

~~GH. G. 2~~

No. 31

1962

21

1963

Supreme Court of Ceylon,
S.C. 376 (Final) of 1958.

District Court of Colombo,
Case No. 34367/M.

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

BETWEEN

Mrs. HILDA VANDER POORTEN of No. 20, Alfred Place, Colpetty,
Colombo.....Plaintiff - Respondent.
Appellant.

AND

JOSEPH VANDER POORTEN of No. 63, Wilpenna Street, Eden Hills,
South Australia.....Defendant - Appellant.
Respondent.

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
17 JUN 1964
25 RUSSELL SQUARE
LONDON, W.C.1.

74124

RECORD
OF PROCEEDINGS

INDEX — PART - I

Serial No.	Description of Document	Date	Page
1	Journal Entries	25-1-55 to 5-7-61	1
2	Plaint of the Plaintiff	25-1-55	17
3	Answer of the Defendant (with annex marked " X ")	16-9-55	19
4	Replication of the Plaintiff	4-11-55	38
5	Affidavit of H. W. R. Burton	10-5-56	38
6	Affidavit of H. W. R. Burton	23- -56	40
7	Amended Plaint of the Plaintiff	15-5-56	41
8	Proceedings before the District Court	28-5-56	43
9	Issues Framed	27-9-57	44
10	Proceedings before the District Court	22-11-57	46
11	Proceedings before the District Court	16-6-58	46
12	Defendant's Evidence	—	47
13	Addresses to Court	—	139
14	Judgment of the District Court	29-8-58	143
15	Decree of the District Court	29-8-58	147
16	Petition of Appeal to the Supreme Court	29-8-58	147
17	Petition of Mrs. Joseph Vander Poorten for execution of decree	8-9-58	149
18	Affidavit of Mrs. Joseph Vander Poorten	8-9-58	150
19	Affidavit of C. G. Reeves	21-1-59	152
20	Statement of Objections of Joseph Vander Poorten	23-1-59	153
21	Judgment of the Supreme Court	14-12-60	156
22	Decree of the Supreme Court	14-12-60	157

INDEX — PART - I — (Contd.)

Serial No.	Description of Document	Date	Page
23	Application for Conditional Leave to Appeal to the Privy Council	11-1-61	158
24	Decree granting Conditional Leave to Appeal to the Privy Council	19-5-61	160
25	Application for Final Leave to Appeal to the Privy Council...	12-6-61	161
26	Decree granting Final Leave to Appeal to the Privy Council...	16-6-61	162

INDEX — PART - II
Plaintiff's Documents

Exhibit Mark	Description of Document	Date	Page
P 1	Plaint in D.C. Colombo case No. 36982/M	22-11-55	176
P 2	Answer of the Defendant in D.C. Colombo case No. 36982/M	29-6-56	190
P 3	Statement of account of the Plaintiff and Defendant for the period 14-10-49—30-11-50	1-12-50	(166 167
P 4	Plaint in D.C. Colombo case No. 3115/ Divorce ...	7-10-53	170
P 5	Answer of the Defendant in D.C. Colombo case No. 3115/ Divorce	24-2-54	171
P 6	Affidavit of H. W. R. Burton, filed in D.C. Colombo case No. 3115/Divorce	25-2-54	173

DEFENDANT'S DOCUMENTS

D 1	Statement of Account of Vander Poorten Estates for the period 1-12-40 to 31-12-50	14-11-57	193
D 2	Account showing Distributable Share Income from Estates for the period 1-12-40 to 31-3-56	18-11-57	200
D 3	Statement of Account showing Income of Mrs. J. Vander Poorten and Income Tax thereon	16-11-57	199
D 4	Application of H. Vander Poorten and J. Vander Poorten to open a Current Deposit Account in the Mercantile Bank of India, Ltd., Colombo	31-8-40	164
D 5	Application of J. Vander Poorten and H. Vander Poorten to open a Current Deposit Account in the Mercantile Bank of India, Ltd., Colombo	19-11-46	165
D 6	Rules of Business for Current Deposit Accounts in the Mercantile Bank of India, Ltd., Colombo Branch ...	—	201
D 7	Letter addressed to the Defendant by the Plaintiff ...	30-1-51	168
D 8	Cheque No. FU 748674 for Rs. 15,000/-	12-11-51	169
D 9	Cheque No. FU 309391 for Rs. 3,000/-	19-1-51	168
D 10 to D 132	} Not printed		

LIST OF DOCUMENTS NOT PRINTED
(DEFENDANT'S DOCUMENTS)

Exhibit Mark	Description of Document
D 10	Statement of Mrs. J. Vander Poorten dated 17th July 1957 prepared by Aitken Spence & Co., Ltd., in respect of Vander Poorten Estates.
D 11	Statement of Mrs. J. Vander Poorten from 1950-1956 prepared by Aitken Spence & Co., Ltd., and dated 17th July 1956.
D 12	Pass Book issued by the Mercantile Bank Ltd., from 13/8/1940 to 18/2/1942 in respect of the Joint Account.
D 12a	Pass Book issued by the Mercantile Bank Ltd., from 18/2/1942 to 13/5/1943 in respect of the Joint Account.
D 13	Pass Book issued by the Mercantile Bank Ltd., from 13/5/43 to 8/1/1944 in respect of the Joint Account.
D 14	Pass Book issued by the Mercantile Bank Ltd., from 10/1/1944 to 8/9/1944 in respect of the Joint Account.
D 15	Pass Book issued by the Mercantile Bank Ltd., from 21/8/1944 to 14/3/1945.
D 16	Pass Book issued by the Mercantile Bank Ltd., from 15/3/1945 to 22/9/1945.
D 17	Pass Book issued by the Mercantile Bank Ltd., from 24/9/1945 to 26/3/1946.
D 18	Pass Book issued by the Mercantile Bank Ltd., from 27/6/1946 to 12/2/1947.
D 19	Pass Book issued by the Mercantile Bank Ltd., from 12/2/1947 to 18/10/1949.
D 20	No. 1 Joint Account from 18/10/1949 to 4/4/1950.
D 21	Pass Book from 12/5/1950 to 1/6/1953 Current Account of Vander Poorten.
D 22	Paying-in-Pass Book for 25/8/1941 to 5/12/1942.
D 23	Paying-in-Pass Book for 28/5/1942 to 8/9/1943.
D 24	Paying-in-Pass Book from 4/5/1944 to 28/2/1945 in respect of the Joint Account.
D 25	Paying-in-Pass Book from 17/3/1945 to 2/8/1946.
D 26	Paying-in-Pass Book from 7/8/1946 to 12/4/1951.
D 27	True copy of the Extract of Cross-Examination of the Plaintiff on 10/2/58 filed of Record in D.C. Colombo Case No. 3115/D.

LIST OF DOCUMENTS NOT PRINTED—(Contd.)
(DEFENDANT'S DOCUMENTS)

Exhibit Mark	Description of Document
D 28 to D 67 D 68	Cheques drawn on the Mercantile Bank of India (London Branch) on the Joint Account of Mr. & Mrs. Vander Poorten.
D 69	Cheque counterfoil book for the period 9/11/44 to 13/12/44.
D 70	Cheque counterfoil book for the period 13/13/44 to 24/1/45.
D 71	Cheque counterfoil book for the period 23/12/46 to 5/2/47.
D 72	Cheque counterfoil book for the period 19/3/49 to 17/4/50.
D 73	Cheque counterfoil book for the period 16/12/41 to 5/1/42.
D 74	Cheque counterfoil book for the period 6/1/42 to 21/1/42.
D 75	Cheque counterfoil book for the period 21/1/42 to 9/2/42.
D 76	Cheque counterfoil book for the period 10/2/42 to 25/2/42.
D 77	Cheque counterfoil book for the period 26/2/42 to 10/3/42.
D 78	Cheque counterfoil book for the period 10/3/42 to 21/3/42.
D 79	Cheque counterfoil book for the period 30/3/42 to 23/4/42.
D 80	Cheque counterfoil book for the period 23/4/42 to 7/5/42.
D 81	Cheque counterfoil book for the period 7/5/42 to 23/5/42.
D 82	Cheque counterfoil book for the period 26/5/42 to 12/6/42.
D 83	Cheque counterfoil book for the period 15/6/42 to 5/8/42.
D 84	Cheque counterfoil book for the period 6/8/42 to 19/9/42.
D 85	Cheque counterfoil book for the period 21/9/42 to 11/11/42.
D 86	Cheque counterfoil book for the period 12/11/42 to 16/12/42.
D 87	Cheque counterfoil book for the period 17/12/42 to 11/1/43.
D 88	Cheque counterfoil book for the period 12/1/43 to 23/2/43.
	Cheque counterfoil book for the period 24/2/43 to 7/4/43.

LIST OF DOCUMENTS NOT PRINTED—(Contd.)
(DEFENDANT'S DOCUMENTS)

Exhibit Mark	Description of Document
D 89	Cheque counterfoil book for the period 7/4/43 to 23/5/43.
D 90	Cheque counterfoil book for the period 27/5/43 to 12/7/43.
D 91	Cheque counterfoil book for the period 13/7/43 to 23/8/43.
D 92	Cheque counterfoil book for the period 17/10/43 to 17/11/43.
D 93	Cheque counterfoil book for the period 18/12/43 to 28/1/44.
D 94	Cheque counterfoil book for the period 28/1/44 to 1/3/44.
D 95	Cheque counterfoil book for the period 4/3/44 to 31/3/44.
D 96	Cheque counterfoil book for the period 31/3/44 to 16/5/44.
D 97	Cheque counterfoil book for the period 17/5/44 to 22/6/44.
D 98	Cheque counterfoil book for the period 22/6/44 to 30/7/44.
D 99	Cheque counterfoil book for the period 30/7/44 to 6/9/44.
D 100	Cheque counterfoil book for the period 6/9/44 to 10/10/44.
D 101	Cheque counterfoil book for the period 7/10/44 to 9/11/44.
D 102	Cheque counterfoil book for the period 24/1/45 to 12/2/45.
D 103	Cheque counterfoil book for the period 15/2/45 to 15/3/45.
D 104	Cheque counterfoil book for the period 15/3/45 to 7/5/45.
D 105	Cheque counterfoil book for the period 14/5/45 to 6/6/45.
D 106	Cheque counterfoil book for the period 6/6/45 to 2/7/45.
D 107	Cheque counterfoil book for the period 3/7/45 to 6/8/45.
D 108	Cheque counterfoil book for the period 10/8/45 to 5/9/45.
D 109	Cheque counterfoil book for the period 5/9/45 to 6/10/45.
D 110	Cheque counterfoil book for the period 8/10/45 to 9/11/45.

LIST OF DOCUMENTS NOT PRINTED—(Contd.)
(DEFENDANT'S DOCUMENTS)

Exhibit Mark	Description of Document
D 111	Cheque counterfoil book for the period 9/11/45 to 6/12/45.
D 112	Cheque counterfoil book for the period 11/12/45 to 10/1/46.
D 113	Cheque counterfoil book for the period 16/1/46 to 15/2/46.
D 114	Cheque counterfoil book for the period 19/2/46 to 12/3/46.
D 115	Cheque counterfoil book for the period 13/3/46 to 3/4/46.
D 116	Cheque counterfoil book for the period 4/4/46 to 13/5/46.
D 117	Cheque counterfoil book for the period 14/5/46 to 14/6/46.
D 118	Cheque counterfoil book for the period 14/6/46 to 16/7/46.
D 119	Cheque counterfoil book for the period 16/7/46 to 17/8/46.
D 120	Cheque counterfoil book for the period 17/8/46 to 11/9/46.
D 121	Cheque counterfoil book for the period 11/9/46 to 26/10/46.
D 122	Cheque counterfoil book for the period 26/10/46 to 27/11/46.
D 123	Cheque counterfoil book for the period 27/11/46 to 23/12/46.
D 124	Cheque counterfoil book for the period 5/2/47 to 27/2/47.
D 125	Cheque counterfoil book for the period 27/2/47 to 28/4/47.
D 126	Cheque counterfoil book for the period 28/4/47 to 26/5/47.
D 127	Cheque counterfoil book for the period 26/5/47 to 6/8/47.
D 128	Cheque counterfoil book for the period 6/8/47 to 14/9/47.
D 129	Cheque counterfoil book for the period 7/5/48 to 9/7/48.
D 130	Cheque counterfoil book for the period 17/12/49 to 11/12/50.
D 131	Cheque counterfoil book for the period 12/12/50 to 18/2/51.
D 132	Cheque counterfoil book for Vander Poorten Joint Account.

No.

Supreme Court of Ceylon,
S.C. 376 (Final) of 1958.

District Court of Colombo,
Case No. 34367/M.

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

BETWEEN

MRS. HILDA VANDER POORTEN of No. 20, Alfred Place, Colpetty,
Colombo Plaintiff - Respondent.
Appellant.

AND

JOSEPH VANDER POORTEN of No. 63, Wilpenna Street, Eden Hills,
South Australia Defendant - Appellant.
Respondent.

RECORD
OF PROCEEDINGS

JOURNAL ENTRIES

IN THE DISTRICT COURT OF COLOMBO

MRS. JOSEPH VANDER POORTEN of Colombo.

No. 34367/M.

Plaintiff

Class : Value Raised.

Amount : Rs. 50,000/-

Vs.

Nature : Money.

Procedure : Regular.

JOSEPH VANDER POORTEN of Colombo.

10 Claim in Reconvension : Rs. 210,496/-

Defendant.

Class Stamps : Rs. 73/50.

Exhibit : Rs. 17/10.

Schedule : Rs. 2/40.

JOURNAL

(1)

The 25th day of January, 1955.

Mr. N. A. B. Stave files appointment and **Plaint**. **Plaint** accepted and **Summons** ordered for 4th **March**, 1955.

(Sgd.)
District Judge.

20

(2) 12-2-55

Summons issued on Defendant **W.P.** with **Precept** returnable the day of _____, 19 ____ .

(3) 4-3-55

Summons not served on Defendant.
Reissue for 13-5-55.

(Intd.).....
D. J.

(4) 8-8-55

30 Summons issued on Defendant, **W.P.**

(5) 13-5-55

Summons not served on Defendant.

Reissue for 17-6-55.

(Intd.)
D. J.

No. 1
Journal
Entries
25-1-55 to
5-7-61
—continued.

- (6) 19-5-55
Summons reissued on defendant, W.P.
- (7) 17-6-55
Mr. N. A. B. Stave for plaintiff.
Summons served on Director of Aitken Spence and Co., on behalf of Defendant.
Defendant absent. Proxy filed with Power of Attorney.
Mr. R. G. de Silva says the Defendant is away in Australia and he moves for a long date to file an answer.
Answer 16-9-55. (Intd.) 10
D. J.
- (8) 16-9-55
M/s. Samarasinghe and de Silva for Defendant.
Answer filed.
Replication on 21-10-55.
Deficiency on 21/X. (Intd.)
A. D. J.
- Deficiency of Rs. 49/50 due on Proxy of Defendant (7). 20
(Intd.)
- (9) 21-10-55
Mr. N. A. B. Stave for Plaintiff.
M/s. Samarasinghe and de Silva for Defendant.
Deficiency of Stamps duty Rs. 49/50 due from Defendant.
Tendered affix and cancel.
Replication 4/11. (Intd.)
D. J.
- (9) Stamps of Rs. 49/50 affixed to motion and cancelled. 30
(Intd.)
21/10

(10) 4-11-55
Replication filed.

Call—" B " 7/11.

Stamp duty also for same date.

(Intd.)
D. J.

Deficiency of Rs. 49/50 due on Replication (10) of Plaintiff.

(Intd.)
4/11

10 Deficiency of Stamp duty of Rs. 49/50 affixed and cancelled on 7/11.

(11) 7-11-55
Case called. Vide (10)

Mr. N. A. B. Stave for Plaintiff.

M/s. Samarasinghe and de Silva for Defendant.

Deficiency of Stamps duty Rs. 49/50 due from the Proctor for Plaintiff tendered.

Trial 28 and 29-5-56.

(Intd.)
A. D. J.

20 (12) 9-3-1956
Proctor for Plaintiff moves in terms of section 102 of the C.P.C. that Court be pleased to order Defendant to declare by affidavit all documents which are or had been in his possession or power relating to the matter in question.

Allowed for 28/3/56.

(Intd.)
A. D. J.

(13) 19-3-56
Notice tendered understamped.

30

(14) 28-3-56
Case called Vide (12)

Mr. N. A. B. Stave for Plaintiff.

M/s. Samarasinghe and de Silva for Defendant.

Notice not issued.

Issue now for 23-4-56.

(Intd.)
A. D. J.

No. 1
Journal
Entries
25-1-55 to
5-7-61
—continued.

(15) 5-4-56

Notice issued on Defendant. W.P.

(16) 10-4-56

Proctor for Plaintiff moves for leave of Court in terms of section 94 of the C.P.C. to deliver through Court the annexed interrogatories for the examination of the Defendant. Allowed.

(Intd.)
A. D. J.

(17) 23-4-56

Case called Vide (14).

10

Mr. N. A. B. Stave for Plaintiff.

M/s. Samarasinghe and de Silva for Defendant.

Notice served on the Defendant Co.

Affidavit filed.

(Intd.)
A. D. J.

(18) 26-4-56

Proctor for Plaintiff moves in terms of section 104 for an order of Court for notice on Defendant in whose affidavit reference is made to documents in support of the case to produce such documents for the inspection of Plaintiff's Proctor and to allow him to take copies thereof.

Allowed for 16/5.

(Intd.)
A. D. J.

(19) 4-5-56

Notice issued on Proctor for Defendant W.P.

(20) 4-5-56

Proctors for Defendant files list of witnesses and move to issue summons.

Proctor for Plaintiff received notice.

30

Allowed.

(Intd.)
A. D. J.

(21) 5-5-56

Proctors for Defendant file list of documents.

Proctor for Plaintiff received notice.

File.

(Intd.)
A. D. J.

(22) 11-5-56

Proctors for Defendant file affidavit in response to the interrogatories served on them and move that same be filed of record.

10 Proctor for Plaintiff received notice.

File.

(Intd.)
A. D. J.

(23) 16-5-56

Case called Vide (18).

Mr. N. A. B. Stave for Plaintiff.

M/s. Samarasinghe and de Silva for Defendant.

Notice served on the Proctors for Defendant.

They are absent.

20

(Intd.)
A. D. J.

(24) 16-5-56

Proctor for Plaintiff moves to amend the Plaintiff in terms of motion filed.

He also files amended Plaintiff.

Proctors for defendant received notice for 28-5-56.

Mention on 28-5-56.

(Intd.)
A. D. J.

No. 1
Journal
Entries
25-1-55 to
5-7-61
—continued.

(25) 16-5-56

As Defendant has omitted to answer the interrogatories served on him, Proctor for Plaintiff moves in terms of provisions of section 100 of the C.P.C. for an order of Court requiring him to answer same.

Vide (22) answer to Interrogatories filed.

(Intd.)
A. D. J.

(26) 18-5-56

Mr. N. A. B. Stave in support of motion (25).

Mr. Stave addresses Court.

10

I order the Plaintiff to answer the interrogatories by affidavit.

(Intd.)

(27) 18-5-56

Notice issued on Proctor for Defendant.

(Intd.)

(28) 19-5-56

Summons issued on 6 witnesses by Defendant.

(Intd.)

(29) 28-5-56

Trial (1) *Vide* (11).

20

Mr. N. A. B. Stave for Plaintiff.

M/s. Samarasinghe and de Silva for Defendant.

Case called Vide (24).

Vide proceedings (29) filed.

Call 30/7.

(Intd.)

(30) 30-7-56

Case called Vide (29).

Mr. N. A. B. Stave for Plaintiff.

M/s. Samarasinghe and de Silva for Defendant.

Answer to interrogatories filed.

Trial 14-2-57.

(Intd.)

(31) 2-10-56

Proctor for Plaintiff moves for permission of Court to amend the replication filed in this case on behalf of the Plaintiff by adding the paragraph mentioned in this motion (31).

Proctors for Defendant received notice with copy of motion for 14-2-57.

10 Mention on 14-2-57.

(Intd.)
A. D. J.

(32) 25-1-57

Call case on 6-2-57 to refix a date for trial as 14-2-57 has been declared a public holiday. Inform Proctors.

(Intd.)
A. D. J.

(33) Proctors informed.

(Intd.) (28/1).

20 (34) 29-1-57

Proctor for Plaintiff files list of witnesses and moves to issue summons.

Proctor for Defendant received notice.

Allowed.

(Intd.)
A. D. J.

(35) 29-1-57

Proctor for Plaintiff files additional list of witnesses and moves to issue summons.

Proctor for Defendant received notice.

30 Allowed.

(Intd.)
A. D. J.

No. 1
Journal
Entries
25-1-55 to
5-7-61
—continued.

No. 1
Journal
Entries
25-1-55 to
5-7-61
—continued.

(36) 6-2-57

Case called Vide (32).

Mr. N. A. B. Stave for Plaintiff.

M/s. Samarasinghe and de Silva for Defendant.

Trial refixed for 22-8-57.

(Intd.)
A. D. J.

(37) 8-3-57

As Counsel for Plaintiff will be away from Colombo on 27-8-1957, Proctor for Plaintiff, moves that the trial be postponed to some other date.

He further moves that the case be called on 14-3-1957.

Proctors for Defendant received notice for 14-3-1957.

Mention on 14/3.

(Intd.)
A. D. J.

(38) 14-3-57

Case called. Vide (37).

Mr. N. A. B. Stave for Plaintiff.

M/s. Samarasinghe and de Silva for Defendant.

20

Trial 27-9-57.

(Intd.)

(39) 13-9-57

Summons to witnesses tendered by Defendant.

Not reissued. Application should be made for reissue of summons.

(Intd.)

(40) 17-9-57

Proctor for Plaintiff files additional list of witnesses and documents and moves to issue summons. Proctor for Defendant received notice. Allowed.

30

(Intd.)
A. D. J.

(41) 18-9-57
2 Subpoenas issued by Plaintiff Kandy.
1 Subpoena do. W.P.

(Intd.)

(42) 27-9-57
Trial (2). *Vide* (38).
Mr. N. A. B. Stave for Plaintiff.
M/s. Samarasinghe and de Silva for Defendant.
Vide proceedings (42) filed.

10 Further hearing 22-11-57.

(Intd.)

(43) 5-11-57
5 Subpoenas reissued by Plaintiff. W.P.

As the subpoenas issued on witnesses have not been served on them for the last trial date, Proctor for Defendant moves to reissue them for next date of trial.

Allowed.

(Intd.)
A. D. J.

20 (44) 15-11-57
In view of Issues Nos. 8 and 9 raised by Plaintiff on 27-9-1957 without the same having been pleaded, Proctors for Defendant moves to raise a further issue as a consequential issue to Issue No. 5, numbered 5a as stated in the motion and move to amend the answer filed accordingly. They further move that the trial date already fixed be allowed to stand as defendant is presumed to assume the right to begin in any event and to permit Plaintiff to lead her evidence, if any, in rebuttal.

Proctor for Plaintiff objects.

Mention on 22/11.

30 (Intd.)

No. 1
Journal
Entries
25-1-55 to
5-7-61
—continued.

(45) 22-11-57

Trial (3). *Vide* (42) contd.

Mr. N. A. B. Stave for Plaintiff.

M/s. Samarasinghe and de Silva for Defendant.

Case called. *Vide* (44).

Vide proceedings (45) filed.

Trial 16-6-58.

(Intd.)

(46) 16-6-58

Trial (4). *Vide* (45) contd.

10

Mr. N. A. B. Stave for Plaintiff.

M/s. Samarasinghe and de Silva for Defendant.

Vide proceedings.

Further hearing on 27-6-58.

(Intd.)

(47) 18-6-58

2 Subpoenas reissued by Defendant. W.P.

(48) 27-6-58

Trial (5). *Vide* (46) contd.

Mr. N. A. B. Stave for Plaintiff.

20

M/s. Samarasinghe and de Silva for Defendant.

Vide proceedings (48) filed.

Trial 17-7-58.

(Intd.)

(49) 17-7-58

Trial (6). *Vide* (48) contd.

Mr. N. A. B. Stave for Plaintiff.

M/s. Samarasinghe and de Silva for Defendant.

Vide proceedings.

Further hearing on 31-7-58.

(Intd.)

(50) 31-7-58

Trial (7). *Vide* (49) contd.

Mr. N. A. B. Stave for Plaintiff.

M/s. Samarasinghe and de Silva for Defendant.

Vide proceedings.

10 Further hearing on 5/8.

(Intd.)

(51) 5-8-58

Trial (8). *Vide* (50) contd.

Mr. N. A. B. Stave for Plaintiff.

M/s. Samarasinghe and de Silva for Defendant.

Vide proceedings. Judgment on 29-8-58.

(Intd.)

(52) 8-8-58

P1—P8 filed.

20 (53) 8-8-58

D1—D132 tendered.

(D12—D26 and D68—D132 in the Record Room).

(54) 29-8-58

Mr. N. A. B. Stave for Plaintiff.

M/s. Samarasinghe and de Silva for Defendant.

Judgment delivered in open Court.

(Intd.)

No. 1
Journal
Entries
25-1-55 to
5-7-61
—continued.

No. 1
Journal
Entries
25-1-55 to
5-7-61
—continued.

(55) Decree entered.

(Intd.)
(29/8).

(56) 29-8-58

Proctors for Defendant file petition of appeal against the Judgment of this Court dated 29-8-58 and tenders stamps to the value of Rs. 73/50 for Secretary's Certificate in appeal. Rs. 147/- Stamps for S.C. Judgment cancelled and kept in Secretary's safe. Stamps are affixed to blank certificate in appeal form and cancelled. Accept. 10

(Intd.)
(1) A. D. J.

(57) 29-8-58

Proctors for Defendant-Appellant tenders notice of tendering security served on Proctor for Plaintiff-Respondent that the Defendant-Appellant's petition of appeal against the Judgment and Decree of this Court dated the 29th day of August 1958 in this case having been received by Court he states that he will on 12-9-58 (or sooner if possible) deposit in Court to the credit of this action Rs. 250/- as security for the Plaintiff-Respondent's costs of appeal by hypothecating same by bond 20 and further states that he will on the same date (or sooner, if possible) tender to Court Stamps Rs. 19/50 to cover the expenses of serving notice of appeal on Proctors for Plaintiff-Respondent.

Call on 12-9 58.

(Intd.)
(2) A. D. J.

(58) 29-8-58

Proctor for Defendant-Appellant moves to issue a deposit note for Rs. 24/- to cover the costs of one typewritten copy in connection with the appeal. 30

Issue Paying-in-Voucher for Rs. 25/-.

(Intd.)
(3) A. D. J.

(59) 2-9-58

Paying-in-Voucher for Rs. 25/- and Rs. 250/- issued.

(Intd.)

(60) 12-9-58

Case called. Vide (57).

Mr. N. A. B. Stave for Plaintiff-Respondent.

M/s. Samarasinghe and de Silva for Defendant-Appellant.

Amount offered as security is accepted.

On Bond being perfected and filed issue notice of appeal for 24-10-58.

(Intd.)
D. J.

(61) 12-9-58

10 Proctor for Defendant-Appellant tenders security—K.R. for Rs. 250/- being security.

K. R. for Rs. 25/- being copying fees and Notice of Appeal and Application for typewritten copies.

Vide Journal Entry (60)

1. File.

2. Issue notice of appeal.

(Intd.)
D. J.

K/R. 010905/1112 of 9-9-58 for Rs. 250/- filed.

20 K/R. P/14 010904/1111 of 9-9-58 for Rs. 25/- filed.

(62) Notice of appeal issued to W.P. to be served on Mr. Stave returnable 22/10/58.

(Intd.)
15/9.

(63) 13-10-58

Proctor for Plaintiff files Petition Affidavit and Application for execution of Decree against Defendant and moves for a notice on Defendant to show cause, if any, why writ should not be issued notwithstanding appeal.

30 1. Pay deficiency Rs. 1/50.

2. Issue notice for 24-10-58.

(Intd.)
D. J.

No. 1
Journal
Entries
25-1-55 to
5-7-61
—continued.

(64) 24-10-58

(1) Notice of Appeal served on Proctor for Plaintiff-Respondent.

Forward record to Supreme Court.

(2) Notice of Writ not issued on Defendant. Comply with order to pay deficiency and move.

(Intd.)
D. J.

(65) 3-11-58

Proctor for Plaintiff tenders stamps for Rs. 1/50 and moves for a date to issue notice on Defendant to show cause if any, why writ of execution should not be issued against Defendant.

1. Affix and cancel.
2. Issue notice for 12-12-58.

(Intd.)
D. J.

(66) 7-11-58

Proctor for Respondent applies for typewritten copies of record as per particulars in the motion.

He also applies for a Paying-in-Voucher for Rs. 15/-.

1. File.
2. Issue Paying-in-Voucher.

(Intd.)
D. J.

(67) 12-11-58

Paying-in-Voucher for Rs. 15/- issued.

(Intd.)

(68) 14-11-58

Notice of Writ issued on Defendant W.P.

(69) 28-11-58

Appeal Branch calls for additional fees as the brief consists of 39530 pages.

M/s. Samarasinghe and de Silva—Rs. 162/50.

Mr. N. A. B. Stave—Rs. 172/50.

Call for them by Registered Post.

No. 1
Journal
Entries
25-1-55 to
5-7-61
—continued.

(Intd.)
D. J.

(70) 1-12-58

Fees called for from Proctors by Registered Post.

(Intd.)

(71) 9-12-58

10 Proctor for Plaintiff files K.R. No. 030864 of 28-11-58 in payment of copying fees for typewritten brief.

File.

(Intd.)
D. J.

(72) 12-12-58

Mr. N. A. B. Stave for Plaintiff-Petitioner.

M/s. Samarasinghe and de Silva for Defendant-Respondent.

Notice under section 763 C. P. C. to issue Writ notwithstanding appeal served on Defendant-Respondent.

20 He is present.

Objections on 23-1-59.

(Intd.)
A. D. J.

(73a) 9-1-59

K.R. L/15 No. 1457/032631 of 11-12-58 for Rs. 162/50 filed.

(73b) 9-1-59

K.R. L/15 No. 1755/032929 of 15-12-58 for Rs. 172/50 filed.

No. 1
Journal
Entries
25-1-55 to
5-7-61
—continued.

- (73) 23-1-59
Mr. N. A. B. Stave for Plaintiff-Respondent.
M/s. Samarasinghe and de Silva for Defendant-Petitioner.
Objections filed by way of statement of Objections and Affidavit.
Inquiry on 30-1.
(Intd.)
D. J.
- (74) 30-1-59
Inquiry. (1) *Vide* (73).
Mr. N. A. B. Stave for Plaintiff-Respondent. 10
M/s. Samarasinghe and de Silva for Defendant-Petitioner.
Enquiry re-fixed for 2/3. " A " Court.
(Intd.)
- (75) 11-2-59
Record forwarded to Registrar, Supreme Court with 2 briefs for the Judges, and cancelled Stamps to the value of Rs. 147/- for the S.C. Decree. Documents marked D12 to D26 and D68 to D132 sent separately.
(Intd.)
Assistant Secretary. 20
- (76) 20-3-61
The Registrar Supreme Court returns record together with S.C. Decree.

Judgment of this Court is set aside and Judgment entered dismissing Plaintiff's action with costs. Plaintiff-Respondent to pay Defendant-Appellant's costs of appeal.

Proctors to note.
(Intd.)
Acting D.J.
21-3-61. 30
- (77) 5-7-61
The Registrar, Supreme Court requests that this case be forwarded to him immediately, as permission for an appeal to the Privy Council has been granted.

Forward record.
(Sgd.) V. SIVA SUPRAMANIAM.
Acting D.J.
6-7-61.

PLAINT OF THE PLAINTIFF
IN THE DISTRICT COURT OF COLOMBO

MRS. JOSEPH VANDER POORTEN of No. 20,
Alfred Place, Colpetty, Colombo.

Plaintiff.

No. 34367/M.
Class :
Nature : Money.
10 Amount : Rs. 50,000/-
Proced. Regular.

Vs.

JOSEPH VANDER POORTEN of No. 20,
Alfred Place, Colpetty and No. 52,
Park Street, Colombo.

Defendant.

On this 25th day of January, 1955.

20 The plaintiff of the plaintiff abovenamed appearing by Noel Austin Bernardin Stave, her Proctor, states as follows :—

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

2. Sometime in November, 1940 the plaintiff and the defendant became co-owners of the following properties namely : Greenwood Group, Normandy and Weyweltalawa in the proportion of 1/20th share to the plaintiff and 9/20th share to the defendant and or a group of other estates called and known as Vander Poorten Estates comprising the following lands
30 and Batagolla in the proportion of 1/20th share to the plaintiff and 8/20th share to the defendant.

3. The defendant stating that he was the major shareholder of these estates undertook to manage the said estates and acted as the plaintiff's agent in respect of her share of the estates to manage the same and to collect the rents and profits accruing therefrom and to pay over the same to the plaintiff.

4. In pursuance of this agreement the defendant entered into possession and managed and received the rents and profits from plaintiff's share in the aforesaid estates as and from 1st December, 1940 up to date.

No. 2
Plaint of the
Plaintiff.
25-1-55
—continued.

5. The defendant has received the rents and profits from plaintiff's share in the said estates as and from 1st December, 1940 and in the premises the plaintiff states that the defendant holds the same in trust for the plaintiff.

6. The defendant has failed and neglected to give or render to the plaintiff a true and correct account of the rents and profits received by him though thereto demanded.

7. The plaintiff has received only a sum of Rs. 118,514/04 on account of her share of the profits from her share in the aforesaid estates. The defendant has failed and neglected to pay the balance rents and profits due to her which the plaintiff estimates at Rs. 50,000/- from 1st December, 1940 up to date.

8. On the 9th day of January, 1953, the plaintiff sold her share in the estates called and known as Pilessa and no income in respect of Pilessa is asked from that date from the defendant.

9. A cause of action has accrued to the plaintiff to sue the defendant (a) for an order directing the defendant to render an account of the rents and profits received by him from her share in the said estates from 1st December, 1940 up to date hereof and to pay to the plaintiff the amount found due on such accounting being taken (b) or in the alternative for judgment against the defendant in a sum of Rs. 50,000/-.

20

WHEREFORE the Plaintiff prays :—

- (a) for an order directing the defendant to render an account of the rents and profits received by him from her share in the said estates from 1st December, 1940 up to date hereof and to pay the plaintiff the amount found due on such accounting being taken, together with legal interest thereon from date hereof to date of decree and thereafter on the aggregate amount of the decree till date of payment in full and
- (b) or in the alternative for judgment in a sum of Rs. 50,000/- together with legal interest thereon from date hereof to date of decree and thereafter on the aggregate amount of the decree till date of payment in full and
- (c) for costs of suit and
- (d) for such other and further relief as to this Court shall seem meet.

(Sgd.) N. A. B. STAVE,
Proctor for Plaintiff.

Documents filed with the plaint.

Appointment.

(Sgd.) N. A. B. STAVE,
Proctor for Plaintiff. 40

Settled by :
(Sgd.) N. H. C. RUSTOMJEE,
Advocate.

No. 3

No. 3
Answer of
the Defen-
dant.
16-9-55

Answer of the Defendant

(with annex marked " X ")

IN THE DISTRICT COURT OF COLOMBO

Mrs. JOSEPH VANDER POORTEN of 20, Alfred Place,
Colpetty, Colombo.

Plaintiff.

No. 34367/M

Vs.

JOSEPH VANDER POORTEN of No. 20, Alfred Place, Colombo, and
No. 52, Park Street, Colombo.

10

Defendant.

On this 16th day of September, 1955.

The answer of the defendant abovenamed appearing by Ruwanpura Gartin De Silva practising under the name style and firm of " Samarasinghe and De Silva " his Proctor states as follows :—

1. The defendant denies all and singular the averments contained in the several paragraphs of the plaint save and except as are hereinafter specially admitted.

2. Answering paragraph 1 of the plaint the defendant denies that he
20 resides in Colombo within the local limits of the jurisdiction of this Court. He also denies that the cause of action pleaded in the plaint arose within the local limits of the jurisdiction of this Court. In these circumstances the defendant pleads that this Court has no jurisdiction to adjudicate on this plaintiff's claim.

3. The defendant admits the averments contained in paragraph 2 of the plaint, but states that the plaintiff became the owner of the rights set out there in by virtue of a deed of gift executed in her favour by the defendant.

4. The defendant denies the averments contained in paragraphs 3 and 4 of the plaint.

30 5. Further answering paragraphs 3 and 4 of the plaint the defendant specially denies that he at any time undertook to look after the properties in question as plaintiff's Agent or collect the share of her income as averred in paragraph 3 of the plaint. He states that since about the year 1932 during the lifetime of his father the late Mr. A. J. Vander Poorten who was the owner of the said lands, he was looking after the same, and he continued to look after them up to date either by himself and through his Agents and Attorneys, only accounting for the income thereof.

6. Answering paragraph 5 of the plaint the defendant denies that he
40 holds any sum of money out of the income of the said lands in trust for the plaintiff.

7. Answering paragraph 6 of the plaint, the defendant states that up to 7th July, 1951 when the defendant left Ceylon the accounts were rendered by him to the plaintiff personally and if she required any clarification of such

No. 3
Answer of
the Defen-
dant.
16-9-55
—continued.

accounts, these were always available to her in the defendant's Office which was in the house where the plaintiff and defendant both resided. The plaintiff has been drawing and been paid various sums of money and various amounts have been paid out on her account and at her request by the defendant and/or his Attorneys and Agents against the amount due to her by way of income for her share of the aforesaid lands.

8. The defendant denies that the plaintiff has received only Rs. 115,514/04 as averred in paragraph 7 of the plaint, and states that the defendant is entitled to credit in a sum of Rs. 371,984/- on account of various sums of money drawn by her, paid to her and to others at her request and on her behalf and also on account of various sums of money expended on her account and at her request, together with various sums of money collected by her as income, and on account of produce appropriated by her from the properties belonging to the plaintiff and defendant. The said items are shown in the account particulars marked " X " filed herewith and pleaded as part and parcel of this answer.

9. Further answering the defendant states that the plaintiff was entitled to a sum of Rs. 161,488/- as her proportionate share of her income from the lands in question up to 31-3-54 up to which date the accounts have been duly audited, which up to that date she is liable to be debited in a sum of Rs. 371,984/- as averred in paragraph 8 hereof. The defendant denies that any sum whatsoever is due from him to the plaintiff.

