

2,1958

No. 20 of 1956.

# In the Privy Council.

UNIVERSITY OF LONDON  
VIC.

24 JAN 1956

## ON APPEAL FROM THE SUPREME COURT OF CEYLON

INSTITUTE OF  
LEGAL STUDIES

52015

BETWEEN

ABDUL CADER ABDEEN (Plaintiff) . . . . . *Appellant*

AND

- 1. ABDUL CAREEM MOHAMED THAHEER
- 2. ABDUL CAREEM MOOMINA UMMA
- 3. ABDUL CAREEM MOHAMED ISMAIL
- 4. ABDUL CAREEM MOHAMED HAFEEL
- 5. ABDUL CAREEM SITHI AYSHA
- 6. ABDUL CAREEM SITHI SAEDA
- 7. ZAINUL ABDEEN MOHAMED AJWARD
- 8. AYNUM NAWASIA
- 9. SITHY AYNUR RILAH
- 10. UMMU FARIDA ZULFIKAR
- 11. BADDEATHUZ ZUHIRIAH
- 12. SITHY ZAMEELATHUL MARLIAH
- 13. MOHAMED NAFIH MOHAMED

Nos. 8 to 12 Minors  
appearing by their  
guardian - *ad-litem*  
No. 13 *infra*.

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(Defendants) *Respondents*.

## Case for the Appellant.

RECORD.

1. This is an appeal from a Judgment and Decree of the Supreme Court of Ceylon, dated the 10th June, 1955, setting aside a Judgment and Decree of the District Court of Colombo, dated the 1st November, 1951, whereby, in an action instituted by the Appellant for specific performance of an agreement to sell, and cause to be sold, certain premises in Colombo, it was ordered and decreed that the 1st, 2nd and 8th to 12th Respondents and also the 13th Respondent as guardian-*ad-litem* of the 8th to 12th Respondents do execute in favour of the Appellant an appropriate conveyance of the shares in the said premises owned by the 1st, 2nd and 8th to 12th Respondents, and pay to the Appellant, as damages caused by their failure to do so previously, Rs. 40/- per month from the date of the institution of the proceedings until the Appellant is placed in possession of the said premises.

pp. 80-85.  
p. 86.  
pp. 69-74.  
pp. 74-75.

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In the said action the Appellant did not seek any relief against the 3rd to 7th Respondents who, having already executed a conveyance of their shares in the said premises, were made parties to the action merely to give them notice thereof.

In allowing the appeal from the said decree of the District Court the Supreme Court dismissed the Appellant's action, with costs.

2. The main question for determination on this appeal is concerned with the interpretation (in the light of the relevant Roman-Dutch law) of Clause 8 of the agreement for sale of the said premises which, in the event of the Vendors' failure to execute the deed of transfer, provided for the return of the deposit to the Purchaser, together with interest thereon, and, also, for a specified sum to be paid to him as liquidated and ascertained damages. 10

Under the Roman-Dutch law (the common law of Ceylon) a party to a contract who is ready and willing to perform his part of the bargain is, in the absence of circumstances clearly negating the right, entitled to the remedy of specific performance of the contract against any of the parties thereto in default—irrespective of any view that damages would be a sufficient or more appropriate remedy.

In the present case the Purchaser (the Appellant) was, and is, ready and willing to purchase the said premises in accordance with the agreement of sale. Some of the Vendors (Respondents Nos. 1 and 2), however, refused to execute the deed of transfer on grounds that do not appear to be material. The Purchaser seeks relief by way of specific performance and it is his submission that he is not debarred from doing so by the terms of the said Clause 8 which introduced the subject of liquidated damages not as a substitutive, but only as an additional, or alternative, remedy, available to the Purchaser in certain circumstances. 20

The defaulting Vendors maintain that Clause 8 provides for liquidated damages payable by the Vendors on any breach of the agreement whether by some, or all, of them ; and that, in doing so, it deprives the Purchaser of his normal right to relief by way of specific performance. 30

