. Name of Parents ; F. Manisge Solomon Rodrigo, M. Saipala Celestina.

Exhibits

— Pz
Certificate
of Death
29-10-39
—Continued

7. Cause of Death and Place of Burial or Cremation { Semile Debility and Diabetes, Inspected by Act. Dy. Medical Registrar.
8. Name and Residence of Informant, and in what capacity he gives information { David Clement Perera 415/3, Blomendahl Road, Grand son-in-law present at death.
9. Informant's Signature : Sgd. D. C. Perera.
10. When registered : 29th October, 1939. 10
11. Signature of Registrar : Sgd. D. P. Kitulgoda.

I do hereby certify that the foregoing is a true copy of a Death Registration entry filed of record in this office.

Sgd.

Asst. Registrar-General.

Registrar-General's office.
Colombo, 2nd September, 1950.

6D8.

Extracts of Encumbrances.

Application No. R 264

Division A Volume 10
Folio 97

Name of Land : A part of a garden with all the buildings thereon
 Village or Town and Street : Slave Island within the gravets
 Boundaries : North by the lake
 East by the other part
 South by the road
 West by the garden of Mr. van Buren
 District : Colombo Province : Western Extent : 30 2/100 sq. perches

Date of Registry (Day Book No. and Date)	Grantors (Names in full and residence)	Grantees (Names in full and residence)	Nature and Particulars of Alienations and Incumbrances	No. and Date of Deed	Name of Notary, Judge, etc.	Regn. Stamp Duty	Signature of Registrar	Remarks
1868 September 29	Solomon Rodrigo	John William Schokman	Mortgage Bond for £ 100 and interest at 12 per cent	No. 837 19 Sept., 1868	H. G. Kelaart	8s.	B. Edwin Alwis	

Carried over to A33 Folio 151

Exhibits
—
6D8
Extracts of
Encumbrances
27-1-50

Exhibits
—
6D8
Extracts of
Encumbrances
27-1-50
— Continued

Division A Volume 33
Folio 151

Volume Folio
A 10 97
Brought forward from

Name of Land : All that part of a garden with the buildings standing thereon. Boundaries : North by the lake
Village or Town and Street : Slave Island Gravets
East by the other part
South by the road
West by the garden of Mr. van Buren

District : Colombo Province : Western Extent : 30 2/100 sq. perches

Date of Registry (Day Book No. and Date)	Grantors (Names in full and residence)	Grantees (Names in full and residence)	Nature and Particulars of Alienations and Incumbrances	No. and Date of Deed	Name of Notary, Judge, etc.	Regn. Stamp Duty	Signature of Registrar	Remarks
1885 March 10th	The Fiscal of the Western Province	Lydia Katherine Curgenvin	Assignment of the Lease No. 15 dated 24th December, 1881 W. G. F. W. Seneviratna Notary for the residue and unexpired term thereof. (Consideration Rs. 99)	No. 2315 27th February, 1885	Lionel Lee Fiscal	Rs. 1	B. Edwin Alwis	

Certified.
Sgd. M. A. FERNANDO,
Addl. Registrar of Lands.
Colombo, 27th January, 1950.

6D9.

Extracts of Encumbrances.

Application No. R 264

Division A Volume 30

Folio 39

Name of Land: All that part of the garden with the buildings constructed thereon. Boundaries: North by the lake East by the other part South by the road West by the garden of Mr. van Buren

Village or Town and Street : Slave Island Gravets
 Province : Western
 District : Colombo
 Extent : 30 2/100 sq. perches

Date of Registry (Day Book No. and Date)	Grantors (Names in full and residence)	Grantees (Names in full and residence)	Nature and Particulars of Alienations and Incumbrances	No. and Date of Deed	Name of Notary, Judge, etc.	Regn. Stamp Duty	Signature of Registrar	Remarks
1882, 26th October	Manisge Lorensoe Rudrigo Appuhami and son and daughter M. L. Rudrigo Appuhamy and M. Madelu Rudrigo Hamine	Tantrimudalige Dona Menika Hamine wife of Don Bastian Weerasinghe	Lease term for ten years commencing from 1st January, 1882. Rent Rs. 500/- for the full term	No. 15 24th Decem-ber, 1881	W. G. F. W. Seneviratne	Rs. 2/-	B. Edwin Alwis	
1884, October 24th	Tantrimudalige Dona Menika Hamine	Don Silvestri Weerasinghe Appuhamy	Lease term 7 years commencing from the date of the Deed Rent Rs. 50 per annum	No. 5261 13th October 1884	Don Fredrick	Rs. 2/-	B. Edwin Alwis	
1887 10th June	Don Silvestri Weerasinghe	Benedict de Soyza	Assignment of the unexpired term of the above Lease No. 5261 13th October, 1884 (Consideration Rs. 200/-)	No. 681 16th May, 1887	W. G. F. W. Seneviratne Notary	Rs. 2/-	B. Edwin Alwis	