10. The defendant is aware of the correctness of the averments contained in paragraph 8 of this plaint.

By way of a claim in reconvention

11. The defendant states that in view of his averments made in paragraphs 8 and 9 hereof the plaintiff is up to 31-3-54 indebted to the defendant in a sum of Rs. 210,496/- which sum the defendant claims from the plaintiff in reconvention.

WHEREFORE the defendant prays :—

30

(a) That plaintiff's action be dismissed ;

(b) that judgment be entered against the plaintiff in favour of the defendant in a sum of Rs. 210,496/- being the amount due to defendant as at 31-3-54 or such other sum as is found due on this account up to 25-1-55 ;

(c) for costs and for such other and further relief as to this Court shall seem meet.

(Sgd.) SAMARASINGHE AND DE SILVA,
Proctors for Defendant.

Documents relied on :

Copy of account Particulars marked " X "

40

(Sgd.) SAMARASINGHE AND DE SILVA,
Proctors for Defendant.

Settled by :

Mr. M. L. de Silva.

Mr. T. P. P. Goonetilleke.

Advocates.

" X "

No. 3
Answer of
the Defen-
dant
16-9-55.

MRS. H. VANDER POORTEN

DISTRIBUTABLE SHARE INCOME FROM ESTATES FOR
THE PERIOD 1st DECEMBER, 1940 TO 31st MARCH,
1954.Annex
marked ' X'.

Vander Poorten Estates :—		Rs.	Rs.
	Distributable share income from Vander Poorten Estates for the period 1.12.1940 to 31.3.1953 as per statement I dated 5.2.1954	63,398	
10	Share of loss for the year to 31.3.1954... ..	6	63,392
Mr. and Mrs. J. Vander Poorten Estates :—			
	Distributable share income from Mr. and Mrs. J. Vander Poorten Estates from dates of acquisition to 31st March, 1953, as per statement I dated 5.2.1954	64,014	
	Share of profit for 1953/54 Rs. 34,136/- less 1/9th share in capital Expenditure on machinery of Rs. 490/-	34,082	98,096
	TOTAL		161,488

20 Reference is invited to Statement I dated 5th February, 1954, and to our letter dated 5th February, 1954, addressed to Messrs. Aitken Spence & Co., Ltd.

(Sgd.) AIYAR & Co.,
Chartered Accountants.

Colombo,

Dated : 15th March, 1955.

True copy.

(Sgd.) Illegibly.
1.9.1955.

No. 3
Answer of
the Defen-
dant.
16-9-55

Annex
marked 'X'.
—continued.

MRS. H. VANDER POORTEN
PAYMENTS MADE TO HER BY MR. J. VANDER POORTEN,
PAYMENTS MADE ON HER BEHALF, Etc., UP TO
31ST MARCH, 1954.

	Rs.
Total as per statement II dated 5th February, 1954 ...	363,790
<i>Add</i> Amount remitted by Mrs. H. Vander Poorten to Mr. P. G. Payne £200 on 27.3.1943 by T. T. from Funds in Mercantile Bank, Colombo, at Rs. 13/35 per £ sterling. (This item was omitted in the original statements) ...	2,670 10
Amount paid by M/s. Aitken Spence & Co., Ltd.,—value of tea supplied, etc., during year ended 31st March, 1954 ...	5,524
Total amount as at 31st March, 1954 ...	371,984

Reference is invited to Statement II dated 5.2.1954 and to our letter dated 5th February, 1954, addressed to Messrs. Aitken Spence & Co., Ltd.

(Sgd.) AIYAR & Co.,
Chartered Accountants.

Colombo,
Dated : 15th March, 1955.

True copy. 20
(Sgd.) Illegibly.
1.9.55.

Statement I.

MRS. H. VANDER POORTEN
SHARE INCOME FROM ESTATES FOR THE PERIOD
1ST DECEMBER, 1940 TO 31ST MARCH, 1953.

	Rs.
Distributable share income from Vander Poorten Estates for the period 1st December, 1940 to 31st March, 1953, as per statement I (a) ...	63,398 80
Distributable share Income from Greenwood, Weyweltalawa and Normandy from dates of acquisition to 31st March, 1953, as per statement I (a) ...	64,014
TOTAL ...	127,412

Subject to remarks in statements I (a) and I (b) attached, we consider the above statement to be correct.

Colombo,
Dated : 5th February, 1954.

(Sgd.) AIYAR & Co.,
Chartered Accountants. 40

True copy.
(Sgd.) Illegibly.
1.9.55.

Statement 1 (a)

SHARE INCOME OF MRS. H. VANDER POORTEN FROM VANDER
POORTEN ESTATES

Period 1.12.1940 to 31.3.1953.

No. 3
Answer of
the
Defendant.
16-9-55.Annex
marked ' X ' ,
—continued.

1. Income of Vander Poorten Estates :

10	<i>Year and Particulars</i>	<i>Income</i>	<i>Income of Pilessa and Batagolla included in Total Income.</i>	
		Rs.	Rs.	Rs.
	1.12.1940 to 31.3.1941.			
	Year to 31.3.1940 as per Profit and Loss Account ...	177,847		
	<i>Less</i> Income of Gilliemalay, Devalagala and Embuldeniya transferred to Estates of Late Mr. A. J. Vander Poorten. (Please see Balance Sheet)...	22,637		
	Contribution to "Send a Plane Fund". (Please see Balance Sheet)	5,000		
	Balance ...	<u>150,210</u>		
20	Proportion for 4 months to 31.3.1941 ...		50,070	8,175
	Year to 31.3.1942 :—			
	Profit as per Profit and Loss Account	285,889		
	<i>Less</i> Income of Gilliemalay, Devalagala and Embuldeniya transferred to Estate of Late Mr. A. J. Vander Poorten. (Please see Appropriation Account)	19,642	266,247	36,970
	Year to 31.3.1943 :—			
	Profit as per Profit and Loss Account	214,280		
30	Income of Devalagala, Gilleimalay and Embuldeniya transferred. (Please see Appropriation Account)	22,100		
	Bonus paid for 1940/41 and 1941/42 (Appropriation Account)	3,786		
		<u>188,394</u>		
	<i>Add</i> Capital expenses transferred. (Appropriation Account)	2,628	191,022	31,001
	C/Forward ...		<u>507,339</u>	<u>76,146</u>

Statement 1 (a) (Contd.)

No. 3
Answer of
the
Defendant.
16-9-55

Annex
marked ' X '
—continued.

Year and Particulars	Income		Income of Pilessa and Batagolla included in Total Income	
	Rs.	Rs.	Rs.	Rs.
Year to 31.3.1944 :—				
B/Forward ...	507,839		76,146	
As per Profit and Loss Account ...				10
Less Excess Profits Duty paid (Balance Sheet) ...		164,918		
Bonus for 1942/43 (Balance Sheet) ...		30,000		
		1,800	133,118	40,675
Year to 31.3.1945 :—				
As per Profit and Loss Account ...		246,498		
Less Bonus to Staff (Balance Sheet) ...		3,325		
Gratuity to Conductor ...		1,500	241,673	57,878
Year to 31.3.1946 :—				
As per Profit and Loss Account ...		164,633		
Less Bonus to Staff (Balance Sheet) ...		5,673	158,960	44,312
Year to 31.3.1947 :—				20
As per Profit and Loss Account ...		86,233		
Less Bonus to Staff (Balance Sheet) ...		5,430	80,803	29,159
Year to 31.3.1948 :—				
As per Profit and Loss Account ...		2,762		
Add Excess Profits Duty Refund (Balance Sheet) ...		30,000		
		32,762		
Less Bonus paid (Balance Sheet) ...		3,100	29,662	25,002
Year to 31.3.1949 :—				
As per Profit and Loss Account (Loss) ...		11,933	11,933	26,195
Year to 31.3.1950 :—				30
As per Profit and Loss Account ...			46,253	31,474
1.4.1950 to 31.12.1950 :—				
As per Profit and Loss Account ...		188,281		
Less Bonus paid. (Balance Sheet) ...		3,450	184,831	119,591
			1,370,706	450,427
Total Income between 1.12.1940 and 31.12.1950 ...				1,370,706
Less Batagolla Income :—				
Income of Pilessa and Batagolla ...			450,427	
C/forward ...			450,427	1,370,706

Statement 1 (a) (Contd.)

No. 3
Answer of
the
Defendant.
16-9-55Annex
marked ' X '
—continued.

	Rs.	Rs.
B/Forward	450,427	1,370,706
<i>Less</i> Overhead charges applicable to this income (approximately)	66,353	
Nett Income of Pilessa and Batagolla	<u>384,074</u>	
Proportionate income of Batagolla (Acreage basis 79/221)...	...	<u>137,293</u>
Nett income of estates other than Batagolla ... ..	...	<u>1,233,413</u>
1/20th Share of Mrs. H. Vander Poorten	Rs. ...	<u>61,671</u>
102. Share income of Mrs. H. Vander Poorten for the Period 1.12.1940 to 31.3.1953		Rs.
Share Income for the period 1.12.1940 to 31.12.1950 as in (1)	Rs.	61,671
Share income for the period 1.1.1951 to 31.3.1951—As per statement of accounts for the period	4,094	
Share of Batagolla income included in Rs. 4,094/- (79/221 of Rs. 2,017/-)	<u>721</u>	<u>3,373</u>
Year to 31.3.1952 as per statements of accounts	Loss	263
Year to 31.3.1953 as per statements of accounts...	Loss	1,383
		<u><u>63,398</u></u>

(1) Date of attestation of Deed of Gift 1083 is stated to have been 30.11.1940 and Mrs. Vander Poorten is treated as entitled to share income from 1.12.1940.

(2) It is stated that the gift did not include share in property known as Batagolla and it has been treated that Mrs. H. Vander Poorten was not entitled to share income of this property.

(3) For the purpose of ascertaining income distributable correct basis appears to be to deduct capital expenditure and to ignore depreciation. During the period some capital expenditure is charged to Profit and Loss Account and others to capital accounts. In the above computations no deduction has been made for capital expenditure not charged to Profit and Loss Account and no addition has been made of depreciation charged. 1/20th share of the difference between the two sums is small.

Statement 1 (b)

MRS. H. VANDER POORTEN

SHARE INCOME FROM GREENWOOD, WEYWELTALAWA
AND NORMANDY.No. 3
Answer of
the
Defendant.
16-9-55Annex
marked 'X'
—continued.

	<i>Period</i>			<i>1/9th share income</i>	<i>1/9th share of capital expenditure deducted in arriving at income in Column 2</i>	
	(1)			(2) Rs.	(3) Rs.	
Greenwood :	1.10.46 to 31.3.47	...	...	147	941	
Do.	1. 4.47 to 31.3.48	...	...	1,400	2,429	
Do.	1. 4.48 to 31.3.49	...	...	1,824	721	
Do.	1. 4.49 to 30.4.49	...	...	394 (Loss)	—	
Greenwood Normandy & Weywel- talawa	}	1.5.49 to 31.3.50	...	...	14,373	—
Do.							...1.4.50 to 31.3.51	...	...	34,637	451	20
Do.	...1.4.51 to 31.3.52	...	...	5,921	1,835	
Do.	...1.4.52 to 31.3.53	...	...	11,157	—	
				69,065	6,377	
<i>Deduct : 1/9th Share in Capital Expenditure</i>						
<i>Not charged to Profit and Loss Account but</i>						
<i>debited to asset accounts :—</i>						
	1950/51	...	...	3,078		
	1951/52	...	...	695		
	1952/53	...	...	1,278		30
	Distributable income	...	...	64,014		

NOTE :

(1) It is considered that capital expenditure whether debited to Profit and Loss Account or not has to be deducted in arriving at distributable income.

(2) In arriving at the income of the year ended 31.3.1952, a sum of Rs. 1,955/- being 1/9th share of legal expenses incurred on partition actions has been deducted.

(3) In arriving at the income of the year ended 31.3.1953 a sum of Rs. 333/- being 1/9th share of legal expenses incurred, has been deducted.

(4) The figures in the above statement relating to the period after 1.5.1949 are taken from statements of Messrs. Aitken Spence & Co., Ltd., who were in management 40 of the estates from the said date. Figures relating to periods prior to 1.5.1949 are as per accounts furnished for Income Tax Purposes.

“ X ”

Statement 2.

MRS. H. VANDER POORTEN

PAYMENTS MADE TO HER BY MR. J. VANDER POORTEN
PAYMENTS MADE ON HER BEHALF, Etc.No. 8
Answer of
the
Defendant.
16-9-55Annex
marked ' X '
—continued.

1. Date	Particulars	Rs. cts.	Rs. cts.
1944 ...	“ Preston ”—20, Alfred Place, Colombo 3		
to	Purchase Price	70,000·00	
1948	Purchase expenses and maintenance expenses		
10	statement 2 (a)	14,068·40	
		<u>84,068·40</u>	
	Half share		42,084·20
	Half share of rents collected by Mrs. H. Vander Poorten (Between July, 1947 and December, 1949, rents amounting to about Rs. 5,800/- were collected by Mr. W. H. Kenny and placed to the credit of Mrs. Vander Poorten) ...		2,900·00
2. 10th January, 1947.			
20	Payments made for purchase of Shares for Mrs. Vander Poorten :—		
	500 Kuttapitayas	5,812·50	
	101 Saffragams	13,782·50	
	364 Meal Mors	8,841·00	
	(E. John & Co., Brokers)	<u>28,436·00</u>	
3. 1949 to 1951.			
	Weyweltalawa and Normandy :		
	Purchase 11/20 share Weyweltalawa	110,000·00	
	Purchase 11/20 share Normandy	44,000·00	
30	Auctioneer's expenses, etc. (Weyweltalawa)	641·81	
	Auctioneer's expenses, etc. (Normandy)	621·50	
	Arthur Fernando—Copies of deeds of Gift	78·00	
	Cheque books	2·40	
	Cost of plans	525·70	
	Interest to Bank on overdraft	17,058·95	
	Commission to Mr. Arthur Fernando	4,500·00	
	Julius & Creasy—Fees and disbursements	20,844·35	
		<u>198,272·71</u>	
	1/9th share of Mrs. Vander Poorten		22,030·30
4. 1944 to 1948.			
40	Defamation Case, D.C., Colombo, M15511—Mrs. H. Vander Poorten vs. Henry Vander Poorten (Statement 2 b)		7,248·90
	C/Forward		<u>102,644·40</u>

Statement 2 (Contd.)

No. 3
Answer of
the
Defendant.
16-9-55

Annex
marked ' X '
—continued.

Date	Particulars	Amount	
		Rs. cts.	Rs. cts.
	B/Forward ...		102,644·40
5. 1942 to 1950.			
	Cost of Partition actions—		
	D.C., Kandy, P583 (Greenwood)	7,823·06	
	D.C., Kandy, P1457 (Weyweltalawa)	3,497·37	
	D.C., Kandy, P1528 (Normandy)	2,340·37	
	Payment of fees to Mr. Arthur Fernando in regard to above 3 actions in December, 1950	5,000·00	10
		<u>18,660·80</u>	
	1/9th share ...		2,073·42

Statement 2 C.

6. 1947 to 1950.			
	Rents of " Terraces ", Kadawatte, Property of Mr. J. Vander Poorten, Collected by Mr. W. H. Kenny and credited to the account of Mrs. H. Vander Poorten as under :		
	Rents from 20.9.47 to 31.12.47	350·00	20
	Rents 1.1.48 to 31.1.50	3,750·00	4,100·00
		<u> </u>	
7. February, 1951.			
	Value of 11,215 lbs. of rubber appropriated by Mrs. H. Vander Poorten from Greenwood Estate		33,397·39
	Do. Value of 378 cwts. of Cocoa appropriated by Mrs. H. Vander Poorten from Greenwood Estate		58,635·58
1950 to 1953.			
	Payments received by her through M/s. Aitken Spence & Co., Ltd., from Vander Poorten Estates and from Mr. and Mrs. J. Vander Poorten Estates (as per separate statement 2d)		33,655·45
8. 1943 to 1951.			
	Monies drawn by Mrs. H. Vander Poorten for her own use and account from Mercantile Bank, London		1,930·29

Statement 2 E.

9.	Furniture and belongings left behind at " Pres- ton " which has been in sole occupation of Mrs. H. Vander Poorten since (Statement 2 f)		70,710·00
	C/Forward ...		<u>307,146·53</u>

	<i>Date</i>	<i>Particulars</i>	<i>Amount</i>		No. 3 Answer of Defendant. 16-9-55 Annex marked ' X ' —continued.
			Rs. Cts.	Rs. Cts.	
10.		Income Tax paid and payable by Mr. J. Vander Poorten (Share of tax on Mrs. H. Vander Poorten's income included in Mr. J. Vander Poorten's assessment—on income up to 31.3.1950)—About		30,000·00	
11.	Following payments made to her :—				
10	10.2.1947	Cheque No. O. 401412 in favour of Mr. W. H. Kenny on Mercantile Bank Joint Account ...	1,260·00		
	11.4.1947	Cheque No. O. 373951 dated 11.4.47 in favour of Mr. W. H. Kenny on Mercantile Bank Joint Account	3,500·00		
	15.6.1947	Cheque No. O. 642,585 credited to her private account	3,000·00		
	14.5.1948	Amount drawn by Mr. W. H. Kenny on behalf of Mrs. H. Vander Poorten from M/s. B. E. R. Cooray & Sons from produce sales ...	7,000·00		
20	19.4.1949	Cheque paid by M/s. Julius & Creasy to Mr. S. Winter on instructions of Mrs. H. Vander Poorten	2,671·30		
	7.7.1950	Cheque paid by M/s. Aitken Spence & Co., Ltd.	7,500·00		
12.	25.9.1950	Board and Lodging afforded to Mr. R. M. Winter, his wife, mother-in-law, as per account rendered to him on 25.9.1950 ...	1,712·38	26,648·68	
				<u>363,790·21</u>	
		In addition—			
30		(a) Mrs. H. Vander Poorten is in free occupation of Preston from July, 1951.			
		(b) Mrs. H. Vander Poorten had Mrs. R. M. Winter, the latter's father and mother boarded and lodged at Preston between 1st September, 1950 and 30th April, 1951, at the expenses of Mr. J. Vander Poorten.			
		(c) Mrs. Vander Poorten's account in relation to Greenwood, Weywel-talawa and Normandy is overdrawn and Mr. J. Vander Poorten has to provide money for working expenses.			

This statement is as per information furnished to us by Mr. J. Vander Poorten. Supporting statements giving details are attached.

Regarding item 10 above, Mrs. H. Vander Poorten's income up to 31st March, 1950, was being included by Mr. J. Vander Poorten in his Income Tax Return. Mr. J. Vander Poorten's assessments relating to income up to 31st March, 1950, are not yet final. We have verified that Rs. 30,000/- is a reasonably correct estimate of the proportion relating to his wife's income of the total tax paid and payable by Mr. J. Vander Poorten.

(Sgd.) AIYAR & Co.,
Chartered Accountants.

Colombo,
Dated : 5th February, 1954.

True copy.

(Sgd.) Illegibly.
1.9.55.

Statement (2 a)

MRS. H. VANDER POORTEN

" Preston " Account

No. 3
Answer of
the
Defendant.
16-9-55

Annex
marked ' X '
—continued.

Date	Cheque No. (Mercantile Bank)	Name of Party	Particulars	Amount
				Rs. cts.
22.11.44	... M475818	... Arthur Fernando	... Purchase price	... 70,000·00
"	... "	... "	... Stamp duty	... 1,120·00
11.12.44	... M475846	... "	... Fees on Preston trans- action 700/- other charges 350/-	... 10 1,050·00
13.12.44	... M478451	... Hoare & Co., Ltd.	... Paint	... 72·50
5. 9.45	... L883535	... House Decorators Co.	... "	... 134·50
26. 9.45	... L896030	... "	... "	... 101·50
22.12.45	... N126375	... "	... "	... 60·00
29.11.44	... M475827	... Mrs. T. A. Burns	... Materials	... 275·00
3. 1.45	... M 47805	... Hamer Brothers	... "	... 150·50
12. 2.45	... M478538	... Hunter & Co.	... "	... 105·80
"	... M478540	... Broughams Ltd.	... "	... 154·53 20
"	... M478541	... Walker & Greig Ltd.	... "	... 39·00
"	... M478545	... Walker Sons & Co.	... "	... 28·65
15. 3.45	... M810097	... Hunter & Co.	... "	... 16·00
3. 7.45	... M852101	... Brown & Co.	... "	... 21 00
9. 7.45	... M852106	... ———	... "	... 30·00
27. 7.45	... M852124	... Chettinad Corporation	... "	... 215·05
10. 8.45	... L883502	... M. S. Abduraham & Co.	... "	... 40·65
26. 9.45	... L986035	... Broughams Ltd.	... "	... 36·00
27.12.45	... N126394	... Chettinad Corporation	... "	... 84 48
11.10.46	... O669238	... Samuel & Sons	... "	... 32·00 30
3. 2.45	... M478512	... Raja Nawagamuwa	... Repairs	... 300·00
9. 3.45	... M810071	... "	... "	... 335·00
29. 5.45	... M829393	... N. D. E. Abeywardena	... "	... 2,000·00
13. 8.45	... L883508	... K. W. T. de Silva	... "	... 147·00
22. 9.45	... L896019	... N. D. E. Abeywardena	... "	... 285·00
21.10.45	... L905160	... K. W. Onis Silva	... "	... 365·00
12.10.45	... L905156	... K. W. T. de Silva	... "	... 50·00
10.10.45	... L905191	... "	... "	... 50·00
9.11.45	... N115354	... K. W. T. de Silva	... "	... 116·00
5.12.45	... N115398	... "	... "	... 60·00 40
4. 1.46	... N126398	... "	... "	... 237·20
31. 1.46	... N138122	... D. Jason Fernando	... "	... 42·40
25. 2.46	... N145354	... A. Dias Abeysingha & Co.	... "	... 100·00
14. 2.46	... N138146	... K. W. T. de Silva	... "	... 110·00
23. 3.46	... N161180	... "	... "	... 115·50
4. 4.46	... N916202	... "	... "	... 50·00
14. 5.46	... N927152	... "	... "	... 96·00
26. 6.46	... N936779	... Edward Reid & Begg	... "	... 150·00
16. 5.47	... O373987	... N. D. E. Abeywardane	... "	... 685·00
12. 5.48	... 230	... E. Fernando (drains)	... "	... 25·00 50
17. 5.48	... 231	... K. A. Perera (drains)	... "	... 44·00
10. 7.48	... 244	... E. Fernando	... "	... 150·00
17. 8.48	... 458	... M. A. Costa	... "	... 389·10
21.10.48	... 462	... Kenny & Co.	... "	... 239·70
26.10.48	... 466	... Cash	... "	... 50·00
5.11.48	... 468	... "	... "	... 100·00
13.11.48	... 469	... "	... "	... 450·00
21.12.48	... 781	... "	... "	... 132·00
12. 8.48	... 452	... K. & Co.	... "	... 168·00

				<i>Rs. cts.</i>	No. 3	
17.11.46	...	O683241	... Kenny & Co.	... Insurance	... 35·25	Answer of the Defendant. 16-9-55
24.11.47	...	802	..	..	... 33·75	
1. 6.48	...	234	..	..	... 125·00	
25. 8.49	...	593	..	..	... 126·25	
20.12.44	...	M478478	... The Municipal Treasurer	Rates	... 100·00	
17. 1.45	...	M478497	..	... Water Supply for 2nd Quarter	... 13·00	
24. 3.45	...	M818964	..	... Water Tax	... 36·66	Annex marked 'X' —continued.
10 6. 6.45	...	M829397	..	... Rates 1st Qtr. 1945, Rs. 100/-; fine Rs. 10/-	110·00	
26. 6.45	...	M839392	..	... Rates 2nd Qtr.	... 100·00	
27. 9.45	...	L896041	..	... Rates 3rd Qtr.	... 100·00	
24.12.45	...	N126392	..	... Rates 4th Qtr.	... 100·00	
28. 3.46	...	N161186	..	... .. 1st Qtr. '46	... 100·00	
1. 7.46	...	N936786	..	... .. 2nd ..	... 100·00	
30. 9.46	...	O669227	..	... .. 3rd ..	... 100·00	
23.12.46	...	O388659	..	... .. 4th ..	... 100·00	
2. 4.47	...	O361035	..	... .. 1st .. '47	... 105·00	
20 30. 6.47	...	753	..	... .. 2nd ..	... 105·00	
2.10.47	...	795	..	... .. 3rd ..	... 157·50	
16.12.47	...	825	..	... .. 4th ..	... 157·50	
10. 4.48	...	226	..	... .. 1st .. '48	... 157·50	
5. 7.48	...	239	..	... .. 2nd ..	... 150·00	
15. 7.48	...	246	..	... .. 2nd (Bal.)	... 7·50	
20.12.48	...	779	..	... .. 3rd ..	... 173·25	
10. 1.49	...	783	..	... .. 4th ..	... 157·50	
6. 4.49	...	797	..	... .. 1st .. '49	... 157·50	
13. 7.49	...	586	..	... .. 2nd ..	... 157·50	
30 12.10.49	...	600	..	... .. 3rd ..	... 157·50	
				... .. 4th ..	... 157·50	
18. 1.50	...	P330505	..	... .. 1st .. '50	... 157·50	
14. 9.50	...	P330544	..	... .. 2nd ..	... 173·25	
9.10.50	...	P330554	..	... .. 3rd ..	... 157·50	
6. 1.51	...	Q358028	..	... .. 4th ..	... 157·50	
					84,535·47	
30.11.44	...	Refund by E. John & Co.	...	... 700·00		
31. 1.45	...	Refund by Hunter & Co.	...	... 25·50		
					725·50	
					83,809·97	
40 Mrs. H. Vander Poorten's 1/2 share	41,904·98	

**Timber supplied from Greenwood to "Preston" and debited to J. V. D. Poorten
vide Ledger a/c.**

				<i>Rs. cts.</i>	<i>Rs. cts.</i>
To	76 sq. ft. Sapu @ 30/-	...	...	... 22·80	
	150 sq. ft. Sapu @ 30/-	31/10/47	Led. Folio 41	... 45·00	
	180 sq. ft. Mara @ 35/-	...	...	... 54·00	
	104 sq. ft. Sapu @ 15/-	31/3/48	Led. Folio 42	... 15·60	
	30 sq. ft. Sapu @ 15/-	...	...	... 4·50	
	Balance wages for repairs	30/4/48	Led. Folio 35	... 43·80	
50	Transport timber	30/5/48	ledger Folio 35	... 5·00	
	Timber & transport	31/10/48	do.	... 38·30	
	Timber	31/11/48	do.	... 21·44	
	Timber transport	..	do.	... 8·00	
				258·44	

Mrs. H. Vander Poorten's 1/2 share 129·22

Rs. 42,034·20

Statement 2 (b)

No. 3
Answer of
the
Defendant.
16-9-55

Annex
marked 'X'
—continued.

MRS. H. VANDER POORTEN
DEFAMATION CASE MRS. H. VANDER POORTEN Vs. MR. HENRY
VANDER POORTEN—D.C. COLOMBO M. 15511.

Date	Cheque No. Mercantile Bank	Name of Party	Particulars	Amount
				Rs. cts.
28/1/44	650	N. A. B. Stave	Fee for Handwriting expert	63·00
28/1/44	801	E. T. MacIntyre	Retainer	52·50 10
Jan'y. 31	803	L. Muthu Krishna	Half Fees	525·00
April 25	532	N. A. B. Stave	For Stamps	110·90
May 17	361	N. A. B. Stave	For retaining services of L. Muthu Krishna, retaining Fr. Julian, consultations with N. K. Choksy. H. V. Perera and getting the plaint settled, drafting re-drafting, settling and filing plaint.	367·50 20
"	536	G. C. Thambyah	Retainer (28/4/44)	105·00
May 2	588	E. T. MacIntyre	For report on Post Card	136·50
May 2	539	Fr. T. Julian	do.	136·50
June 1	374	H. V. Perera	Consultation and settling plaint.	157·50
June 5	377	G. C. Thambyah	For two consultations.	210·00
June 13	382	N. K. Choksy	For consultations and settling plaint.	273·00
June 13	389	Arthur Fernando	For consultation	21·00
1945.				30
March 27	968	N. A. B. Stave	On Account	100·00
March 27	969	L. Muthu Krishna	For photographs of Post Cards.	100·00
Sept. 26	039	E. T. MacIntyre	For photographs.	100·00
Oct. 2	045	N. A. B. Stave	On account for summons on witnesses.	100·00
Oct. 5	049	do.	For drafting, typing and serving, etc. copy of amended plaint as per memo dated 28-9-45.	42·00 40
Oct. 11	155	L. Muthu Krishna	Balance due for appearance on 26-10-45.	162·50
Oct. 24	164	N. A. B. Stave	On Account.	1,000·00
Oct. 26	189	R. L. Pereira	For appearance on 26-10-45.	787·50
	980	R. L. Pereira	For appearance on 24-4-45.	525·00
	981	N. A. B. Stave	Fees for N. K. Choksy 262/50, T. Nadarajah 31/- N. A. B. Stave 100/- for appearance on 24-4-45 (cheque dated 30-4-45).	393·50 50
Nov. 9	352	N. K. Choksy	Fee for consultation and appearance on 26-10-45.	420·00
1946.				
April 10	204	N. A. B. Stave	For obtaining briefs.	20·00
June 6	195	H. V. Perera	Fee for appearance in appeal.	525·00
	197	N. K. Choksy	do.	350·00
	198	N. A. B. Stave	do.	105·00
			C/Forward	6,888·90

Statement 2 (b) contd.

Date	Cheque No. Mercantile Bank	Name of Party	Particulars	Amount Rs. cts.
			B/Forward	6,888·90
1947.				
March 28	030	N. A. B. Stave	Appearance on 28-8-47 ...	21·00
March 26	562	N. A. B. Stave	As per memo of 20-5-47. ...	110·50
1948.				
Feby. 28		W. H. Kenny	As per memo to Julius and Creasy. ...	76·50
10 1944.				
June 29	862	E. T. MacIntyre and Fr. Julian	For Opinion and report on post cards. ...	147·00
			Rs. ...	<u>7,243·90</u>

No. 3
Answer of
the
Defendant.
16-9-55

Annex
marked 'X'
—continued.

Statement 2 (c)

MRS. H. VANDER POORTEN

EXPENDITURE ON PARTITION CASE D.C. KANDY P583 (GREENWOOD)

Date	Cheque No. Mercantile Bank	Name of Party	Particulars	Amount Rs. cts.
20 1942.				
Jany. 15	246	Arthur Perera	For appearance. ...	70·00
April 23	552	Alfred Fernando	On account. ...	100·00
27	555	Alfred Fernando	Amount paid through Cosey Drapery Stores. ...	52·50
July 18	844	Arthur Perera	For appearance. ...	52·50
Nov. 16	600	Alfred Fernando	On Account. ...	100·00
1943.				
Jany. 23	019	Arthur Perera	For appearance. ...	52·50
30 May 17	301	Alfred Fernando	On Account. ...	150·00
Nov. 4	234	Arthur Perera	For appearance. ...	52·50
Nov. 4	235	Alfred Fernando	On Account. ...	200·00
Nov. 14	628	Alfred Fernando	Batta for witnesses. ...	100·00
1944.				
Feby. 5	811	N. E. Weerasooria	For appearance. ...	420·00
Feby. 6	812	Arthur Perera	For appearance. ...	105·00
Feby. 9	818	Arthur Fernando	For consultation with S. F. H. Perera 10/50 consul- tation with N. E. Weerasoo- ria and S. F. H. Perera 21/-.	31·50
40 March 4	351	Arthur Perera	For appearance. ...	21·00
1945.				
Jany. 20	498	Alfred Fernando	For obtaining copy of S. F. H. Perera's Report. ...	20·00
March 14	082	Arthur Fernando	For consultation with N. E. Weerasooria and Correspon- dence with Alfred Fernando.	21·00
May 22	386	Arthur Fernando	Fee for N. E. Weerasooria 105/- Arthur Fernando 52/50 for drafting objections etc.	157·50
50 July 19	115	N. E. Weerasooriya	For appearance on 16-7-45 and inspection of land. ...	420·00
July 30	127	T. A. Dunuwille	For appearance as junior on 16-7-45, ...	105·00

No. 3
Answer of
the
Defendant.
16-9-55
Annex
marked ' X '
—continued.

<i>Date</i>	<i>Cheque No. Mercantile Bank</i>	<i>Name of Party</i>	<i>Particulars</i>	<i>Amount Rs. cts.</i>
Aug. 11	504	T. P. Murray	For visiting Greenwood Estate on two occasions re partition. ...	50·00
Aug. 31	525	N. E. Weerasooria	For consultation and Appearance on on 29-8-45. ...	525·00
Sept. 5	532	Alfred Fernando	On Account. ...	500·00
5	533	T. A. Dunuwille	For appearance on 29-8-45. ...	52·50 10
8	013	Alfred Fernando	On account. ...	1,500·00
Oct. 5	048	Arthur Fernando	Stamp on affidavit Re. 1/- postage on registered letter to Kandy -/40. ...	1·40
Nov. 6	199	Alfred Fernando	For 13 copies of Greenwood Plan. ...	130·00
	121	Arthur Fernando	As per memo dated 1-9-45 (Cheque dated 24-7-45) on account. ...	126·00
1946. July 16	799	Arthur Fernando	For consultations with N. E. Weerasooria, withdrawing partition case appeal, etc., <i>vide</i> , memo. ...	31·50
23	373	Arthur Fernando	Fees for N. E. Weerasooria 262/50 S. P. Wijewickrema 131/25, Arthur Fernando 10/50 as per memo. ...	404·25
1946. Oct. 26	250	Alfred Fernando	For certified copy of Final Decree and Disbursements. ...	39·00
1947. June 13	578	Alfred Fernando	Copy of the Final Decree, etc. ...	17·50
Dec. 12	086	Alfred Fernando	Amount due for Survey and Partitioning. ...	1,962·68
1948. Feby. 20		W. H. Kenny	As per bill dated 20-2-48 rendered to Julius and Creasy. ...	252·23 40
			Rs. ...	<u>7,823·06</u>

D. C. KANDY 1457 (WEYWELTALAWA)

<i>Date</i>	<i>Cheque No. Mercantile Bank</i>	<i>Name of Party</i>	<i>Particulars</i>	<i>Amount Rs. cts.</i>	<i>Total Rs. cts.</i>
1944. Jany. 17	630	S. P. Wickremasinghe	For settling plaint. ...	105·00	
	630	Arthur Fernando	Fees. ...	73·50	
Jany. 27	648	Alfred Fernando	On Account. ...	300·00	
Feby. 2	809	Alfred Fernando	For certified copy of plaint. ...	16·00	50
	809	Alfred Fernando	Fees. ...	10·50	
March 20 1945.	365	T. P. Murray	Survey fees ...	1,641·00	
Aug. 11 1946.	504	T. P. Murray	For tracing of plan. ...	25·00	
Aug. 28	135	Arthur Fernando	For Weyweltalawa Extracts. ...	26·00	

D. C. KANDY 1457 (WEYWELTALAWA) *contd.*

No. 3
Answer of
the
Defendant.
16-9-55
—
Annex
marked ' X '
—*continued.*

Date	Cheque No. Mercantile Bank	Name of Party	Particulars	Amount		Total	
				Rs.	cts.	Rs.	cts.
Sept. 27 1948.	207	Alfred Fernando	On Account. ...	52	50		
May 17	602	Julius and Creasy	Counsel's fees and cost of documents	131	06		
July 13	615	Alfred Fernando	Counsel's fees. ...	73	50		
Sept. 7	628	Alfred Fernando	Counsel's fees. ...	73	50		
10 23	630	Alfred Fernando	Auctioneer's charges	969	81	3,497	37

D. C. KANDY P. 1528 (NORMANDY)

Date	Cheque No. Mercantile Bank	Name of Party	Particulars	Amount		Total	
				Rs.	cts.	Rs.	cts.
1944. Mar. 1	845	S. P. Wickremasinghe	For settling Plaintiff.	73	50		
	845	Arthur Fernando	Fees, etc. ...	73	50		
May 17	363	T. P. Murray	Survey fees. ...	735	00		
	364	Alfred Fernando	On account. ...	200	00		
20 Dec. 5	082	Arthur Fernando	On settlement account. ...	10	50		
1948. May 17	602	Julius and Creasy	Counsel's fees and cost of documents.	131	06		
July 13	615	Alfred Fernando	Counsel's fees. ...	73	50		
Sept. 7	628	do.		73	50		
23	630	do.	Auctioneer's charges. ...	969	81	2,340	37
Amount to Mr. Alfred Fernando in settlement of fees on all 3 actions. ...						5,000	00
				Rs.	...	18,660	80
30	Mrs. H. Vander Poorten's 1/9th share ...					2,073	42

Statement 2 (d)

MRS. H. VANDER POORTEN

AMOUNTS DRAWN BY HER FROM OUT OF ESTATE INCOME

			Rs.	cts.
9-11-1951	By adjustment of loan of £100 taken in England by Mrs. H. Vander Poorten from Mrs. T. Concannon. ...		1,350	00
1-4-1950 to 31-3-1951	Drawings through Messrs. Aitken Spence & Co. Ltd. ...		16,697	26
do.	Tea and Postages ...		108	23
1-4-1951 to 40 31-3-1952	Payments by Messrs. Aitken Spence & Co. Ltd. ...		15,000	00
do.	Tea, etc. ...		324	40
1-4-1952 to 31-3-1953	Tea, etc. ...		175	56
			Rs.	...
			33,655	45

These drawings are as appearing in statements of accounts of Vander Poorten Estates and of Mr. and Mrs. J. Vander Poorten Estates.

No. 3
Answer of
the
Defendant.
16-9-55

Annex
marked ' X '
—continued.