### 3. The facts are as follows :—

By Agreement No. 4080, dated the 3rd October, 1947, and, subsequently, duly registered, the 1st to 7th Respondents ("the Vendors") agreed to sell, and cause to be sold, to the Appellant ("the Purchaser") certain premises (described in the Schedule) wherein they were jointly seised and possessed of 151 out of a total of 192 shares, the balance of 41 shares being owned by certain named minors. 40

The purchase price was stated to be Rs. 92,000/-. The payment of Rs. 12,500/- by the Purchaser by way of deposit was acknowledged, and the balance (Rs. 79,500/-) was made payable on completion which was to take place on, or before, the 31st December, 1947, by the Purchaser: (A) tendering to the Vendors, at the office of the Purchaser's Proctor and Notary, an

pp. 25-30.

p. 25, l. 30.  
p. 55, l. 15.

p. 26, ll. 12-20.

p. 26, ll. 32-34.

p. 26, l. 37-p. 27, l. 18.

appropriate transfer deed for execution by the Vendors; and (B) paying to the Vendors (inclusive of appropriate deposits) to the credit of certain curatorship proceedings in the District Court of Colombo relating to the said named minors, the owners of the said 41 shares, the balance of the purchase price due, i.e. Rs. 79,500/-.

4. By Clause 4 of the agreement the Vendors agreed to give vacant possession of the premises to the Purchaser at least one day prior to the execution of the deed of transfer; and by Clause 6 the Purchaser agreed to give to the Vendors seven days' notice of the date on which he intended to complete so as to enable them to comply with the condition as to vacant possession.

By Clause 5 the Vendors undertook to deduce a good title to the premises.

By Clause 7 it was stipulated that in the event of the Purchaser dying prior to the 31st December, 1947, the agreement would stand cancelled and the Vendors would forthwith repay the said deposit of Rs. 12,500/- to the Purchaser's legal representatives.

5. Clause 8 of the said agreement, with the interpretation and effect of which this appeal is mainly concerned, is as follows:—

“ 8. In the event of the Purchaser being ready and willing to complete the said sale in terms hereof and the Vendors failing, refusing or neglecting to execute and cause to be executed the said deed of transfer as aforesaid, then and in such case the Vendors shall repay forthwith to the Purchaser the said deposit of Rupees Twelve-thousand Five-hundred (Rs. 12,500/-) together with interest thereon at five per centum per annum from the date hereof to date of payment and shall also pay to the Purchaser a sum of Rupees Fifteen-thousand (Rs. 15,000/-) as liquidated and ascertained damages and not as penalty.”

6. By Clause 9 of the agreement it was provided that if upon the Vendors deducing a good title and being ready and willing to execute, or cause to be executed, prior to the 31st December, 1947, the said transfer, and to give vacant possession as agreed, the Purchaser failed or refused or neglected to complete the purchase, the Purchaser would pay to the Vendors the sum of Rs. 15,000/- as liquidated and ascertained damages and the Vendors would refund to the Purchaser the said deposit of Rs. 12,500/-.

7. On the 18th December, 1947, by an Order of the District Court of Colombo made in Guardianship Proceedings No. 4603, the 4th Respondent, as curator of one of the four minors who owned the said 41 shares in the premises, was authorised to execute a conveyance of the share of the said minor in favour of the Appellant upon the sum of Rs. 11,500/- being credited to the said Guardianship Proceedings; and, on the same date, in Guardianship Proceedings No. 4604, the same Court similarly authorised the 7th Respondent, as Curator of the three other minors, to execute a conveyance of their share upon the sum of Rs. 6,500/- being deposited in Court.

p. 53, ll. 21-24.

On the 22nd December, 1947, the Appellant deposited to the credit of each of the said Guardianship Proceedings the said sums of Rs. 11,500/- and Rs. 6,500/-. Deducting the total of these sums (i.e. Rs. 18,000/-) and the deposit of Rs. 12,500/- which the Appellant had paid at the date of the execution of the agreement of sale from the agreed purchase price of Rs. 92,000/- left the Appellant with a balance of Rs. 61,500/- to pay, and this balance he tendered to the 1st and 2nd Respondents on the 30th and the 31st December, 1947, with the request that they execute the deed of conveyance in his favour. The said Respondents, on both of the said dates, refused to execute the deed and to give vacant possession to the Appellant. 10

p. 54, ll. 26-36.

p. 55, ll. 17-20.