Exhibits
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 6D9
 Extracts of
 Encum-
 brances
 27-1-50

6D9

Application No. R 264

Division A Volume 30

Folio 39

Name of Land : All that part of the garden with the buildings constructed thereon. Boundaries: North by the lake East by the other part South by the road West by the garden of Mr. van Buren

Village or Town and Street : Slave Island Gravets

Date of Registry (Day and Date)	District : Colombo	Province : Western	Name of Land	Boundaries	Extent :	Remarks
Book No. and Date)	Grantors (Names in full and residence)	Nature and Particulars of Alienations and Incumbrances	No. and Date of Deed	Name of Notary, Judge, etc.	Regn. Stamp Duty	Signature of Registrar
1889 October 2nd	Benedict de Soya	Assignment of the unexpired term of the lease No. 5261 of 13-10-1884. Don Frederick, Notary	September 26th 1889	W. G. F. W. Seneviratna, Notary	Rs. 2/-	W. A. de Saram
1892 22nd March	Manisge Lorensu Rudrigo, Do. Madalena Rudrigo Do. Lawarenti Rudrigo and Kuruppumullage Don Siman Appuhami	Lease of the above Land term 5 years from 1st February, 1892 Rent at Rs. 100/- per year	No. 1403 23rd January, 1892	W. G. F. W. Seneviratna, Notary	Rs. 3/-	R. G. Anthornisz

Carried over A43 375

Division A
Folio 375

Volume 43
Brought forward from :

Volume A 30
Folio 39

Name of Land : All that part of a garden with the buildings thereon
Village or Town and Street : Glennie Street, Slave Island, Gravets

Boundaries :

North by the lake
East by the other part now belonging to Mr. von
Possner

South by the road

West by the garden of Mr. van Buren

Extent : 30 2/100 sq. perches

District : Colombo Province : Western

Date of Registry (Day Book No. and Date)	Grantors (Names in full and residence)	Grantees (Names in full and residence)	Nature and Particulars of Alienations and Incumbrances	No. and Date of Deed	Name of Notary, Judge, etc.	Regn. Stamp Duty	Signature of Registrar	Remarks
1893 March 15th	Manisge Law- renti Rodrigo	Theobald Dias	Lease of the above for a term of one year commencing from 1st February, 1897—Rent Rs. 100/- for the whole term	No. 1581 10th February, 1893	W. G. F. W. Seneviratne	Rs. 1/-	R. G. Anthoniz	
1895 December 31, No. 12050	Manisge Law- rence Rodrigo of Slave Island	Theobald Dias of Slave Island	Conveyance of the above. Cons. Rs. 6,000	No. 5249 December 21, 1895	D. J. Kulatinga, N.P.	Rs. 10/-	A. Abeywickrema	
1896 29th February No. 2925	Theobald Dias of Slave Island	Wettesinghe Appuhamillage Charles Peiris of Pamankadde	Mortgage of the above for Rs. 4,000/- with interest at 10% p.a.	No. 1329 28th February, 1896	Arthur W. Alwis, N.P.	Rs. 7/50	A. Abeywickrema	
1898 24th May No. 4810	W. Charles Peiris	Seymour Dias of Galkissa	Assignment of the right title and interest of the grantor in and to the Judgment in D.C. Case No. 9508 for Rs. 4,380 with interest and costs of suit. Cons. Rs. 4,000/-	No. 139 9th May, 1898	F. A. Prins, Jr., N.P.	Rs. 7/50	N. W. Mor-gappah	

For subsequent transactions see A 57/83.

Exhibits
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6D9
Extracts of
Encum-
brances
27-1-50
—Continued

Division A Folio 83	Volume 57 Brought forward from	Volume	Folio	Boundaries :			
Name of Land : Village or Town and Street :	Glennie Street, Slave Island, Gravets			North Lake East Property of von Possner South Road West Garden of Mr. van Buren now belonging to J. P. Sinnotchi			
Pattu District :	Colombo	Korale Province : Western		Extent : 30 2/100 sq. perches.			
Date of Registry (Day Book No. and Date)	Grantors (Names in full and residence)	Grantees (Names in full and residence)	Nature and Parti- culars of Alien- ations and Incumbrances	Name of Notary, Judge, etc.	Regn. Stamp Duty	Signature of Registrar	Remarks
1898 6th Septem- ber No. 8790	Theobald Dias of Colombo	Welhelmina Dias, wife of Seymour Dias of Colombo	Mortgage of the above for Rs. 12,200/- with interest at 8% p.a. payable monthly	F. A. Prins N.P.	Rs. 20/-	N. W. Mor- gappah	(1) For previous trans- action see A 43/375 (2) Name of Land : Portion of garden with buildings. (3) Together with an assignment by way of secondary mort- gage (subject to the prior mortgage dated 1st May, 1897 for Rs.1,800/- of two policies of assurance No. 28433 dated 7th August, 1895 for Rs.3,000/- and No. 30020 dated 29th January, 1896 for Rs. 5,000/-).
1899 27th January No. 1082	Manisse Madelena Rodrigo, Kurup- pumullage Don Siman Appu- hamy of Pana- dura and Man- isse Lawrenti Rodrigo of Slave Island	Arpen Ahamat of Slave Island	Lease of the above for a term of 7 years from 1st February, 1899 Rent Rs. 840/- for the whole term	C. Pieris, N.P.	Rs. 4/-	D. S. Jaya- tilleke	Name of Land : Assignment No. 29