Statement 2 (e)

MRS. H. VANDER POORTEN
AMOUNTS DRAWN BY HER FROM MERCANTILE BANK
OF INDIA LTD. LONDON

<i>Date</i>	<i>Particulars</i>	<i>Amount</i>
30- 1-1943	Cheque to R. M. Winter	100· 0·0
9- 1-1945	Mr. P. G. Payne	22· 0·0
8- 3-1946	Cheque to Brain Vander Poorten	400· 0·0
26- 8-1946	Mr. P. G. Payne	10·19·0
17-12-1946	do.	10· 0·0 10
26- 2-1947	do.	10· 0·0
9-1947	do.	16· 0·0
3- 2-1948	do.	67· 6·6
4-1948	Mr. L. G. Payne	20· 0·0
		<hr/>
		656· 5·6
15-12-1949	Amount drawn and credited to Mrs. Vander Poorten's Savings Bank, Account	100· 0·0
17- 1-1951	do.	500· 0·0
do.	Amount drawn and credited to her private account	88·15·6
		<hr/>
		1,345· 1·0 20
	<i>Less</i> : Her Defence Bonds and Interest realised and credited	120·10·2
	Her drafts on London credited	1,091·19·0
		<hr/>
	Nett	<u>132·11·10</u>
		<hr/>
	At 13-35 — Rs. 1,762·09.	

Statement 2 (f)

MRS. H. VANDER POORTEN
STATEMENT OF FURNITURE AND ARTICLES LEFT BEHIND
AT "PRESTON" BY MR. J. VANDER POORTEN

	<i>Rs.</i>	<i>cts.</i>
A. 4 Double and treble lengths of suitings taken off his possessions, valued	560·00	30
B. Large size Jewel/Cash steel box with combination secret lock other than the smaller one given my wife as a present by me.	600·00	
C. Large steel safe with combination secret lock.	1,200·00	
D. 1 smaller one similar to above handed to Mrs. J. Vander Poorten by Mr. J. S. Gorrie by error before his departure on 2-7-1952.	1,000·00	
E. 1 Rollioflex camera insurance claim taken and appropriated £60.	800·00	
F. 1 Gold full hunter watch heirloom given me by my father with his monogram engraved on it.	600·00	
G. Box containing my links studs, etc. some gold.	200·00	
H. Clothing old and new valued.	750·00	40
I. Furniture, fittings, all household effects, Pictures, Silver ware, crockery, cutlery, ornaments in alabaster and China, linen, radiogram, large collection of records; Garden carpentry and engineering tools, refrigerators, liquors, and spirits, glass ware, etc., etc.	65,000·00	
	<hr/>	
	<u>70,710·00</u>	
	<hr/>	

Statement 3

MRS. H. VANDER POORTEN

PRESENT VALUE OF PROPERTIES HELD BY MRS. H. VANDER POORTEN
IN FEBRUARY, 1954, BEING PROPERTIES GIFTED OR PAID FOR
BY MR. J. VANDER POORTEN

No. 3
Answer of
the
Defendant.
16-9-55

Annex
marked ' X '
—continued.

<i>Particulars</i>	<i>Basis of Valuation</i>	<i>Value Rs.</i>
10 1/9th Share in Greenwood Estate	... Valuation of Commissioner in connection with partition suit D.C. Colombo 6219 P. ...	95,676
1/9th Share of Weyweltalawa Estate	... Valuation of Mr. P. J. C. Durrants — Partition action No. 3922 D.C. Kandy. ...	58,402
1/9th Share in Normandy Estate	... Estimate by Mr. J. Vander Poorten. ...	17,000
1/20th Share in Pillessa Estate	... do. ...	10,800
1/20 Share in Verdun Group	... do. ...	12,500
20 1/20th Share in Belga Estate	... do. ...	10,000
1/20 Share in Illumbekande Estate	... do. ...	8,000
1/20th Share in Edumawatte and Kosgahahena	... do. ...	800
1/2 Share in " Preston " 20, Alfred Place, Colombo 3.	... do. ...	80,000
Value of shares purchased in 1947 at cost	... ..	28,436
		<u>321,614</u>

(At the time of marriage, life interest in a sum of Rs. 20,000/- was settled on her).

This statement is as furnished by Mr. J. Vander Poorten.

(Sgd.) AIYAR & CO.
Chartered Accountants.

30 Colombo,
Dated : 5th February, 1954.

True copy.

(Sgd.) Illegible.
1/9/55.

Colombo, 16th Sept. 1955.

(Sgd.) Illegible.
Proctors for Defendant.

No. 4
Replication
of the
Plaintiff--
4-11-55.

No. 4

Replication of the Plaintiff

IN THE DISTRICT COURT OF COLOMBO

MRS. JOSEPH VANDER POORTEN of No. 20,
Alfred Place, Colpetty, Colombo.

Plaintiff

No. 34367/Money

Vs.

JOSEPH VANDER POORTEN of Colombo

Defendant

On this 4th day of November, 1955.

10

The replication of the plaintiff abovenamed appearing by Noel Austin Bernardin Stave, her Proctor states as follows :—

1. The plaintiff joins issue with the defendant the denials contained in the answer.

2. Further replying to the claim in reconvention in the answer the defendant emphatically denies that there is a sum of Rs. 371,984/- due from her to the defendant and puts the defendant to the strict proof thereof.

WHEREFORE the plaintiff prays that the Court may be pleased to dismiss the defendant's claim in reconvention with costs and to enter judgment for plaintiff as prayed for in the plaint with costs and for such other 20 and further relief as to this Court shall seem meet.

(Sgd.) N. A. B. STAVE,
Proctor for Plaintiff.

No. 5
Affidavit of
H. W. R.
Burton—
10-5-56.

No. 5

Affidavit of H. W. R. Burton

IN THE DISTRICT COURT OF COLOMBO

MRS. JOSEPH VANDER POORTEN of No. 20,
Alfred Place, Colombo 3.

Plaintiff

No. 34367/Money

Vs.

JOSEPH VANDER POORTEN of No. 20,
Alfred Place, Colombo and presently of South Australia

30

Defendant

I, Harold William Robshaw Burton do hereby solemnly sincerely and truly swear and state as follows :—

No. 5
Affidavit of
H. W. R.
Burton—
10-5-56.
—continued.

1. I am a Director of Messrs. Aitken Spence & Co., Ltd., who are the Attorneys of the defendant abovenamed.

2. The trial in this action has been specially fixed for the 28th and 29th May.

3. Interrogatories were served on the defendant's Proctors on the 7th inst. to be answered by the defendant within ten days by affidavit in terms of section 99 of The Civil Procedure Code.

10 4. The defendant is at present in South Australia, a fact of which the plaintiff is well aware.

5. The defendant's Attorneys have taken all such steps as are necessary to be ready for trial on the 28th and 29th May.

6. It is not possible for the defendant's Attorneys and Proctors to have the interrogatories answered by the defendant in the circumstances.

7. I am advised that the defendant is not bound at this stage to answer the said interrogatories particularly in view of the plaintiff's delay in making her application.

20 8. I am advised that it will not be possible for the defendant to answer all or any of the interrogatories before the date of trial.

9. I am advised that the plaintiff's application to have the said interrogatories served upon the defendant's Proctors at this late stage is merely a device to procure an adjournment of the trial.

(Sgd.)
(Illegibly).

Read over signed and sworn to at Colombo
on this 10th day of May, 1956.

Before me,

(Sgd.) Illegibly.

80 J.P.

No. 6
Affidavit of
H. W. R.
Burton—
23.—56.
—continued.

No. 6

Affidavit of H. W. R. Burton
IN THE DISTRICT COURT OF COLOMBO

MRS. JOSEPH VANDER POORTEN of No. 20,
Alfred Place, Colombo 3.

Plaintiff

No. 34367/M

Vs.

JOSEPH VANDER POORTEN of Australia

Defendant

I, Harold William Robshaw Burton, do hereby solemnly sincerely and truly swear as follows :—

1. I am a Director of Messrs. Aitken Spence & Company Limited, the Attorney of the defendant.

2. Messrs. Aitken Spence & Company Limited have the following documents in their possession :—

- (a) Journal, cash book and ledger from 10-5-1949 in respect of Mr. and Mrs. J. Vander Poorten Estates, *i.e.*, Greenwood Estates, Normandy and Weywatalawa.
- (b) Journal, cash book and ledger from 9-1-1951 in respect of the Vander Poorten Estates, *i.e.*, Belga, Illumbekande, Verdun, 20 Pilessa, Edumawatte and Kosgahahena.
- (c) A cash book and check roll maintained on each estate, which are in the custody of the Superintendent of each Estate.
- (d) Monthly reports from Superintendents, and other documents to vouch the correctness of the items in the books of account.
- (e) Correspondence.

3. To the best of my knowledge and belief, no other documents in the possession of Messrs. Aitken Spence & Company Limited relate to or are material to this action.

4. Statements of account have been regularly rendered to Mrs. Joseph Vander Poorten, who has been kept fully informed of the state of every account.

5. I am advised that as Attorney for the defendant, Messrs. Aitken Spence & Company Limited, are not obliged in law to give the plaintiff, discovery of documents.

(Sgd.)
(Illegibly).

Sworn to this 23rd day of 1956.

Before Me,

(Sgd.) *Illegibly.*
J.P.

Amended Plaintiff of the Plaintiff

IN THE DISTRICT COURT OF COLOMBO

MRS. JOSEPH VANDER POORTEN of Colombo

Plaintiff

No. 34367/Money

Vs.

JOSEPH VANDER POORTEN of Colombo

Defendant.

10 On this 15th day of May, 1956.

The Amended Plaintiff of the plaintiff-abovenamed appearing by Noel Austin Bernardin Stave, her Proctor, states as follows :—

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

2. Sometime in November, 1940 the plaintiff and the defendant became co-owners of the following properties namely, Greenwood Group, Normandy and Weyweltalawa in the proportion of 1/20th share to the plaintiff and 9/20th share to the defendant and of a Group of other estates called and known as Vander Poorten Estates comprising the following lands
20 namely : Pilessa, Verdun, Kosgahahena, Eddumawatte, Illumbekande, Belga and Batagolla in the proportion of 1/20th share to the plaintiff and 8/20th share to the defendant.

3. The defendant stating that he was the major shareholder of these estates undertook to manage the said estates and acted as the plaintiff's agent in respect of her share of the estates to manage the same and to collect the rents and profits accruing therefrom and to pay over the same to the plaintiff.

4. In pursuance of this Agreement the defendant entered into possession and managed and received the rents and profits from plaintiff's share
30 in the aforesaid estates as and from 1st December, 1940 up to date.

5. The defendant has received the rents and profits from plaintiff's share in the said Estates as and from 1st December, 1940 and in the premises the plaintiff states that the defendant holds the same in trust for the plaintiff.

No. 7
Amended
Plaint of the
Plaintiff—
15-5-56.
—continued.

6. The defendant has failed and neglected to give or render to the plaintiff a true and correct account of the rents and profits received by him though thereto demanded.

7. The plaintiff has received only a sum of Rs. 118,514/04 on account of her share of the profits from her share in the aforesaid estates. The defendant has failed and neglected to pay the balance rents and profits due to her which the plaintiff estimates at Rs. 50,000/- free of Income Tax from 1st December, 1940 up to date.

8. On the 9th day of January, 1953, the plaintiff sold her share in the estates called and known as Pilessa and no income in respect of Pilessa is asked from that date from the defendant.

9. A cause of action has accrued to the plaintiff to sue the defendant (a) for an order directing the defendant to render an account of the rents and profits received by him from her share in the said Estates from 1st December, 1940 up to date hereof and to pay to the plaintiff the amount found due on such accounting being taken, (b) or in the alternative for judgment against the defendant in a sum of Rs. 50,000/- free of Income Tax.

WHEREFORE the plaintiff prays :

- (a) For an order directing the defendant to render an account of the rents and profits received by him from her share in the said Estates from 1st December, 1940, up to date hereof and to pay the plaintiff the amount found due on such accounting being taken, together with legal interest thereon from date hereof to date of decree and thereafter on the aggregate amount of the decree till date of payment in full and
- (b) or in the alternative for judgment in a sum of Rs. 50,000/- free of Income Tax together with legal interest thereon from date hereof to date of decree and thereafter on the aggregate amount of the decree till date of payment in full and
- (c) for costs of suit and
- (d) for such other and further relief as to this Court shall seem meet.

(Sgd.) N. A. B. STAVE,
Proctor for Plaintiff.

Documents filed with the plaint.

Appointment.

(Sgd.) N. A. B. STAVE,
Proctor for Plaintiff.

Proceedings before the District Court

No. 8
Proceedings
before the
District
Court—
28-5-56.

34367/M

28-5-56

Mr. Advocate S. J. C. Kadirgamar with Mr. Advocate

N. C. J. Rustomjee for plaintiff instructed by Mr. N. A. B. Stave.

Mr. Adv. T. P. P. Goonetilleke with Mr. Adv. R. F. Dias for defendant instructed by Mr. R. G. de Silva.

Mr. Kadirgamar addresses court. He states that after the order of court on 18-5-56 he has moved that the defence be struck off.

10 Mr. Kadirgamar states that he is prepared to argue that the defendant is bound to answer the interrogatories. In regard to the trial itself he produces a medical certificate from Dr. Hillary Gunawardene that the plaintiff will not be fit to attend court for at least 4 months.

Mr. Goonetilleke addresses court. He states that the defendant is the husband of the plaintiff and says that she knew very well that the defendant was away in South Australia. The case was fixed for trial in November last year and a few days before the trial date they served interrogatories on the proctor for the defendant, knowing very well that his client is out of the Island. He says it is not possible to answer the interrogatories without con-
20 sulting the defendant.

Mr. Goonetilleke wants time to consult his client before answering the interrogatories or not.

Mr. Kadirgamar has no objection.

Call case on 30th July.

Mr. Goonetilleke moves for costs.

Mr. Kadirgamar states that he withdraws his application for amending the plaint.

I am of opinion that the defendant is entitled to the day's taxed costs.

(Sgd.)

A. D. J.

Issues Framed

D.C. 34367/M

27-9-57

Mr. Advocate S. J. Kadirgamar for plaintiff with Mr. Advocate N. C. J. Rustomjee instructed by Mr. N. A. B. Stave.

Mr. Advocate T. P. P. Goonetilleke for defendant with Mr. Advocate F. R. Dias and Mr. Advocate M. L. de Silva instructed by M/s. Samarasinghe and de Silva.

Mr. Kadirgamar moves to amend the 4th line in paragraph 2 to the amended *Plaint* to read “ of 1/9th share to the plaintiff and 8/9th share to the defendant ”, and the same fractions at the 8th and 9th lines in that paragraph.

Mr. Silva has no objection.

The amendment is allowed.

It is admitted that the plaintiff and the defendant are husband and wife and also that plaintiff is entitled to 1/9th of the properties described in the second paragraph to the amended *Plaint*.

Issues suggested by Mr. Kadirgamar :—

1. From 1940 up to date has the defendant been looking after the said properties by himself and through his Agents and Attornies only accounting 20 for the income therefrom ?

2. Has the plaintiff been paid various sums of money on her account and at her request by the defendant or his Agents on his behalf against the amounts due to her by way of income from her share of the aforesaid lands ?

3. Was the plaintiff entitled to receive from the defendant a sum of Rs. 161,488/- as her proportionate share of income up to 31st March 1954 from the lands referred to in the *Plaint* ?

4. If Issues 1 to 3 or any one or more of them are answered in the plaintiff's favour :—

(a) is the plaintiff entitled in law to an accounting from the 30 defendant, in respect of her proportionate share of the income from the said lands ?

(b) is the plaintiff entitled to recover from the defendant any sum of money and if so what sum ?

Mr. Kadirgamar states that he is prepared to accept the defendant's position that the amount due to the plaintiff for her 1/9th share of the income during the period in question, *i.e.*, from 1942 to 31-3-54 is Rs. 161,488/- which is the sum set out in the Answer. He also admits that he received a sum of Rs. 118,514/- and he says that he restricts his claim to Rs. 42,974/-.

It is admitted that the defendant acted as the plaintiff's Agent and entered into possession of these estates and collected rents and profits.

No. 9
Issues
Framed
27-9-57.
—continued.

Issues suggested by Mr. Silva :—

5. Is defendant as such Agent holding any income from the lands in question in trust for the plaintiff ?
6. In what sum if any is defendant entitled to credit as against the plaintiff ?
7. What sum if any is due to plaintiff from the defendant or from defendant to plaintiff ?

10 Mr. Kadirgamar objects to Issue 6 as it is not clear. Mr. Silva frames the issue in the following fashion :—

6. Is the defendant entitled to debit the plaintiff with the amounts set out in Statement II filed of record which is now marked X ?

Further issues suggested by Mr. Kadirgamar :—

8. (a) Is the defendant's claim against the plaintiff or any part of it prescribed ?
- (b) If so is the defendant entitled to judgment in any sum against the plaintiff ?
- (c) Is the defendant's right to claim credit in any one of the items set out in the said Statement X prescribed ?

20

9. In law can the defendant maintain his alleged claim for credit as against the plaintiff in any of the sums shown in Statement X ?

Mr. Kadirgamar points to paragraph 5 of the Answer in regard to Issue 1, to paragraph 7 in regard to Issue 2 and paragraph 9 in regard to Issue 3. He calls no evidence. He reserves his right to call evidence in rebuttal on the issues on which the burden of proof is on the defendants.

Mr. Silva moves for an adjournment stating that he is not ready to proceed with the trial as his seniors are absent today.

Mr. Kadirgamar has no objection to an adjournment.

80 Further hearing on 22-11-57.

Defendant will pay Rs. 315/- as costs to the plaintiff.

(Sgd.)
A. D. J.
27-9-57.

No. 10
Proceedings
before the
District
Court—
22-11-57.

No. 10

Proceedings before the District Court

34367/M

22-11-57

Mr. Advocate Rustomjee states that Mr. Advocate Kadirgamar who appears for Plaintiff is ill and that he is compelled to ask for a date on personal grounds.

Mr. Dias for the defendant consents.

It is agreed that the order for costs in favour of the plaintiff made on the last date should be waived.

It is also agreed that the question of new issues suggested by the defendant should be argued on the next trial date. Counsel move for a long trial date stating there is a possibility of adjustment.

Trial is re-fixed for 16-6-58.

(Sgd.)
A. D. J.

No. 11
Proceedings
before the
District
Court—
16-6-58.

No. 11

Proceedings before the District Court

D.C. /34367M

16-6-58

Mr. Advocate S. J. Kadirgamar for plaintiff with Mr. Advocate N. C. J. Rustomjee instructed by Mr. N. A. B. Stave. 20

Mr. Advocate F. R. Dias for defendant with Mr. Advocate Candappa instructed by Mr. R. G. de Silva.

Mr. Dias moves to raise a fresh issue marked 5 (a) in terms of his motion dated 11-11-57.

Mr. Kadirgamar objects. He points to the admissions made by the defendant on the last trial date that the defendant acted as the plaintiff's agent and entered into possession of those estates. He states that the proposed issue is inconsistent with the admissions made on the last date.

Mr. Kadirgamar points out that the statement in the motion to amend that his two issues 8 and 9 were raised without pleadings is incorrect because they are specifically pleaded in the amended replication. He points out that the proposed issue 5 (a) is not consequential upon issue 5 as alleged in the motion. He refers to Sarkar's Civil Procedure Code 812.

ORDER : I am of opinion that the proposed amendment and the proposed issue are inconsistent with the admissions made on 27-9-57. I disallow the application.

No. 12

Defendant's Evidence

No. 12
Defendant's
Evidence.D. Rama-
swamy—
Examina-
tion.

Mr. Dias calls :—

D. Ramaswamy.—Affirmed 37, Chartered Accountant. Partner, Iyer & Co., 200, Grandpass Road, Colombo.

I know the plaintiff and I also know her husband the defendant. I have been acting for these parties for about 20 years. We have been looking into their estate accounts, the accounts of the Vander Poorten Estates and we have been preparing the statements of income of the late Mr. A. J. Vander
10 Poorten. During this period I came to know the plaintiff and defendant fairly well. I am aware that their relations are strained at the moment.

I produce marked X the statement which is filed in Court dated 15-3-55. This is a true copy of a statement prepared and certified by me. The figures for those statements for the Vander Poorten Estates up to 31st December, 1950 were taken from the books maintained by the proprietors and from 1st January 1951 from the books maintained by Aitken Spence & Co.

In respect of the other estates the books for Weyweltalawa were maintained by defendant himself from 1949 and for the subsequent period by Messrs. Aitken Spence & Co.

20 According to this the share due to the plaintiff for her share of the income is Rs. 161,488/- that is from 1st December, 1940 up to 31st March, 1954.

Subsequent to that I have prepared a further statement analysing the position up to 31st March, 1956 at the request of the defendant's proctor, that is dated 14th November, 1957. I produce a copy of that statement marked P1.

(To Court : the plaintiff's share of the income has not been separately worked out for those two years).

I produce marked P2 statement dated 18-11-57 where I have worked the reconciliation between the statements X and P1 and showed the total
30 distributable share of the income for the plaintiff up to 31-3-56 which is Rs. 199,708/-.

According to the statement X, I have taken the figures from the books which I have referred to earlier and worked out in respect of the Vander Poorten Estates the 9/20th share of the income for the period 1-12-40 to 31-12-50 as shown in statement 1A dated 9-2-54. The total income is Rs. 1,370,706/-. and that figure in P1 has been taken from X. Out of this Rs. 137,293/- represents the share of the income of Batagolla Estate in which plaintiff has no share. That figure is also shown in 1A. The balance share of plaintiff and defendant in respect of these estates is Rs. 1,233,413/-.

No. 12
Defendant's
Evidence.

D. Rama-
swamy—
Examina-
tion.
—continued.

Out of these moneys the distributed shares of Mr. & Mrs. Vander Poorten in fact paid to defendant as shown in paragraph 2 is Rs. 531,093/-.

After 31-12-50 as shown in paragraph 3 two further disbursements were made—Rs. 50,000/- to the defendant and Rs. 6,250/- to plaintiff.

In paragraph 4 I have worked out the balances due to plaintiff and defendant in respect of their joint 9/20th share—plaintiff being entitled to 1/20th and defendant to 8/20ths.

The balance due to plaintiff and defendant together is Rs. 55,481/-.

In paragraph 5 I have worked out the plaintiff's 1/20th share in the income of all the estates comprising the Vander Poorten Estates excluding 10 Batagolla which would be Rs. 61,671/- of which Rs. 50,494/- is included in the distributions made to the defendant and Rs. 6,250/- actually paid to plaintiff leaving a balance of Rs. 4,927/- due to plaintiff.

The sum of Rs. 50,494/- is the proportionate share of the plaintiff out of the Rs. 531,093/- which was paid to the defendant.

Rs. 55,481/- would be the amount due to plaintiff if this amount had not been paid to her.

The income from the Vander Poorten Estates from 1st January 1951 to 31-3-56 and the distribution of that is shown on the following page of P1. The figures from which I made these accounts were taken from the books 20 maintained by Messrs. Aitken Spence & Co., Estate Department.

According to that the share of the income of plaintiff from 1-1-51 to 31-3-56 is Rs. 3,322/-, showing that for three years 1952, 1954 and 1956 these estates have been working at a loss while under the management of Messrs. Aitken Spence & Co.

Out of the Rs. 3,322/- a sum of Rs. 2,441/- has been distributed to plaintiff by Messrs. Aitken Spence & Co. leaving a balance of Rs. 880/- in the hands of Aitken Spence & Co. which would be reflected as a credit balance to her in the books of Aitken Spence as at 31-3-56.

P1 and P2 also apply to the accounts of the Vander Poorten Estates. 30

(To Court—P1 is up to 31-3-56. According to that the amount due from the Vander Poorten Estates to the plaintiff is Rs. 50,494/-. She had also drawn a sum of Rs. 6,250/-. Rs. 55,421/- represents the amount due to plaintiff from the Vander Poorten Estates up to 31-12-50. Thereafter up to 31-3-56 the amount due to her is Rs. 3,322/- and she has drawn Rs. 2,241/- leaving a balance of Rs. 880/-).

The above accounts are in respect of the Vander Poorten Estates.

In respect of the Mr. and Mrs. Vander Poorten Estates that is Greenwood, Weweltalawa and Normandy, I have shown a distributable income in P1 under two periods 1st October 1946 to 30-4-49 where I have taken the income from the statement 1B in X. and the income for the period 1st May 1949 to 31-3-56 was taken from the accounts of Messrs. Aitken Spence & Co. From that I have deducted the 1/9th share of the capital expenditure debited to the Assets Account in 1953 and 1954 amounting to a total of Rs. 5,105/-. The total distributable income of the plaintiff for that period is Rs. 134,715/-.

No. 12
Defendant's
Evidence.

—
D. Rama-
swamy—
Examina-
tion.
—continued.

On page 2 of P1 relating to Weweltalawa, Normandy and Greenwood I have shown the distribution actually made to plaintiff according to the books of Messrs. Aitken Spence & Co. up to 31-3-56 and I have shown a sum of Rs. 131,422/- as having been paid to her by Messrs. Aitken Spence & Co., that is from 1-4-50 to 31-3-56.

Messrs. Aitken Spence & Co. took over these estates in 1946 and 1949. Greenwood was taken over in 1946 and the other estates were taken over on 30-4-49.

In this statement of distributions and accounts I have taken into account the drawings made by her from 1-4-50 onwards totalling Rs. 131,422/-. A sum of Rs. 6,281/- has been deducted. In the Vander Poorten Estates Accounts Messrs. Aitken Spence & Co. had taken over Rs. 6,281/- as a debit to Mr. Vander Poorten and credited it in this account. It was merely a transfer from one account to the other.

The balance to the credit of plaintiff in the books of Messrs. Aitken Spence & Co. as at 31-3-56 is Rs. 11,026/-. A deduction has not yet been made for capital expenditure on her account, that is the sum of Rs. 5,105/-.

The true balance due to plaintiff as at 31-3-56 is Rs. 5,875/-, that is after deducting the capital expenditure item as well and making the necessary adjustments.

(To Court—So that from both sets of estates plaintiff's share up to 31st March 1956 would be Rs. 55,421/- Rs. 880/- and Rs. 5,875/- that is Rs. 62,176/-).

In the document P2 dated 18th November 1957 I have shown how plaintiff's share of the Vander Poorten Estates and in Normandy, Greenwood and Weweltalawa have been shown separately in X and P1, but the total is the same.

I have also been doing the Income Tax work of these parties.

I produce marked P3 a statement dated 16-11-57 prepared by me and certified by me of the income of the plaintiff and the Income Tax thereon. I have classified this statement in various columns.

No. 12
 Defendant's
 Evidence
 —
 D. Rama-
 swamy—
 Examination
 —continued.

In P3 I have totalled up her income from various sources, from the Vander Poorten Estates, from Greenwood, Normandy and Weweltalawa and interest on dividends and from 1-4-40 to 31-3-50 her total income has been Rs. 107,446/- as shown in column 9.

In column 10 I have shown the total income of the plaintiff and defendant as Rs. 128,779/-.

In column 11 I have shown the total tax payable which works out to Rs. 347,967/-.

Column 12 shows the tax deducted at source on dividends and column 13 shows the nett tax payable. 10

In column 14 I have worked out what share of the nett tax is due in respect of plaintiff's share of the income, that is Rs. 28,940/-.

Under the provisions of the Income Tax Ordinance under certain circumstances the payment of Income Tax is obligatory by the husband. By virtue of the fact that the share of her income had been included in the defendant's statements of income it had been taxed thereon and paid by him.

The statement P3 is in respect of the Income Tax up to 1950.

From 1951/1952 assessments were being made separately for plaintiff and defendant even though assessments on plaintiff were made with refer- 20
 ence to the income of the defendant, there have been no separate assessments as such. For about 5 or 6 years even though plaintiff's share of the income was small the tax she was paying was large. Subsequent to 1950 the plaintiff's income does not come into the statement of income of the defendant.

Between the period of 1940 and 1951 the assessment was made on the husband and he was liable to pay the tax.

The taxes have all been paid but as to who actually paid the taxes I do not know but the receipts are all with me here in the name of the defendant.

In the statement X is also shown how the various counter claims now being made by defendant against plaintiff are arrived at. 30

I assisted in the preparation of this statement (shown D3). For this purpose we examined cheque counterfoils. For the purpose of compiling this statement we did not examine the bank statements. This statement was worked out on certain information given to me by the defendant and with the counterfoils.

XXD.—Q. Various parts of the document X have been prepared at various times? *A.* Yes.

Q. For instance one set of documents which go to make that is dated 15-3-55, the statement 1 which is part of document X is dated 5-2-54, the statement marked 2 is dated 5-2-54 and the statement 3 is also dated 5-2-54?

A. Yes.

Q. The plaint in this case is filed on 29-1-55?

A. Yes.

10 *Q.* Defendant's answer was filed on 16-9-55?

A. Yes.

Q. Statement 2 which is part of the document X was not prepared by you but is merely a compilation of figures given to you by the defendant?

A. Yes.

Q. From where did defendant send you that material?

A. Messrs. Aitken Spence & Co., were his attorneys in Ceylon and we have acted on their instructions?

Q. Statement 2 is dated 5-2-54?

20 *A.* Yes.

Q. You say that all the material for that statement was supplied to you by somebody?

A. Yes.

Q. Who was it who supplied it to you?

A. Messrs. Aitken Spence & Co.

Q. You did not call for these?

A. No.

Q. When was that material supplied to you?

30 *A.* It would have been subsequent to January 1954 and I say that for the reason that we have got a copy of a letter from Messrs. Julius & Creasy written to Messrs. Aitken Spence.

No. 12
Defendant's
Evidence

D. Rama-
swamy—
Cross-exami-
nation.
—continued.

- Q. In January 1954 where was the defendant ?
- A. I do not know.
- Q. Was he in the Island ?
- A. I do not know.
- Q. Were you having any personal dealings with him ?
- A. No.
- Q. Do you know defendant personally ?
- A. Yes.
- Q. When did you last see defendant ?
- A. It must have been over 15 years ago. 10
- Q. Fifteen years from now, that is about 1943 ?
- A. Might have been.
- Q. Round about early 1954 you might not know where he was but he was not in the Island.
- A. I was not aware.
- Q. You last saw him in 1943—thereafter did you have correspondence with defendant ?
- A. No. Our correspondence has always been with Messrs. Aitken Spence.
- Q. Up to 1943 you have taken instructions from defendant personally ? 20
- A. Yes.
- Q. After 1943 you have not even received a letter from the defendant ?
- A. I cannot say at the moment.
- Q. After 1943 you have received instructions from Messrs. Aitken Spence & Co. ?
- A. No.
- Q. You began to receive instructions from Messrs. Aitken Spence & Co. when ?
- A. After they took over the management, that is in 1950,

Q. You have not received any correspondence from defendant after 1943 giving you instructions ?

A. I cannot say that. I did not see him personally after 1943, I may have received letters subsequent to that.

Q. Did you receive any letters from the defendant in 1957 ?

A. No.

Q. Did you receive any letters from the defendant for the five months of this year ?

A. No.

10 I did not receive any letters from defendant in 1956, or 1955, or 1954, or 1953 or 1952 or 1951.

Q. Up to the point Messrs. Aitken Specne took over did you receive any letters from defendant ?

A. I will have to look into my files to say that.

Q. You were sent a set of figures by Messrs. Aitken Spence typed out on paper ?

A. Yes.

Q. What you have done is you have reproduced those figures as statements 2, 2a to 2f and 3 ?

20 A. Yes.

Q. And you have signed it ?

A. Yes.

Q. You do not vouch for the accuracy or the correctness of any one of those items in the whole of statements 2a to 2f and 3 ?

A. I cannot vouch for the accuracy of those figures.

Q. Nor in fact did you check that material which is now reproduced as statements 2 and 3 from the primary or original documents, like bank statements etc. ?

30 A. We have seen most of the cheque counterfoils. We have not seen the bank statements.

Q. Nor receipts ?

A. No.

No. 12
Defendant's
Evidence

D. Rama-
swamy—
—Cross-
examination
—continued.

- Q.** You are not able to say why Messrs. Aitken Spence & Co. sent you this material in January 1954 before plaintiff filed this action ?
- A.** That was in regard to D.C. 3115/D Colombo.
- Q.** That is the divorce case between Mr. and Mrs. Vander Poorten ?
- A.** Yes.
- Q.** So that the material in the statements 2 and 3 were sent to you by Messrs. Aitken Spence & Co. for the purposes of the divorce case ?
- A.** Yes.
- Q.** You do not know what purpose these statements were to serve in that divorce case ? 10
- A.** No.
- Q.** Can you tell me why have you appended these statements 2 and 3 as part of the document X, did you do it or were you asked to do it ?
- A.** We were asked to prepare a statement by Messrs. Aitken Spence.
- Q.** The whole of document X you say was prepared by you at the instance of Messrs. Aitken Spence ?
- A.** Yes.
- Q.** Was the rest of the document X also prepared for the purposes of the divorce case 3115/D ?
- A.** The portion dated 15-3-55 was given subsequently by us to Messrs. 20 Aitken Spence & Co. that is also part of the document X.
- Q.** Were those two statements headed “ Distributable share.....” prepared by you for the purposes of the divorce case ?
- A.** I cannot say because there is no reference like that. They only wanted a statement—that was in connection with the divorce case.
- Q.** Were you consulted by defendant’s proctor in connection with the preparation of the Answer filed in this case ?
- A.** No.
- Q.** Were you a witness for the defendant in the divorce case ? 30
- A.** Yes. I was present in Court and I gave evidence for the defendant. (Shown documents X and D2).

Q. According to document X plaintiff's share of the income from the estates for the period 1-12-40 to 31-3-54 was Rs. 161,488/- ?

A. Yes.

Q. The effect of D2 is that plaintiff's share of the income for the period 1st December, 1940 to 31st March, 1956 was Rs. 199,780/- ?

A. Yes.

Q. All that D2 has done is that it has extended the period for 2 years ?

A. Yes.

(Shown page 2 of the document marked X).

No. 12
Defendant's
Evidence

D. Rama-
swamy—
Cross-exami-
nation
—continued.

10 Q. That is headed " Payments made to her by Mr. J. Vander Poorten, Payments made on her behalf, etc., up to 30th June, 1954 " and shows a total of Rs. 371,984/- ?

A. Yes.

Q. Of this sum a sum of Rs. 363,790/- consists of the amounts set out in statement 2 ?

A. Yes.

Q. You do not vouch for the position that Rs. 371,984/- represents payments made to plaintiff by defendant or payments made on her behalf ?

20 A. I do not vouch for that.

Q. That second page also must have been prepared by somebody ?

A. Aitken Spence gave us the figures.

Q. What those figures represent you do not know ?

A. I do not know.

Q. You have merely signed the statement which was given to you by Messrs. Aitken Spence & Co. ?

A. Yes.

30 Q. In fact you do not know whether defendant made any payments to plaintiff or whether any payments were made on her behalf, you do not know personally ?

A. I do not know.

(Shown statements 1, 1A, 1B of document X).

- Q.** Those are also statements supplied to you by Messrs. Aitken Spence & Co. ?
- A.** Those consist of figures taken from our files.
- Q.** Including the figures in the statement 1A ?
- A.** Yes.
- Q.** 1A deals with the income of the Vander Poorten Estates ?
- A.** Yes.
- Q.** Vander Poorten Estates consist of what estates ?
- A.** A large number of estates. 10
- Q.** You do not work the estate accounts ?
- A.** No. The statements are prepared from the books sent at various times and this statement has been prepared from those books.
- Q.** As far as you know the Vander Poorten Estates consist of a large number of estates in which plaintiff and defendant have shares only together with others ?
- A.** Yes.
- Q.** Is that a limited liability company ?
- A.** No.
- Q.** What share did plaintiff have and what share did defendant have 20 after 1940 in the Vander Poorten Estates ?
- A.** Plaintiff 1/20th and defendant 8/20ths.
- The Vander Poorten Estates came under the management of Aitken Spence & Co. from 1st January, 1951.
- Q.** From 1940 till 1951 in whose management was it ?
- A.** The estates were being managed by the proprietors.
- Q.** Who actually was in charge ?
- A.** I cannot actually say.
- Q.** Were you acting as accountant during that period from 1940 ?
- A.** Yes. 80

The Mr. and Mrs. Vander Poorten Estates consisted of Weyweltalawa, Greenwood and Normandy in which plaintiff had 1/9th share and the defendant 8/9th. Those estates came under the management of Messrs. Aitken Spence & Co. from 1st April, 1949. Before that it was managed by the proprietors, that is the defendant.

No. 12
Defendant's
Evidence

—
D. Rama-
swamy—
—Cross-
examination
—continued.

I last saw defendant in 1943. As far as the accounts were concerned it was not necessary for us to see the defendant all the time. At that time I was not personally looking into those accounts.

(Shown document X).

10 Q. You show Rs. 63,398/- as the distributable share up to March 1954 and Rs. 64,993/- as the distributable share up to 31-3-56 according to D2—where did you get those figures ?

A. From the books of Messrs. Aitken Spence & Co.

Q. Is the top page of document X a computation ?

A. We have used that word and by that we mean a statement computing the figures.

(Adjourned for lunch).

(Sgd.)
A. D. J.
16-6-58.

20

34367/M.

16-6-58.

After lunch.

Ramasamy Iyer.—Affirmed.—recalled.

(XXD—Contd.)

In order to summarise the imprest in regard to what is due to the plaintiff, Rs. 126,888/- is due up to 31st March, 1952. According to P2 Rs. 199,708/- is due up to 31st March, 1956.

Q. You have shown in D1 on the sixth sheet a total sum of Rs. 131,422/- as being the sum drawn by her ?

30 A. Yes.

Q. You reduced that further to Rs. 125,863/- ?

A. Yes.

Q. Therefore of those two figures what is shown is the difference between them ?

A. Yes.

No. 12
Defendant's
Evidence

D. Rama-
swamy
—Cross-
examination
—continued.

- Q. Those are the drawings made by Mrs. Vander Poorten as against the Rs. 199,708/- ?
- A. That is not correct. Those are drawings made against the sum of Rs. 136,843/-, share income from 1-5-49 from the estates owned by Mr. and Mrs. Vander Poorten alone.
- Q. What is the total sum which you say has been drawn by Mrs. Vander Poorten out of Rs. 199,708/- which is her distributable share ?
- A. For that purpose I have not got a statement. That figure could be given to the extent of Rs. 125,141/- in respect of income of the 10 estates owned by Mr. and Mrs. Vander Poorten exclusively. As regards the drawings with regard to Vander Poorten Estates as has been stated in the statements, the profits up to the point of time the estates were taken over by Messrs. Aitken Spence & Co., there has been no separate account for Mr. and Mrs. Vander Poorten. The profits had all been taken by Mr. Vander Poorten, and for that purpose we have shown the sums taken by Mr. Vander Poorten all make a total of Rs. 531,933/-. At paragraph 5, page 2 Rs. 50,494/- is a portion that could be attributable to those drawings for her 1/9th share. 20
- Q. From the documents available to the court today can you give the total amount which you say Mrs. Vander Poorten has drawn out of the distributable share ?
- A. I cannot.
- Q. The position is, as far as you are concerned, and as far as the documents go Rs. 199,708/- was due and payable to Mrs. Vander Poorten ?
- A. Yes.
- Q. But you cannot say how much was paid to her or drawn by her ?
- A. Yes. I cannot say. 30
- Q. Except to the extent of Rs. 125,141/- which is the figure shown on Sheet 6 of D1 ?
- A. Yes.
- Q. That is all you can be positive about ?
- A. Yes.
- Q. The difference is Rs. 74,567/- ?
- A. Yes.