Ex. P.13, pp. 112-116.

p. 114, ll. 35, 36.

8. On the 2nd January, 1948, the 3rd to 7th Respondents executed an appropriate deed of conveyance in the Appellant's favour (P.13, Deed No. 4118), the 4th and 7th Respondents doing so also as curators of the estates of the minors who owned the said 41 shares. The 1st and 2nd Respondents, however, persisted in their previous refusals.

p. 55, ll. 17-20.

p. 71, ll. 3-6

On the same date the 1st Respondent, by deed No. 1504, transferred his undivided share in the premises to his minor children, the present 8th to 12th Respondents, who, subsequently, were represented in these proceedings by the 13th Respondent. This transfer became known to the Appellant's legal advisers shortly after the institution of these proceedings and led, as will hereinafter appear, to the addition of the 8th to 13th Respondents as Defendants and to an amendment of the original 20  
Plaint (see paragraphs 11 and 12 hereof).

p. 22.

9. In his original Plaintiff, dated the 17th March, 1948, filed in the District Court of Colombo, the Appellant (hereinafter also called "the Plaintiff") referred to the facts then within his knowledge (substantially as outlined above) and, on the ground that the 1st and 2nd Respondents (the Respondents are hereinafter also referred to as "the Defendants") had wrongfully refused to execute a deed of conveyance in his favour he 30  
prayed, as against them only, for specific performance of the said agreement of sale and for damages at the rate of Rs. 500/- per month from the 1st January, 1948, until vacant possession of the premises was given to him.

p. 24, ll. 31-38.

p. 24.

p. 24, ll. 8-14, 27-28.

As to the 3rd to the 7th Defendants, he said that he claimed no relief against them for they had already executed a deed of conveyance which included, also, the said 41 shares belonging to minors whose estates were represented by their respective Curators, the 4th and 7th Defendants.

pp. 35-36.

p. 36, ll. 15-17.

p. 36, ll. 24-28.

10. In his Answer, dated the 9th July, 1948, the 1st Defendant denied that in refusing to execute the deed of conveyance tendered to him by the Plaintiff he had acted wrongfully or unlawfully in breach of the 40  
agreement of sale or that any cause of action had thereby accrued to the Plaintiff. He alleged that the Plaintiff had failed to fulfil certain terms and conditions in the agreement relating to completion. He appears to have made no reference to the fact that he had, as already stated, transferred his share to his children on the 2nd January, 1948.

pp. 37-38.

Similar denials and allegations were contained in the Answer of the 2nd Defendant.

11. The Plaintiff having become aware of the transfer of the 1st Defendant's share to his minor children, an application was made on his behalf in the District Court of Colombo for leave to add the transferees (through their guardian-*ad-litem*) as defendants to the action. This step was taken : (1) so that the transferees might be bound by the judgment in the action ; (2) for the effectual and complete adjudication of all questions involved in the action ; and (3) for the avoidance of any subsequent litigation. The application was objected to by the 1st Defendant and the said guardian-*ad-litem* on the several grounds set out in their  
 10 Statement of Objections, dated the 25th February, 1949. Among the said grounds were : (1) the transferees were not parties to the contract sought to be enforced ; (2) they had no notice of the said contract ; and (3) if they were added there would be a misjoinder of parties and of causes of action.

By his Order, dated the 31st May, 1949, the learned District Judge granted the application being of opinion that by the addition of parties as prayed for there could not be, especially in view of Section 93 of the Trusts Ordinance (c. 72), any misjoinder of parties and of causes of action. The learned Judge had earlier referred to the said Section 93 which runs  
 20 as follows :—

“ Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract :

Provided that in the case of a contract affecting immovable property, such contract shall have been duly registered before such acquisition.”