Division A

Volume 60

Volume A 57

Folio 83

Folio 223

Brought forward from

Boundaries :

Name of Land :

North : Lake

East : Property of von Possner

South : Road

West : Garden of Mr. van Buren now belonging to J. P. Sinnotchi

Village or Town and Street : Glennie Street in Slave Island

Pattu : Gravets

Korale : Western

District : Colombo

Extent : 3 2/100 sq. perches.

Date of Registry (Day and Date)	Grantors (Names in full and residence)	Grantees (Names in full and residence)	Nature and Particulars of Alienations and Incumbrances	No. and Date of Deed	Name of Notary, Judge, etc.	Regn. Stamp Duty	Signature of Registrar	Remarks
3162 20th March 1899	Manisse Madalena Rodrigo and Kuruppumullage Don Siman of Kuruppumulla	Mahatelge Andrew Peris of Kuruppumulla	Conveyance of an undivided one half of the above and the buildings thereon subject to the lease No. 2301 25th Jan. 1899 Cons. Rs. 2,000/-	No. 7936 4th March 1899	P. Siman Dias, N.P.	Rs. 5 (Sgd.)	D. S. Jayatileke	(1) Name of land : Portion of Garden (2) Asst. No. 29
1899 13th April 3884	Arpen Ahamat of Jawa Lane	Chaina Voona Chana Thana Chidambaram Chetty and Chaina Voona Kuna Velayuthan Chetty both of Sea Street	Mortgage of the right title and interest of the grantor in and to the Lease No. 2301 of 25-1-1899 attested by C. Peiris, N.P. and the sum of Rs. 480/- paid in advance to secure the sum of Rs. 400 and interest at 45% per annum	No. 13065 29th March 1899	Paulus Perera, N.P.	Rs. 3	—do—	Extent 30 2/100 sq. perches as per this Deed
1899 10th August No. 8922	Manisse Lawrence Rodrigo of Church Street	Tuan Kitchill Lye of Glennie Street	Transfer of the grantors' estate, right, title, interest, claim, etc. in and to the above property : Cons. Rs. 100/-	No. 5742 12-7-99	D. J. M. Wickramasinghe	Re. 1	—do—	Name of land :—Garden with the buildings bearing Asst. No. 29. 30 2/100 sq. perches

Exhibits
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6D9
Extracts of Encumbrances
27-1-50
—Continued

Division Volume Folio
Brought forward from Boundaries:
Name of Land :
Village or Town and Street :

District : Colombo Province : Western Extent :

Date of Registry (Day and Date)	Grantors (Names in full and residence)	Grantees (Names in full and residence)	Nature and Particulars of Alienations and Incumbrances	No. and Date of Deed	Name of Notary, Judge, etc.	Regn. Stamp Duty	Signature of Registrar	Remarks
1900 21st June No. 6788	Mahatelge Andrew Peiris of Digarolle	Kuruppumullage Don Siman of Kuruppumulla	Transfer of an undivided half of the above and of the buildings thereon. Cons. Rs. 2,000/-	No. 10432 June 1900	M.P. Rana-singhe, N.P.	Rs. 5/-	D. S. Jayatilake	
1900 21st June No. 6789	K. Don Simon	Saith Peer Saith Careem of Wolfendal	Mortgage of an undivided half of the above and of the buildings for Rs. 750/- with interest at Rs. 20/- p.m. for the whole amount payable monthly	No. 10433 June 1900	—do—	Rs. 4/-	D. S. Jayatilake	

Carried over to Volume A 69 Folio 152

Division A

Volume 69

Folio 152

Name of Land : Asst. No. 29
Village or Town and Street : Glennie Street in Slave Island Gravets

Brought forward from A 60

Folio 233

Boundaries :
North Lake
East Other part now of Mr. von Possner
South Road
West Garden of Mr. von Possner