There is one more item of Rs. 6,250/- in P1 sheet 2. That leaves a balance of Rs. 68,317/-.

No. 12
Defendant's
Evidence

D. Rama-
swamy—
—Cross-
examination
—continued.

Q. As far as your evidence goes and as far as the documents produced by you before the court go, out of the distributable share due to Mrs. Vander Poorten Rs. 68,317/- is still due ?

A. Yes.

Q. You have no knowledge of whether the sum of Rs. 6,250/- shown on Sheet 2 of D1 was in fact paid to Mrs. Vander Poorten ?

A. No.

10 Q. That figure appears only in D1 because Messrs. Aitken Spence & Co. gave it to you ?

A. Yes. It is found in the books.

Q. You referred to the figure of Rs. 125,141/- you are not able to say whether that represents monies paid direct to Mrs. Vander Poorten or drawn by her or set off against her account ?

A. These are all recorded as having been paid to Mrs. Vander Poorten.

Q. Are you sure of that ? A. Yes.

Q. Are you sure that the books say that they were paid to Mrs. Vander Poorten ?

20 A. Yes, debited to her account.

Q. Do you understand the difference between debit to account and payment direct ?

A. I do.

Q. For instance with regard to Rs. 6,250/- it is entered in the books as paid to her direct ?

A. Yes.

Q. In regard to items which make a total of Rs. 125,141/- those were items debited to her account ?

30 A. No. That depends. It had necessarily to be made at first in paragraph 5 of sheet 2 for the reason that we are referring to payments that had been made to Mrs. Vander Poorten. No part of those payments were made to Mrs. Vander Poorten's account, while on the other hand Rs. 6,250/- was paid to her. That is why we had to use the word "direct". An account could only be debited when a payment is made.

No. 12
Defendant's
Evidence

D. Rama-
swamy
—Cross-
examination
—continued.

Q. You admit that in regard to the total of Rs. 125,141/- those are entered in the books as debited to her account ?

A. Yes.

Q. That figure of Rs. 161,488/- is made up of Rs. 63,392/- the details of which are set out in the statement 1A ?

A. Yes. That would be in the March 1955 statement which is part of X.

Q. Of Rs. 64,014/- the details of which are set out in the statement 1B which is part of the document X ?

A. Yes.

10

Q. And a further sum of Rs. 34,082/- for which details do not appear in the document X ?

A. Yes.

(Witness referred to statement 1A).

Q. These were all figures given to you by Messrs. Aitken Spence & Co. and were extracted by you ?

A. These were all extracted from the statements available to us which had been taken at the time of the examination of the documents on the earlier dates.

Statement 1A arrives at the figure of Rs. 63,398/- that is after debiting a sum of Rs. 5,000/- which is shown as a contribution to a send-a-plane fund.

Q. You don't know whether Mrs. Vander Poorten wanted to contribute to the send-a-plane fund ?

A. I don't know.

Q. It may very well be that Mr. Vander Poorten made a contribution of Rs. 5,000/- to the send-a-plane fund ?

A. May be.

Q. If that figure of Rs. 5,000/- is not to find a place in 1A then Mrs. Vander Poorten's share would go up by how much ?

80

A. It will go up by 1/20th of Rs. 5,000/-.

(To court : It will go up by Rs. 250/-).

Q. Are you able to say whether the figures of profit and loss and income which are shown in the statement 1A include only the items of expenditure necessary to run and maintain the estate or does it include any other debits such as this send-a-plane fund contribution?

A. No. Whatever items that are there have been shown in the statements. In the latter part only the working expenses have gone.

Q. Why did you show that Rs. 5,000/- to the send-a-plane fund?

10 A. Because that has been debited in the profit and loss appropriations account before distribution of any part of the profits to the various shareholders.

(Mr. Kadirgamar refers to statement 2 of X where Messrs. Aitken Spence & Co. have set out a sum of Rs. 18,660/80 as being the cost of three partition actions.)

Q. Can you assure the court that that sum of Rs. 18,660/80 has not been debited to the working accounts of any one of this group of estates?

20 A. That amount has not gone into any of the expense accounts for the reason that these profit and loss accounts are prepared not only for these two people. There are other co-owners of the Vander Poorten Estates. They cannot be made a party to bear any part of this expenditure.

I can say that no part of that Rs. 18,660/80 has gone into the accounts.

Q. Is it an inference that you are drawing from the fact that there are other co-owners to these properties or have you actually checked?

A. I have not tested that particular point.

30 Q. On that same sheet there is a reference to 11,215 lbs. of rubber which according to that statement has been appropriated by Mrs. Vander Poorten from Greenwood Estates amounting to Rs. 33,392/57. Can you say that that sum has not been debited to the estate working account as a loss or that it does not come into the account?

A. It has been credited to the account because one of the co-owners goes and take some of the produce. From the taxation point of view, we have to see that this has been credited too. So far as the account is concerned that has not been credited.

40 Q. You don't know whether Mr. Joseph Vander Poorten is right when he says that 11,215 lbs. of rubber were appropriated by Mrs. Vander Poorten?

No. 12
Defendant's
Evidence.

—
D. Rama-
swamy—
—Cross-
examination
—continued.

- A. I don't know.
- Q. You don't know anything about the rights or wrongs of Mr. Vander Poorten having included that figure in his statement too ?
- A. I don't know.
- Q. Can you say that as a result of some personal checking that you have done with the accounts ?
- A. I can say that this amount has not been claimed as an expense in the accounts.
- Q. At the bottom of page 2 of statement 2 item 9 is represented as a figure of Rs. 70,710/- being the value of furniture and belongings left behind at Preston ?
- A. Yes.
- Q. Are you aware that Mr. Joe Vander Poorten has filed an action No. 36982/M in the District Court of Colombo against Mrs. Vander Poorten for the recovery of Rs. 70,000 odd which he says is the value of furniture at Preston No. 20, Alfred Place ?
- A. I am not aware of that.
- (Mr. Kadirgamar moves to mark copy of plaint in case 36982/M ?
Mr. Dias objects.)
- (Mr. Kadirgamar refers to Item 4 of Statement 2.) 20
- I know nothing about the defamation case in D.C. Colombo Mrs. H. Vander Poorten versus Mr. Joe Vander Poorten.
- Q. Do you know whether those monies were shown in the accounts of any one of these groups of estates ?
- A. If you mean profit and loss accounts, they are not included.
- Q. Taking the figure of Rs. 64,014/- details of which are shown in the statement 1B that is the share of income of Greenwood, Weywetalawa and Normandy estates, you have a note that in arriving at the income for the year 31st March 1952 a sum of Rs. 155/- being 1/9th share of the legal expenses incurred in the partition action³⁰ has been deducted ?
- A. Yes.
- Q. Similarly a sum of Rs. 333/- being the 1/9th share of legal expenses has been deducted ?
- A. Yes.

Q. Does that mean that those two sums have been deducted from the estate accounts ?

A. They have been debited to the estate accounts.

Q. You don't know what those legal expenses are ?

A. I don't know.

Q. How is it that you are so positive that in regard to statements 1A and 1B that the costs of these partition actions and the defamation action have not been debited ?

10 A. That is because I have not made a note as regards those expenses as well ; otherwise that being an item which is extraneous I would definitely have made a statement.

Q. Taking the group of years 1950 to 1956 you have told the court that the income from the properties during that group of years has been very little ?

A. Yes.

Q. Up to this time the properties were under the management of the proprietors and from 1949 or 1951 Messrs. Aitken Spence & Co. began to take over ?

A. Yes.

20 Q. From the time Aitken Spence & Co. took over the income has dropped to very very small proportions ?

A. The figures show that according to the share income.

Q. Are you able to give some explanation as to why the income has been very low for that period ?

A. Mrs. Vander Poorten I believe has transferred her interests in some of the estates that belonged to her to her son which is not included here. It may be due to that I cannot just off hand say as to why this figure is low.

30 Q. Are you able to look at any account in court now and say whether there have been any large debits to the working accounts for any one year or two years ?

A. Yes.

(Mr. Dias says that Messrs. Aitken Spence & Co.'s books are in court and are available for inspection).

No. 12
Defendant's
Evidence.

D. Rama-
swamy—
Cross-
examination
—continued.

For the year ended 31st March, 1954 Mrs. Vander Poorten appears to have a 1/20th share only in Vander Poorten Estates. Mr. Vander Poorten himself is having an 8/20th share in those estates plus 8/20th in Battagalla and Spillers estate. Actually her share from the estates they were losing at that particular point of time. Prior to that she appears to have had a 1/20th share in all the estates.

(Shown D3).

Q. In the last column you have shown the tax which is attributable to Mrs. Vander Poorten's share ?

A. Yes. 10

Q. You don't know personally who paid the Income Tax ?

A. I don't know.

Q. Nor do you know whether Mr. Vander Poorten paid any part of Mrs. Vander Poorten's Income Tax, from your own personal knowledge ?

A. So far as these years are concerned there has been no assessment of Mrs. Vander Poorten's account separately.

Q. You don't know who paid that tax, you don't know who paid the cheques ?

A. That of course, I don't know. 20

RE-XXD.

No. 12
Defendant's
Evidence.

D. Rama-
swamy—
Re-examin-
ation

Q. You were questioned just now about Income Tax. You told the court that there was no separate assessment made on Mrs. Vander Poorten during the period 1940 to 1950 ?

A. Yes.

Q. Does that mean that a notice of assessment was served on Mr. J. Vander Poorten in respect of those years of assessment for the income of himself and his wife ?

A. Yes.

Q. To your knowledge has that tax in fact been paid ? 30

A. Yes, all the taxes have been paid.

Q. Who is the person who is liable to pay that tax ?

A. Mr. Vander Poorten. If it has not been paid it is he who is liable to pay it.

Q. Year after year you have been responsible for the Income Tax work of both these parties.

A. Yes.

Q. In respect of difference holdings in different estates ?

A. Yes.

Q. For that purpose have you to examine the statements of books of the estate accounts for each year for the purpose of preparing the Income Tax statements ?

10

A. So far as those statements go, the Superintendents have been furnishing monthly reports and we have been checking such monthly reports with sales notices and there we have been doing a general audit of those accounts. All these figures are incorporated in the books maintained by Messrs. Aitken Spence & Co. and we have looked into those books. Prior to Aitken Spence & Co.'s management there was a set of books maintained in respect of these estates on the estate and we have examined those books.

Q. After an examination of those books the Income Tax statements were prepared ?

A. Yes.

20

Q. For the purpose of preparing the Income Tax statement do you personally attach a certificate to the Income Tax returns certifying to their correctness as a Chartered Accountant ?

A. Yes.

Q. Before you issue that certificate do you satisfy yourself that the items of expenditure and profits are properly recorded in the accounts as shown in the Income Tax returns ?

A. Yes.

Q. For instance would the expenses of a partition action be allowable as deductions for Income Tax purposes ?

30

A. It won't be allowed.

Q. If for instance there is an item like that which is not something that is properly allowable for Income Tax purposes would you make a correction in the accounts ?

A. We will increase the profits as shown by the books. We make an adjustment to correct a position like that.

No. 12
Defendant's
Evidence.

D. Rama-
swamy—
Re-
examination
—continued.

No. 12
Defendant's
Evidence.

D. Rama-
swamy—
Re-
examination
—continued.

- Q.** If you do that would you make a note of it ?
- A.** We would.
- Q.** For instance Rs. 5,000/- has been debited in respect of the send-a-plane fund. The entry in the accounts would mean that out of the profits of the estate including the share of all the proprietors Rs. 5,000/- has been in fact paid ?
- A.** Yes.
- Q.** Would that be properly allowable as a tax item ?
- A.** No.
- Q.** For that purpose would you have to make an adjustment in respect 10 of that Rs. 5,000/- by noting it ?
- A.** Yes. Normally we would have to make an adjustment if that Rs. 5,000/- had been debited to the profit and loss account. If it has not been so debited, by crediting available profits for distribution among the various shareholders. No such adjustment would be made in preparing these statements.
- The information is taken from the books maintained by Messrs. Aitken Spence & Co.
- Q.** You prepared those statements out of your own Income Tax records for each year ? 20
- A.** Yes.
- Q.** In making the statement you took your information about the send-a-plane fund from that statement ?
- A.** Yes.
- Q.** That is to say in your statement you had made a note of the send-a-plane fund ?
- A.** Yes.
- Q.** You said you were able to say that no items of expense not properly allowable had been included in these profit and loss appropriation accounts ? 30
- A.** Yes.
- Q.** You told the Court you drew that inference from the absence of a note made by you ?
- A.** Yes.

Q. Is that because you would have made a note if that item is not properly allowable ?

A. Yes.

Q. You were questioned that the total income which ought to be paid to the plaintiff was a total figure of something like Rs. 68,307/- ?

A. Yes.

Q. As far as your statement D1 is concerned the total amount due to the plaintiff if one assumes that the Rs. 50,494/- has not been paid to her is Rs. 62,176/42 ?

10 A. That is correct.

Q. Your evidence in cross-examination was that working from a different angle that total figure was Rs. 68,317/- ?

A. Yes.

Q. In making that second computation of Rs. 68,317/- have you taken into account the reduction of capital expenditure ?

A. It has not been taken into account.

Q. It has to be made against Mrs. Vander Poorten's share ?

A. I have shown that in statement D1.

20 Q. You were questioned in regard to statement 2 which forms part of the document X5 filed of record. In regard to this you were asked whether you could personally vouch for the different items shown in statement 2 ?

A. Yes. I said the information in statement 2 is obtained from Aitken Spence & Co.

Q. You have examined some cheque counterfoils ?

A. Yes.

Q. In regard to statement 1, are you in a position to vouch personally for the statement of income shown in statement X ?

30 A. All the figures can be supported by statements furnished to the Income Tax Department, and the statements in the Income Tax Department have been taken from the various books personally.

(Sgd.)
A. D. J.

No. 12
Defendant's
Evidence.
—
T. H. B.
Saldin—
Examination

T. H. B. Saldin.—Affirmed.—56—Clerk, Mercantile Bank, Colombo.

The Mercantile Bank of India has been summoned to produce certain documents. I have been asked to produce a letter written by the plaintiff and defendant to the Mercantile Bank asking them to open a joint account with the Mercantile Bank.

(Mr. Kadirgamar objects to the document. I allow it.)

I have brought into Court the original as well as a photostat copy.

(Mr. Dias marks the photostat copy of letter dated 19th August, 1940, D4).

I produce marked D5 a photostat copy of another application to open a No. 2 Joint Account by the same parties, dated 19th November, 1956.

(Mr. Kadirgamar objects to D5. I allow it.)

I was also asked to produce all cheques and paying-in-vouchers in respect of this account, but they are not available. Both joint accounts were closed. I cannot say when they were closed. I produce marked D6 a copy of the rules of the Bank. Both can draw cheques on a joint account up to the extent of the money in the bank.

XXD. Nil.

(Sgd.)
A. D. J. 20

D. D'Zilva
Examination

D. D'Zilva.—Sworn—56—Sub-Assistant, Messrs. Aitken Spence & Co., Colombo.

I have been employed at Messrs. Aitken Spence & Co. for 38 years. Our firm was summoned in this case to produce certain documents. The first document is the letter dated 30th Jan. 1951 signed by the plaintiff and addressed to the defendant which I produce marked D7. Between the years 1st April 1951 to 31st March 1952 a sum of Rs. 15,000/- was paid to the plaintiff by the firm of Aitken Spence & Co. In regard to that payment of Rs. 15,000/- I produce cheque No. FU 748674 dated 12th Nov., 1951 drawn in favour of Mrs. Hilda Vander Poorten. I produce the cheque marked D8. In respect of the earlier payment of Rs. 16,697/26 for the year ended 31st March 1951, I tried to get the cheque for that period. I tried to get it from the National Bank, but could not.

I produce marked D9 cheque No. FU 309391 dated 19th Jan., 1951 for a sum of Rs. 3,000/- payable to Mrs. Hilda Vander Poorten. I have also ascertained that there was another cheque for Rs. 13,697/20 which has been destroyed by the bank. I have ascertained from the bank that that original has been destroyed.

I was asked to produce certain account statements particularly in regard to the value of certain quantities of rubber and cocoa which are said to have been taken by Mrs. Vander Poorten. With regard to that Messrs. Aitken Spence & Co. have sent another representative to give evidence on that point. He is one Mr. E. B. Perera who is here.

XXD.

Q. You produced D7 a letter from Mrs. Vander Poorten to Mr. Vander Poorten ; are you aware that subsequent to this letter the plaintiff wrote to your firm cancelling the letter D7 ?

A. I am not aware of that.

Q. These two cheques which you have produced D8 and D9 were two cheques paid by the Joseph Vander Poorten Estates to Mrs. Vander Poorten ?

A. Yes.

10 Q. One was on 19th Jan. 1951 and the other later in the year, 12th Nov. 1951 ? A. Yes.

Q. All that you can say is that these were two sums of money paid by Joseph Vander Poorten Estates to Mrs. Hilda Vander Poorten ?

A. Yes.

Q. You don't know what these payments represent ?

A. They are part of the profits.

Q. These are the only two payments that you can speak to ?

A. Yes.

Re-XXD. N I L.

20

(Sgd.)
A. D. J.

E. B. Perera.—Sworn—48—Book Keeper, Messrs. Aitken Spence & Co., Colombo.

E. B. Perera
Examination

I produce marked D10 copy of the accounts of Mrs. J. Vander Poorten in account with the Vander Poorten Estates for the period 1951 to 31st March, 1956. The statement is dated 17th July, 1957. I have also with me the ledgers of the Vander Poorten Estates maintained by Messrs. Aitken Spence & Co. The figures in D10 were taken from those ledgers which are in court and are available for inspection.

30 I produce marked D11 copy of Mrs. H. Vander Poorten's account with Mr. & Mrs. J. Vander Poorten Estates in respect of the period 1951 to 31st March, 1956, certified by the accountant of Messrs. Aitken Spence & Co. and dated 17th July, 1957. The figures in D11 are also taken from these same ledgers.

No. 12
Defendant's
Evidence.

E. B. Perera
Examination
—continued.

In the Greenwood Cocoa sales account appearing in the Mr. & Mrs. Vander Poorten Estates ledger we have debited sales account in respect of 350 cwts. of Cocoa. Mrs. Vander Poorten would be the sundry debtor in this case. The amount was Rs. 58,635/58. In the ledger account for 1951 Greenwood Rubber sales account there is an entry of Rs. 17,211/60 and Rs. 16,246/20 in respect of rubber sold on sundry debtors account. That represents 211015 lbs. of rubber. The total amount is Rs. 33,397/39. We have credited that account for that year and subsequently passed the debit. According to the books the balance at 31st March, 1956 is Rs. 11,025/52. That money is held for the benefit of Mrs. Vander Poorten payable to her. 10 In respect of D10 Rs. 1,694/- is held by Messrs. Aitken Spence & Co. As against the Vander Poorten Estates, according to D10 Mrs. Vander Poorten has been actually paid two sums of money, one of Rs. 4,093/55 on the 31st March 1961 representing her share of the profits in respect of Vander Poorten Estates and on 31st March 1955 a sum of Rs. 3,425/93. According to D11 all payments on account of profits are shown.

I have been working at Messrs. Aitken Spence & Co. for 30 years.

Q. When did Aitken Spence & Co. take over the management of these estates ?

A. They took over the Vander Poorten Estates in January, 1951 and 20 Mr. & Mrs. Vander Poorten Estates somewhere in May, 1949. During the whole of that period I did not work these books. I took charge of these books two years back. Now I am in charge of all the sets of books. There is a clerk of Mr. Vander Poorten called E. V. Fernando working on the Vander Poorten Estates account.

Our company is also the Attorneys of Mr. J. Vander Poorten.

Q. Is your company also the Attorney or acting for Mrs. Vander Poorten ?

A. (Inaudible). 30

Q. With regard to Mr. J. Vander Poorten & Mrs. J. Vander Poorten two separate ledger folios are maintained for each one ?

A. Yes.

Q. The payments made to Mr. J. Vander Poorten are shown in his ledger folio ?

A. Yes. The drawings by Mrs. Vander Poorten are shown in her ledger folio.

Q. And the share of the profits of each should be credited to their respective folios ?

A. Yes. 40

(It is 4 p.m. now. Further hearing on 27/6).

(Sgd.)
A. D. J.

27/6/58.

No. 12
Defendant's
Evidence.

Trial resumed.

Appearances as before.

E. B. Perera—recalled—sworn.

XXD.

I started working at Messrs. Aitken Spence & Co. in 1929. I had nothing to do with the books and ledgers of the Vander Poorten Estates or of Mr. & Mrs. Vander Poorten Estates until about two years ago.

E. B. Perera
—Cross-
examination

Q. That is, you did not work on these books until about 1956.

10 A. I did that work in 1954—1955 and 1955—1956.

Q. In which year did you start ?

A. I started in 1954.

Q. When you gave evidence on the last date you told the court “ I took charge of these books two years back ”. What did you mean by that ?

A. Two years back means I am referring to the years in the estates the financial years. When I say two years back I mean the two financial years 1955 to 1956 and 1956 to 1957.

20 Q. That is to say, you took charge of the books of the estates for the accounting years 1955 to 1956 and 1956 to 1957 ?

A. Yes. You can verify that from the ledgers which show my handwriting.

Q. Taking the years 1955/1956, all the books are not written by you. You must, when you take up the books, keep them until that accounting year is over ?

30 A. As far as I can recollect I think I took up this work from Mr. Senanayake. He was my boss. Then as I was getting efficient in my work I was asked to take up this work. I cannot definitely say the year in which I took up this work or whether I took it up for finalising or from the inception of that year.

Q. All I want to know is, can you say in which year you took over these books from Mr. Seneviratne.

A. I cannot remember unless I look into the register.

No. 12
Defendant's
Evidence.

E. B. Perera
—Cross-
examination
—continued.

Q. Before you took over, who was keeping these books and ledgers?

A. Mr. D. H. Seneviratne.

Q. For how long had he been keeping those books?

A. From the inception of this work. That is, from the time Messrs. Aitken Spence & Co. took over the estate. That is, somewhere in 1949/50.
(Shown D10)

This document was prepared by me. I prepared this document on the instructions of the Director of the firm. These are figures which have been extracted from the ledger. 10

Q. What were you asked to prepare?

A. I was asked to prepare a statement of Mrs. Vander Poorten. A statement of her account in the ledger.

Q. From what books did you prepare this document D10?

A. There are two sets of books. D10 is the account of Mrs. J. Vander-Poorten on account of Vander Poorten Estates.

This document represents Mrs. J. Vander Poorten's account in the Vander Poorten Estates ledger. The Vander Poorten Estates means there are five groups of estates.
(Shown D11). 20

That is the document headed "Mr. & Mrs. J. Vander Poorten Estates". I prepared this document. This was also prepared at the request of the Director of Messrs. Aitken Spence & Co.

Q. What does that document D11 show according to you?

A. That is to show Mrs. J. Vander Poorten's account with J. Vander Poorten Estates from March 1950 to 31st March, 1956.

Q. According to this document is there any money due to Mrs. Vander Poorten?

A. There is a sum of Rs. 11,025/52 due to her as at the 31st March, 1956.

The document D10 there is a sum of Rs. 1,600/94 due to Mrs. Vander Poorten.

Q. Those two sums of money, that is Rs. 11,025/52 and Rs. 1,600/94, which you say according to these two documents, are payable to Mrs. Vander Poorten?

A. Yes.

Q. Those sums of money according to you are held here ?

A. There are bank accounts.

Q. These monies are lying available in bank accounts to the credit of Mrs. Vander Poorten ?

A. No. These monies are to the credit of Mrs. Vander Poorten's account in the ledger account of Mr. & Mrs. Vander Poorten Estates. This is working capital available for the estates. At that time these were monies credited to Mrs. Vander Poorten. This money in the following year may have been absorbed.

10 Q. In D11 there is a balance shown of Rs. 11,025/52. Is that available to the credit of Mrs. Vander Poorten ?

A. Yes.

Q. In regard to D10 is the balance of Rs. 1,600/94 available to the credit of Mrs. Vander Poorten ?

A. Yes.

(To Court :

Q. In striking those balances you will take into account your working expenses ?

20 A. Any balance after drawing up accounts accrue to the *pro-rata* accounts.

Q. At the date on which it is entered that money must be the balance after deducting expenses ?

A. After deducting the working of that particular year. But Mrs. Vander Poorten may not have drawn that money at that date.

Q. Say on the 31st March 1956 this Rs. 11,025/52 was available to Mrs. Vander Poorten to be drawn if she wanted to ?

A. Yes.

Q. Between 1956/57 and 1957/58 if the estate has been run at a loss this money will be utilized to run the estate ?

30 A. Yes.

Q. Those two amounts were available on those two dates ?

A. Yes.)

Q. The accountant Ramasamy Iyer has said that the amount due to the plaintiff was Rs. 62,176/- up to 31st March, 1956. How do you account for this difference ?

No. 12
Defendant's
Evidence.

E. B. Perera
—Cross-
examination
—continued.

A. I don't know what they have made. This is what we have made and we sent this statement to the auditors. They audit our books and they prepare the statement. This is our statement. They prepare their own statements and pass them on to us. Our statements are subject to audit and might not be accepted by the auditors.

I know Mr. Ramasamy Iyer. I know the firm of Messrs. Ramasamy Iyer & Co., of which Mr. Ramasamy Iyer is a partner. I don't know whether Messrs. Ramasamy Iyer & Co. are the auditors for Mr. Vanderpoorten.

Q. Messrs. Aitken Spence are the agents who looked after the estates and run the estates and make payments and make the collections of money?

A. Yes.

Q. Your firm keeps the accounts for that purpose?

A. Yes.

Q. Those accounts are periodically sent to Messrs. Iyer & Co.?

A. Yes. They are sent to Messrs. Iyer & Co. because they are the auditors of the estate.

Q. Messrs. Iyer & Co. examined your accounts?

A. Yes.

20

Q. Did you for the purpose of this case in connection with this case meet Mr. Iyer?

A. No.

Q. Has he come to your office?

A. I have not seen him.

Q. You say Messrs. Aitken Spence & Co. send their accounts to Messrs. Iyer & Co. periodically, do you send them weekly or monthly?

A. No. We prepare the accounts and send them once a year.

Q. Has Messrs. Iyer & Co. or Mr. Ramasamy Iyer called for confirmation from Messrs. Aitken Spence & Co. for the year 1956/57?

A. When the books are being audited they are being called for.

Q. Do you know that Mr. Ramasamy of Iyer & Co. has been preparing some accounts and looking into figures to ascertain how much

money is due to Mrs. Vanderpoorten or whether money is due to Mrs. Vanderpoorten, are you aware of that ?

No. 12
Defendant's
Evidence.

E. B. Perera
—Cross-
examination
—continued.

A. I heard of that only today.

(Shown D11).

Q. In D11 in arriving at the balance of Rs. 11,025/52 there has been debited to Mrs. J. Vanderpoorten a sum of Rs. 58635/58 ?

A. Yes.

Q. That has been debited on account of what is called Greenwood Cocoa ? A. Yes.

10 Q. That debit entry which you have shown on D11 is a debit entry prior to March 1951 ?

A. Yes.

Q. In 1951 you were not entering these books ?

A. Yes.

Q. Therefore you would know nothing about that item of Greenwood Cocoa ? A. Yes.

Q. You know nothing about the next debit item of Rs. 36,397/39 in respect of 11,252 lbs. of rubber ?

A. No.

20 Q. Nor do you know anything about the item marked Share of reserve for development ? A. Yes.

Q. Nor would you know anything with regard to drawings ?

A. Yes.

Q. Those are all matters of which you have no personal knowledge ?

A. Yes.

Q. All those items of Greenwood Cocoa, 11252 lbs. of rubber, share of reserve for development are prior to March 1951 ?

A. Yes.

30 Q. You don't know whether those items are properly debited to Mrs. Vanderpoorten, you are only taking them from the books ?

A. As far as the ledgers are concerned it must be right.

No. 12
Defendant's
Evidence.

E. B. Perera
—Cross-
examination
—continued.

- Q. You don't know personally whether they were properly debited to Mrs. Vanderpoorten ?
- A. I don't know.
- Q. The Greenwood Cocoa and Rubber invoices make up a total of Rs. 92,032/97 ? A. Yes.
- Q. If those two items for instance are not properly debited to Mrs. Vanderpoorten then that total sum of Rs. 92,032/97 will have to be added to the balance you have shown as at 31st March, 1951 ?
- A. If that amount is not payable, yes. That should be added on to that Rs. 11,025/52. 10
- Q. You said in your evidence on the last date "in the Greenwood Cocoa sales account appearing in the Mr. & Mrs. Vanderpoorten Estates ledger we have debited....." What you mean there is it is debited ?
- A. Yes.
- Q. You say Mrs. Vanderpoorten would be the sundry debtor in this case ? A. Yes.
- Q. What do you mean by saying Mrs. Vanderpoorten would be the sundry debtor ?
- A. That the produce was sold by Mrs. Vanderpoorten on the estates. 20 We, for the purpose of accounting for that period, have taken that produce and credited the respective rubber sales and cocoa sales and debited in the sundry debits pending some queries. We found that the produce had been sold by Mrs. Vanderpoorten.
- Q. You know nothing about that transaction personally ?
- A. From the books I can say. I know nothing about it personally.
- Q. As far as your account D11 goes, do you say that this sum of Rs. 58,635/58, do you say that that is money which is due and owing to Mr. Vanderpoorten from Mrs. Vanderpoorten, from the state of the books as they are ? 30
- A. I say from the books that this money is belonging to the Joint Account of Mr. & Mrs. Vanderpoorten. That is Mr. & Mrs. Vanderpoorten's money.
- Q. On those accounts do you say that Rs. 58,635/58 is due from Mrs. Vanderpoorten to Mr. Vanderpoorten ?
- A. There are two partners, when one partner takes from another

Q. In your document D11 you have arrived at a balance due as at 31st March, 1956. You have arrived at that balance after taking into account the Rs. 58,635/58 ?

A. Yes.

Q. You have already said that if that amount is wrongly debited where it is it should be added to the Rs. 11,000 odd ? A. Yes.

Q. Are you aware that in this case Mr. Vanderpoorten's position is that if any money is due from him to Mrs. Vanderpoorten, from that should be deducted this Rs. 58,635/58 on account of cocoa ?

10 A. I am not aware of that.

Q. Similarly a sum of Rs. 36,397/39 should be deducted in respect of rubber, that sum has also been debited on D11 and the balance of Rs. 11,000/- odd is arrived at after accounting for this debit ?

A. Yes.

Q. You said that a clerk by the name of E. V. Fernando works on the Vanderpoorten Estates account ?

A. No. He looks after the interests of Mr. J. Vanderpoorten.

Q. You are recorded as having said that " Now I am in charge of all the sets of books " ?

20 A. That is correct.

Q. There is a clerk of Mr. Vanderpoorten called E. V. Fernando working on the Vanderpoorten Estates account, is that correct ?

A. That is correct.

Mr. E. V. Fernando is not an employee of Messrs. Aitken Spence & Co. He works in our office for Mr. J. Vanderpoorten. Mr. Vanderpoorten pays his salary. He comes every day to the office. He comes in the morning and leaves early. Now our office working time is from 8-30 a.m. to 4 p.m. Formerly our office was working from 9 a.m. to 4-30 p.m. and he works till 4 p.m. E. V. Fernando leaves early every day. He comes regularly to 30 the office, but he is an employee of Mr. Vanderpoorten.

(Witness asked to refer to the two ledgers where there is a reference to Greenwood Coconut and rubber.)

(Adjourned).

(Sgd.)
A. D. J.

After lunch.

Same appearances.

E. B. Perera sworn. Recalled.

E. B. Perera
—Cross-
examination
—continued.

XXN. Contd.—I have with me the Ledger which shows the Greenwood cocoa and rubber invoices that is in folio 5 of the Ledger of Mr. & Mrs. J. Vander Poorten Estates account.

In the ledger the entry against date 31st March, 1951 shows on the debit side Sundry Debtors Account is credited and debit to J. Vander Poorten proceeds of 378 cwts. Greenwood cocoa Invoice 9 sold by Mrs. Vander Poorten as per statement transferred Rs. 15,365/58, ditto 1114 cwts. Greenwood rubber sold by Mrs. Vander Poorten as per statement transferred.

That entry is not in my handwriting. This was posted by Mr. George my assistant and the entry is framed by Mr. Seneviratne. There is nothing here to show that it was framed by Mr. Seneviratne but he was in charge.

This produce when accounting for that period harvested has been credited to the Greenwood rubber sales and Greenwood cocoa sales and debited Sundry Debtors. Afterwards I presume Mr. George must have received instructions to debit to Mrs. Vander Poorten so he has reversed those entries.

20

Q. That reversal and debit to Mrs. Vander Poorten's Account was done by Mr. George you presume on instructions? **A.** Yes.

Q. On instructions from Mr. Vander Poorten? **A.** No.

Q. From Aitken Spence & Co.? **A.** Yes.

Q. When were those instructions given?

A. I cannot say.

Q. Clearly after 1951?

A. The entries here are after 31st March, 1951.

Q. That posting by Mr. George is clearly after 31st March, 1951?

A. It is as at 31st March, 1951.

30

Q. These are not done contemporaneously?

A. No.

Q. As the entry now stands Mrs. Vander Poorten Account has been debited by those two sums ?

A. Yes.

Q. On D11 you have used these words “ proceeds of 378 cwts. cocoa Invoice 9 sold and appropriated by Mrs. J. Vander Poorten on the estate ”,—those words “ appropriated by Mrs. J. Vander Poorten ” do not appear on folio 5 ?

A. No.

10 Q. Similarly in regard to the rubber invoice the words “ sold and appropriated by Mrs. Vander Poorten on the estate ” which you have put on D11 do not appear in that folio ?

A. No.

Q. You do not know personally what that transaction was in regard to that cocoa and that rubber ?

A. I do not know.

(Shown a set of documents which have already been marked X in this case).

20 Q. Mr. Ramasamy of Iyer & Co. has told this Court that the various documents which go to make that set were prepared at various times in 1954 and 1955 not by him but by Messrs. Aitken Spence & Co.—do you know anything about the preparation of those documents ?

A. This is the first time I saw these.

(Witness is referred to statement 2 of document X).

Q. This statement 2 is dated 5/12/54. In February 1954 you had nothing to do with the preparation of accounts in connection with this ?

A. No.

30 Q. In statement 2 of X against date February 1951 there is an item of debit to Mrs. Vander Poorten which reads as follows : (Counsel reads). According to statement 2 of X that entry is to the effect that rubber and cocoa were appropriated by Mrs. Vander Poorten from the estate ? A. Yes.

Q. According to the words you have used on D11 those words are to the effect that Mrs. Vander Poorten sold and appropriated that quantity of cocoa and rubber on the estate ?

A. Yes.

No. 12
Defendant's
Evidence.

E. B. Perera
—Cross-
examination
—continued.

Q. You say that there is a difference between what is stated in statement 2 of X and what appears in D11 in regard to these two lots of cocoa and rubber, a difference between saying “appropriated from” and “sold and appropriated on”?

A. The words may be different.

Q. Do you say that what appears in statement 2 where it is said in regard to the rubber for instance, that the rubber was appropriated from the estates—does that to you mean the same thing as saying in D11 that the rubber was sold and appropriated on the estate?

A. No.

10

Q. In regard to the cocoa again the two different sets of words used on those documents do not mean the same thing?

A. Yes.

Q. How did you in D11 come to describe for instance the cocoa as cocoa sold and appropriated on the estate, who gave those words to you?

A. I can't remember whether I put those words under anybody's instructions or on my own.

Q. Did Mr. E. V. Fernando speak to you or did you have anything to do with him when you were preparing D11 and D12?

20

A. No.

Q. Did you refer to him for any information?

A. No.

Q. You got instructions from your employers to prepare D11 and D12?

A. Yes.

Q. You not knowing anything about these two transactions personally and having before you the ledger folio 5 you decided to use the descriptions in regard to both those items which you have set out in D11? A. Yes.

30

E. B. Perera
—Re-
examination

RE-EXN.—Messrs. Aitken Spence started working these estates on the dates I have already referred to in my evidence. For the purpose of working those estates Messrs. Aitken Spence have in their hands the money of the proprietors. Not only in regard to those estates but also in regard to other estates run by them they do that. We have working expenses for 2 or 3 months in the case of rubber estates, three months for coconut estates and in some other estates even 4 months or 6 months.

Q. Do you keep in your hands sufficient money of the proprietors to cover the estate expenditure for a number of months? *A.* Yes.

Q. Messrs. Aitken Spence have in their hands moneys both of plaintiff and defendant in respect of these estates? *A.* Yes

Q. At any given date could you by reference to the ledgers ascertain how much money of an individual proprietor there is in the hands of Messrs. Aitken Spence?

A. I could.

Q. That would appear in what documents?

10 *A.* In the Ledger.

Q. Of which D10 and D11 is an accurate copy as far as Mrs. Vander Poorten is concerned?

A. Yes.

Q. That figure is not a distribution made to Mrs. Vander Poorten, does that represent money actually paid to Mrs. Vander Poorten?

A. That is her capital with Messrs. Aitken Spence.

Q. In point of fact if drawings are made by a proprietor are those drawings recorded? *A.* Yes.

Q. In what documents will those drawings be recorded?

20 *A.* In the ledger account of that particular proprietor in respect of that estate.

Q. In the computation of D10 and D11 are there any such drawings taken into account?

A. Yes, they have been taken into account.

Q. The figure appearing in the ledger account of Mrs. Vander Poorten as at 31st March, 1956 where would that be carried forward to next?