In pursuance of this Order the transferees were joined as the 8th to  
 30 the 12th Defendants through their guardian-*ad-litem* the 13th Defendant.

12. Following the said addition of parties the Plaintiff amended his  
 40 Plaintiff on the 3rd March, 1950. In paragraphs 11 and 12 of the Amended Plaintiff he referred to the said transfer, by way of gift, by the 1st Defendant to the 8th to 12th Defendants who, he said, had acquired the transferred share with notice of the said agreement of sale and, therefore, held it for his benefit to the extent necessary to give effect to the agreement. He said that the 1st, 2nd and 8th to 12th Defendants, in breach of the agreement, were in unlawful possession of the premises to his loss and damage. He prayed, *inter alia*, that the said Defendants together with the 13th  
 40 Defendant be ordered to execute in his favour a conveyance of the shares of the 1st, 2nd and 8th to 12th Defendants, that they be ejected from the said premises and he be placed in possession thereof, and that they be ordered to pay to him damages at the rate of Rs. 500/- per month from January, 1948, until he was placed in possession.

13. In their Answer (to the Amended Plaintiff), dated the 10th March, 1950, the 8th to 12th Defendants stated *inter alia* that : (1) the Plaintiff had not fulfilled the terms and conditions relating to completion and he

was not, therefore, entitled to specific performance of the agreement ; and (2) as they had no notice of the agreement when they acquired their shares the agreement could not be enforced against them.

pp. 49-52.  
pp. 78-79.

14. Of the several Issues framed in the suit, Issues 1 to 6 were, after a consideration of the oral and documentary evidence produced by both sides, answered thus by the learned District Judge :—

p. 78, ll. 16-19.

“ 1. Did the Plaintiff on 31.12.47—(a) tender to the parties to deed No. 4080 including the 1st and 2nd Defendants the purchase price of Rs. 61,500/-; (b) tender the deed of conveyance and request the parties to execute the same ? ”

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p. 73, l. 39.

*Answer* : “ Question of tender has not been pressed.”

p. 78, ll. 20-21.

“ 2. Did the 1st and 2nd Defendants wrongfully and unlawfully refuse to execute the said deed of conveyance ? ”

p. 73, l. 40.

*Answer* : “ Yes.”

p. 78, ll. 22-23.

“ 3. Did the 1st to the 7th Defendants agree to place Plaintiff in vacant possession of the premises on 31.12.47 ? ”

p. 73, l. 41.

*Answer* : “ Yes.”

p. 78, ll. 24-25.

“ 4. Are the 1st and 2nd Defendants in wrongful possession of the premises since 1.1.48 ? ”

p. 74, l. 1.

*Answer* : “ Yes.”

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p. 78, ll. 26-29.

“ 5. Is Plaintiff entitled to specific performance of the said agreement by 1st and 2nd Defendants and, in view of the transfer to 8th to 12th Defendants by the 1st Defendant, by 8th to 12th Defendants also ? ”

p. 74, l. 2.

*Answer* : “ Yes.”

p. 78, l. 30.

“ 6. To what damages, if any, is Plaintiff entitled ? ”

p. 74, ll. 3-4.

*Answer* : “ Rs. 40/- a month from 1.1.48 till Plaintiff is placed in possession of the shares of the 1st and 2nd Defendants.”

15. The remaining Issues 7 to 13b—Issue 7 is particularly relevant to this appeal—were answered thus by the learned District Judge :—

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p. 78 ll. 31-32.

“ 7. Is Plaintiff entitled to specific performance in view of the provisions in Clause 8 of the agreement No. 4080 ? ”

p. 74, l. 5.

*Answer* : “ Yes.”

p. 78, ll. 33-35.

“ 8. Can Plaintiff in any event maintain this action for specific performance as against the other Defendants, that is, the 8th to the 12th Defendants ? ”

p. 74, l. 6.

*Answer* : “ Yes.”

p. 78, l. 36.