Pattu

District : Colombo

Korale
Province : Western

Extent : 30 2/100 sq. perches

Date of Registry (Day and Date)	Grantors (Names in full and residence)	Grantees (Names in full and residence)	Nature and Particulars of Alienations and Incumbrances	No. and Date of Deed	Name of Notary, Judge, etc.	Regn. Stamp Duty	Signature of Registrar	Remarks
1901 18th February No. 2075	Assen Ahamat of Slave Island	Seena Kana Rawanna Mana Rawanna Mana Vellappa Chetty of Sea Street	Mortgage of the grantors right title and interest in and to the lease No. 2301 of 25th January, 1899 by Charles Pieris, N.P. and the sum of Rs. 480 thereby deposited as advance for Rs. 400/- with interest at 4 1/2% per annum	No. 6502 5-1-1901	D. G. M. Wickremasinha, N.P.	Rs. 3/-	D. S. Jayatilaka	
No. 2905 6th March, 1901	Chaina Voona Chana Thana Chidambaram Chetty of Sea Street	Arpen Ahamat of Jawa Lane	Discharge of the Mortgage Bond No. 13065 of 29-3-1899 S. M. Paules Perera, N.P.	Discharged 4-12-1900		Rs. 1/-	D. S. Jayatilaka	
2nd May, 1902 DB 5182	Seymour Dias and Dona Wilhelmina Dias	Edward Simon Perera	Mortgage of the Mortgage Bond No. 166 of 26-8-1898 F. A. Prins, N.P. to secure the sum of Rs. 3,000 with interest at 12% p.a.	No. 3998 25-4-1902	Charles Peiris, N.P.		D. S. Jayatilaka	With land in M 102/16
1904 2nd February No. 1523	Kuruppumullage Don Simon Appuhamy of Kuruppumulla	Minuwandipityage William Peiris of Egoda Uyana in Moratuwa	Transfer of an undivided one half of the above and of the buildings thereon. Cons. Rs. 3,000	No. 1498 19-1-1904	G. M. Silva, N.P.	Rs. 7/50	D. S. Jayatilaka	

Exhibits
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 6D9
 Extracts of
 Encum-
 brances
 27-1-50
 —Continued

Division Volume Volume Folio

Folio Brought forward from: Boundaries:

Name of Land :
 Village or Town and Street :

District : Colombo

Province : Western

Extent :

Date of Registry (Day and Date)	Grantors (Names in full and residence)	Grantees (Names in full and residence)	Nature and Particulars of Alienations and Incumbrances	No. and Date of Deed	Name of Notary, Judge, etc.	Regn. Stamp Duty	Signature of Registrar	Remarks
1904 6th October, No. 12821	E. S. Perera	Seymour Dias and D. W. Dias	Discharge of the Mortgage Bond No. 3098 dated 25-4-1902 Charles Peiris, N.P.	Discharge dated 30-9-1904			D. S. Jayatileke	With the land in M 102/16

Volume Folio

Carried over to A 85 277

Division A

Volume 85

Volume Folio
A 69 152

Folio 277

Name of Land : Asst. No. 29 Brought forward from
Village or Town and Street : Glennie Street, Slave Island

Boundaries :
North : Lake
East : Other part now of Mr. von Possner
South : Road
West : Garden of Mr. van Buren

Pattu : District : Colombo		Korale : Province : Western		Extent : 30 2/100 sq. perches		Signature of Registrar	Remarks
Date of Registry (Day and Date)	Grantors (Names in full and residence)	Grantees (Names in full and residence)	Nature and Parti- culars of Alien- ations and Incumbrances	No. and Date of Deed	Name of Notary, Judge, etc.		
No. 16849 21st December 1905	Manisge Lawaren- ti Rodrigo of Kotahena	Minuwantipiage William Peiris of Egoda Uyana	Transfer of an undiv- ided one half share of the above and of the buildings standing thereon. Cons. Rs. 3,500/-	No. 2190 6th December 1905	G. M. Silva, N.P.	Rs. 7/50	Jno. Dharm- akirti
1906 22nd June No. 7999	Theobald Dias of Slave Island	Seena Kana Muna Suppera- maniam Pillai of Sea Street	Mortgage of the above with the buildings standing thereon for Rs. 1,000/- and inter- est at 18% per annum payable monthly	No. 1757 2nd June 1906	F. A. Prins, Jr., N.P.	Rs. 4/-	Jno. Dharm- akirti
No. 1662 1st Febru- ary 1908	Welhelmina Dias, wife of Sey- mour Dias of Colombo	Theobald Dias of Colombo	Discharge of the Mort- gage Bond No. 166 of 26-8-1898 attested by F. A. Prins, N.P.	Discharge dated 10-6-1905		Rs. 2/50	H. R. Abeya- wardhana
No. 1663 1st Febru- ary 1908	Suna Kana Muna Suppiramaniam Pillai of Sea Street	Theobald Dias of Slave Island	Discharge of the Mort- gage Bond No. 1757 of 2-6-96 attested by F. A. Prins, N.P.	Discharge dated 14-11-07		Rs. 1/-	H. R. Abeya- wardhana
1908 6th April No. 4847	Theobald Dias of Glennie Street, Slave Island	Frederick Emanuel Abeyesundere of Colombo	Mortgage of the above with the buildings thereon for Rs. 2,000/- with interest at 12% per annum	No. 2227 20th March 1908	F. A. Prins, Jr., N.P.	Rs. 5/-	H. R. Abeya- wardhana