A. It is carried forward to the ledger for the following year?

30 Q. So far as Messrs. Aitken Spence & Co. is concerned the final figure you arrive at as at 31st March, 1956 is the balance of Mrs. Vander Poorten's money remaining in the hands of Messrs. Aitken Spence from the date Messrs. Aitken Spence took over the management up to 31st March, 1956?

A. Yes.

No. 12
Defendant's
Evidence.

E. B. Perera
—Re-exami-
nation.
—continued.

(To Court—D10 is from 1951 and D11 is from 1950).

Q. You were asked in regard to whether your books are sent to Messrs. Iyer & Co. for purposes of audit and you answered that they are sent once a year ?

A. Yes.

Q. You also said of course that they may not be accepted ?

A. Yes.

Q. To your knowledge was there a single instance when the books maintained by Messrs. Aitken Spence & Co. were not accepted by Iyer & Co. ?

10

A. When we send the books for the audit if there is anything they like to clarify they refer it to us. They do not refuse to accept the books. I did not meet Mrs. Ramasamy for the purposes of this case. I never had any consultation with Counsel or the Proctor for the purposes of this case. The company was summoned to produce certain documents in this case and I was sent. I was not summoned specifically by name.

Q. Have you personally done any investigations into each item in those books ?

A. No, excepting at the request of Counsel for the plaintiff.

20

The sundry debtors account appears at folio 97 of the ledger. From Sundry Debtors Account the item in respect of the 378 cwts. of cocoa has been transferred to Mrs. J. Vander Poorten's personal account, that is in folio 5.

Under Greenwood Sales Account there is a credit appearing in Greenwood Cocoa sales of Mr. & Mrs. J. Vander Poorten Estates for the cocoa that was sold by Mrs. Vander Poorten on the estate and debited to Sundry Debtors. Thereafter we have credited Sundry Debtors Account to close that account and debited Mrs. Vander Poorten's Account. It was first debited to Sundry Debtors and later to the plaintiff.

30

That debit entry in the books represents a payment to Mrs. Vander Poorten. In regard to the actual transactions I have no personal knowledge, I can only speak to what is in the books. These entries were made before my time. These estates are still being worked by Messrs. Aitken Spence & Co.

(Sgd.)
A. D. J.

C. C. Sayakkara.—Affirmed. 57. Chief Clerk, Greenwood Estate, Galagedera.

(Mr. Kadirgamar objects as this witness has not been listed.

Mr. Dias admits this but states that he has been listed on two lists of witnesses of plaintiff.

I allow the witness to be called.)

Up to 30th December, 1950 I was the Chief Clerk of the Vander Poorten Estates. I lived in my own house which is close to Greenwood Estate in Galagedera. I am still working on Greenwood Estate. There is a Superintendent in charge of Greenwood Estate. I have brought to Court all the
10 Ledgers in respect of the Vander Poorten Estates maintained on the estate.

The earliest ledger I have here is the ledger for 1942.

Q. What distributions were made out of the income of the Vander Poorten Estates during 1942 ?

A. Rs. 90,000/- being the share of Mr. Vander Poorten—that is in April 1942 folio 66.

The entry reads “ By cheque MB. 304 Rs. 95,706/48 ”. That is a debit entry. That is the amount paid to the defendant on account of a dividend—that is part of the profit.

20 In November 1942 there is an entry in the ledger which reads “ By cheques MB. 436 Rs. 18,000/- ” that was paid to the defendant.

All those cheques were in fact paid to the defendant. These ledgers were kept by me.

In July 1943 there is the following entry—“ By cheque MB. 342 Rs. 29,984/95 ” that was also paid to the defendant.

In February 1944 there is the following entry—“ By cheque MB. 178 Rs. 22,500/- ” that has been paid to the defendant as dividend declared in respect of the Vander Poorten Estates.

30 On 10th May, 1944 there is the following entry—“ By cheque MB. 363 Rs. 22,500/- paid to Mr. J. Vander Poorten as dividend ”.

On August, 21st 1944 there is an entry—“ By cheque MB. 034 Rs. 45,000/- paid to defendant as dividend ”.

In December 1944 there is an entry—“ By cheque MB. 8133 6% income distribution Rs. 27,000/- paid to the defendant ”.

In June 1945 there is the following entry—“ By cheque MB. 998 Rs. 54,000/- paid to the defendant ”.

In July 1946 there is the following entry—“ By cheque MB. 853 Rs. 25,000/- ”. This amount was paid to Mr. Vander Poorten but a dividend

No. 12
Defendant's
Evidence.

C. C. Sayak-
kara—
Examina-
tion.

No. 12
Defendant's
Evidence.
C. C. Sayak-
kara—
Examination
—continued.

of Rs. 36,000/- was declared. On the debit side there are various items debited—"expenses incurred on building bungalow Rs. 7,089/71"—"cheque Rs. 180/-"—"cash Rs. 40/-"—"cheque Rs. 24/50".

Q. Out of the Rs. 36,000/- declared as dividend Rs. 25,000/- was paid by cheque to defendant and the balance was used for other items ?

A. Yes.

A bungalow was built on Greenwood Estate, it was started in 1946.

In September 1946 dividend declared 5% income distributed Rs. 22,500/-. Nothing was paid to Mr. Vander Poorten because building materials and other materials were taken over from Greenwood at the time 10 of the partition and they were set off against that.

In December 1946 the 9/20th share of the profits was Rs. 1,640/53. That was paid by cheque to the defendant. The cheque number has not been noted down.

In May 1947 6% income distributed Rs. 27,000/- was paid by cheque MB. 392 to the defendant.

In August 1947 by cheque MB. 806 Rs. 7,452/90 was paid to the defendant.

In June 1950 by cheque MB. 517 Rs. 67,500/- was paid to the defendant on the income distributed. That is in folio 68. 20

All these ledgers were maintained by me and I can swear to the correctness of the entries recorded in those ledgers. They were all made available to Messrs. Iyer & Co. during the time of the management by Mr. Vander Poorten and even today.

From June 1942 to June 1950 these are the sum total of the dividends declared from the Vander Poorten estates in respect of the shares of plaintiff and defendant.

I have no record of separate payments made to the plaintiff.

Q. In regard to Greenwood Estate in 1951 was there any trouble about any rubber or cocoa ? 30

A. There was no trouble. Mrs. Vander Poorten sold some rubber and cocoa on the estate by herself.

Q. Had she ever done that before ? A. No.

Q. Have you got a record of that in your books ?

A. Not in these books.

I cannot remember the quantity of rubber she sold, nearly 300 cwts. of cocoa and rubber from one or two lots about 15,000 lbs. That was during the time of Mr. Concannon the then Superintendent. Plaintiff instructed him to sell the cocoa and rubber, her share of the produce. Mrs. Vander Poorten was there and she instructed him to sell and got him to sign an authority to the Galagedera dealers whom she got down in the presence of Mr. Concannon. Money was paid to her for that transaction. That money was not paid in my presence. The money was sent by cheque.

No. 12
Defendant's
Evidence.

C. C. Sayak-
kara—
Examination
—continued.

10 Q. Except for that instance in 1951 has plaintiff subsequently sold any produce ?

A. That was not on one day, that was on two occasions rubber and on one occasion cocoa, all in 1951.

Q. After 1951 has plaintiff sold any produce directly like that ?

A. No.

Q. Generally what is the procedure for selling the produce ?

A. Generally we despatch to Colombo to the brokers.

Q. And the contracts are entered into in Colombo or Galagedera ?

A. In Colombo. Minor products are sometimes sold to Galagedera traders.

20 Q. Cocoa and rubber are major produce of Greenwood ?

A. Yes.

XXN.—Plaintiff. sold this produce on the estate I think in February 1951. All the occasions on which she sold the produce was in February 1951. Plaintiff personally instructed Mr. Concannon the Superintendent to sell the rubber and cocoa and Mr. Concannon carried out her instructions and he had plaintiff's authority to sell this rubber and cocoa. The Galagedera dealers came to the Estate and Mr. Concannon was present at the time the dealers bought. I was also present. The dealers bid and Mr. Concannon asked for more and ultimately they agreed on the price and they were sold.
30 I think the quotations were given there but the cheque was not given there. As far as I remember the money was not paid in my presence, I think they were sent by cheque. It was Mr. Concannon who telephoned these dealers and got them down. I can't remember whether the cocoa market had dropped at that time.

C. C. Sayak-
kara—
—Cross-
examination.

Q. There have been other occasions on which dealers came to the estate and made their quotations to Mr. Concannon and bought cocoa ? A. No.

RE-EXN.—Nil.

(Sgd.)
A. D. J.

No. 12
Defendant's
Evidence.

E. V. Fernando—
Examination.

E. V. Fernando.—Affirmed, 56, Clerk under Mr. J. Vander Poorten, Colombo.

I am a clerk employed by the defendant. I have been employed by him for the last 20 years. I have also been employed by the defendant during the period he was living with the plaintiff. I was his personal clerk. Defendant is no longer in Ceylon today. He left Ceylon in 1951 and now he is in Australia. He has not returned since. He has left an attorney in Ceylon—the Directors of Messrs. Aitken Spence & Co.

They are managing the Vander Poorten Estates as well as the Mr. & Mrs. Vander Poorten Estates today. Some of my work involves going to 10 Messrs. Aitken Spence's office. I attended to Mr. Vander Poorten's personal affairs in their office.

The books and papers of defendant in Ceylon and the account books kept by Mr. Vander Poorten prior to 1951 are in my custody.

I receive a salary of about Rs. 350/- today, earlier I drew less.

Defendant had bank accounts. Plaintiff also had a private bank account—somewhere in the 1940s. Defendant and plaintiff had two joint accounts—No. 1 Joint Account and No. 2 Joint Account, that was apart from plaintiff's private bank account. Defendant had no private bank account. Those accounts were in the Mercantile Bank of India. Plaintiff's private account was first in the Imperial Bank and afterwards that was transferred to Mercantile Bank. I cannot say whether that account has been going on ever since, nor can I say whether that Account has been closed.

The two Joint Accounts have been closed. I think the No. 1 Account was closed in 1950, and the No. 2 Account also at about the same time.

Defendant drew cheques on both joint accounts. No. 2 Joint Account was really for the working of Greenwood Estate.

Plaintiff drew cheques on No. 1 Joint Account. Sometimes they wrote their own cheques and at other times I used to write the cheques on their instructions. Sometimes I write the cheques on the instructions of defendant and sometimes on the instructions of plaintiff and took up the cheques to be signed by them. I had no authority to sign those cheques.

Those cheque books were always kept in the office. I was always in the office. I had access to those cheque books. Sometimes I had to take the cheque books and give them to the plaintiff. I had access to those cheque books.

Sometimes deposits were made to Joint Account No. 1 on deposit paying-in slips to the Mercantile Bank. Most of those slips were written by me. Sometimes they were written by plaintiff and sometimes by defendant. Most of the counterfoils of those paying-in books are in my custody today. 40

The Bank also maintained Bank Pass Books in respect of these Joint Accounts which were entered up and sent to plaintiff and defendant from time to time. I have in my custody those Pass Books as well in respect of Joint Account No. 1.

No. 12
Defendant's
Evidence.
—
E. V. Fer-
nando—
Examination
—continued.

Q. Do you know whether the dividends from Vander Poorten Estates were paid to defendant by cheque ?

A. Yes.

Q. Those cheques were signed by whom, who had drawn those cheques ?

10 **A.** Those cheques were drawn by defendant himself on the Mercantile Bank. Formerly it was paid to Vander Poorten Estates Account and after that to No. 4 Account. That was the account into which the dividends were paid.

(Mr. Dias moves to mark certain Bank Pass Books of the Mercantile Bank relating to the Joint Account of plaintiff and defendant certified by the Accountant and Manager Mercantile Bank.)

(Mr. Kadirgamar states that he has no objections to the books being received in evidence but that their entries should be proved.)

I allow the documents to go in.

20 **I produce marked :—**

D12 certified copy of Bank Pass Book for the period 2/8/1940 up to 18/2/1942.

D13 Bank Pass Book for the period 13/5/1943 to 31/1/1944.

D14 Bank Pass Book for the period 10/1/44 to 7/8/44.

D15 Bank Pass Book for the period 21/8/44 to 14/3/45.

D16 Bank Pass Book for the period 15/3/45 to 27/9/45.

D17 Bank Pass Book for the period 24/9/45 to 26/3/46.

D18 Bank Pass Book for the period 27.3/4 to 12/2/47.

D19 Bank Pass Book for the period 12/2/47 to 18/10/49.

D20 Bank Pass Book for the period 18/10/49 to 4/4/50.

30 D21 Bank Pass Book for the period 12/5/50 to 1/6/53.

D12A Bank Pass Book for the period 18/5/42 to 13/5/43.

All these Pass Books relate to Joint Account No. 1. I am familiar with the handwriting of the defendant. I am familiar with the handwriting of the plaintiff.

No. 12
Defendant's
Evidence.

E. V. Fernando—
Examination
—continued.

(Shown an entry in D12 under date 29/11/1940).

There is an entry of a deposit of Rs. 22,558/33. There are some pencil figures in line with that entry. Those figures are in the handwriting of the plaintiff.

The pencil entries read as follows—Rs. 58/33 and Rs. 22,500/- those appear to be breakdown of the total figure.

In D12 under the date 1/11/41 there is an entry of Rs. 45,050/00. It reads "November 1st by cheque Self No. 4 Account" that is the Vander Poorten Estates Account.

I produce marked D22 counterfoils of paying-in slips for the period 25/8/41 to 5/12/42. There are entries here made by defendant, by plaintiff and also there are entries made by me.

(It is 4 p.m. now.

Further hearing on 17/7/58).

(Sgd.)
A. D. J.
27/6/58.

17/7/58.

Trial resumed.

Appearances as before.

E. V. Fernando.—Affirmed. Recalled.

20

I produce marked D23 counterfoils of paying-in slips for the period May 1942 to September 1943.

I produce marked D24 counterfoils of paying-in slips for the period 4th May, 1944 to 28th February, 1945.

I produce marked D25 counterfoils of paying-in slips for the period 17-3-45 to 2-8-46.

I produce marked D26 counterfoils of paying-in slips for the period 7-8-46 to 12-4-51.

Q. In D22 against the date 8-4-42 there is a paying-in slip for Rs. 98,519/48 which is shown in D12A as having been credited to the account 30 on 13-4-1942 ?

A. Yes.

Q. In D22 details are given of how this figure of Rs. 98,519/48 is made up ? A. Yes.

- Q. In whose handwriting are these figures (shown) ?
- A. In Mrs. Vander Poorten's handwriting.
- Q. The details are D/W. Rs. 90,000/- tea coupons Rs. 5,706/48, salary No. 2 Rs. 300/-, Furlough Rs. 2,000/- and Singho Appu (self) Rs. 513/- ?
- A. Yes.
- Q. In D12A under the date 17-11-1942 there is a credit payment into the bank of Rs. 80,025/- ?
- A. Yes.
- 10 Q. In D23 there is a paying-in slip dated 16-11-1942 for Rs. 80,025/- ?
- A. Yes.
- Q. In whose handwriting is that entry ?
- A. In Mrs. Vander Poorten's handwriting.
- Q. It reads Rs. 80,000/- —A.F.—what does that mean ?
- A. Proctor Arthur Fernando.
- Q. Dr. D Rs. 25/- —what does that mean ?
- A. Dr. Dadabhoy.
- Q. There is an arrow against Rs. 80,000/- and the word dividends ?
- A. Yes.
- 20 Q. Under the date 30-7-1943 in D13 cheques for Rs. 26,219/95 have been credited ?
- A. Yes.
- Q. In D23 (shown) there is a paying-in slip for Rs. 26,219/25 dated 29-7-43 ? A. Yes.
- Q. Against this paying-in slip are also certain entries in ink—in whose handwriting are those ?
- A. They are in my handwriting. They are the details written by me.
- Q. In D14 (shown) under date 1-2-1944 there is a credit payment for Rs. 22,500/- ? A. Yes.
- 80 Q. In D24 (shown) there is a paying-in slip for Rs. 22,500/- dated 24-5-44—in whose handwriting is that ?

No. 12
Defendant's
Evidence.

E. V.
Fernando—
Examination
—continued.

No. 12
Defendant's
Evidence.
—
E. V.
Fernando—
Examination
—continued.

- A. In my handwriting.
- Q. Against that is written ' Distribution of profits ' Vander Poorten Estates 1943/1944 ?
- A. Yes.
- Q. In D14 (shown) under date 5-5-44 appears another credit entry for Rs. 22,500/- ? A. Yes.
- Q. In D15 (shown) under date 24-5-44 there is a cheque credited for Rs. 45,000/- ?
- A. Yes.
- Q. There is a pencil entry against that—in whose handwriting is that ? 10
- A. In Mrs. Vander Poorten's handwriting. V.D.P. stands for Vander Poorten estates.
- Q. In D24 under date 24-8-44 appears a paying-in slip for Rs. 45,000/- ? A. Yes.
- Q. In whose handwriting is that ?
- A. Mine.
- Q. What do you say there ?
- A. Distribution of Vander Poorten Estates 1942/53.
- Q. In D15 under date 16-9-44 appears a credit for Rs. 27,000/- ?
- A. Yes. 20
- Q. In D24 under date 15-12-44 appears a paying-in slip for Rs. 27,000/- ?
- A. Yes.
- Q. In whose handwriting is that ?
- A. In my handwriting.
- Q. Are there any other entries besides those in your handwriting ?
- A. All are mine. I have said ' Vander Poorten Estates dividend cheque '.
- Q. In D16 under date 15/6/45 appears a credit entry for Rs. 54,000/- ? A. Yes. 30

Q. In D25 under date 13-6-45 there is a paying-in slip for Rs. 54,000/- ?

A. Yes.

Q. In whose handwriting is that ?

A. Mine.

Q. What is said there ?

A. Distribution of income from Vander Poorten Estates for 1944/45.

Q. Between the period 24-9-45 and 26-3-46 in D17 there do not appear to be any credit entries relating to the income from Vander Poorten Estates ?

10 A. Yes.

Q. In D18 under date 5-6-46 there is a credit entry for Rs. 25,000/- ?

A. Yes.

Q. In D25 under date 3-6-46 there is a paying-in slip for Rs. 25,000/- in whose handwriting is that ?

A. In my handwriting.

Q. What is written there ?

A. Distribution of Vander Poorten Estates profits Rs. 36,000/- less Rs. 11,000/- retained by D. Concannon for bungalow.

20 Q. In D18 under date 2-12-46 there is a credit payment for Rs. 1,640/34 ?

A. Yes.

Q. In D26 under date 30-12-46 there is a paying-in slip for Rs. 1,640/34 —in whose handwriting is this ?

A. Mine.

Q. What have you said there ?

A. Balance 9/20 share out of the total of Rs. 3,645/- paid before.

Q. In D19 under date 2-5-47 there is a payment of Rs. 27,000/- ?

A. Yes.

30 Q. In D26 under date 1-5-47 there is a paying-in slip for Rs. 27,000/- —in whose handwriting is that ?

No. 12
Defendant's
Evidence.

E. V.
Fernando—
Examination
—continued.

No. 12
Defendant's
Evidence.

E. V.
Fernando—
Examination
—continued.

A. My handwriting.

Q. What does it say ?

A. Division of profits Vander Poorten Estates Rs. 60,000/- 9/20. share
Rs. 27,000/-.

Q. That is for Mr. & Mrs. Vander Poorten ?

A. Yes.

Q. In D19 under date 5-9-47 there is a credit payment for Rs. 7,452/90?

A. Yes.

Q. There is a pencil entry against that—in whose handwriting is that ?

A. I cannot say.

10

Q. Is there an entry in D26 in respect of that ?

A. No, because in September 1947 Mr. & Mrs. Vander Poorten were in
the U.K. and their attorneys in Ceylon at that time were Messrs.
Julius & Creasy and it has not gone through me.

Q. In D20 there is no entry in respect of this period ?

A. Yes.

Q. In D21 under date 5-7-50 there is a credit for Rs. 67,500/- ?

A. Yes.

(Shown D26) There is no entry corresponding to that payment
here.

20

In 1950 Mr. Vander Poorten was in Ceylon.

Q. You produce marked D27 certified copy of the extract of the evi-
dence given by the plaintiff under cross-examination on 10th
February, 1958 from D.C. Colombo 3115/Divorce ? A. Yes.

(Mr. Kadirgamar objects. I allow it.)

Q. To your knowledge has plaintiff been drawing cheques on the Joint
Account No. 1 ?

A. Yes.

Q. Was this joint account in existence even while the plaintiff and her
husband were both in England ?

30

A. Yes.

Q. At the Mercantile Bank? A. Yes.

Q. Was it transferred to London?

A. No. They had several accounts in London also, several joint accounts.

No. 12
Defendant's
Evidence.
—
E. V.
Fernando—
Examination
—continued.

Plaintiff and defendant were in England from June 1947 till the end of 1949.

In 1954 plaintiff was not in England to my knowledge.

Q. Even when they were not in England was that joint account still in existence, do you know?

10 A. I think the account was there.

I produce marked D28 cheque dated 1-12-49 signed by Hilda Vander Poorten joint account drawn on the Mercantile Bank of India Ltd. London for £.60 cash.

Q. (Shown D28). Can you identify this handwriting?

A. This is in the plaintiff's handwriting.

I produce marked D29 cheque dated 2-12-49 for a sum of £. 10.0.6 also signed by Hilda Vander Poorten joint account on the London Bank.

I produce marked D30 cheque dated 7-12-49 for a sum of £. 20 cash signed by plaintiff on the joint account in London.

20 I produce marked D31 cheque dated 10-12-49 for a sum of £. 10 drawn by plaintiff on the joint account in London.

I produce marked D32 cheque dated 12-12-49 for a sum of £. 100 drawn by plaintiff on the joint account in London.

I produce marked D33 cheque dated 30-11-49 for a sum of £. 39.15.4 drawn by plaintiff on the joint account.

I produce marked D34 cheque dated 28-11-49 for a sum of £. 37.5.0 drawn by the plaintiff on the joint account in London.

I produce marked D35 cheque dated 28-11-49 for a sum of £. 180 signed by plaintiff on the joint account in London.

30 I produce marked D36 cheque dated 29-11-49 for £. 4.12.9 drawn by plaintiff on the joint account in London.

I produce marked D37 cheque dated 5-10-49 for £. 65 drawn by plaintiff on the joint account in London.

No. 12
Defendant's
Evidence.

E. V.
Fernando—
Examination
—continued.

I produce marked D38 cheque dated 12-10-49 for £.2 drawn by plaintiff on the joint account in London.

I produce marked D39 cheque dated 12-10-49 for £.5·3·10 drawn by plaintiff on the joint account in London.

I produce marked D40 cheque dated 15-10-49 for £.8 drawn by plaintiff on the joint account in London.

I produce marked D41 cheque dated 15-10-49 for £.2·6·0 drawn by plaintiff on the joint account in London.

I produce marked D42 cheque dated 15-10-49 for £.3·19·6 drawn by plaintiff on the joint account in London. 10

I produce marked D43 cheque dated 18-10-49 for £ £.1·3·9 drawn by plaintiff on the joint account in London.

I produce marked D44 cheque dated 19-10-49 for £.3 drawn by plaintiff on the joint account in London.

I produce marked D45 cheque dated 19-10-49 for £.13·5·0 drawn by plaintiff on the joint account in London.

I produce marked D46 cheque dated 21-10-49 for £.50 drawn by plaintiff on the joint account in London.

I produce marked D47 cheque dated 26-10-49 for £.15 drawn by plaintiff on the joint account in London. 20

I produce marked D48 cheque date 27-10-49 for £.12 drawn by plaintiff on the joint account in London.

I produce marked D49 cheque dated 27-10-49 for £.8·9·0 drawn by plaintiff on the joint account in London.

I produce marked D50 cheque dated 1-11-49 for £.10 drawn by plaintiff on the joint account in London.

I produce marked D51 cheque dated 1-11-49 for £.10 drawn by plaintiff on the joint account in London.

I produce marked D52 cheque dated 3-11-49 for £.50 drawn by plaintiff on the joint account in London. 30

I produce marked D53 cheque dated 15-11-49 for £.7·6·6 drawn by plaintiff on the joint account in London.

I produce marked D54 cheque dated 16-11-49 for £.50 drawn by plaintiff on the joint account in London.

I produce marked D55 cheque dated 17-11-49 for £.30 drawn by plaintiff on the joint account in London.

I produce marked D56 cheque dated 18-11-49 for £.5·18·6 drawn by plaintiff on the joint account in London.

I produce marked D57 cheque dated 21-12-49 for £.4 drawn by plaintiff on the joint account in London.

I produce marked D58 cheque dated 23-11-49 for £.3·3·0 drawn by plaintiff on the joint account in London.

I produce marked D59 cheque dated 7-7-50 for £.15 drawn by plaintiff on the joint account in London.

I produce marked D60 cheque dated 22-9-50 for £.100 drawn by plaintiff on the joint account in London.

I produce marked D61 cheque dated 15-4-54 for £.40 drawn by plaintiff on the joint account in London.

Q. It is signed by Hilda Vander Poorten ?

A. Yes.

Q. Was it a payment to the joint account ?

A. I cannot say.

I produce marked D62 cheque dated 28-4-54 for £.21 drawn by the plaintiff—it is not marked joint account.

I produce marked D63 cheque dated 28-4-54 for £.45 similarly signed by the plaintiff.

I produce marked D64 cheque dated 26-6-54 for £.24 signed by Hilda Vander Poorten.

I produce marked D65 cheque dated 28-6-54 for £.20 signed by Hilda Vander Poorten.

I produce marked D66 cheque dated 6-7-54 for £.1 drawn by Hilda Vander Poorten.

I produce marked D67 cheque dated 2-9-54 drawn by plaintiff on the London joint account for £.20.

Q. As part of the document marked X there was a statement marked statement 2 consisting of the claims in reconvention made by defendant against plaintiff in this case ?

A. Yes.

No. 12
Defendant's
Evidence.

E. V.
Fernando—
Examination
—continued.

- Q. The first portion of that statement consists of Statement 2A relating to the amounts claimed by the defendant from the plaintiff on account of the purchase of Preston? A. Yes.
- Q. In Statement 2A defendant claims from plaintiff Rs. 42,034/20 being half share of the expenses incurred in the purchase of Preston and 20 Alfred Place, Colombo? A. Yes.
- Q. The total expenses are shown in Statement 2 as amounting to Rs. 84,000/- and the details are shown in statement 2A?
- A. Yes.
- Q. In Statement 2A there is a reference to Mercantile Bank of India 10 cheque No. M 475818 for a sum of Rs. 70,000/- which has been paid to Mr. Arthur Fernando as purchase price of Preston—have you got the cheque counterfoil for that?
- A. Yes.
- Q. You produce marked D68 cheque counterfoil book for the period 9-11-44 to 13-12-44? A. Yes.
- Q. These are counterfoils of joint account No. 1?
- A. Yes.
- Q. In D68 is the counterfoil of cheque M 475818 referred to in Statement 2A? 20
- A. Yes.
- Q. The cheque is drawn on 22-11-54 and shown a payment to Proctor Arthur Fernando as purchase price of Preston Rs. 70,000/- and stamp charges Rs. 1,120/-?
- A. Yes.
- Q. In whose handwriting is this counterfoil?
- A. In my handwriting.
- Q. In D15 under date 24-11-54 this cheque for Rs. 71,120 has been debited against Joint Account No. 1? A. Yes.
- Q. In D68 itself also appears counterfoil of cheque No. M 475846 for a 30 sum of Rs. 1,050/- also paid to Mr. Arthur Fernando, fees and other charges on Preston transaction?
- A. Yes.
- Q. In whose handwriting is the note at the bottom?

A. In my handwriting.

Q. This cheque has also been debited to the account in D15? A. Yes.

Q. You produce marked D69 counterfoil book for the period 13-12-44 to 24-1-45 in which appears cheque No. M 475841? A. Yes.

Q. The counterfoils of all the cheque numbers given in Statement 2A are all here except for cheque number 0361753 to 0361600 appearing in page 2 of statement 2A.

10 Q. In statement 2 defendant has alleged that rents were collected by Mr. Kenny and placed to the credit of the plaintiff personally—what are those rents?

A. Rents from Preston bungalow.

Q. Before July 1947 who was living in Preston bungalow?

A. Plaintiff and defendant.

Q. What happened in July 1947?

A. In June 1947 they left for the U.K.

The bungalow was then rented out to one Mr. Scoones of the Hong Kong Bank at a rent of Rs. 200/- a month. It was rented out by Mr. Kenny the Attorney of plaintiff in Ceylon. I do not think he is a relation of the plaintiff. I have had dealings with Mr. Kenny as the Attorney of Mrs. 20 Vander Poorten during this period.

Mr. Scoones was there for about a year or so. After Mr. Scoones Mr. R. M. Winter the brother of the plaintiff came into occupation of these premises. He also rented them out and he paid the rent to Mr. Kenny.

Mr. Winter was there till Mr. & Mrs. Vander Poorten came back—that is December 1949. After that Mr. & Mrs. Vander Poorten occupied Preston.

Q. During the time Mr. Kenny was collecting the rents were they credited to the joint account?

A. Not to No. 1 Joint Account.

Q. Was it credited to any of their Joint Accounts by Mr. Kenny.

30 A. No.

Q. Do you know what Mr. Kenny did with these rents?

A. I presume that it was credited to Mrs. Vander Poorten's account.

No. 12
Defendant's
Evidence.

E. V.
Fernando—
Examination
—continued.

I continued in my employment as a clerk even when Mr. & Mrs. Vander Poorten were away and there were books and documents relating to their affairs in my custody.

Q. On that basis a sum of Rs. 2,900/- has been claimed for a period of 19 months being 1/2 share of the rent? A. Yes.

Q. In Statement 2 is shown payment for certain shares for Mrs. Vander Poorten—have you got the cheques for which those payments were made?

A. Yes.

I produce marked D70 counterfoil book for the period 23-12-46 to 10 5-2-1947.

Q. In this there is a cheque counterfoil No. 4388674 dated 23-2-47 for value of shares bought paid to E. John Thompson White Rs. 28,436/-?

A. Yes.

Q. The details of the shares bought are not given in the counterfoil D70?

A. Yes.

Q. In whose handwriting is that counterfoil?

A. In my handwriting.

20

Q. How did you get the details of those shares?

A. I have got the Brokers' notes in respect of the different shares which make up that amount with me.

A. The third item in Statement 2 refers to a 1/9th share of certain expenses connected with the purchase of Weyweltalawa and Normandy Estates?

A. Yes.

Q. Weyweltalawa and Normandy Estates originally belonged to the group of estates called the Vander Poorten Estates in which plaintiff and defendant owned shares along with the other members of 30 the family? A. Yes.

Q. Plaintiff and defendant owned 1/20 and 8/20 and the balance was owned by the other members of the family?

A. Yes.

- Q. At a certain stage plaintiff and defendant purchased the 11/20 shares belonging to the other members of the family? A. Yes.
- Q. They purchased it and continued to own it as part of the estates of Mr. & Mrs. Joe Vander Poorten in which they were entitled to 8/9 and 1/9? A. Yes.

No. 12
Defendant's
Evidence.

E. V.
Fernando—
Examination
—continued.

Weyweltalawa Estate was purchased on 19th March, 1949 and Normandy Estate on 2-4-49.

The whole of Weyweltalawa was bought for Rs. 200,000/- at a public auction for the 11/20th share Rs. 110,000/- was paid by plaintiff and defendant.

Normandy was purchased for Rs. 80,000/-.

For the purchase of these two estates an overdraft was obtained from the Eastern Bank and a separate Joint Account was opened at the Eastern Bank for the purchase of Weyweltalawa and Normandy.

Q. You have got with you the counterfoil book in respect of the Eastern Bank joint account?

A. Yes.

Q. You produce that book covering the period 19-3-49 to 17-4-50 marked D71?

20 A. Yes.

Q. You also have with you the Bank Statements in relation to that Eastern Bank transaction?

A. Yes.

Q. Have you got cheques totalling to Rs. 110,000/- for the purchase of Weyweltalawa Estate?

A. In D71 by cheque D636541 dated 19-3-1941 a sum of Rs. 27,500 has been paid as a percentage deposit on the purchase price and the balance of Rs. 82,500/- is shown to have been paid on 13-4-49 by cheque D636545.

30 Q. Both cheques appear to have been drawn in favour of the G.A. Central Province—that money had to be paid to the G.A. to be credited to the case?

A. Yes.

Q. Similarly in regard to the purchase of Normandy by a cheque dated 2-4-49 also contained in D71 a sum of Rs. 11,000/- was paid as a percentage deposit against the purchase price and that was paid to

No. 12
Defendant's
Evidence.

E. V.
Fernando—
Examination
—continued.

the G.A. Central Province to be brought to the credit of the partition case and the balance sum of Rs. 33,000/- has been paid by cheque D636546 of 13-4-49 ?

A. Yes.

Q. There is also a cheque in D71 for Rs. 641/81 being the auctioneer's expenses for Weywetalawa ?

A. Yes.

Q. And there is also another cheque for Rs. 621/50 being the auctioneer's cheque for Normandy ?

A. Yes.

10

Q. All the items shown in Item 3 Statement 2 are supported by counterfoils except for the sum of Rs. 17,058/95 being interest to Bank on overdraft ?

A. Yes.

Interest to the bank on the overdraft is shown in the bank statements which I have with me.

(Further hearing on 31-7-58).

(Sgd.)
A. D. J.
17-7-58. 20

31/7/58.

Trial resumed.

Appearances as before.

E. V. Fernando.—Affirmed.—recalled.

I produce marked—

D72 cheque counterfoil book for the period 16/12/41 to 5/1/42.

D73 cheque counterfoil book for the period 6/1/41 to 21/1/42.

D74 cheque counterfoil book for the period 21/1/42 to 9/2/42.

D75 cheque counterfoil book for the period 10/2/42 to 25/2/42.

D76 cheque counterfoil book for the period 26/2/42 to 10/3/42.

30

D77 cheque counterfoil book for the period 10/3/42 to 21/3/42.

D78 cheque counterfoil book for the period 30/3/42 to 23/4/42.

Q. A representative from Messrs. Aitken Spence & Co. was asked whether they prepared the document and he says he did not prepare it. Did you prepare the document ?

A. No, I did not.

Q. Did you know of the preparation of this document ?

A. I did not supply any information about this document.

Q. But you knew that the document was being prepared ?

A. Yes.

10 Q. When was the document prepared, because some parts of it were done in March, 1955 and other parts in 1954 ?

A. (No answer).

Q. You can see for yourself that the document X, parts were prepared in March, 1955 and parts in February, 1954. It is dated 15th March, 1955. Do you know why this document was prepared ?

A. It was prepared for the purpose of the divorce case.

Q. One thing you are clear about is that this document was not prepared for the purpose of this case ?

A. It applies to this case also.

Q. Was this document X prepared for the purpose of this case ?

20 A. It was prepared for this case as well.

Q. Parts of the document were prepared in March, 1955 and other parts in February, 1954 ?

A. Yes.

Q. This action was filed on the 25th January, 1955 ?

A. Yes.

Q. Therefore in March, 1954 that document X could not have been prepared for the purpose of this case ?

A. Yes.

Q. Summons in this case would have been served after March, 1955 ?

30 A. Yes.

No. 12
Defendant's
Evidence.

E. V.
Fernando—
—Cross-
examination
—continued.

No. 12
Defendant's
Evidence.

E. V.
Fernando—
—Cross-
examination
—continued.

- Q. Therefore that part of the document X which is dated March, 1955 could not have been prepared for the purpose of this case ?
- A. Yes.
- Q. Now you admit that this document X was not prepared for this case. Therefore you know why the document was prepared. Was this document prepared on any instructions given by Mr. Vander Poorten or on any instructions given by you ?
- A. It was prepared on instructions given by Mr. Vander Poorten.
- Q. In March, 1955 in what part of the world was Mr. Vander Poorten ?
- A. I think he was in the United Kingdom. In February, 1954 also he was in the U.K. He sent instructions to Messrs. Aitken Spence & Co. He told them what to prepare.
- Q. Did he tell them what was the purpose for preparing the document ?
- A. I think he told them.
- Q. Can you say now what was the purpose for which this document X was prepared ?
- A. It was for the divorce case.
- Q. What was this document intended to show ?
- A. That Mrs. Vander Poorten has wealth.
- Q. Therefore this document X according to you was prepared to prove 20 that Mrs. Vander Poorten had wealth of her own ?
- A. Yes.
- Q. And that Mrs. Vander Poorten had some income ?
- A. Yes.
- Q. And that was to prove that she should not get any alimony in the divorce case ?
- A. May be.
- Q. You were at that time doing Mr. Vander Poorten's work, but in the office of Messrs. Aitken Spence & Co. ?
- A. Yes.
- Q. Your job there was to look after Mr. Vander Poorten's interests ?

A. Yes.

Q. Your job there was to keep all the documents and material and facts and figures in respect of Mr. Vander Poorten's affairs?

A. Messrs. Aitken Spence & Co. documents I cannot touch. I can only go through them. I had Mr. Vander Poorten's documents and papers when he left the estate. Those documents were in my charge, left by Mr. Vander Poorten. Mr. Vander Poorten gave me no power of Attorney. His Power of Attorney was given to Aitken Spence & Co.

10 Q. Messrs. Aitken Spence & Co. were given only the books and documents which related to the Estates which they were now going to look after?

A. Before that they were doing other work, and he gave them instructions to have them under their charge.

Q. All information, papers and documents in regard to Mr. Vander Poorten's personal affairs prior to 1951 were in your charge?

A. Yes.

20 Q. All documents, papers, etc., in regard to the estates themselves and their management were in the keeping of Messrs. Aitken Spence & Co.?

A. Prior to 1951 they were with me.

Q. The only person who could give information in regard to the preparation of statements dealing with Mr. Vander Poorten's affairs or Mrs. Vander Poorten's affairs prior to 1951 was yourself and no one else?

A. Yes.

Q. You then knew what Mr. Vander Poorten wanted to achieve by the document X?

A. Yes.

30 Q. You knew then that Mr. Vander Poorten wanted to achieve the following objects—1. To show that Mrs. Vander Poorten had wealth of her own. (2) that she had a sufficient income of her own and (3) that Mrs. Vander Poorten should not receive alimony from Mr. Vander Poorten?