“ 9. Is there a misjoinder of parties and causes of action ? ”

p. 74, ll. 7-9.

*Answer* : “ Although this matter has not been specifically dealt with in my Judgment there is a previous Order on the point which is binding upon the parties.”

p. 70, ll. 1-7

“ 10. Did the Plaintiff fail—(a) to tender to the 1st and 2nd Defendants the purchase price before calling upon the Defendants

to execute the deed of transfer ; (b) to tender the proposed deed of transfer for execution by 1st and 2nd Defendants at the office of Mr. John Wilson, Proctor and Notary, 365 Dam Street, Colombo ; (c) give at least 7 days' notice in terms of Clause 6 of the said agreement ? ”

*Answer* : “ Is withdrawn. The failure to give the 7 days' notice only affects the question of vacant possession.” p. 74, ll. 10-11.

“ 11. If Issue 10 (a) or 10 (b) or 10 (c) or all or any of them is answered in the affirmative can Plaintiff maintain this action for specific performance ? ” p. 51, ll. 17-18.  
p. 79, ll. 8-10.

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*Answer* : “ Yes.” p. 74, l. 12.

“ 12. Did the 8th to 12th Defendants have notice of the agreement No. 4080, Ex. P1 ? ” p. 79, ll. 11-12.  
p. 52, ll. 7-8.

*Answer* : “ Yes.” p. 74, l. 13.

“ 13a. Did the 1st and 2nd Defendants refuse to carry out the terms of the agreement P1 on or about 29.12.47 ? ” p. 52, ll. 9-10.

*Answer* : “ Yes.” p. 74, l. 14.

“ 13b. If so, was tender of the purchase price and of the deed of transfer for execution necessary ? ” p. 52, ll. 11-12.

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*Answer* : “ Tender was unnecessary.” p. 74, l. 15.

16. By his Judgment, dated the 1st November, 1951, incorporating the said Answers to Issues, the learned District Judge held that the Plaintiff was entitled to specific performance as prayed for, to damages at Rs. 40/- a month commencing from the 1st January, 1948, and to costs of the suit. p. 69-74.

17. On the question whether the Plaintiff could insist upon the remedy of specific performance or whether he was, by the said Clause 8 of the agreement of sale (see paragraph 5 hereof), restricted to damages, the learned District Judge, after a careful consideration of the terms of the agreement and the circumstances of the case, found himself unable to agree with the contention that the provision in Clause 8 for the payment of interest upon the deposit when, upon the Vendors' failure to complete, it became repayable to the Purchaser, and the provision in Clause 7 that in the event of the Purchaser's death before the 31st December, 1947, the agreement would stand cancelled and the deposit would become repayable to the Purchaser's legal representative, indicated that the parties intended to substitute damages for the performance of the act of transfer. In his view, by the said provisions “ the purchaser merely safeguarded his heirs from being called upon to make so large a payment after his death ; and with regard to interest that is a provision which was introduced in order to give him, by way of damages, the interest he would otherwise have obtained upon the advance of Rs. 12,500/-.” p. 71, l. 18-p. 72, l. 2.  
p. 72, ll. 3-10.

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18. Continuing his interpretation of the agreement the learned District Judge expressed the view that—

“ The intention of the parties was to perform the act of transfer and to provide for damages in the event of its becoming impossible ” p. 72, ll. 13-26

to do so. The payment of damages cannot in this case be regarded as a substitute for the performance of the act . . . It seems to me that in the present case the sum mentioned is specifically stated to be liquidated damages and was intended to be damages which would become payable upon breach of the contract. There is nothing in the agreement which would indicate any other intention."

p. 72, ll. 30-39. 19. As to the transfer of his share by the 1st Defendant to his minor children the 8th to 12th Defendants, the learned District Judge drew attention to the absence of any valuable consideration and, continuing, 10 said :—