Volume Folio
A 99 266

Exhibits
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6D9
Extracts of
Encum-
brances
27-1-50
— Continued

Other description of the
property as per this
Deed, N. by the Lake,
E. by the property of
Mr. von Possner bear-
ing Asst. No. 28, S.
by Glennie Street, W.
by the property of Mr.
von Possner bearing
Asst. No. 30.
Extent: 36 97/100
perches

E. by the property of
Mr. von Possner No.
28, S. by Glennie
Street, W. by the
property of Mr. von
Possner No. 30
Extent: 36 97/100
perches

Division A

Volume 133

Volume Folio
A 99 266

Brought forward from

A 99 2/100 perches

Name of Land : Asst. No. 29. Extent : 30 2/100 perches
Village or Town and Street : Glennie Street, Slave Island, Gravets

Boundaries :

North : Lake
East : Other part of Mr. von Possner
South : Road
West : Garden of Mr. van Buren also described as follows :—North Lake, East property of Mrs. von Possner bearing Asst. No. 28, South Glennie Street, West property of Mr. von Possner Asst. No. 30.Pattu :
District : ColomboKorale :
Province : Western

Extent : 36 97/100 sq. perches.

Date of Registry (Day and Date)	Grantors (Names in full and residence)	Grantees (Names in full and residence)	Nature and Particulars of Alienations and Incumbrances	No. and Date of Deed	Name of Notary, Judge, etc.	Regn. Stamp Duty	Signature of Registrar	Remarks
No. 11273 15th May 1919	Frederick Abeyesundere of Galle	The Ceylon Rubber Mills Co., Ltd.	Transfer of the above with the buildings thereon. Cons. Rs. 20,000/-	No. 5512 12th May 1919	V. A. Julius, N.P.	Rs. 20/-	D. A. Kanan-gara	W. Property of the Colombo Ice and Cold Storage Co., Ltd. Asst. No. 30— Extent : 35 3/4 perches
34435 4th November 1921	George Harold Montgomery, Liquidator of the Ceylon Rubber Mills Co., Ltd.	Anthony Zarephe of Kingsland Lodge, Colpetty	Transfer of the above with the buildings thereon. Cons. Rs. 20,000/-	No. 703 3rd Nov- ember 1921	L. Mack, N.P.		J. S. de S. Jayawardhana	W. Property of the Colombo Ice and Cold Storage Co., Ltd. A. R. P. Extent : o. o. 35 3/4
12218 30th March 1926	Anthony Zarephe of G.O.H., Colombo	The Colombo Apothecaries' Co., Ltd.	Transfer of the above with the buildings thereon. Cons. Rs. 85,000/- for this and another	No. 397 26th March 1926	O. P. Mount, N.P.	Rs. 20/-	J. S. de S. Jayawardhana	Land Asst. No. 12/29 E. Property of Mr. von Possner bearing Asst. 13/28 S. Glennie Street W. Property belonging to the Colombo Ice and Cold Storage Co., Ltd. Asst. 11/30 Extent : 35 3/4 perches with land A 126/45

Exhibits
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6D9
Extracts of
Encumbrances
27-1-50
—Continued

Division	Volume	Folio	Boundaries :
Folio	Brought forward from		
Name of Land : Village or Town and Street :			
Pattu District : Colombo		Korale Province : Western	
Date of Registry (Day and Date)	Grantors (Names in full and residence)	Grantees (Names in full and residence)	Nature and Particulars of Alienations and Incumbrances
24828 17th July 1930	The Colombo Apothecaries' Co., Ltd., Colombo	The National Bank of India Ltd.	Mortgage of the above with buildings now standing or hereafter to be erected thereon as security for all sums of money which may hereafter become to the Bank with interest at such rate that may be fixed from time to time
		No. 898 12th July 1930	
		Rs. 5/-	Regn. Stamp Duty
		T. de V. Goonewardhana	Signature of Registrar
		D. E. Mar-tensz, N.P.	Name of Notary, Judge, etc.
			No. and Date of Deed
			Remarks
			With lands in A 111/58 and 126/45 Asst. No. 72
			Boundaries and extent as remarked above
	Carried over	Volume 200	Folio 229

Division A

Volume 200

Volume Folio
A 133 49

Folio 229

Brought forward from A 133 49
Name of Land : Asst. No. 29
Village or Town and Street : Glennie Street, Slave Island, Gravets

Boundaries :
North : Lake
East : Other part of Mr. von Possner
South : Road
West : Garden of Mr. van Buren, also described as