A. According to the income that was the idea.

Q. Therefore it is for that purpose that the document X was prepared?

A. Yes,

No. 12
Defendant's
Evidence.

E. V.
Fernando—
—Cross-
examination
—continued.

- Q.* You would have had to supply a considerable amount of material for this document X or had you supplied only the items of payments made by cheque ?
- A.* I supplied the information with regard to the following statements—Statement 2 of Document X, namely, the statement of payments alleged to have been made to Mrs. Vander Poorten by Mr. Vander Poorten. Then for statement 2*a* I supplied the information.
I supplied the information for statements 2*b* and 2*c*.
I did not supply information for statement 2*e*. 10
- Q.* How do you remember it was you who supplied the information for these statements, is there any mark on the papers to show which are the particulars you gave ?
- A.* I know that because the cheque counterfoils are with me. (Shown statement 2*e*).
- Q.* They are stated to be amounts drawn by Mrs. Vander Poorten on the Mercantile Bank of India Ltd. ?
- A.* Yes.
- Q.* You have produced certain cheques with regard to that ?
- A.* Yes. 20
- Q.* If you did not give the particulars in Statement 2*e* who could have given that ?
- A.* Mr. Vander Poorten himself because he had those cheque books with him. I am quite sure of that.
- Q.* You notice in statement 2*e* something to which you have made no reference in the course of your evidence. You notice that Mr. Vander Poorten having given particulars for the preparation of statement 2*e* has deducted from the amounts which according to him were drawn by Mrs. Vanderpoorten, such as the value realised by Defence Bonds and Drafts on London which were in favour of 30 Mrs. Vander Poorten £.1,191. 19*s.* and £ 120. 10*s.* 2*d.* So that statement 2*e* shows that Defence Bonds belonging to Mrs. Vander Poorten had been realised, also drafts in favour of Mrs. Vander Poorten had been realised, and statement 2*e* shows that Mr. Vander Poorten has appropriated those two sums of £.1,191. 19*s.* and £ 120. 10*s.* 2*d.* ?
- A.* I don't think he has appropriated those moneys. They may have gone into the Bank account.
- Q.* What is the plain meaning of statement 2*e*, does it not mean on the face of it that Mr. Vander Poorten is alleging that that sum was drawn by Mrs. Vander Poorten from the Mercantile Bank of India 40 Ltd. London ?

(Mr. Dias objects to the question. I allow it.)

No. 12
Defendant's
Evidence.

E. V.
Fernando—
—Cross-
examination
—continued.

Q. According to the statement *2e* Mr. Vander Poorten is alleging that Mrs. Vander Poorten has drawn £. 1,345. 1s., but he is giving her credit in two sums of £.1191. 19s. and £.120. 10s. 2d. ?

A. Yes.

Q. On the face of statement *2e* he is claiming £.132. 11s. 10d. as being money due to him ?

A. Yes.

10 Q. This statement shows that certain drafts from London in Mrs. Vander Poorten's favour have been realised by Mr. Vander Poorten ?

A. Yes.

Q. The statement also shows that certain Defence Bonds in her name have been realised by Mr. Vander Poorten ?

A. Yes.

Q. When the Vander Poortens were in England you were in complete control of their affairs here in Ceylon ?

A. I was not in control of their affairs.

Q. You were fully aware of their affairs in Ceylon ?

20 A. Yes, to some extent, because he had appointed as his attorneys Messrs. Julius & Creasy from 1947 to 1949.

Q. During what period were they in England ?

A. From June 1947 to end of 1949.

Q. You told court that this document X was prepared for the purpose of the divorce case ?

A. Yes. I know about that divorce case. The case is No. 3115 of this court. I gave evidence in that case.

Q. You assisted the defence in the case, you assisted the proctor for Mr. Vander Poorten in preparing the defence in that case ?

A. Yes.

30 Q. Any material required about Mr. Vander Poorten's affairs, the proctor would have asked you for that information ?

No. 12
Defendant's
Evidence
—
E. V.
Fernando—
—Cross-
examination
—continued.

- A. Not directly. He always writes to Messrs. Aitken Spence & Co. and I give the information. I don't think I went personally and saw the proctor for the defence.
(Shown the plaint in the divorce case).
- Q. You will grant that the plaint in that divorce case was dated 7th October, 1953 and the answer was dated 24th February, 1954 ?
- A. Yes.
- Q. You remember in that case Mrs. Vander Poorten was awarded alimony *pendente lite* in a sum of Rs. 1,250/- after an inquiry ?
- A. Yes. 10
- Q. From that finding in respect of alimony *pendente lite* Mr. Vander Poorten appealed to the Supreme Court ?
- A. Yes. That appeal was dismissed.
- Q. For the purpose of the alimony *pendente lite* inquiry the particulars in this document X were used on behalf of Mr. Vander Poorten in order to keep the alimony *pendente lite* down ?
- A. I don't know. I was present in court at the inquiry into the alimony *pendente lite*. Mr. R. L. Pereira Q.C. appeared for Mrs. Vander Poorten and Mr. N. K. Choksy Q.C. appeared for the defendant at that inquiry. 20
- Q. Did you come into court in that case as a witness or as a personal clerk interested on behalf of Mr. Vander Poorten ?
- A. I don't think I came into court every day. I cannot remember whether I came on the first day of the inquiry.
- Q. Would you admit that documents were produced in that alimony *pendente lite* inquiry in regard to these properties, dividends, incomes, etc. ?
- A. I cannot remember.
- Q. You told court that you gave information with regard to statements 2, 2a, 2b and 2c. 30
Did you merely give the information or did you actually prepare it ?
(No answer).
- Q. For instance in statement 2 the details with regard to particulars of Preston from 1942 to 1948, details in regard to payments made for purchase of shares, details with regard to Weyweltalawa and Normandy, all those details were details which you had with you ?

A. Yes.

Q. You would have put them all together as shown in statement 2 and in statement 2a ?

A. Yes.

Q. Putting them together means you would have prepared a list containing detailed amounts and particulars ?

A. Yes.

Q. Having prepared that list you would have handed that list over to Messrs. Aitken Spence & Co.

10 A. After preparing it it was sent to Mr. Vander Poorten for his approval. After approval it came back from Vander Poorten to Aitken Spence & Co.

Q. That list as compiled by you is what is shown as part of the document X ?

A. Yes.

Q. Then you admit that the statements to which you have referred were prepared by you ?

A. Yes.

20 Q. In statement 2 there is an item, No. 9, which reads " Furniture and belongings left behind at Preston which has been in sole occupation of Mrs. Vander Poorten since " ?

A. Yes.

Q. The amount given is Rs. 70,710/- ?

A. Yes.

Q. There is a reference there to statement 2f ?

A. Yes.

Q. Statement 2f gives the details ?

A. Yes.

30 Q. You are aware that an action has been filed in this court by Mr. Vander Poorten against Mrs. Vander Poorten for the recovery of Rs. 70,710/- being the value of the articles which he says he left behind in Preston ?

No. 12
Defendant's
Evidence.

E. V.
Fernando—
—Cross-
examination
—continued.

A. Yes.

Q. That action was filed on instructions received from Mr. Vander Poorten ?

A. Yes.

Q. Mr. Vander Poorten's proctors in that case are the same as in this case, Messrs. Samarasinghe & De Silva ?

A. Yes.

(Mr. Kadirgamar produces a certified copy of the plaint in case No. 36982 M dated 25th November, 1955 marked P1, " Joseph Vander Poorten vs. Hilda Vander Poorten " and he produces marked P2 10 certified copy of the answer of Mrs. Vander Poorten dated 29th June, 1956.)

Q. You would have rendered some services in this connection either to Messrs. Aitken Spence & Co. or Messrs. Samarasinghe & De Silva in the preparation of that plaint especially in respect of the articles left behind at Preston ?

A. Mr. Vander Poorten wanted some information regarding that.

Q. Mr. Vander Poorten asked you to send him a schedule of the articles at Preston ?

A. Yes.

20

Q. Did you have a schedule of the articles left at Preston ?

A. Yes. It was prepared by me with the assistance of Mrs. Vander Poorten before she left. I was aware that he was filing an action when he called for that list. He sent the list back to Aitken Spence & Co. after approving it. Then Aitken Spence & Co. were instructed to file an action for the recovery of those articles in the schedule. That plaint was filed on the 25th November, 1955.

Q. That plaint was filed after the answer in this present case was filed, that is after 16th November, 1955 ?

A. Yes.

30

Q. Mr. Vander Poorten gave instructions after the answer in this case was filed for the action for recovery of the articles left behind at Preston ?

A. Yes, may be. The action D.C. 36982/M is pending.

Q. Also the items or sums of money shown or set out in the document X is the only sum of money in respect of which Mr. Vander Poorten gave instructions for the filing of an action is that sum of Rs. 70,000

odd relating to the articles at Preston which is the subject matter of the action in P1 ?

A. Yes.

Q. In fact, it is the only other action filed apart from this case for the recovery of any sum of money shown in the document X, is that action 36982/M ?

A. Yes.

10

Q. To your knowledge the first time that any step was taken by Mr. Vander Poorten to seek to recover any of the sums of money set out or shown in the document X is when the answer in this case was filed on 16th September, 1955 in which a claim in reconvention is made ?

A. Yes.

Q. In fact, not one of the various sums of money shown or set out in the Document X had ever been claimed or demanded by Mr. Vander Poorten from Mrs. Vander Poorten until the answer in this case was filed in September, 1955 ?

A. No.

20

Q. Mr. Vander Poorten had never prior to his departure from the Island in July 1951 even discussed with you any intention of demanding from Mrs. Vander Poorten any one of the sums of money which are shown in the Document X ?

A. No.

I cannot say when Mr. & Mrs. Vander Poorten were married.

Q. If the plaint says that they were married on 5th February, 1924 would you accept that ?

A. Now I know.

Q. You have stated in Examination-in-chief that the plaintiff had a private bank account somewhere in 1940, are you sure of that ?

30

A. Yes, I am sure.

Q. You say the plaintiff's private account was first in the Imperial Bank and afterwards transferred to the Mercantile Bank ?

A. Yes.

Q. You also say that the plaintiff and defendant had two Joint Accounts, No. 1 Joint Account and No. 2 Joint account ?

No. 12
Defendant's
Evidence.

E. V.
Fernando—
—Cross-
examination
—continued.

No. 12
Defendant's
Evidence.

E. V.
Fernando—
—Cross-
examination
—continued.

A. Yes.

Q. The No. 1 and No. 2 Joint Accounts were joint accounts in the Mercantile Bank ?

A. Yes.

I cannot say when No. 1 Joint Account in the Mercantile Bank was opened. No. 2 Joint Account was opened somewhere in 1948. From the cheque counterfoils I have, the first joint account was opened on the 5th December, 1946. So that the joint account was opened somewhere in 1945 or 1946.

Q. You say that Mrs. Vander Poorten had a private bank account. 10

Q. When you say that she had a private bank account, as far as your recollection goes she commenced her private bank account somewhere in the 1940s ?

A. She commenced it about that time. The private bank account of Mrs. Vander Poorten was opened with the Imperial Bank.

Q. When you say her private bank account was transferred to the Mercantile Bank, you mean her private funds were transferred from the Imperial Bank to the Mercantile Bank ?

A. Yes, that is so. She had a private account in the Mercantile Bank. She closed her Imperial Bank account and opened a new account 20 at the Mercantile Bank. That was a private account. I am sure it was a private account. I know that she had a private bank account. I have no documents regarding her private bank account.

Q. You say the defendant had no private bank account ?

A. No. By private bank account I mean that he did not have a bank account to be operated by him solely. The two joint accounts have been subsequently closed.

Q. Have you any documents from which you can say when the Joint No. 1 Account was closed and when the Joint No. 2 Account was closed ? 30

A. I have nothing with me now.

Q. Surely statements of account are sent by the Mercantile Bank —accounts in respect of both accounts you must have with you ?

A. I have the bank pass book.

Q. From the bank pass books can you say when the account was closed ?

(Witness refers to bank pass book D20).

A. It was closed somewhere in April, 1950. D20 shows that Joint No. 1 Account was closed in the month of April 1950. I have no

documents to show when No. 2 Joint Account was closed. If I said that the No. 2 Joint Account was closed at about the same time, that is possible. When the No. 2 Joint Account was closed a new account was opened in Mr. Vander Poorten's name in the Mercantile Bank.

No. 12
Defendant's
Evidence.

E. V.
Fernando—
—Cross-
examination
—continued.

Q. Does that mean that whatever moneys were lying to the credit or balances in No. 1 and No. 2 Accounts, both those credit balances were transferred to a new account, in the sole name of Mr. Vander Poorten ?

10 A. There was no credit balance at the time. There was an overdraft of Rs. 79,504/30.
(Shown D20).

Q. There is nothing on the face of it to show that the No. 1 Joint Account was closed in April 1950 ?

A. No, but from the document I can say that there are no entries after that.

The No. 1 Account was overdrawn in a sum of Rs. 79,000 odd.

20 Q. In your Examination-in-chief when you said that the defendant had no private bank account, that is not quite correct, because according to you after April, 1950 the bank account was in the sole account of Mr. Vander Poorten only ?

A. Yes. Mr. Vander Poorten was the only person who could operate on it.

Q. Mrs. Vander Poorten had no account to operate on except her own personal account ?

A. Yes. That has been the position ever since April 1950.

Q. Can you say how much was lying to the credit of the Joint Account No. 2 in April or May 1950, at the time that the sole account was in the name of Mr. Vander Poorten ?

30 A. Mrs. Vander Poorten had her private account. The Joint Account was closed and Mr. Vander Poorten had opened an account for himself.

Q. You know nothing whatsoever about the private bank account of Mrs. Vander Poorten ?

A. In some instances I have written out cheques for her. Those cheques would have been written prior to 1950. I cannot exactly say what amount of money she had in her private account. The money which went into it were moneys from her income.

No. 12
Defendant's
Evidence.

E. V.
Fernando—
—Cross-
examination
—continued.

Q. Whatever income she drew prior to 1950 went into that private account ?

A. That was dividends, interest on loans she had given, etc.

(ADJOURNED).

A. D. J.

31/7/58.

After lunch.

Same appearances.

E. V. Fernando.—Affirmed. Recalled.

XXD.—*Contd.*

10

Q. You confirm that the plaintiff has not drawn any cheque on any joint account or any other account of defendant in Colombo after April 1950 ?

A. Yes.

Q. So that if defendant has any claim for any money drawn or any money paid out from any account for the benefit of the plaintiff it is only in respect of such moneys prior to April 1950 ?

A. Yes.

Q. You said that the Joint No. 1 Account in the Mercantile Bank was overdrawn to the extent of some Rs. 75,000/- odd when it was closed in April 1950 ?

A. Yes.

Q. How was that overdraft settled, do you know ?

A. Still it is being paid I think.

Q. Was the Joint No. 2 Account in funds in April 1950 ?

A. I cannot say.

Q. You are quite sure that the Joint No. 2 Account with the Mercantile Bank was used exclusively for the purposes of Greenwood Estate ?

A. Yes.

Q. You mean that all dividends and profits from Greenwood went into the Joint Account No. 2 ?

A. Without referring to the books I cannot say.

Q. What did you mean by telling the Court in Examination-in-chief that the No. 2 Account was really for the working of Greenwood Estate.

A. Because for the working of Greenwood Estate cheques were issued from the No. 2 Account.

Q. Namely, the drawings necessary for the running of Greenwood Estate were from the No. 2 Account.

A. Yes.

10 Q. But the account had to be replenished—can you say whether the revenue from Greenwood Estate was put into the No. 2 Account?

A. I cannot say without referring to the books.

Q. You do not say that any sum of money was either drawn by Mrs. Vander Poorten or paid to her benefit from the Joint No. 2 Account?

A. No.

Q. The Joint No. 2 Account was exclusively operated on by the defendant?

A. Yes, at the start by defendant and thereafter by Messrs. Julius & Creasy.

20 Q. That was an account in respect of which plaintiff had nothing to do?

A. Yes.

30 Plaintiff and defendant had children—a son named Bryan, a daughter Eileen and another daughter Joyce. The two daughters were living with the plaintiff and the defendant. Up to 1950 the plaintiff and defendant were living at Preston No. 20 Alfred Place. After 1950 the two daughters were not living with them. Eileen married and went to the U.K. I cannot remember when Eileen married and left. She married somewhere in 1944 or 1945. I do not know at what age she married. Eileen married One Mr. Ayres. She is now known as Mrs. Ayres.

The daughter Joyce was not living with the plaintiff and defendant at "Preston" till 1950. She was married and she lived with her husband—she married a Mr. Gorrie. She married somewhere in 1946. She was living separately with her husband.

The son Bryan came to the Island in the beginning of 1950. Until then he was in England. One Mr. P. G. Payne was the guardian of Bryan in England.

No. 12
Defendant's
Evidence.

E. V.
Fernando—
—Cross-
examination
—continued.

(Shown statement 2E in document X).

No 12
Defendant's
Evidence.

E. V.
Fernando—
—Cross-
examination
—continued.

- Q. There are some cheques shown here as having been drawn in favour of Mr. P. G. Payne and also to Mr. Bryan Vander Poorten ?
- A. Yes.
- Q. The Bryan Vander Poorten referred to there is is the son of plaintiff and defendant who was in England ?
- A. Yes.
- Q. The cheque in favour of Bryan for £.400 is dated 8/3/46—that is at the time when he was in England ?
- A. Yes. 10
- Q. The cheques to Mr. P. G. Payne guardian of Bryan are dated from 1945 to 1948 ?
- A. Yes.
- Q. That Mr. Payne is the guardian of Bryan ?
- A. Yes.
- Q. Bryan was being maintained in England by his father Joseph Vander Poorten the defendant ?
- A. Yes.
- Q. What were the moneys which went into the Joint No. 1 Account as long as that account was in operation ? 20
- A. All the profits from the Vander Poorten Estates—that is the share of the plaintiff and the defendant, the profits from Weliwita Estate and the dividends from estate companies went into the Joint No. 1 Account.
- Q. You know that the plaintiff also had shares in estate companies ?
- A. Yes.
- Q. The dividends from those shares also went into the Joint No. 1 Account ?
- A. No.
- Q. The expenses of plaintiff and defendant in keeping house, living, paying for Byran and other similar expenses in which both were interested were paid for by drawing from the Joint No. 1 Account ? 30
- A. Yes.
- Q. You have told the Court in Examination-in-chief that the defendant drew cheques on both joint accounts—that is correct ?
- A. Yes.

Q. The cheques that he drew on the Joint No. 2 Account were in connection with the working of Greenwood Estate ?

A. Yes.

Q. He also drew cheques from the No. 1 Account as he pleased, whenever he required ?

A. Yes.

Q. You have produced a large number of cheque counterfoil books ?

A. Yes.

10

Q. The Pass Books of these joint accounts would have come to Mr. Vander Poorten ?

A. Yes.

Q. He knows what moneys are being paid him and what moneys are being drawn ?

A. Yes.

Q. Whether the cheques on the Joint No. 1 Account were drawn by himself or by the plaintiff he knew what was being drawn from the No. 1 Account ?

A. He never goes into these accounts, once in a way he goes into these accounts.

20

Q. He could easily have found out from the Pass Books, he would have known what the drawings are ?

A. Yes.

Q. You were there to keep a close check on their affairs ?

A. Yes.

Q. You have produced a large number of cheque counterfoil books ?

A. Yes.

Q. Do any of the cheque counterfoil books which you have produced before this Court deal with the Joint No. 2 Account ?

30

A. (Witness refers to a book) Yes, a cheque has been issued on 4th November to open this Joint No. 2 Account.

Q. Has that book been produced in Court ?

A. No.

No. 12
Defendant's
Evidence.

E. V.
Fernando—
—Cross-
examination
—continued.

No. 12
Defendant's
Evidence.

É. V.
Fernando—
—Cross-
examination
—*continued.*

Q. A whole series of cheque counterfoil books were produced this morning—D72 to D131, do all these cheque counterfoil books relate to the Joint No. 1 Account ?

A. No.

Q. Is there any book produced here before this Court with a number which relates to the Joint No. 2 Account ?

A. No.

Q. All the cheque counterfoil books you produce relate to the Joint No. 1 Account ?

A. Yes.

10

Q. That is for the period December 1941 to February, 1951 ?

A. Yes.

Q. The Joint No. 1 Account was closed in April, 1950 ?

A. Yes.

(To Court—there are certain counterfoils for 1951 which have been produced but they do not relate to the Joint No. 1 Account. Those cheques may have been used for a new account.)

Q. Why did Mr. Vander Poorten close those Joint No. 1 and No. 2 Accounts in April, 1950 and start a sole account in 1950 ?

20

A. Because plaintiff disassociated herself with the Joint No. 1 Account. She said she does not want to take any responsibility for that Joint No. 1 Account—I cannot remember the exact words she used.

Q. When did she write that—shortly before the account was closed ?

A. Yes.

Q. Must have been in February, 1950 ?

A. Yes.

There was displeasure between them in 1950.

Q. That displeasure between them had something to do with the closure of the No. 1 Account ?

30

A. I do not know.

Q. Did that displeasure have anything to do with plaintiff's wanting to disassociate herself with the Joint No. 1 Account ?

A. I do not think so.

Q. D130 is the cheque counterfoil book for the period 17/12/49 to 11/12/1950 ; D131 is the cheque counterfoil book for the period 12/12/50 to 18/2/51 D131 is the cheque counterfoil book which deals with the period when plaintiff had no control over defendant's bank account ?

A. Yes.

Q. And all the items in D131 are cheques written out either by you or the defendant ?

10 A. Yes, most of them by Mr. Vander Poorten.

Q. If there are any others they are by you, not by the plaintiff ?

A. Yes.

Q. In D130 all the counterfoils are written by you or by the defendant ?

A. From 17/12/47 to 8/2/1950 cheques were written out by Messrs. Julius & Creasy.

Q. Or in their office by their personal ?

A. Yes.

Q. There was a period when they were attorneys for the defendant ?

20 A. Yes.

Q. Notice of each of these drawings would have been given to the defendant at some time or other when Messrs. Julius & Creasy rendered accounts ?

A. Yes.

Q. In these cheque books D72 to D131 all the cheque counterfoils for that entire period are before Court ?

A. Yes.

Q. From 17/12/47 plaintiff has never written a single cheque on the Joint Account ?

30 A. No.

Q. In D127, D128 and D129 you find that in fact it was from August, 1947 that Messrs. Julius & Creasy began to operate on these cheque books and thus plaintiff had not drawn a single cheque after August, 1947 ?

No. 12
Defendant's
Evidence.

E. V.
Fernando—
—Cross-
examination
—continued.

A. Not August, 4th July 1947.

(To Court—Q. Is it that from July 1947 plaintiff has not drawn cheques on Joint No. 1 Account ?

A. Yes.)

Q. You can say that by looking at documents D127, D128 and D129 ?

A. Yes.

Q. You say from D127 that prior to July, 1947 cheques have been drawn by you and the defendants ?

A. Plaintiff has also drawn.

Q. Have you drawn ? .

10

A. Yes.

Q. Has defendant drawn cheques ?

A. He has not written out a single cheque in D127.

(To Court : In D127 there are cheques drawn by plaintiff. The last one is cheque counterfoil dated 16/6/47 for £. 40. That is the last cheque she drew on the Joint No. 1 Account).

Q. Ever since this No. 1 Account commenced the last cheque drawn by plaintiff was on 16/6/47 ?

A. Yes.

Q. And since then she has not drawn a single cheque although the 20 account was alive till April, 1950 ?

A. Yes.

Q. That cheque you referred to in D127 of 16/6/47 reads as follows :
“ Kenny & Co. baggage insurance for a year Rs. 226/50 ”.

A. There is another.

Q. You were incorrect when you said that the last cheque she drew was for Rs. 540/- on the 16th June 1947 plaintiff has written five cheques shown in D127—viz., Thomas Cooks for £.150/- Pioneer Pharmacy for drugs £.40..... ?

A. That is in my handwriting.

30

Q. You admit that this cheque of 26/3/47 (Shown) is in your handwriting ?

A. Yes.

Q. You say that all the other cheques of 16/6/47 are in your handwriting—I say they are in plaintiff's handwriting?

A. Yes, they are in my handwriting?

Q. All the cheques that are in D127 either in your handwriting or plaintiff's are in respect of household expenses?

A. Yes.

Q. At a time when plaintiff and defendant were living together?

A. Yes.

10 Q. They went to England round about June, 1947?

A. Yes.

Q. All the cheques drawn in June, 1947 are in connection with the trip to England?

A. I cannot say.

Q. "Kenny & Co. baggage account" is in respect of the trip to England?

A. Yes.

Q. Thomas Cook & Sons Rs. 2,002/20 there is in respect of the trip to England?

20 A. Yes.

Q. Both defendant and plaintiff went together to England?

A. Yes.

Q. That is the trip on which they went and stayed till 1949?

A. Yes.

Q. Did any of the children go with them on that trip?

A. No.

Q. Because Bryan was in England and the two girls were married?

3 A. Yes.

No. 12
Defendant's
Evidence.

E. V.
Fernando—
—Cross-
examination
—continued.

No. 12
Defendant's
Evidence.

E. V.
Fernando—
—Cross-
examination
—continued.

- Q. All those cheques are in respect of household expenses and the trip to England until Julius & Creasy took over ?
- A. Yes.
- Q. In the same way these counterfoils that you have produced all show drawings on account of the joint household of the plaintiff and defendant ?
- A. Yes.
- Q. Whether the cheques were written by you, plaintiff or defendant ?
- A. Yes.
- Q. You have produced the cheques D28 to D67 which are cheques¹⁰ drawn on the Mercantile Bank of India Ltd. London account—that account is also a joint account ?
- A. Yes.
- Q. This joint account in London was kept going by funds sent from Ceylon ?
- A. Yes.
- Q. You are also aware that plaintiff took an overdraft in England ?
- A. The account shows that, but I do not know.
- Q. The account shows an overdraft ?
- A. Yes. 20
- Q. You have with you the bank statements issued by the Mercantile Bank of India Ltd. London ?
- A. Yes.
- Q. That shows that there was an overdraft ?
- A. Yes.
- Q. Those statements also give the names of the persons in whose favour the cheques were drawn ?
- A. Yes.
- Q. The cheques that you have produced here commence on 1st December, 1949 to September, 1954—that is D28 to D67 ? 30
- A. Yes.

Q. You have not produced in this Court any cheques prior to 1st December, 1949 on the London account ?

A. No.

Q. In regard to the documents D28 to D67 I want you to explain to Court why you did this—The documents D28 to D58 are cheques on the London Bank signed by Mrs. Hilda Vander Poorten on the joint account ?

A. Yes.

Q. They are consecutive cheques ?

10 A. Yes.

Q. D59 and D60 are cheques drawn by Mrs. Vander Poorten not on a joint account, those seem to be on her own personal account ?

A. Yes.

Q. That is D59 of 7/7/50 and D60 of 22/9/50 two cheques for £. 50 and £. 100 were drawn by plaintiff on her own account in the Mercantile Bank London ?

A. Yes.

Q. Among cheques drawn on the joint account why did you include cheques drawn on her personal account ?

20 A. When they went to U.K. there was a credit balance of £. 588.15.6. After this trouble started she has slowly written to the London Bank and transferred £.88 to her credit.

Q. How do you know that she slowly wrote ?

A. I have got a letter from the bank.

Q. Have you got a letter from her ?

A. No.

(To Court—Plaintiff got that credit balance transferred to her name, she may have opened an account. It may be that D59 and D60 were issued after the private account was opened by the plaintiff.)

30

Q. You were reading out from a statement sent by the Mercantile Bank Ltd. London to defendant ?

A. Yes,

No. 12
Defendant's
Evidence.

E. V.
Fernando—
—Cross-
examination
—continued.

No. 12
Defendant's
Evidence.

E. V.
Fernando—
—Cross-
examination
—continued.

- Q. That shows that £. 588.15.6 was lying to the credit of their joint account in London ?
- A. Yes.
- Q. That same account shows that £. 500.15.6 was deposited to the credit of the Post Office savings Bank account ?
- A. Yes.
- Q. That was credited to the account of the defendant ?
- A. No.
- Q. Why do you say that ?
- A. Because defendant has no Post Office Savings Bank account. 10
- Q. The document says " Transferred to Mrs. Vander Poorten £. 88 " ?
- A. Yes.
- Q. That is all that the document says ?
- A. Yes.
- Q. The documents D61 to D67 are cheques drawn by Mrs. Vander Poorten in the year 1954 ?
- A. Yes.
- Q. So that there is a gap of very nearly 3½ years in the series of London cheques that you have produced ?
- A. Yes. 20
- Q. By 1954 plaintiff and defendant had parted ?
- A. Yes.
- Q. You do not know whether plaintiff had transferred funds of her own to the Mercantile Bank London in 1954 ?
- A. I do not know.
- Q. Have you got the Mercantile Bank statements from 1949 to 1950 ?
- A. Yes.
- Q. That statement is described as No. 1 Account—does it mean that defendant had two accounts ?

A. Yes, defendant had another account apart from this.

(Mr. Kadirgamar marks as P3 Mercantile Bank statements of the London Joint Account for the period October, 1949 to 30th November, 1950.)

Q. You know that the plaintiff and defendant ran a house together in England when they were there ?

A. They were living together with their daughter Mrs. Ayres.

Q. You do not know that they were running a house together ?

A. No.

10 Q. The cheques D28 to D67 are all cheques in connection with their living expenses in England from December, 1949 and cheques drawn in favour of their daughter Mrs. Ayres and the Thomas Cook passage money ?

A. There are several parties—I do not know for what purposes they are drawn.

Q. But you can identify the cheques drawn in favour of the daughter Mrs. Ayres ?

A. There is one cheque on 27th November 1949 for £.8.5.0 and another cheque of 22/9/50 for £. 100.

20 Q. Their landlord was a man by the name of F. W. Dennis to whom rent had to be paid—you know that they had to pay rent for that house ?

A. I know that they bought a house in England, I do not know whether they paid rent.

Q. You know from subsequent statements that you had to prepare that they were paying rent for the house in which they were living in England ?

A. I do not know. I know that they bought a house.

Q. That is both of them together ?

30 A. Later it was transferred to Mrs. Ayres, I cannot say for what purpose they bought it.

Q. You know that Mr. & Mrs. Vander Poorten bought a house at the time they were in England ?

A. Yes.

Q. You know the address of that house ?

No. 12
Defendant's
Evidence.

—
E. V.
Fernando—
—Cross-
examination
—continued.

No. 12
Defendant's
Evidence.

E. V.
Fernando—
—Cross-
examination
—continued.

- A. I cannot remember.
- Q. You know that defendant was ill when he was in England ?
- A. He was ill when he was here.
- Q. When he went to England he would have received treatment ?
- A. Yes of course.
- Q. And that treatment would have had to be paid for ?
- A. Yes.
- Q. There were some cheques in P3 in favour of doctors ?
- A. Yes.
- Q. There is a cheque of 23/11/49 in favour of Dr. C. Allen for £. 3.3.0 ? 10
- A. Yes.
- Q. You have heard of a shop called Harrods in England ?
- A. No.
- Q. There are cheques drawn payable to Thomas Cook & Sons, there is a cheque of 28/11/49 for £. 180 ?
- A. Yes.
- Q. There is a cheque of 12/12/49 for £ 100 in favour of the Post Master ?
- A. Yes, the Post Master General for £. 100 only.
- Q. And on the reverse of it what is written ? 20
- A. I cannot read, it is not clear enough.
- Q. You know that the English Banks have a system of sending back to the customer all the cheques drawn and paid ?
- A. Yes.
- Q. You have kept the cheques which the Mercantile Bank of India returned to the customer ?
- A. Yes.
- Q. Although you have selected and produced in this Court only some of the cheques returned to the customer ?

A. I did not have these cheques with me, these cheques were always with the defendant.

Q. Defendant for the purposes of this case sent you a large number of cheques ?

A. He sent the cheques direct to the proctor.

Q. That is the cheques D28 to D60 ?

A. Yes.

Q. There are no other Mercantile Bank Cheques with you at the moment ?

10 A. No.

Q. And defendant has not sent them to you ?

A. No.

Q. I take it defendant sent these cheques because the proctor wrote and asked him to let him have the cheques ?

A. I do not know.

Q. Do you know why these cheques were sent ?

A. No.

Q. Do you know why these cheques are produced in Court ?

A. For the case.

20 Q. Have you produced these cheques with the hope of supporting Mr. Vander Poorten's claim for the recovery of those amounts from the plaintiff ?

A. I do not think they are claiming the amounts on these cheques.

Q. Have you ever seen these London cheques before ?

A. Yes.

Q. Can you recall a single cheque being written during the period 1947 to 1950 when they were in England by Mr. Vander Poorten ?

A. No.

Q. Every cheque during their stay in England was drawn by plaintiff ?

No. 12
Defendant's
Evidence.
—
E. V.
Fernando—
—Cross-
examination
—continued.

- A. Yes, because he was ill.
- Q. He was so ill that he could not write cheques ?
- A. Usually plaintiff used to write on his behalf.
- Q. In connection with his illness and their stay in England a lot of expense would have been necessary ?
- A. Yes.
- Q. And the cheques that were drawn would be for the joint existence and for the expenses in connection with the defendant's illness ?
- A. I cannot say that all those cheques were drawn for that purpose. There are cash cheques and I cannot say for what they have been drawn.
- Q. By looking at the endorsements cannot you satisfy yourself what the cash cheques are for ?
- A. It only says " Cash £. 60 ".
- Q. You have given evidence in the divorce case ?
- A. Yes.
- (Mr. Kadirgamar marks as P4 certified copy of the plaint in D.C. 3115/D and as P5 certified copy of the Answer in that case).
- Q. Plaintiff instituted an action for separation against the defendant ?
- A. Yes. 20
- Q. Defendant prayed for a divorce ?
- A. Yes.
- Q. Judgment has been delivered in that case ?
- A. Yes.
- Q. And decree has been entered granting a separation ?
- A. Yes.
- Q. And defendant's action for a divorce was dismissed ?
- A. Yes.
- Q. And the matter has gone up in appeal ?
- A. Yes. 30

Q. The answer in that action was filed by Messrs. Julius & Creasy on behalf of the defendant ?

A. Yes.

Q. In that answer it is pleaded on behalf of the defendant that he left the Island in or about the month of July, 1951. It is also pleaded in paragraph 7 (b) that plaintiff " Mrs. Vander Poorten was and is possessed of properties of considerable value either gifted to her or paid for by the defendant on her behalf "—you know that an application was made for alimony *pendente lite* by the plaintiff ?

10 A. Yes.

Q. That matter came up for inquiry ?

A. Yes.

Q. Mr. H. W. R. Burton was a Director of Messrs. Aitken Spence & Co. ?

A. Yes.

Q. He was one of the attorneys of Mr. Vander Poorten at that time ?

A. Yes.

Q. In reply to plaintiff's application for alimony *pendente lite* Mr. Burton filed an affidavit on Mr. Vander Poorten's behalf ?

20 A. Yes.

Q. He received instructions from the defendant for that purpose ?

A. Yes.

Q. Mr. Vander Poorten was always kept informed of all the proceedings in the actions here and he gave instructions ?

A. There were instances where Messrs. Aitken Spence could not get instructions from him.

Q. In the alimony *pendente lite* proceedings Mr. Vander Poorten did not file any affidavit in reply to plaintiff's claim ?

A. I do not think he filed.

30 Q. The affidavit in reply to the claim was filed by Mr. Burton as attorney of defendant in Ceylon ?

A. Yes.

(Mr. Kadingamar marks as P6 certified copy of affidavit filed by Mr. H. W. R. Burton in D.C. 3115/D).

No. 12
Defendant's
Evidence.

E. V.
Fernando—
—Cross-
examination
—continued.

No. 12
Defendant's
Evidence.

E. V.
Fernando—
—Cross-
examination
—continued.

- Q. According to Mr. Burton's affidavit those were shares gifted to Mrs. Vander Poorten or paid for by defendant on her behalf and they are of the total value of so much ?
- A. No, they were purchased by the plaintiff.
- Q. The shares that are referred to in the affidavit P6 are valued at Rs. 28,436/- the statement 2 in the document X was prepared by you ?
- A. Yes.
- Q. Item 2 there is a reference to shares—that figure of Rs. 28,436/- is the identical figure in the schedule to Mr. Burton's affidavit ? 10
- A. Yes.
- Q. Also in the schedule to the affidavit P6 is included a half share in " Preston " 20 Alfred Place valued at Rs. 80,000/- ?
- A. Approximate value.
- Q. In the affidavit P6 the defendant's attorney says that half share of " Preston " has been gifted to plaintiff ?
- A. Yes.
- Q. The affidavit P6 is dated 25/2/54 ?
- A. Yes.
- Q. The statement 2 which was prepared by you is dated 5/2/54 and in that Rs. 42,000/- viz., half share of the purchase price of " Preston " and the expenses is now being debited to Mrs. Vander Poorten ?
- A. Yes.
- Q. " Preston " was bought in the joint name of the plaintiff and defendant ?
- A. Yes.
- Q. So that plaintiff had half share ?
- A. Yes.
- Q. Can you explain how on 5/2/54 you claim to debit plaintiff with a 30 half share when defendant's attorney on 25/2/54 files affidavit that half share was gifted or paid for on her behalf ? (Mr. Dias objects to this question).

A. As she has claimed money from defendant he had to show how much she has taken already.

Q. The money claimed is the money by way of *pendente lite*—because she has claimed alimony *pendente lite* he wanted to show how much had been given to her by him ?

A. Given to her and paid for by him.

Q. You told the Court about the rents of Preston when the plaintiff and defendant were in England the house was in the charge of Mr. W. H. Kenny ?

10 A. Yes.

Q. He was the attorney of plaintiff and defendant ?

A. Of plaintiff.

Q. You told the Court that the bungalow had been rented out ?

A. Yes.

Q. All you are able to tell the Court is that you do now know what Mr. Kenny did with the rents which he collected from Preston while he was attorney and while plaintiff and defendant were away ?

A. I do not know what he has done.

20 Q. You have told the Court at page 61 that you presumed that it was credited to Mrs. Vander Poorten's account ?

A. Yes, because Mrs. Vander Poorten has appointed Mr. Kenny as her attorney to look after her interests.

Q. So you presumed that ?

A. Yes.

Q. You have no other material to support that ?

A. No.

Q. He was collecting the rents for which period ?

A. June or July 1947 to December 1949.

30 Q. That is because in December 1949 or early 1950 they were back and they went into occupation of Preston ?

A. Yes.

No. 12
Defendant's
Evidence.