Ex. P.1, pp. 25-30. "It is difficult to accede to the proposition that by mere voluntary transfer a person who has entered into an agreement to transfer can validly evade his obligations. Even if the transfer were for valuable consideration the transferees would, by reason of the provisions of Section 93 of the Trust Ordinance (see paragraph 11 *supra*) be bound by the agreement to transfer. This agreement P1 has been duly registered and in terms of Section 93 the person who accepts a transfer of property with notice of an existing contract affecting the sale must hold the property for the benefit of the 20 latter to the extent necessary to give effect to the contract."

p. 73, ll. 24-27. In the view of the learned Judge the contract remained an "existing contract" notwithstanding its repudiation by the 1st and 2nd Defendants; and, as it was duly registered, the added Defendants must be deemed to have had "notice" of it within the terms of the said Section 93. p. 72, ll. 41-43.

pp. 74-75. 20. A Decree in accordance with the Judgment of the learned District Judge was drawn up on the 1st November, 1951, and from the said Judgment and Decree the 1st and 2nd, and the 8th to 12th Defendants appealed to the Supreme Court on grounds stated in their Petition of Appeal, dated the 9th November, 1951. 30

p. 80, ll. 22-23. 21. The appeal was heard in the Supreme Court by a Bench the members of which could not agree and it was therefore re-heard subsequently by a Bench of three Judges (Gratiaen, Pulle and Sansoni, JJ.) who, by their Judgments, dated the 10th June, 1955, allowed the appeal and dismissed the action with costs in both Courts. pp. 80-85.

pp. 80-85. 22. Delivering the main Judgment of the Supreme Court, Gratiaen, J. (with whom Sansoni and Pulle, JJ. agreed) said that the only question argued on appeal was "whether upon a proper interpretation of the document read as a whole, the Plaintiff could claim specific performance of the contract (or, if he so chose, a part of the contract) in the event of all or any of the 'Vendors' failing, refusing or neglecting to execute and cause to be executed a conveyance of the entire premises within the stipulated period." 40 p. 81, ll. 35-40.

p. 82, ll. 13-15. The learned Judge said that in Ceylon "the right to claim specific performance of an agreement to sell immovable property is regulated by the Roman-Dutch law and not by the English law"; and, drawing attention to a "fundamental difference" between the two systems of law, p. 82, ll. 15-30.



he said that whereas in England the common law remedy of damages for breach of an executory contract had been the sole remedy until the Courts of Chancery assumed, and exercised, jurisdiction to decree specific performance in appropriate cases, under the Roman-Dutch law the accepted rule had always been that a party to a contract who is ready to carry out his term of the bargain *prima facie* enjoys a legal right to demand performance by the other party—a right subject only to the Court’s discretion to refuse the remedy in the interests of justice in particular cases. Continuing, he said that “in either system of law the terms of a particular contract may expressly or by necessary implication exclude the remedy.”

23. Interpreting the said Clause 8 (see paragraph 5 hereof) the learned Supreme Court Judge (Gratiaen, J.), said that when making the agreement on the 3rd October, 1947, the parties must have appreciated that the Vendors’ failure to secure a conveyance of the entire property to the Purchaser could result from a variety of causes, e.g., failure to obtain the sanction of the District Court to the proposed sale of the said 41 shares belonging to minors (the sanction was in fact obtained on the 18th December, 1947), or the failure to deduce a satisfactory title, or because “one or more of the ‘Vendors’ might back out of the transaction during the interval between the date of the contract and the date fixed for completion.” He expressed the opinion that in the first of these contingencies specific performance of the individual obligation to secure the sale of the entire property would have been impossible and the Purchaser would in the event be entitled only to the return of the deposit and to the agreed sum by way of liquidated damages. And it was his view that this result must also follow if the Vendors, for some other reason equally within the contemplation of the parties, defaulted in the performance of their primary obligation. He concluded that “what was clearly intended to constitute a substituted obligation upon the first contingency referred to, must equally have been intended to constitute the sole obligation arising upon a default in any other contemplated contingency.”