North : Lake
East : Property of Mrs. von Possner bearing Asst. No. 28
South : Glennie Street
West : Property of Mr. von Possner Asst. No. 30
Extent : 36 97/100 sq. perches

Pattu District : Colombo
Province : Western

Name of Notary, Judge, etc.
Signature of Registrar

Date of Registry (Day and Date)	Grantors (Names in full and residence)	Grantees (Names in full and residence)	Nature and Particulars of Alienations and Incumbrances	No. and Date of Deed	Name of Notary, Judge, etc.	Regn. Stamp Duty	Remarks
---------------------------------	--	--	--	----------------------	-----------------------------	------------------	---------

26050 28th July 1930
The address of the mortgagee in Mortgage Bond No. 898 of 12th July, 1930 attested by David B. Martensz and regtd. in A 133/49 is National Bank of India Ltd., York Street, Fort, Colombo.

Cts. 70 M. P. Diyagama

With lands in folio

41455 10th December 1947
Martha Agnes Peiris Rodrigo of 99/2 Galkapanawatte Road, Grandpass Plaintiff.

Partition Action affecting the above with the buildings thereon
D.C. Colombo Case No. 5143/Partition
A. H. Abeyratne, Prosecutor for Plaintiff.
Rs. 5/-

D. C. Jayamanne

Presently Asst. No. Glennie Street
E. Property of Mr. bearing Asst. No. S. Road presently Glennie Street
W. Garden of
Extent 30 2/100 perches
Otherwise described as follows :—

vs.
(1) Clara Stephenia Pathivillana Rodriogo Mabel Villa, van Rooyen Street, Kothena, and five others
Defendants.

N. Lake
E. Property of Mrs. bearing Asst. No. 13/28
S. Glennie
W. Property belonging to Colombo Cold Storage Co., Ltd. bearing
Extent: 35

Exhibits
—
6D9
Extracts of Encumbrances
27-1-50
—Continued

Exhibits
 —
 6D10
 Extracts
 from the
 Municipal
 Assessment
 Register
 20-9-50

Extracts from the Municipal Assessment Register.

P.O. Box 216,
 Colombo, 20th Sept. 1950.

Premises No. 100 Glennie Street.

Dear Sirs,

With reference to your letter of the 18th instant I have to inform you as follows:—

Asst. Nos. from 1911-1924 Ward No.	Asst. Nos. from 1925-1936 St. No.	St. No.	Street Name from 1911-1930	Name of Reputed Owner	10
11	30	74	Glennie Street		

Proprietors of the Colombo Ice Manu-
 factory 1911 to middle of 1922. Anthony
 Zaraphe from middle of 1922—middle
 of 1926. The Colombo Apothecaries'
 Co. Ltd. from middle of 1926 to 1936.

12	29	72	Glennie Street	Theobald Dias from 1911 to middle of 1916. Fred Abeysundera from middle of 1916 to middle of 1919. The Ceylon Rubber Mills and Coy. Ltd. from middle of 1919 to middle of 1922.	20
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Anthony Zaraphe from middle of
 1922 to middle of 1926. The Colombo
 Apothecaries' Coy. Ltd. from middle of
 1926 to 1936.

Old Asst. No. Street No.	Corresponding Asst. Nos. from 1937 to 1941 Street No.	Asst. No. from 1942 to date Street No.	Street Name from 1937 to date	Name of reputed owner	30
74 72	100 } 98 }	100	Glennie Street	The Colombo Apothecaries' Co. Ltd. from 1937 to date.	

Yours faithfully,
 Sgd. Illegible.
Municipal Assessor.

Messrs. Julius & Creasy,
 Proctors & Notaries,
 Colombo.

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P13.

**Letter from the Registrar of Lands to
Abeyratne and Abeyratne, Proctors.**

No. RR 10,
Land Registry Office,
Colombo, September 7, 1950.

Exhibits

— P13
Letter from
the Registrar
of Lands to
Abeyratne &
Abeyratne,
Proctors
7-9-50

Certified Extract of Verification
Register.

Sirs,

10 With reference your letter dated 5-9-50 on the above subject, I have the honour to inform you that the verification register is not a document kept under the Registration of Documents Ordinance Cap. 101, and it is therefore regretted that certified copy of any entries therein cannot be issued.

I am, Sirs,
Your obedient servant,
Sgd. Illegible.
Registrar of Lands.

Messrs. Abeyratne & Abeyratne,
Proctors and Notaries,
20 Colombo.