E. V.
Fernando —
—Cross-
examination
—continued.

- Q. Defendant knew that Mr. Kenny as attorney rented out the house to Mr. Scoones of the Hong Kong & Shanghai Bank and after that to Mr. Winter ?
- A. Yes.
- Q. Defendant would have known that ?
- A. He may have known that.
- Q. Before defendant and plaintiff left the Island they knew that Mr. Kenny was to find a tenant for the house when they were away ?
- A. Yes.
- Q. Had Mr. Scoones been found as a tenant then ? 10
- A. No, I do not think that before they left Scoones had been found.
- Q. When did Scoones come to the house as the tenant ?
- A. In July.
- Q. You would have been often reporting to Mr. Vander Poorten about his various affairs in Ceylon ?
- A. Yes.
- Q. You would have told him that a tenant had been found for Preston ?
- A. No. I did not write to Mr. Vander Poorten at all, I was writing to Mrs. Vander Poorten. 20
- Q. You were occupying one of the rooms in Preston right throughout that period ?
- A. Yes.
- Q. D70 is the cheque counterfoil for the cheque dated 23/1/47 in favour of E. John & Co. for Rs. 28,436/- which is stated to be the value of the shares bought ?
- A. Yes.
- Q. In whose handwriting is that ?
- A. In my handwriting.
- Q. Those shares are the shares referred to in statement 2 ? 30
- A. Yes.

Q. You wrote that cheque on instructions from defendant ?

A. Of Mrs. Vander Poorten.

Q. Mr. Vander Poorten knew that those shares had been purchased ?

A. I do not know whether he knew or not, he may have known.

A. Dividends would have come from these shares.

Q. Dividends may have come but I cannot remember, it was only a few months before they left for the U. K.

Q. When they were in the U.K. during 1948 and 1949 dividends would have come ?

10 A. It would have gone through Mr. Kenny into her account.

Q. After defendant came back in 1950 ?

A. There was trouble, I was not there, I went there once in a way. Defendant had to shift to some other place and I do not know.

Q. Are you suggesting that defendant did not know that shares to the value of Rs. 28,436/- were being bought ?

A. He came to know afterwards.

Q. From whom ? from plaintiff or from you ?

A. I do not know, he told me after he returned from England.
(Shown statement 2 A in Document X).

20 Q. Those cheques there — did you write out all those cheques ?

A. Without going through them I cannot say.

Q. Can you say whether all the items shown in 2A are in connection with the house " Preston " ?

A. Yes.

Q. Either repairs to Preston or some maintenance of it ?

A. Yes.

Re-Examined — Statement X consists of a number of statements prepared from time to time.

No. 12
Defendant's
Evidence.

E. V.
Fernando—
—Cross-
examination
—continued.

E. V.
Fernando—
—Re-exam-
ination.

30 Q. Some of those statements may have been prepared independent of other statements on different dates ?

A. Yes.

No. 12
Defendant's
Evidence.

E. V.
Fernando—
—Re-
examination
—continued.

- Q. And they may have been prepared for different purposes ?
- A. Yes.
- Q. Statement 1 is a part of statement X and contains an account of income from Mr. and Mrs. Vander Poorten Estates and from the Vander Poorten Estates up to 31st March, 1954 ?
- A. Yes. From 1940 up to 1953 in some cases and 1954 in some cases.
- Q. Did you have any part in the compilation of that statement ?
- A. No.
- Q. The details from which statement 1 has been prepared are set out in the annexures 1A and 1B which are filed along with statement 1? 10
- A. Yes.
- Q. On what material has statement 1 been compiled, where is that information to be found ?
- A. From the account books kept on the estates ?
- Q. Those are the account books audited by Messrs. Iyer and Co. annually and from which the income tax returns are prepared ?
- A. Yes.
- Q. You went through items 1, 2 and 3 in statement 2 in some detail and the details of statement 2A in particular ?
- A. Yes. 20
- Q. In regard to item 4 the defamation case Messrs. Julius and Creasy would have personal knowledge of the details of expenditure set out in statement 2B ?
- A. Yes.
- Q. The counterfoils of the cheques referred to are included in the cheque counterfoils which you have produced ?
- A. Yes.
- Q. In regard to item 5 the costs of the partition action, details are given in statement 2C and the cheques in respect of those payments are also borne out by the counterfoils ? 30
- A. Yes.
- Q. Item 6 refers to the rents from the " Terraces " Kadawatte ?

A. Yes.

Q. Do you know anything about the rents from the "Terraces" Kadawatte?

A. Yes.

Q. When plaintiff and defendant were away who were in occupation of the Terraces before they went?

A. At that time the Mahara Rest house was there?

Q. After they went away who were in occupation?

A. I cannot say exactly.

10 Q. May have been Mr. Kenny?

A. Not Mr. Kenny.

Q. Do you know who was collecting the rents while the plaintiff and defendant were in England?

A. Mr. Kenny.

Q. Do you know at what rate he collected the rents?

A. At Rs. 150/-.

Q. I believe at one time one of the Directors of Messrs. Aitken Spence occupied that bungalow?

A. Not one of the Directors — the Accountant Mr. Maclean Wilson.

20 Q. Item 7 is in respect of certain items of rubber and cocoa and payments to Mrs. Vander Poorten — have you any personal knowledge of the items in statement 2D?

A. No.

Q. Item 8 refers to statement 2E and you have stated that you have no knowledge of the items in that account?

A. Yes.

Q. You told the Court that the list of the furniture in "Preston" was prepared by you on instructions of the plaintiff?

A. Yes.

80 Q. Have you got the original of that list prepared on the instructions of the plaintiff?

No. 12
Defendant's
Evidence.

E. V.
Fernando—
—Re-
examination
—continued.

A. I have not got it with me in Court.

Q. In regard to item 10 have you any personal knowledge, what amount is due from plaintiff or whether she paid income tax or not ?

A. No.

Q. Item 11 various payments by cheques, do you have any personal knowledge of that ?

A. I have all those cheque counterfoils and they are all included in the cheque counterfoils produced in Court.

Q. Since July 1951 who has been in occupation of Preston ? 10

A. Mr. and Mrs. Gorrie were in occupation.

Q. To your knowledge had defendant received any rent for that occupation ?

A. No.

The Joint No. 2 Account was for Greenwood. I have only one cheque counterfoil book in respect of that. I produce that cheque counterfoil book marked D132. Every single cheque counterfoil in that refers to Greenwood. Dividends or distributable income from Greenwood Estate were not paid to the Joint Account No. 2.

Plaintiff and defendant left the Island in June 1947. After that 20 Messrs. Julius and Creasy were operating on the Joint No. 1 Account. Plaintiff and defendant returned in December, 1949. The Joint No. 1 Account was closed in April, 1950.

A. D. J.

Mr. Dias closes his case reading in evidence D1 to D132.

Mr. Kadirgamar calls no evidence. He reads in evidence P1 to P6.

It is 4 p.m. now.
Counsel move for a date for addresses.
Further hearing on 5/8/58.

A. D. J. 30

31/7/58.

Addresses to Court

D.C. 34367/M

5-8-58.

Appearances as before.

Mr. Kadirgamar addresses Court. He states that from the plaint, answer and issues the plaintiff's case is that she was entitled to income and profits, that that money came into the hands of the defendant, that the defendant was managing the properties for her and that the defendant was under an obligation to pay over the moneys. Plaintiff estimated her share as far as the pleadings are concerned at Rs. 118,114/- received by her and Rs. 50,000/- still due to her. The defendant in his answer set out the sum of money which he admitted that the plaintiff was entitled to receive (paragraph 5) as Rs. 161,488/- her proportionate share up to 31st March 1954 — defendant has admitted that plaintiff is entitled to Rs. 161,488/-. Plaintiff has restricted her claim to Rs. 42,974/- which is the sum of money which he says was with the defendant — that is the difference between the sum of money which defendant admits is due to plaintiff and the sum which plaintiff says she received.

The Court will observe that this sum of Rs. 42,974/- is in respect of the period up to 31st March 1954. Evidence has been led and witnesses have produced documents up to March 1956. The defendant's case is that he is entitled to credit in a sum of Rs. 371,000, Rs. 161,000/- is due to plaintiff and he claims in reconvention Rs. 210,000/- the difference between the two figures. The defendant in his answer while claiming the right to recover from plaintiff Rs. 210,000/- has put his case as far as the answer is concerned on the ground that various sums of money had been drawn by the plaintiff and had been expended on her account. He submits that in no event can such moneys be claimed back, it does not matter in what circumstances they were paid. Firstly the Court will see that the husband and wife were living together, both had income, moneys have gone into one account from which various payments have been made such as payments necessary to keep the household going, for the expenses of a joint household, for children, for various matters connected with medical bills, a variety of things of that nature none of which are claimable back in an action of this nature. D28 to D67 are cheques drawn by plaintiff on the joint account in England. The husband was ill and the cheques were in respect of the household expenses, household necessaries, illness of the husband, payments to son, payments to daughters, passage moneys, insurance moneys and various things of that nature while they were in England. The other cheques drawn on the joint account were by defendant. His case is, on the admissions and on the documents before Court, as things stand there is a sum of money due to plaintiff. He had restricted his claims to Rs. 40,000/- odd. From the evidence of the accountant he has confirmed that from the documents before Court, up to 31st March, 1957 there is a sum of Rs. 68,367/- due to the plaintiff. He submits that in no event can the defendant seek to reduce the amount the Court holds is due to him. Assuming first of all defendant has any claim it is prescribed. Secondly there is not the slightest

degree of proof that any of the items which defendant seeks to lay against plaintiff is claimable — no one has given evidence to say which were either gifted or loaned or given under an contract to be paid back, that these are moneys which the defendant is entitled to claim back. Lastly looking at the items themselves the Court will find that in no event are items such as these claimable back from a wife by a husband, either during the subsistence of a marriage or afterwards. He states that the nett result of Ramasamy's evidence is at page 14 where he says that Rs. 68,367/- out of the distributable share is still due to the plaintiff — that is for the period up to 31st March, 1956. The amount due up to 31st March 1954 appears in the answer. 10 Keeping in mind Issue 6 raised on behalf of the defendant there is nothing from Ramasamy which carried forward the defendant's case that he is entitled in any view of the law or facts to debit the plaintiff with those amounts. The witness de Zilwa of Aitken Spence has produced two cheques. Nowhere does his case go to show that they are entitled to in any view of the law or facts to show that they are entitled to debit plaintiff with any of the items shown in document X, — those two cheques D8 and D9 are amounts included in the Rs. 118,000/- which the plaintiff has admitted as having been paid to her. The witness E. V. Perera produced some books and having produced the books in answer to Counsel he admits the resulting 20 position is at pages 33 and 34 that there were two sums of money payable to plaintiff, that is Rs. 11,000/- odd and Rs. 1,600/94 — he says they are available to plaintiff. The witness says he does not know how Ramasamy has prepared his accounts. He says at the bottom of pages 35, 36 and 37 that if those two items totalling Rs. 92,000/- were incorrectly debited they must be added back to the Rs. 11,000/- odd and Rs. 1,600/94. He states that the question of what amount is due is to be found in Ramasamy's evidence. E. V. Perera's evidence does not carry the matter any further. Nowhere in his evidence do you find anything to support defendant's contention that he is entitled to debit moneys except for the Greenwood 30 rubber and cocoa. In regard to that he says their case is that they have already deducted that amount, and there is still Rs. 11,000/- odd due. He refers to the evidence of Sayakkara at page 48. He submits that if the defendant claims that these are moneys he is entitled to recover he must prove to Court some facts which entitled him to debit plaintiff. He says there is no proof at all. All Sayakkara can say is that plaintiff's share of the produce was sold. Assuming it is her share what is there wrong in her selling her share of the produce in the presence of the Superintendent getting the best possible price for it and taking the money — she is a co- 40 owner. Secondly this happened in February 1951. Defendant was in the Island till July 1951 and if defendant claims that this has been wrongly appropriated he has a claim in law and that claim is prescribed. He was here till July 1951. Defendant never had an idea of claiming back from defendant any of the items in document X. That document was prepared for the purposes of the divorce case to show that plaintiff had sufficient wealth to fight the case for alimony *pendente lite* which she brought. It was not for the purpose of establishing a claim or a case against plaintiff for the recovery of that money. The witness Fernando has also said that defendant has never suggested, thought, or given any instructions to anyone for the recovery of any sum of money shown in document X. The answer in 50 the divorce case and the affidavit of the attorney makes it clear that he had gifted properties to plaintiff or paid for properties for her. If the produce

was wrongly appropriated then prescription has set in from February 1951 and there was no suggestion of a claim, no attempt to claim anything till the answer in this case was filed in February 1955. Defendant has got to prove to Court that those are sums of money which plaintiff has taken and which she was not entitled to, or sums of money which defendant is entitled to claim.

No. 13
Addresses to
Court.
—continued.

It is admitted that plaintiff is entitled to 1/9 share of Mr. and Mrs. Vander Poorten Estates and the defendant to 8/9. It is also admitted that plaintiff is entitled to 1/20 of Vander Poorten Estates and defendant to 8/20.

10 Mr. Kadirgamar refers to statements 2 and 2A in the document X which he says appear to be the moneys defendant is claiming back. Their case as it appears in the answer is that a total of Rs. 371,984/- has been paid in various ways to plaintiff, that Rs. 161,488/- was due and they ask for judgment in Rs. 210,000/- odd. They say that all these items which defendant is entitled to claim back now. First of all they have to satisfy Court— Secondly, there must be evidence before Court on which the Court can decide whether the figures set out in a document can be debitted to the plaintiff. He says there is no proof. Assuming that there was proof, he says that no claim can arise because all claims if any are prescribed.

20 It is conceded that the last date of the items sought to be charged against the plaintiff is February 1951.

Mr. Kadirgamar submits that all claims are therefore prescribed.

Mr. Kadirgamar refers to the evidence of the witness Fernando at pages 69 to 71. He says document X was prepared for the purposes of the divorce case to prove plaintiff's wealth. It follows that at that time it was not prepared with the object of claiming it back. He refers to the evidence at page 77 — the only one in respect of which defendant thought he had a claim was the furniture in Preston in respect of which defendant filed action — D.C. 36982 in November 1955. Why did he file that action and
30 not the others — because it was never his intention to claim these sums of money — because they were in fact not claimable or because when they were paid he had no intention of making a claim. In regard to 2A how could it be said that in regard to Preston that by merely listing cheques plaintiff's share is Rs. 41,000/-. In regard to 2D he says that there is no evidence before court at all in regard to the defamation case. He says that the expenses in the defamation case come in 1944 and the question of prescription will arise. Apart from that, can defendant place before Court a piece of paper headed "Defamation Case" set out some cheques and names of proctors, assuming that all the counterfoils are here and they were all
40 paid out of the Joint No. 1 Account, how does it follow that plaintiff is chargeable. They must prove that there was a contract that plaintiff must pay it back. He points out to the item of Rs. 28,436/- in respect of shares bought by plaintiff and to P5. This shows that he is now claiming back the value of shares purchased by him and gifted by him to the plaintiff. He refers to paragraph 7 (b) of P5. He refers to paragraph 7 of the affidavit of Mr. H. W. R. Burton P6. He refers to Fernando's evidence at pages 83 and 87. He refers to D3 where defendant states that he paid Rs. 28,940/- as

income tax on plaintiff's income. There is no proof whatsoever that defendant paid the entirety of this sum and in fact one of the witnesses admitted that he did not know whether defendant paid that money. D4 shows that a joint account was opened in the name of the plaintiff and the defendant. There is no proof that the income tax was paid from this account. No primary documents have been placed before Court in support of the allegation that income tax was paid on behalf of the plaintiff.

Mr. Kadingamar cites 44 N.L.R. 488. Powell on law of Agency 1952 page 260 at 301. Hahlow on the Law of Husband and Wife 6th Edition 1952 pages 113 and 61. 1947 3 South African Law Reports 394. 47 10 N.L.R. 32. 1909 Chancery 639 and 645. 25 Times Law Reports 132.

Mr. Dias addresses Court. It is true to say that up to the time of the filing of this action by plaintiff defendant had no intention of making these claims. Plaintiff's case is stated substantially in paragraph 7 of the plaint. He refers to paragraph 8 of the answer. Defendant denies that plaintiff has received only Rs. 118,000/- odd. Defendant's case is that he has paid much more. Defendant does not admit that Rs. 118,000/- is due to the plaintiff. Defendant's case is that all the money due to her has been paid and claims that 3 lakhs is due from plaintiff or at least Rs. 210,000/. He says that defendant does not admit that Rs. 161,000/- odd is due to the plaintiff. 20 The true position is that Rs. 161,488/- is the total income referable to plaintiff's share for the period 1950 to 1954 but defendant says that he has paid her much more than that and that at the very lowest a claim in reconvention is due to defendant of Rs. 210,000/. Defendant admits that the total amount of plaintiff's share he has to account for is only Rs. 161,000/-. He refers to document X. Page 1 of X shows how the share of Rs. 161,000/- is arrived at. He says he is perfectly entitled to debit the capital expenditure. He says that under what circumstances document X came to be prepared, or for what purposes it was prepared is not relevant for the purposes of this case. He refers to D1 which he says contains more information 30 than document X. It purports to show what actually happened to this money, how that money was appropriated or used. Mr. Dias submits that once a payment is made to a joint account that amounts to an accounting to the plaintiff. He states that payments to the plaintiff have been proved. Ramasamy has said that the amount of Rs. 6,250/- was actually paid to plaintiff. Aitken Spence's accounts show that in 1953 there was a payment of Rs. 1,380/80 made to the plaintiff. Rs. 346/20 is the plaintiff's share of dividends. He refers to the ledger accounts of plaintiff and defendant in the books of Aitken Spence and Co. in the document D11 which show the actual balance due to plaintiff and defendant. He refers to the evidence of 40 Ramasamy at pages 14 and 24. He refers to page 6 of D1.

(Adjourned for lunch)

(Sgd.) A. L. S. SIRIMANNE,

A.D.J.

34367/M

5/8/58

No. 13
Addresses to
Court.
—continued.

After lunch.

Mr. Dias continues his address.

He submits that there was a payment of Rs. 50,494/- into the joint account in regard to income prior to 1950 and whether she drew that or not that would constitute a payment to her of her share. The amounts she has drawn after 31/12/50 are shown at page 6 of D1, totalling up to Rs. 129,866/- up to 31/3/54.

Mr. Dias says that though he is not pressing his claim in reconvention, yet he wishes to point out that certain properties, Preston for instance, was bought by both of them and that they had a joint income and a joint account. He submits that he is entitled to take into account money expended for purchase of such properties as Preston in accounting for the income. He is not asking for any deed of gifts to be revoked as suggested by Mr. Kadirgamar.

Judgment on 29/8.

Documents to be filed with list in office on 6/8/58.

(Sgd.) A. L. S. SIRIMANNE,
A.D.J.

20

No. 14

Judgment of the District Court

JUDGMENT

No. 14
Judgment of
the District
Court.
29-8-58.

Plaintiff is the wife of the defendant. Admittedly there has been much displeasure between them, and in a divorce case (now in appeal) the plaintiff has obtained a judicial separation from her husband. They are wealthy people and the defendant owns many estates. There are two sets of estates relevant for this case—(a) The Vander Poorten Estates owned by members of the Vander Poorten family in which the plaintiff has a 1 / 20th share and the defendant an 8/20th. (b) Mr. and Mrs. Vander Poorten Estates—
30 owned by the plaintiff and defendant only, in the proportion of 1/9th to the plaintiff and 8/9th to the defendant.

In short, (as between herself and her husband), the plaintiff owns one share out of nine in both sets of estates.

Plaintiff in this action complains that the defendant who from the very commencement of their co-ownership, *i.e.* from 1940 onwards, acted as her agent and on her behalf never tendered accounts to her of her share of the income from these estates. She admits having received a sum of Rs. 118,514/08 during the whole of the period from 1940 till March 1954. She estimates that the balance due to her from the plaintiff is Rs. 50,000/-
40 At the trial she confined her claim to Rs. 42,974/- in view of the averment in the answer that Rs. 161,488/- was the total amount due to her for this period.

The defendant's position is that the entire sum due, and even more, has been paid to her. He therefore set up a claim in reconvention in the answer. With the answer was filed a statement (document X referred to in the evidence) which had been prepared long before this case was filed for the purpose of resisting a claim for alimony *pendente lite* in the divorce action referred to earlier. The defendant attempts to account for the plaintiff's share of the income, and bases his claim in reconvention on the particulars set out in statement 2 (amplified in statements 2a to 2f) contained in the document X.

The accountant Ramasamy Iyer called by the defendant who prepared the statement X stated at one stage that, from the figures supplied to him, the balance due to the plaintiff as at 31/3/56 was Rs. 62,176/-. Later, in answer to questions in cross-examination he said that this sum was Rs. 68,317/-. Mr. Kadirgamar has urged that the defendant has not satisfactorily accounted for this sum. But in this action one has to find the amount due up to 31/3/1954 and not 1956. The total sum due to the plaintiff (or her "total distributable share") up to 31/3/54 from the estates in question is Rs. 161,488/-. This sum is set out in the first page of Document X, and, as stated earlier has been accepted by the plaintiff for the purposes of this case.

20

The plaintiff and defendant were living together as husband and wife prior to 1950, and I find no reliable evidence of any payments made to her out of her share of the income during this period. The items set out in statement 2 of the document X which the defendant seeks to treat as payments made to the plaintiff out of her share of the income cannot in my view be regarded as such, *e.g.* the husband, a wealthy man, had purchased a house (Preston) for their residence in the name of both himself and his wife. Now, half the purchase price, a similar share of the stamp duty on the deed, Notary's fees, alleged expenses for maintaining the building, including taxes, etc., (*vide* statement 2a), are said to constitute payment to her of her share of the income from the estates. Similarly, in 1947 he appears to have purchased certain shares for her. Credit for the value of these shares is also claimed now by the defendant. Then there is an item of Rs. 2073/42 as 1/9th share of costs incurred in three partition cases — on the footing that the total costs in these three cases amounted to Rs. 18,660/80. The maximum *pro-rata* costs recoverable from a 1/9th owner under the partition Act for all three actions (assuming that all three lands exceeded Rs. 50,000/- in value) would be 1/9th of Rs. 4,500/- *i.e.* Rs. 500/-. If *pro-rata* costs are due to him the defendant can recover whatever is due from the plaintiff by issue of writ in those cases — he cannot say that these sums constitute a payment to her of her share of the income of the joint estates. There is also a sum of Rs. 7,243/90 (statement 2B) made up of various sums paid to lawyers, witnesses, etc., for a defamation case, of which very little is known. One also notices a claim for a sum of Rs. 70,710/- being the value of furniture and articles in Preston. They include the value of such articles as watches, links, studs and even old clothes (Statement 2f). Admittedly there is an action D.C. 36982 pending over this disputed claim and I do not think that the defendant can be permitted to treat this figure as payment to the plaintiff.

The witness Sayakara has been called to show that during the period 1942 to 1947 certain payments as income from these estates have been made to the defendant. The pass books D12 — D21 (and counterfoil paying-in-slips D22 — D27) have been produced to show that all or most of these sums were credited to a joint account of the plaintiff and defendant. Mr. Dias for the defendant submits that payment into a joint account constitutes payment to the plaintiff. I cannot agree. One of two co-owners who gets the income of the joint property into his hands can pay it into a joint account and immediately draw it out himself. Mere payment into the joint account will not, in my view, absolve the receiver of the income from his duty to account to the other for the latter's share.

Prior to 1950 when the plaintiff and the defendant were living together the cheques drawn on the joint account were for household expenses, maintenance of the children, etc., *i.e.* expenses of a household for which the husband would ordinarily be liable. It is the husband who (quite naturally I think) had real control of the funds, and “drew cheques from No. 1 account as he pleased.” to quote the words of the defendant's confidential clerk E. V. Fernando. There are also certain cheques drawn by the in England. plaintiff in 1949 and 1950 (D28 — D60) while she and the defendant were
20 These are payments for household necessities, medical expenses (he was ill there) passage monies, insurance monies, etc. These expenses should not, in my view, be debited to the plaintiff as coming out of the profits of her share of the estate.

The claim in reconvention is also based largely in the items discussed above, and may be dealt with here. This claim was not pressed at the trial — and it is sufficient to note that every single claim now made is, in respect of payments alleged to have been made to the plaintiff prior to February 1951. As this action was filed on 25/1/55, all these claims are prescribed.

30 By the end of 1950 relations between husband and wife were strained, and in January 1951 Messrs. Aitken Spence & Co. took over the management of the estates (*Vide* D7). After that there are records of the respective shares of the income of husband and wife and the amounts drawn by them. According to the statement of accounts D1 (the sixth sheet in it) prepared by the accountant Ramasamy Iyer, the total “drawings” by the plaintiff up to 31/3/54 amounted to Rs. 129,866/-. Every cent actually paid to her and every possible item that could be debited against her had been taken into account in arriving at this sum. This figure has been criticised by Mr. Kadirgamar for the plaintiff. for the accountant has gone on figures supplied
40 to him by Messrs. Aitken Spence & Co., and the representative of that firm called at the Trial Mr. E. B. Perera, produced accounts based on entries taken from old ledgers. Since he took charge of the ledgers only in about 1955, it is pointed out that he cannot speak to the accuracy of entries in the earlier ledgers, and further, that the ledgers themselves have not been produced, nor the payments proved by producing the various cheques and proving through the bank, for example, that it was the plaintiff who had actually realised them. I do not think, however, that in a case like this where the defendant is called upon to account — such a precise degree of proof is necessary unless any particular item is denied. The ledgers and

No. 14
Judgment of
the District
Court.
29-8-58.
—continued.

account books of Messrs. Aitken Spence & Co. (large volumes of them) were in fact brought to court and made available to the plaintiff. They are books kept in the ordinary course of business and if the plaintiff who was present in court throughout denied any of the payments or contested any of the items debited against her in these books she could easily have denied them. I would hold therefore that this sum has been correctly debited against her — and it is the only sum which I find has been satisfactorily accounted for by the defendant. Deducting this sum of Rs. 129,866/- from the total share of her income of Rs. 161,488/- there is still a balance of Rs. 31,622/- due to her.

10

I answer the issues as follows :—

1. Yes — but he has accounted for the income only after 1950.
2. Yes — a sum of Rs. 129,866/-.
3. Yes.
4. (a) Yes—The defendant has endeavoured to do so in this action.
(b) Yes — a sum of Rs. 31,622/-.
5. Yes.
6. (As amended). No.
7. Nothing is due from plaintiff to the defendant.
8. (a) Yes. 20
(b) No.
(c) Yes.
9. No.

Enter judgment for plaintiff for Rs. 31,622/- and costs.

(Sgd.) A. L. S. SIRIMANNE,
A.D.J.

29-8-58.

Delivered in open Court.

(Sgd.) A. L. S. SIRIMANNE,
A.D.J.

30
29-8-58.

No. 15

Decree of the District Court

DECREE

No. 15
Decree of the
District
Court—
29-8-58

Class.

No. 33367/M

IN THE DISTRICT COURT OF COLOMBO

MRS. JOSEPH VANDER POORTEN, of Colombo.....*Plaintiff.*

Against

JOSEPH VANDER POORTEN, of Colombo.....*Defendant.*

This action coming on for final disposal before A. L. S. Sirimanne Esqr.,
10 Additional District Judge, Colombo, on the 29th day of August 1958, in the
presence of Proctor, on the part of the Plaintiff and of Proctor, on the part of
the Defendant, it is ordered and decreed that the defendant do pay to the
plaintiff the sum of Rs. 31.622/- and costs.

(Sgd.) A. L. S. SIRIMANNE,

The 29th day of August, 1958.

Addl. District Judge, Colombo,

No. 16

Petition of Appeal to the Supreme Court

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

No. 16
Petition of
Appeal to
the Supreme
Court—
29-8-58.

20 JOSEPH VANDER POORTEN.....*Defendant-Appellant.*

D. C. Colombo.

Case No. 34367/Money. Vs.

HILDA VANDER POORTEN of Alfred Place, Colombo 3.
Plaintiff-Respondent.

Supreme Court No. 376/58 (F).

To :

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUDGES OF THE
HONOURABLE THE SUPREME COURT.

This 29th day of August 1958.

The petition of appeal of the Defendant-Appellant abovenamed
30 appearing by R. G. de Silva his proctor states as follows :—

No. 16
Petition of
Appeal to
the Supreme
Court.
29-8-58.
—continued.

1. The plaintiff-respondent sued the defendant appellant for or according to the income of her share of certain properties owned in common between the parties and at the trial the Learned District Judge gave judgment against the defendant appellant in a sum of Rs. 31,622/- and costs.

2. Being aggrieved thereby the defendant appellant begs to appeal in the following among other grounds :—

- (a) that the said judgment is contrary to law and against the weight of evidence ;
- (b) that the learned District Judge misdirected himself in refusing to allow the defendant-appellant's issue of prescription on the 10 grounds of inconsistency with the admission ;
- (c) that the learned District Judge has misdirected himself in holding that a payment into the joint account did not in the circumstances of this case amount to a payment to the plaintiff-respondent especially as the money in the joint account had been utilised for joint investments as well as separate investments for the plaintiff-respondent and the payment of her income tax ;
- (d) that the learned District Judge has completely misunderstood the accounts and documents filed in Court ; 20
- (e) that even if all the sums claimed in reconvention by the defendant-appellant were prescribed and irrecoverable the learned Judge has misdirected himself in failing to see if the moneys expended by the defendant-appellant upon the plaintiff-respondent against the sums claimed by her ;
- (f) that the learned District Judge's conclusion did not take any account of the appropriations of produce made by the plaintiff-respondent and the other various items of accounts.

WHEREFORE the defendant-appellant prays :

- (a) that Your Lordships' Court may be pleased to set aside the 30 judgment of the learned District Judge ;
- (b) that the plaintiff's action be dismissed, and the case sent back to the lower Court for an adjudication on the claim in reconvention ;
- (c) for costs of appeal and costs of suit and for such other and further relief as to Your Lordships' Court seem fit.

(Sgd.) R. G. DE SILVA,
(for SAMARASINGHE & DE SILVA),
Proctor for Defendant-Appellant.

Settled by :
(Sgd.) B. A. R. CANDAPPA,
,, FELIX R. DIAS.

**Petition of Mrs. Joseph Vander Poorten for
Execution of Decree**

IN THE DISTRICT COURT OF COLOMBO

MRS. JOSEPH VANDER POORTEN of No. 20, Alfred Place, Colpetty,
Colombo.....*Plaintiff.*

No. 34367/Money Vs.

JOSEPH VANDER POORTEN of 52, Park Street Colombo and presently of
Australia.....*Defendant.*

10 In the matter of an application for execution of decree applied for after
appeal in terms of Section 763 of the Civil Procedure Code.

MRS. JOSEPH VANDER POORTEN of 20, Alfred Place, Colpetty, Colombo.
Judgment-Creditor-Petitioner.

and

JOSEPH VANDER POORTEN of 52, Park Street, Colombo and presently of
Australia..... *Judgment-Debtor-Respondent.*

On this 8th day of September, 1958.

The petition of the Judgment-Creditor-Petitioner abovenamed appearing
by Noel Austin Bernardin Stave, her Proctor states as follows :—

20 1. The judgment-creditor-petitioner is the Plaintiff and the judgment-
debtor-respondent is the defendant in this case.

2. The judgment-creditor-petitioner instituted this action against the
judgment-debtor-respondent for an order directing him to render an account
of rents and profits received by him from the share of judgment-creditor-
petitioner's estates called and known as Greenwood Group, Normandy and
Weyweltalawa in the proportion of 1/20th share to the judgment-creditor-
petitioner and 9/20th share to the judgment-debtor-respondent and from
Vander Poorten Estates in the proportion of 1/20 share to the judgment-
creditor-petitioner and 8/20th share to the judgment-debtor-respondent
30 respectively or in the alternative for judgment in a sum of Rs. 50,000/- free
of income tax together with legal interest thereon from date of action till
payment in full and costs of suit.

3. On the 29th day of August, 1958 judgment was entered in favour
of the judgment-creditor-petitioner in the sum of Rs. 31,622/- and costs of
suit.

4. The judgment-debtor-respondent appealed against this order and
the appeal is still pending.

No. 17
Petition of
Mrs. Joseph
Vander
Poorten for
Execution
of Decree.
8-9-58.
—continued.

5. The judgment-debtor-respondent is not in the island and presently resides in Australia.

6. The judgment-debtor-respondent has on the 2nd September 1958 advertised in the Ceylon Daily News 3 of his valuable properties for sale, with the intent to deprive the judgment-creditor-petitioner from recovering any money due to her from him.

7. In case the judgment-debtor-respondent sells off his estates in the Island collect the proceeds of sale and live abroad the judgment-creditor-petitioner will be left with nothing.

8. In the circumstances, it has now become necessary to execute the writ in this case to recover the claim and costs due to her in this case from the judgment-debtor-respondent.

WHEREFORE the judgment-creditor-petitioner prays :—

- (a) that the Court may be pleased to allow execution of decree to recover the claim and costs due under the decree pending the decision of appeal of the judgment-debtor-respondent.
- (b) for costs of suit and
- (c) for such other and further relief as to this Court shall seem meet.

(Sgd.) N. A. B. STAVE, 20
Proctor for Judgment-creditor-Petitioner.

No. 18

**Affidavit of Mrs. Joseph Vander Poorten
IN THE DISTRICT COURT OF COLOMBO**

No. 18
Affidavit of
Mrs. Joseph
Vander
Poorten
8-9-58.

MRS. JOSEPH VANDER POORTEN of 20, Alfred Place, Colpetty,
Colombo.....*Plaintiff.*

No. 34367/Money. Vs.

JOSEPH VANDER POORTEN of 52, Park Street, Colombo and presently of
Australia.....*Defendant.*

In the matter of an application for execution of decree applied for after 30
appeal in terms of section 763 of the Civil Procedure Code.

MRS. JOSEPH VANDER POORTEN of 20, Alfred Place, Colpetty,
Colombo.*Judgment-creditor-Petitioner.*

and

JOSEPH VANDER POORTEN of 52, Park Street, Colombo and presently of
Australia.....*Judgment-debtor-Respondent.*

I, Mrs. Joseph Vander Poorten of 20, Alfred Place, Colpetty, Colombo make oath and state as follows :—

No. 18
Affidavit of
Mrs. Joseph
Vander
Poorten—
8-9-58.
—continued.

1. I am the judgment-creditor-petitioner-plaintiff and the defendant is the judgment-debtor-respondent in this case.

2. I instituted this action against the defendant-judgment-respondent for an order directing him to render an account of rents and profits received by him from the estates called Greenwood Group, Normandy and Weyweltalawa in the proportion of 1/20 share to me and 9/20th share to the Defendant-judgment-debtor-petitioner and from Vander Poorten Estates
10 in the proportion of 1/20 share to me and 8/20 share to the defendant-judgment-debtor-respondent respectively or in the alternative for judgment in a sum of Rs. 50,000/- free of income tax together with legal interest thereon from date of action till payment in full and costs of suit.

3. On the 29th day of August, 1958, judgment was entered in my favour in the sum of Rs. 31.622/- and costs of suit.

4. The defendant-judgment-debtor-respondent appealed against the order and the appeal is still pending.

5. The defendant-judgment-debtor-respondent is not in the island and presently resides in Australia.

20 6. The defendant-judgment-debtor-respondent has on the 2nd September, 1958 advertised in the Ceylon Daily News, 3 of his valuable properties for sale, with intent to deprive me from recovering any money due to me from him.

7. In case the defendant-judgment-debtor-respondent sells off his estates in the Island, collect the proceeds of sale and live abroad I will be left with nothing.

8. In the circumstances, it has now become necessary to execute the writ in this case to recover the claim and costs due to me in this case from the defendant-judgment-debtor-respondent.

30 Signed and sworn to at }
Colombo, on this 8th day } (Sgd.) Hilda Vander Poorten.
of September, 1958. }

Before me.

(Sgd.) Illegibly.
Commissioner for Oaths.

No. 19
Affidavit of
C. G. Reeves
21-1-59.

No. 19

Affidavit of C. G. Reeves.

IN THE DISTRICT COURT OF COLOMBO

MRS. JOSEPH VANDER POORTEN of No. 20, Alfred Place, Colpetty,
Colombo.....*Plaintiff.*
No. 34367/Money. Vs.

JOSEPH VANDER POORTEN of 52, Park Street, Colombo and presently of
Australia.....*Defendant...*

In the matter of an application for execution of decree applied for after
appeal in terms of Section 763 of the Civil Procedure Code. 10

MRS. JOSEPH VANDER POORTEN of 20, Alfred Place, Colpetty, Colombo.
Judgment-Creditor-Petitioner.

JOSEPH VANDER POORTEN of 52, Park Street, Colombo and presently of
Australia by his Attorneys Messrs. Aitken Spence and Co. Ltd., Fort,
Colombo.*Judgment-Debtor-Respondent.*

I, C. G. Reeves of Colombo, do hereby make oath and state as follows :—

1. I am a Director of Messrs. Aitken Spence and Co. Ltd., of Fort,
Colombo who are the duly appointed Attorneys of the Judgment-Debtor-
Respondent abovenamed.

2. I admit the averments in paragraphs 1-5 of the Petition and deny 20
the other averments therein.

3. I deny that the Respondent abovenamed is disposing of his pro-
perties with the intention of depriving the Petitioner from recovering any
money due to her under the decree.

4. The Respondent, even if he sells the properties would still have
considerable property in Ceylon described in the Schedule to the Petition
from which the Petitioner could if she is successful in the Appeal, satisfy and
claim that might accrue to her.

5. I believe that the Petitioner would be in no position to provide for
the Restitution of any property sold in execution of the decree appealed 30
against and/or provide for the due performance of the decree or order of the
Supreme Court.

6. Grave prejudice would be caused to the Respondent if Writ is
allowed at this state.

7. I am advised that the application for execution is not in accordance
with law.

Readover sworn and }
signed at Colombo }
on this 21st day of }
January, 1959. }
J. Vander Poorten
by his Attorneys,
AITKEN SPENCE & Co. LTD.
(Sgd.) C. G. Reeves. 40
Director.