24. The learned Supreme Court Judge found in the said agreement of sale “a categorical stipulation that if the primary obligation is not fulfilled for any reason whatever, two specified sums shall become immediately due.” The stipulation for the return of the deposit necessarily implied, in his opinion, that the primary obligation to sell was in that event to be regarded as being at an end which negatived an intention that the Purchaser could still demand, if he so chose, specific performance. And it was his opinion that Clause 9 (providing, in the event of the Purchaser’s default, for the payment by him of liquidated damages and for the refund to him of the deposit) equally denied to the Vendors, by necessary implication, the alternative legal remedy of specific performance.

The learned Judge was in agreement with the view that “a provision for the payment of liquidated damages may, in particular contracts, legitimately be construed as having been inserted to secure the performance by the defaulter of his primary obligation.” But, in his opinion, this was not such a case; for, here, two alternative legal remedies were open to the Purchaser as of right and the provision in the agreement for the payment of an agreed sum by way of compensation in the event of a breach

raised, in his view, the presumption that the parties intended to rule out recourse to the other legal remedy of specific performance. He held, therefore, that the Plaintiff had misconceived his remedy.

p. 85, ll. 15-16.

p. 86.

25. A Decree in accordance with the Judgment of the Supreme Court was drawn up on the 10th June, 1955, and from the said Judgment and Decree this appeal to Her Majesty in Council is now preferred the Appellant having been granted leave to do so by two decrees of the Supreme Court, dated, respectively, the 21st July, 1955, and the 8th September, 1955.

pp. 89, 93.

In the Appellant's respectful submission the appeal should be allowed, 10 the Judgment and Decree of the Supreme Court, dated the 10th June, 1955, should be set aside and the Judgment and Decree of the District Court, dated the 1st November, 1951, restored, with costs throughout, for the following among other

## REASONS

- (1) BECAUSE under the Roman-Dutch law (which, admittedly, governs the rights and liabilities of the parties to the agreement of sale) the Appellant, being ready and willing to perform his part of the bargain, is entitled as of right to the remedy of specific performance (irrespective of whether or not damages would be more appropriate) and this right to specific performance cannot, on any reasonable interpretation of the said agreement, be said to have been either expressly or impliedly excluded by its terms. 20
- (2) BECAUSE under the Roman-Dutch law a contract which is otherwise proper to be specifically enforced may, in Ceylon, be so enforced even although it provides for the payment of a specified sum in the event of a breach which the party in default is willing to pay. 30
- (3) BECAUSE in the light of the Roman-Dutch law the clause in the agreement providing for the payment of the said specified sum is only to be regarded as applicable in cases where specific performance ought not to be decreed.
- (4) BECAUSE in the light of the relevant Roman-Dutch law the inclusion in the agreement of the said specified sum is properly regarded as an accessory measure designed to secure performance of the agreement and not as a substitutive remedy for specific performance. 40
- (5) BECAUSE the agreement cannot reasonably be so construed as to give to the parties thereto a right to elect at their option whether to perform the contract or to deliberately refuse to do so and to pay the sum specified as damages.

- (6) BECAUSE even if Clause 8 be so construed as to mean that the Purchaser's sole remedy upon default by the Vendors was the recovery of the sum named therein as liquidated damages yet the default contemplated and, indeed, so expressed, was a default by all the Vendors rendering them all jointly and severally liable, and not by only some of them for which all the Vendors (i.e., those in default and those who were not) were to be liable.
- 10 (7) BECAUSE the said agreement of sale having been duly registered the 8th to the 12th Respondents were bound by its terms, the agreement being an existing contract of which they must be deemed to have had notice at the date of the transfer of the 1st Respondent's share to them.
- (8) BECAUSE, for the reasons stated therein, the Judgment of the District Court was right.

STEPHEN CHAPMAN.

R. K. HANDOO.

No. 20 of 1956.

In the Privy Council.

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ON APPEAL  
*from the Supreme Court of Ceylon.*

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BETWEEN  
**ABDEEN** (Plaintiff) . . . *Appellant*  
AND  
**THAHEER and Others**  
(Defendants) *Respondents.*

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**Case for the Appellant.**

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*Solicitors for the Appellant.*