Exhibits
 XI
 Pedigree

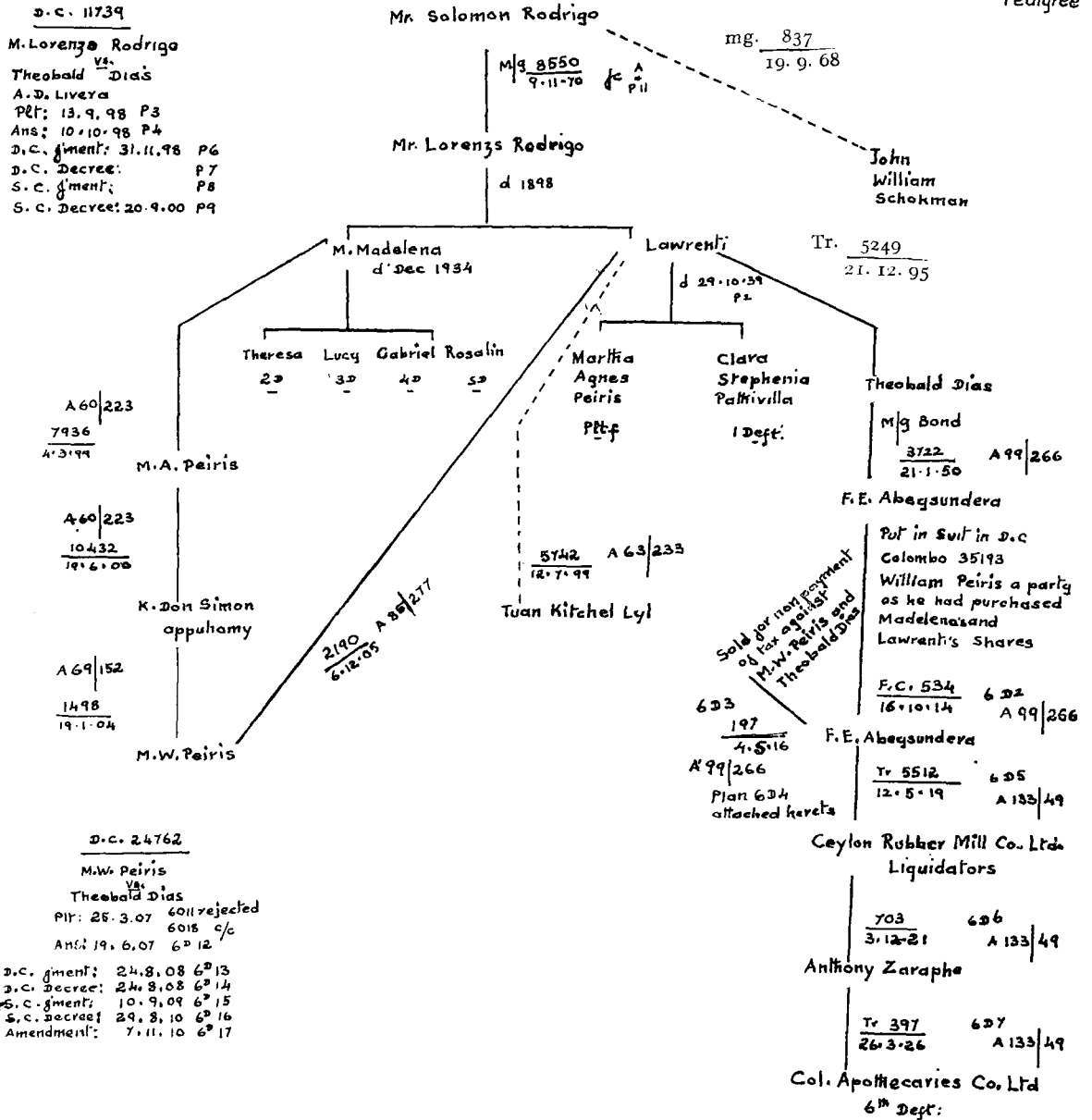
D.C. Colombo
 5143

XI
 Pedigree

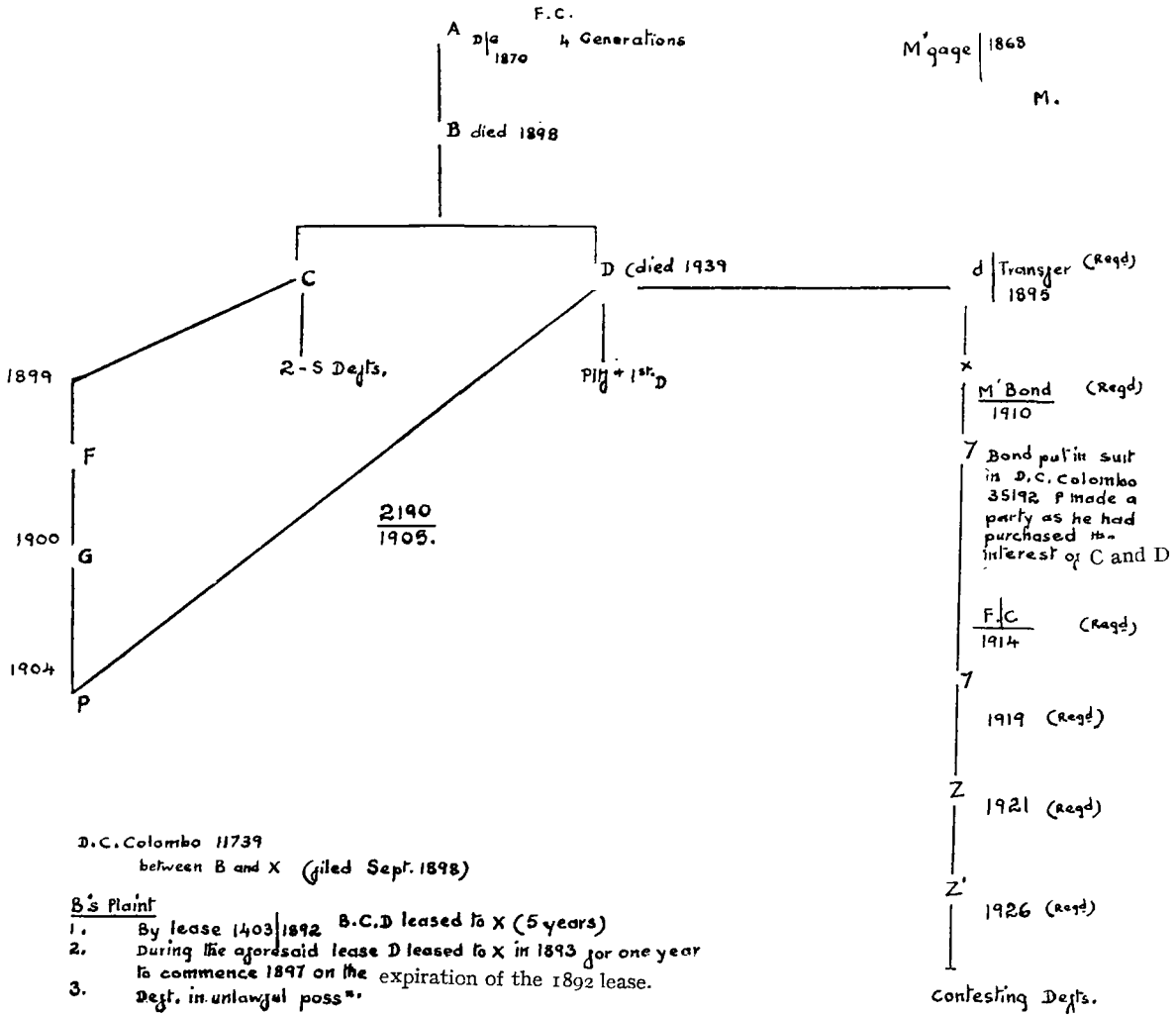
Registration $\frac{608}{A10/97 - A33/101}$ $\frac{609}{A30/39 - A48/375 - A57/83 - A60/223 - A69/152 - A85/277 - A99/266 - A133/49 - A200/229}$

Premises 12/29 Glennie Street
 Slave Island 30⁺/100⁺

XI.
 Pedigree



6D10 Extracts from Assessment Register
 in respect of these premises.



D.C. Colombo 11739
between B and X (filed Sept. 1898)

B's Plaintiff

1. By lease 1403 | 1892 B.C.D leased to X (5 years)
2. During the aforesaid lease D leased to X in 1893 for one year to commence 1897 on the expiration of the 1892 lease.
3. Deft. in unlawful possⁿ.

Answer of X

Pleaded Deed of Transfer by D in 1893

Issues

1. Did Deed of 8550 create F | C
2. Is D in unlawful possⁿ?
3. Did D obtain title on deed of 1895

Judgment for Plf: 1. Declaring him entitled to ppty, Ejectment + poss.ⁿ
2. Deed of 1895 null + void

In appeal S.C upheld 1.
deleted 2.

Supreme Court of Ceylon
No. 358 (Final) of 1951

District Court, Colombo
No. 5143

*In Her Majesty's Privy Council
on an Appeal from the Supreme Court of Ceylon*

between

THE COLOMBO APOTHECARIES'
CO., LTD. of Prince Street, Fort,
Colombo.....6th Defendant-Appellant

versus

MARTHA AGNES PEIRIS of 99 2,
Galkapanawatta Road, Grand-
pass, Colombo.....Plaintiff-Respondent

and

1. CLARA STEPHENIA PATHI-
VILLA nee RODRIGO of Van
Rooyen Street, Colombo
2. KURUPPUMULLAGE DONA
THERESA of Alutgama
3. KURUPPUMULLAGE DONA
LUCY
4. KURUPPUMULLAGE DON
GABRIEL, and
5. KURUPPUMULLAGE DONA
ROSLIN, all of Panadura.....1st to 5th Defendants-
Respondents

RECORD
OF PROCEEDINGS