Before me,
(Sgd.) Illegibly.
Justice of Peace.

Statement of Objections of Joseph Vander Poorten

IN THE DISTRICT COURT OF COLOMBO

MRS. JOSEPH VANDER POORTEN of No. 20, Alfred Place, Colpetty,
Colombo.....*Plaintiff*

No. 34367/Money. Vs.

JOSEPH VANDER POORTEN of 52, Park Street, Colombo and presently of
Australia.....*Defendant*

In the matter of an application for execution of decree applied for after
10 appeal in terms of Section 763 of the Civil Procedure Code.

MRS. JOSEPH VANDER POORTEN of 20, Alfred Place, Colpetty,
Colombo.....*Judgment-Creditor-Petitioner.*

JOSEPH VANDER POORTEN of 52, Park Street, Colombo and presently
of Australia by his Attorneys Messrs. Aitken Spence & Co. Ltd.,
Fort, Colombo.....*Judgment-Debtor-Respondent.*

On this 23rd day of January, 1959.

The Statement of Objections of the Judgment-Debtor-Respondent
abovenamed by his Attorneys Messrs. Aitken Spence and Co. Ltd., Fort,
Colombo appearing by his Proctor Ruwanpura Gartin de Silva, practising
20 under the name firm and style of "Samarasinghe and de Silva" states
as follows :—

1. The Respondent denies all and singular the several averments in
the Petition save and except as are herein-after admitted.

2. The respondent admits the averments in paragraphs 1, 2, 3, 4, and
5 of the Petition.

3. Answering paragraph 6 of the Petition the Respondent denies the
allegations contained therein and states that he caused to be advertised for
sale three properties as he lawfully might and specifically denies that he did
so to deprive the Petitioner of any claim that might accrue to her on a final
30 determination of the suit now pending in appeal.

4. Answering paragraph 7 of the Petition the Respondent denies the
averments therein and states that the allegations therein contained are
frivolous and farfetched.

5. The respondent denies the averments in paragraph 8 of the
petition.

No. 20
Statement of
Objections
of Joseph
Vander
Poorten
23-1-59.
—continued.

6. By way of further answering the Respondent states :—
- (i) that the averments in the Petition particularly in paragraphs 6 and 7 are vexatious and calculated to prejudice the Court.
 - (ii) that the Respondent even if he disposes of the 3 properties referred to would still be left with considerable property in Ceylon and morefully described in the Schedule hereto sufficient to meet the Petitioner's claims if any.
 - (iii) that the Petitioner would be in no position to provide for the restitution of any property sold in execution of the decree appealed against and/or provide for the due performance of the 10 decree or order of the Supreme Court.
 - (iv) grave prejudice and loss would be caused to the respondent if execution were to be allowed on the said decree under appeal.
 - (v) that the application for execution is bad in law in that it does not conform to the provisions of Section 224 of the Civil Procedure Code.

WHEREFORE the Respondent prays :—

- (a) that the application be refused.
- (b) for costs.
- (c) and for such other and further relief as to this Court shall seem to meet.

Settled by :
Mr. B. A. R. Candappa.
Advocate.

Proctors for Respondent.

The Schedule above referred to

VERDUN GROUP				A.	R.	P.	
Seedling Rubber	...	...	...	119	0	00	
Budded Rubber	...	...	...	119	2	27	
Coconut	...	...	...	85	3	37	
Paddy	...	...	...	37	0	00	30
Deniya	...	...	...	7	1	04	
Total				...	368	3 28	(8/20th share)

ILLUMBEKANDE ESTATE				A.	R.	P.	
	Tea in bearing	...	...	167	0	00	
	Tea abandoned	...	...	48	0	00	
	Gardens, Lands, Streams and Forests	...	...	1025	1	20	
	Total	...	...	<u>1,348</u>	<u>1</u>	<u>20</u>	(8/20th share)

BELGA ESTATE				A.	R.	P.	
	Tea in bearing	...	...	198	2	34	
	Seed Bearers	...	...	2	0	10	
10	Buildings and Garden	...	...	1	3	24	
	Cardamoms in full	...	...	41	1	36	
	Jungle	...	...	243	3	14	
	Total	...	...	<u>477</u>	<u>3</u>	<u>38</u>	(8/20th share)

EDUMAWATTE AND KOSGAHAHENA

60 Acres (8/20th share) at Malara Coconut.

WEYWETALAWA ESTATE				A.	R.	P.	
	Tea in bearing	...	...	324	0	14	
	Food Production	...	...	3	1	18	
20	Paddy Lands	...	...	7	2	00	
	Chena, Patna and Waste	...	...	336	2	05	
	Forest and Jungle	...	...	248	2	23	
	Rubber (abandoned)	...	...	186	3	31	
	Total	...	...	<u>1,107</u>	<u>0</u>	<u>11</u>	(8/9th share)

KORAI GROUP at Batticaloa Coconut 802 Acres (9/20th share)

TANKETIYA

13,000 odd acres (9/20th share) Tanketiya in Baddula District.

“The Terraces” Kadawatte about 9 acres with large Bungalow.

30

COMPANY SHARES

519	Shares	Arcadia Coconut Estates Ltd.
48	„	Clunes Estates Co. of Ceylon Ltd.
1014	„	Estates Co. of Uva Ltd.
494	„	Hatbawe Rubber Co. Ltd.
500	„	Kalutara Co. Ltd.

No. 20
Statement of
Objections
of Joseph
Vander
Poorten
23-1-59.
—continued.

13527	Shares	Kandy Hotels Co. (1938) Ltd. (Ordinary).	
250	”	do. (Preference).	
220	”	Kudaganga Rubber Co. of Ceylon Ltd.	
200	”	Kongshi Rubber Co. Ltd.	
300	”	Kanapediwattie Tea Co. Ltd.	
810	”	Lower Perak Coconut Co. Ltd.	
220	”	Moneragalla Rubber Co. Ltd.	
630	”	Mirishena (Kalutara) Rubber Co. Ltd.	
1875	”	Mayen (Ceylon) Tea and Rubber Co. Ltd.	
954	”	Neuchatel Estates Ltd.	10
315	”	Trafford Hill Rubber Estates Ltd.	
108	”	Vogan Tea Co. of Ceylon Ltd.	
45	”	Udapolla Rubber Co. Ltd. (Ordinary).	
200	”	Walagama Rubber Co. Ltd.	
1445	”	Nuwara Eliya Hotels Ltd.	
200	”	Hunuwella Tea and Rubber Co. Ltd.	
200	”	Kandyan Hills Co. Ltd.	
300	”	Udabage Tea and Rubber Co. Ltd.	
540	”	Mahagama Rubber Co. Ltd.	
1050	”	Golinda Tea and Rubber Co. Ltd.	20
3000	”	Saffragam Rubber and Tea Co. of Ceylon Ltd.	
£.65 Ordinary		Stock Stagbrook Rubber and Tea Estates Ltd.	
£.430. — .6.		The United Seradang (Sumatra) Rubber Plantations Ltd.	

Shares valued at Rs. 3,00,000/-.

(Sgd.) SAMARASINGHE & DE SILVA,
Proctors for Respondent.

No. 21

Judgment of the Supreme Court

S.C. No. 376.

D.C. Colombo No. 34367/M.

Present : BASNAYAKE, C.J., and H. N. G. FERNANDO, J.

30

Counsel : L. W. DE SILVA with B. A. R. CANDAPPA for Defendant-Appellant.

N. E. WEERASOORIA, Q.C., with W. D. GUNASEKARA for Plaintiff-Respondent.

Argued and Decided on : December 14, 1960.

BASNAYAKE, C. J.

The plaintiff, who is the wife of the defendant, instituted this action praying an order directing the defendant to render an account of the rents and profits received by him from her share in certain estates which were owned in common, or in the alternative for judgment in a sum of Rs. 50,000/- free of income tax. The defendant denied that any sum was due to the plaintiff from him, and he stated that the plaintiff was entitled to credit in a

No. 21
Judgment of
the Supreme
Court—
14-12-60.

sum of Rs. 161,488/- as her proportionate share of income from the lands in question up to 31st March, 1954, up to which date the accounts had been duly audited but that she was also liable to be debited with a sum of Rs. 371,984/-. The defendant also produced an account to show that he has disbursed on account of the plaintiff a sum far in excess of the sum of Rs. 50,000/- claimed by her. Of the chief items proved in the account produced by him are the purchase of a house called "Preston" and of shares to the value of Rs. 28,000/- and the payment of income tax. The learned District Judge is wrong in holding that a sum of Rs. 31,622/- is still due from the defendant. We therefore set aside the judgment of the learned District Judge and enter judgment dismissing the plaintiff's action with costs.

No. 21
Judgment of
the Supreme
Court.
14-12-60.
—continued.

The appellant is entitled to the costs of the appeal.

(Sgd.) HEMA H. BASNAYAKE,
Chief Justice.

H. N. G. FERNANDO, J.

I agree.

(Sgd.) H. N. G. FERNANDO,
Puisne Justice.

20

No. 22

Decree of the Supreme Court

S.C. 376/58 (F).

No. 22
Decree of
the Supreme
Court—
14-12-60.

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

MRS. JOSEPH VANDER POORTEN of Colombo.....*Plaintiff.*

Vs.

JOSEPH VANDER POORTEN of Colombo.....*Defendant.*

JOSEPH VANDER POORTEN of Colombo.....*Defendant-Appellant.*

30

Against

MRS. JOSPEH VANDER POORTEN of Colombo,.....*Plaintiff-Respondent.*

Action No. 34367/Money.

District Court of Colombo

This cause coming on for hearing and determination on the 14th day of December, 1960 and on this day, upon an appeal preferred by the Defendant-Appellant before the Hon. Hema Henry Basnayake, Q.C., Chief Justice and the Hon. Hugh Norman Gregory Fernando, Puisne Justice of this Court, in the presence of Counsel for the Defendant-Appellant and Plaintiff-Respondent.

No. 22
Decree of
the Supreme
Court.
14-12-60.
—continued.

It is considered and adjudged that the judgment of the District Judge be and the same is hereby set aside and judgment is entered dismissing the plaintiff's action with costs.

It is ordered and decreed that the Plaintiff-Respondent do pay to the Defendant-Appellant the taxed costs of this appeal.

Witness the Hon. Hema Henry Basnayake, Q.C., Chief Justice at Colombo, the 20th day of January, in the year One thousand Nine hundred and Sixty One and of Our Reign the Ninth.

(Sgd.) B. F. PERERA,
Deputy Registrar, S. C. 10

No. 23

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

No. 23
Application
for Condi-
tional Leave
to Appeal to
the Privy
Council.
11-1-61

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for conditional Leave to Appeal to Her Majesty-in-Council.

S.C. No. 376/F
D.C. Colombo
Case No. 34367/M

MRS. HILDA VANDER POORTEN of No. 20, Alfred Place, Colpetty, 20
Colombo.....*Plaintiff-Appellant.*

Vs.

JOSEPH VANDER POORTEN of No. 63, Wilpenna Street, Eden Hills,
South Australia.....*Defendant-Respondent.*

To :

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

On this 11th day of January, 1961.

The humble petition of the Plaintiff-Appellant abovenamed appearing by NOEL AUSTIN BERNARDINE STAVE, her Proctor states as so follows :—

1. That feeling aggrieved by the Judgment and the Decree of this Honourable Court pronounced on the 14th day of December, 1960 the appellant is desirous of appealing therefrom to HER MAJESTY-IN-COUNCIL.

2. That the said Judgment is a final judgment and the matter in dispute and the appeal amounts to and is of the value of over Rs. 5000/-.

3. Notices of intended application for leave to appeal was sent to the Defendant-Respondent by the Plaintiff-Appellant in terms of Rule 2 in the Schedule to the Appeal (Privy Council Ordinance Chapter 85) on the 20th December, 1960 by sending a Cable and by registered post to the Defendant-Appellant's address No. 63, Wilpenna Street, Eden Hills, South Australia and by a written notice sent by the Plaintiff-Appellant to the Defendant-Respondent's Attorney in Ceylon Messrs. Henderson and Co. Ltd. No. 77,
10 Gordon Road, Colombo and to the Defendant-Respondent's Proctors on record Messrs. Samarasinghe and De Silva, No. 260, Hulftsdorf Street, Colombo by registered Post ; The cable was as follows :

“ JOSEPH VANDER POORTEN, 65, Wilpenna Street, Eden Hills, South Australia. PLEASE TAKE NOTICE THAT HILDA VANDER POORTEN PLAINTIFF-RESPONDENT WITHIN THIRTY DAYS FROM 16TH DECEMBER, 1960 INTEND TO APPLY TO HONOURABLE THE SUPREME COURT OF CEYLON FOR LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL FROM JUDGMENT AND ORDER OF THE SUPREME COURT IN S.C. 376 D.C. COLOMBO 34367/M WHICH
20 WAS DELIVERED ON THE 16TH DECEMBER, 1960.”

HILDA VANDER POORTEN.
Plaintiff-Respondent-Petitioner.

and the notice under registered post as follows :—

1. Joseph Vander Poorten (Defendant-Appellant-Respondent presently of No. 65, Wilpenna Street, Eden Hills, South Australia.

2. Messrs. Samarasinghe and de Silva (Proctors for Defendant-Appellant-Respondent) Hulftsdorf Street, Colombo 12.

3. Messrs. Henderson and Co. Ltd. (Attorneys of Defendant-Appellant-Respondent) No. 77, Gordon Road, Colombo 2.

30 “ Please take notice that Hilda Vander Poorten Plaintiff-Respondent-Petitioner abovenamed within thirty days from the 16th December, 1960 intend to apply to the Honourable the Supreme Court of the Island of Ceylon for leave to appeal to Her Majesty-in-Council from Judgment and order of the Supreme Court in S.C. 376 D.C. Colombo 34367/M which was delivered on the 16th December, 1960.”

Registered Postal article Receipt No. 1036 annexed hereto marked “ A ” is a receipt in proof of posting the notice to the Defendant-Respondent.

WHEREFORE the Appellant prays for Conditional Leave to appeal against the said Judgment of this Court dated 14th December 1960 to Her
40 Majesty the QUEEN-IN-COUNCIL.

(Sgd.) N. A. B. STAVE,
Proctor for Appellant.

No. 23
Application
for Condi-
tional Leave
to Appeal to
the Privy
Council.
11-1-61.
—continued.

No. 24
Decree
Granting
Conditional
Leave to
Appeal to
the Privy
Council.
19-5-61.

No. 24

**Decree Granting Conditional Leave to Appeal to the
Privy Council**

S. C. Application No. 16/'61.

ELIZABETH THE SECOND, QUEEN OF CEYLON AND OF HER OTHER
REALMS AND TERRITORIES, HEAD OF THE COMMONWEALTH

IN THE SUPREME COURT OF THE ISALND OF CEYLON

In the matter of an application by the Plaintiff-Appellant dated 11th
January, 1961 for Conditional Leave to Appeal to Her Majesty the
Queen-in-Council against the judgment and decree of this Court dated 10
14th December, 1960 in S.C. 376/'58 (Final) — D.C. Colombo Case
No. 34367.

MRS. HILDA VANDER POORTEN of No. 20, Alfred Place, Colpetty,
Colombo.....*Plaintiff-Appellant.*
Petitioner.

Against

JOSEPH VANDER POORTEN of No. 63, Wilpenna Street, Eden Hills,
South Australia..... *Defendant-Respondent.*
Respondent.

Action No. 34367/M.

20

District Court of Colombo

This cause coming on for hearing and determination on the 19th day
of May, 1961 before the Hon. Hema Henry Basnayake, Q.C., Chief Justice,
and the Hon. Hugh Norman Gregory Fernando, Puisne Justice of this
Court, in the presence of Counsel for the Plaintiff-Appellant Petitioner and
no appearance for Defendant-Respondent — Respondent.

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

1. Deposit with the Registrar of the Supreme Court a sum of Rs. 3000/- 30
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,
1921, 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 Pro-
cedure (Privy Council) Order, 1921, with the Registrar a sum of Rs. 300/- in
respect of fees mentioned in Section 4 (b) and (c) of the Appeals (Privy
Council) Ordinance (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 estimated sum with the said Registrar.

Witness the Hon. Hema Henry Basnayake, Q.C. Chief Justice at Colombo, the 25th day of May, in the year One thousand Nine hundred and Sixty One and of Our Reign the Tenth.

(Sgd.) B. F. PERERA,
Deputy Registrar, S. C.

No. 24
Decree
Granting
Conditional
Leave to
Appeal to
the Privy
Council.
19-5-61.
—continued.

10

No. 25

**Application for Final Leave to Appeal to the
Privy Council**

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for Final Leave to Appeal to Her Majesty-in-Council.

S.C. 376 (Final) of 1958.
D.C. Colombo
Case No. 34367/M.

No. 25
Application
for Final
Leave to
Appeal to
the Privy
Council.
12-6-61.

MRS. HILDA VANDER POORTEN of No. 20, Alfred Place, Colpetty,
20 Colombo.....*Plaintiff-Appellant.*

Vs.

JOSEPH VANDER POORTEN of No. 63, Wilpenna Street, Eden Hills,
South Australia.....*Defendant-Respondent.*

To :

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUDGES OF THE
SUPREME COURT OF THE ISLAND OF CEYLON

On this 12th day of June, 1961.

The Petition of the Plaintiff-Appellant abovenamed appearing by her Proctor, NOEL AUSTIN BERNARDIN STAVE, states as follows :—

30 1. That the Plaintiff-Appellant abovenamed on the 19th day of May, 1961, obtained Conditional Leave from this Honourable Court to appeal to Her Majesty the Queen-in-Council against the Judgment and Decree of the Supreme Court pronounced on the 14th day of December, 1960.

No. 25
Application
for Final
Leave to
Appeal to
the Privy
Council.
12-6-61.
—continued.

2. That the Plaintiff-Appellant has in compliance with the conditions on which such leave was granted deposited a sum of Rupees Three Thousand (Rs. 3,000/-) with the Registrar of the Supreme Court and hypothecated the said sum by bond on the 6th day of June, 1961, and has further deposited with the Registrar a sum of Rupees Three hundred (Rs. 300/-) in respect of the amounts and fees mentioned in Section 4 (2) (b) and (c) of the Appeals (Privy Council) Ordinance (Cap. 85).

WHEREFORE THE PLAINTIFF-APPELLANT PRAYS :—

- (a) that she be granted Final Leave to Appeal to Her Majesty the Queen-in-Council against the said Judgment and Decree of this Court, dated the 14th day of December, 1960.
- (b) for costs and for such other and further relief as to Your Lordships' Court shall seem meet.

(Sgd.) N. A. B. STAVE,
Proctor for Plaintiff-Appellant.

No. 26
Decree
Granting
Final Leave
to Appeal to
the Privy
Council.
16-6-61.

No. 26

Decree granting Final Leave to Appeal to the
Privy Council

S.C. Application No. 271/61.

ELIZABETH THE SECOND, QUEEN OF CEYLON AND OF HER OTHER REALMS AND TERRITORIES, HEAD OF THE COMMONWEALTH 20

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application dated 12th June, 1961 for Final Leave to Her Majesty the Queen-in-Council by the Plaintiff-Appellant against the decree dated 14th December, 1960.

MRS. HILDA VANDER POORTEN of No. 20, Alfred Place, Colpetty,
Colombo.....*Plaintiff-Appellant.*
Petitioner.

Against

JOSEPH VANDER POORTEN of No. 63, Wilpenna Street, Eden Hills, 30
South Australia.....*Defendant-Respondent.*
Respondent.

Action No. 34367/M (S.C. 376/'58 (F).)

District Court of Colombo

This cause coming on for hearing and determination on the 16th day of June, 1961 before the Hon. Hugh Norman Gregory Fernando and the Hon. Henry Wijayakone Tambiah, Q. C., Puisne Justices of this Court, in the presence of Counsel for the Plaintiff-Appellant Petitioner and Defendant-Respondent - Respondent.

It is considered and adjudged that the Application for Final Leave to Appeal to Her Majesty the Queen in Council be and the same is hereby
10 allowed.

Witness the Hon. Hema Henry Basnayake, Q.C. Chief Justice at Colombo, the 24th day of June, in the year One thousand Nine hundred and Sixty One and of Our Reign the Tenth.

(Sgd.) B. F. PERERA,
Deputy Registrar, S. C.

No. 26
Decree
Granting
Final Leave
to Appeal to
the Privy
Council
16-6-61.
—continued.

PART II

D 4

**Application of H. Vander Poorten and J. Vander Poorten to
open a Current Deposit Account in the Mercantile Bank
of India, Ltd., Colombo.**

D 4
Application
of H. Vander
Poorten and
J. Vander
Poorten to
open a
Current
Deposit
Account
in the
Mercantile
Bank of
India, Ltd.,
Colombo—
81-8-40.

No. 2 (Joint Account)

Initials of Accountant	
Intld.....	Intld.....

19th/31 August, 1940.

The Manager,
The Mercantile Bank of India, Limited,
(Incorporated in England),
Colombo.

10

Dear Sir,

We hand you herewith Rs. 42,549·85, Balance of Mrs. H. Vander Poorten with which kindly open a Current Deposit Account in our names in the books of the Bank. Cheques on this account will be signed by any one of us and, in the event of the decease of any of us, the balance at the credit of the account will be payable to the survivor or survivors.

We agree to comply with, and to be bound by, the Bank's rules for 20 the time being for the conduct of such accounts.

Please furnish us with a pass-book and a book of 25 Cheque forms and note our signatures as under.

Yours faithfully,

(Signature) HILDA VANDER POORTEN.
,, J. VANDER POORTEN.

Names in full, Occupation and Addresses.

(W^o Joe) Hilda Vander Poorten,
Rock Hill,
Galagedera.

30

J. Vander Poorten,
Rock Hill,
Galagedera.

**Application of J. Vander Poorten and H. Vander Poorten to open
a Current Deposit Account in the Mercantile Bank of India,
Ltd., Colombo.**

D 5
Application
of J. Vander
Poorten and
H. Vander
Poorten to
open a
Current
Deposit
Account
in the
Mercantile
Bank of
India, Ltd.
Colombo.
19-11-46.
~~CONFIDENTIAL~~

No. 2 (Joint Account)

Initials of Accountant	
Intld.....	Intld.....

19th November, 1946.

The Manager,

10 The Mercantile Bank of India, Limited,
(Incorporated in England,
Liability of Shareholders Limited).
Colombo.

Dear Sir,

We hand you herewith Rs. 4,965·91 Cheque from Muller Wight & de Mel, with which kindly open a Current Deposit No. 2 Joint Account in our names in the books of the Bank. Cheques on this account will be signed by any one of us and, in the event of the decease of any of us, the balance at the credit of the account will be payable to the survivor or
20 survivors.

We agree to comply with, and to be bound by the Bank's rules for the time being for the conduct of such accounts.

Please furnish us with a pass-book and a book of 25 cheque forms and note our signatures as under.

Yours faithfully,

(Signature) J. VANDER POORTEN.

,, HILDA VANDER POORTEN.

Names in full, Occupations and Addresses.

30 Joseph Vander Poorten,
Proprietary Planter,
20, Alfred Place,
Colpetty.

Hilda Vander Poorten,
20, Alfred Place,
Colpetty.

168

D 9

D 9
Cheque
No. FU
309391 for
Rs. 3,000/-
19-1-51.

Cheque No. FU 309391 for Rs. 3,000/-

FU 309391

Colombo, 19th January, 1951.

Incorporated in the United Kingdom.

NATIONAL BANK OF INDIA LIMITED

COLOMBO.

Pay Mercantile Bank to Mrs. J. Vander Poorten Rupees Three thousand only.

J. VANDER POORTEN ESTATES, 10
Aitken, Spence & Co., Ltd.,
Agents.

(Sgd.) Illegible,
Director.

Rs. 3,000/-.

D 7
Letter
addressed
to the
Defendant
by the
Plaintiff—
30-1-51.

D 7

Letter Addressed to the Defendant by the Plaintiff.

J. VANDER POORTEN,
Telephone No. 4883.

20, Alfred Place, 20
Colombo,
30th January, 1951.

My dear Joe.

With reference to your conversation of this evening and your letter of this day, I agree to the Vander Poorten Estates Greenwood being handed over to Messrs. Aitken Spence & Co., pending the partition cases you have filed. I hope you will tell them what my interests are in these estates.

Yours affect ;

(Sgd.) HILDA. 30

169

D 8

Cheque No. FU 748674 for Rs. 15,000/-

D 8
Cheque
No. FU
748674 for
Rs. 15,000/-
12-11-51.

No. FU 748674

Colombo, 12th November, 1951.

NATIONAL BANK OF INDIA LIMITED

COLOMBO.

Pay Mrs. Hda Vander Poorten or order Rupees Fifteen thousand only.

J. VANDER POORTEN'S ESTATES,
Aitken Spence & Co., Ltd.,
Agents.

10

(Sgd.) Illegible,
Director.

Rs. 15,000/-.

Endorsed on reverse :

(Sgd.) HILDA VANDER POORTEN.

Please pay to the credit of my account in the Mercantile Bank of
India Colombo.

(Sgd.) HILDA VANDER POORTEN.

Payees Account credited.

20 The Mercantile Bank of India Ltd.

(Sgd.) Illegible,
Manager,
Colombo.

P 4
Plaint in
D.C.
Colombo
Case
No. 3115/
Divorce—
7-10-53.

Plaint in D.C. Colombo, Case No. 3115/Divorce.

IN THE DISTRICT COURT OF COLOMBO

**HILDA VANDER POORTEN of No. 20, Alfred Place,
Colpetty, Colombo.....Plaintiff.**

Vs.

No. 3115/D.

**JOSEPH VANDER POORTEN of the " Terraces ". Kada-
watte and presently of " Alton House ", Vale Road,
Ashvale, Surrey, EnglandDefendant. 10**

On this 7th day of October, 1953.

The plaintiff of the plaintiff abovenamed appearing by Noel Austin Bernadin Stave, her proctor, states as follows :—

1. The plaintiff reside at Alfred Place, Colpetty, Colombo within the jurisdiction of this Court.

2. The plaintiff married the defendant on the 5th day of February, 1920, at St. Anthony's Church, Ganegama. a certified copy of the married certificate is herewith filed marked " A " and pleaded as part and parcel of this plaint.

3. There are three children of the said marriage all of whom are 20 majors.

As a first course of action

4. In or about the beginning of the year 1950 the defendant habitually treated the defendant with gross cruelty and both physically and mentally by assaulting her and by abusing her. He also refused and neglected to pay her medical bills and or give her an allowance.

5. The plaintiff further complains that she suffers from High Blood Pressure and heart Disease and that the defendant who is aware of her condition annoys and ill-treats her by making false allegations against her.

6. The plaintiff further complains that the defendant who is now 30 addicted to liquor behaves in a most irritable manner which effects her mentally and physically.

7. By reason of the aforesaid premises the defendant by his conduct has made the continuance of their married state intolerable and impossible and dangerous for plaintiff's life and health.

8. A cause of action has thus accrued to the plaintiff to sue the defendant for a separation on the ground of Gross cruelty.

As a second cause of action.

9. In or about July, 1951, the defendant without cause deserted the plaintiff and has left the Island and gone abroad without making provisions for the plaintiff and has since refused and neglected to provide for her or to return to his house and be reconciled to her.

10. The defendant is a Landed Proprietor and gets an income of about Rs. 20,000/- a month.

10 11. A cause of action has thus accrued to the plaintiff to sue the defendant for a separation *a mensa at thera* on the ground of malicious desertion and cruelty and for permanent alimony in a sum of Rs. 2,500/- per mensem.

Wherefore the plaintiff prays that the Court may be pleased to grant the plaintiff a separation *a mensa at thera* on the ground of malicious desertion and cruelty and for permanent alimony in a sum of Rs. 2,500/- per mensem and for costs of Court and for such other and further relief as to this Court shall seem meet.

(Sgd.) N. A. B. STAVE,
Proctor for Plaintiff.

20

Documents filed with the plaint.

Certified copy of Marriage Certificate marked " A ".

Appointment.

(Sgd.) N. A. B. STAVE,
Proctor for Plaintiff.

P 5

Answer of the Defendant in D.C. Colombo, Case No. 3115/Divorce.

IN THE DISTRICT COURT OF COLOMBO

80

HILDA VANDER POORTEN of No. 20, Alfred Place,
Colpetty, Colombo.....*Plaintiff.*

No. 3115/D.

Vs.

JOSEPH VANDER POORTEN presently of " Alton
House ", Vale Road, Ashvale, Surrey, England.....*Defendant.*

P 4
Plaint in
D.C.
Colombo
Case
No. 3115/
Divorce—
7-10-53.
—continued.

P 5
Answer
of the
Defendant
in D.C.
Colombo
Case
No. 3115/
Divorce—
24-2-54.

P 5
 Answer
 of the
 Defendant
 in D.C.
 Colombo
 Case
 No. 3115/
 Divorce—
 24-2-54.
 —continued.

On this 24th day of February, 1954.

The answer of the Defendant abovenamed appearing by Geoffrey Thomas Hale, Fredrick Claude Rowan, Joseph Francis Martin, 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 Martin, Rex Herbert Sebastian Phillips, Reginald Fredrick Mirando, William Henry Senanayake, John Ajasath Rancoth Weerasinghe and Bertram Manson Amarasekera, Proctors, states as follows : 10

1. The Defendant admits the averments in paragraph 1, 2 and 3 of the plaint.
2. The Defendant denies all and singular the averments in paragraph 4 of the plaint.
3. Answering paragraph 5 of the plaint the Defendant denies that he annoys or ill-treats the plaintiff in any manner whatsoever.
4. Answering paragraph 6 of the plaint the Defendant denies that he is addicted to liquor or that he behaves in any manner which would effect the plaintiff injuriously or adversely in any way.
5. The Defendant denies all and singular the averments in paragraphs 7 and 8 of the plaint.
6. Answering paragraph 9 of the plaint the Defendant admits that he left the Island in or about July, 1951, but denies that he deserted the plaintiff.
7. By way of further answer to paragraph 9 of the plaint the Defendant states :
 - (a) that from about the beginning of the year 1950, the plaintiff has from time to time treated the defendant with gross cruelty, addressing him in abusive and indecent language and using and inciting others to use violence against him ; that on more than one occasion since that date the defendant was compelled for his own personal safety to leave the Matrimonial home, namely, premises No. 20, Alfred Place, Colombo, for short periods, as he found it dangerous to live with the plaintiff, that after some attempts by the defendant at reconciliation, the plaintiff by her conduct as aforesaid made it impossible, dangerous and insupportable for him to continue to live with her, and the defendant was compelled to leave her in or about the month of July, 1951 and a few days later left for England to regain his health, which had been gravely impaired by the plaintiff's conduct and her persistent dangerous attitude of violent hostility towards him by reason of which he feared for his personal safety.

(b) that the plaintiff was and is possessed of properties of considerable value, either gifted to her, or paid for by the defendant and that the plaintiff was and is possessed of ample means to support herself; and that her proposed solicitude for any reconciliation is not genuine or *bona fide* in view of the treatment he has received at her hands, in the past whenever he has endeavoured to effect a reconciliation.

P 5
Answer
of the
Defendant
in D.C.
Colombo
Case
No. 3115/
Divorce—
24-2-54
—continued.

8. The defendant denies the averments in paragraph 10 and 11 of the plaint.

10 9. The defendant further states that by reason of the matters pleaded in paragraph 7 above the plaintiff has in law maliciously deserted the defendant and that a cause of action had accrued to the defendant to sue the plaintiff for a divorce *a vinculo matrimonii*.

WHEREFORE the Defendant prays :

- (a) that the plaintiffs action be dismissed,
- (b) for a decree of divorce dissolving the defendants marriage with the plaintiff.
- (c) for costs of suit,
- (d) for such other and further relief as to this Court may seem meet.

20

(Sgd.) JULIUS & CREASY,
Proctor for Defendant.

Settled by :

D. S. JAYAWICKREMA,
N. K. CHOKSY,
Advocates.

True copy of plaint and answer, filed in D.C.. Colombo, Case No. 3115/D.

(Sgd.).....
Asst. Secretary, D. C.

P 6

30

**Affidavit of H. W. R. Burton, filed in D. C. Colombo,
Case No. 3115/Divorce.**

P 6

IN THE DISTRICT COURT OF COLOMBO

HILDA VANDER POORTEN of No. 20, Alfred Place,
Colpetty, Colombo *Plaintiff.*

No. 3115/D.

Vs.

JOSEPH VANDER POORTEN presently of "Alton
House", Vale Road, Ashvale, Surrey, England, by
his attorney, Messrs. Aitken & Co., Ltd., Colombo
.....*Defendant.*

40

P 6
Affidavit of
H. W. R.
Burton, filed
in D.C.
Colombo
Case
No. 3115/
Divorce—
25-2-54.

P 6
Affidavit of
H. W. R.
Burton, filed
in D.C.
Colombo
Case
No. 3115/
Divorce—
25-2-54.
—continued.

HILDA VANDER POORTEN of No. 20, Alfred Place,
Colpetty, Colombo..... *Plaintiff-Petitioner.*

Vs.

JOSEPH VANDER POORTEN presently of "Alton
House", Vale Road, Ashvale, Surrey, England, by
his attorney, Messrs. Aitken Spence & Co., Ltd.,
Colombo *Defendant-Respondent.*

I, Harold William Robshaw Burton of Colombo, make oath and say
as follows :

1. I am the deponent abovenamed. 10
2. I am a Director of Aitken Spence & Company, Limited, who are
the lawful attorneys in Ceylon of the Respondent abovenamed.
3. I admit the averments in paragraphs 1, 2 and 3 of the petition.
4. Answering paragraph 4 of the petition I state that the Plaintiff-
Petitioner is possessed of ample means for the payment of all expenses
required in connection :
 - (a) with her state of health, for which according to the Respondent
she herself is mainly responsible by reason of her conduct and
behaviour ;
 - (b) with the action filed by her. 20
5. The sum of Rs. 2,500/- per month and Rs. 5,000/- claimed by the
Plaintiff-Petitioner as alimony *pendente lite* and costs of the case respectively
are quite unreasonable and excessive and I deny that the Plaintiff-
Petitioner is entitled to either of such sums.
6. The Plaintiff-Petitioner being possessed of ample means of her own
is not entitled to payment of any sum as alimony *pendente lite* or for costs of
the case.
7. The Plaintiff-Petitioner personally holds shares in valuable estates
and properties, either gifted to her, or paid for, by the Defendant-Respondent
of the total value of Rs. 321,614/- particulars whereof are given in the ³⁰
schedule hereto. In addition to this the Plaintiff-Petitioner in or about
February, 1951, wrongfully and unlawfully and forcibly removed some
11,215 lbs. of Rubber and 378 cwt. of Cocoa from Greenwood Estate (in
which she has only an undivided 1/9 share) and wrongfully sold and dis-
posed of the same and appropriated to herself the entire proceeds of sale
of the same which proceeds are estimated at over Rs. 92,000/-. The
Defendant-Respondent has also made payments to the Plaintiff-Petitioner
or paid or expended on her behalf large sums of money amounting to about
Rs. 145,000/- which she has not yet repaid. On the occasion of the marriage
the life interest in a sum of Rs. 20,000/- was settled on her. 40

8. The Plaintiff-Petitioner is presently in sole occupation free of rent, of premises No. 20, Alfred Place, Colombo, the entire purchase price of which was paid by the Defendant-Respondent out of his moneys.

9. The Plaintiff-Petitioner's average annual income from the properties gifted to her by the Defendant-Respondent for the last three years has been in the region of Rs. 24,000/- (quite apart from the free use of the Respondent's said house furniture and appointments). The following to the best of my knowledge information and belief are the figure of her income, adjusted for purposes of Income Tax, prepared by the Accountants and Auditors who prepare the accounts of the income from the various Estate in which Petitioner and Respondent own shares :—

P 6
Affidavit of
H. W. R.
Burton, filed
in D.C.
Colombo
Case
No. 3115
Divorce—
25-2-54
—continued.

For the year of Assessment ended 31.3.1952 (Accounting year to 31.3.1951)	Rs. 51,218·00
For the year of Assessment ended 31.3.1953 (Accounting year to 31.3.1952)	„ 10,898·00
For the year of Assessment ended 31.3.1954 (Accounting year to 31.3.1953)	„ 9,743·00
	Rs. 71,849·00

10. To the best of my knowledge information and belief the Petitioner receives income from dividends in companies in which she own shares as well as interest on loans.

The Schedule above referred to :

<i>Particulars</i>	<i>Basis of Valuation</i>	<i>Value</i>
1/9th Share in Greenwood Estate ...	Valuation of Commissioner in connection with Partition suit D.C., Colombo, 6219/P...	Rs. 95,676·00
80 1/9th share of Weyweltalawa Estate ...	Valuation of Mr. P. J. C. Durrants Partition Action No. 3922, D.C. Kandy ...	„ 58,402·00
1/9th share in Normandy Estate ...	Estimate by Mr. J. Vander Poorten ...	„ 17,000·00
1/20th share in Pilessa Estate ...	do. ...	„ 10,800·00
1/20th share in Verdun Group ...	do. ...	„ 12,500·00
1/20th share in Belga Estate ...	do. ...	„ 10,000·00
40 1/20th share in Illumbekande Estate ...	do. ...	„ 8,000·00
1/20th share in Edmumawatte and Koshagahena	do.	„ 800·00
	C/Forward ...	Rs. 213178·00

P 6
Affidavit of
H. W. R.
Burton, filed
in D.C.
Colombo
Case
No. 3115/M
Divorce—
25-2-54
—continued.

	B/Forward	...	Rs. 213178·00
1/2 share in "Preston", 20, Alfred Place, Colombo 3	...	do.	... ,, 80,000·00
Value of shares purchased in 1947 at cost	...	...	... ,, 28,436·00
			Rs. 321,614·00

Signed and sworn at Colombo on this } (Sgd.) H. W. R. BURTON.
25th day of February, 1954.

Before me :
(Sgd.) WALDO SANSONI, 10
J.P.

True copy of the Affidavit filed of
record in D.C. Colombo, Divorce
Case No. 3115.

(Sgd.) Illegible,
Assistant Secretary,
District Court,
Colombo.

P 1
Plaint in
D.C.
Colombo
Case
No. 36982/M
22-11-55.

P 1

Plaint in D.C. Colombo, Case No. 36982/M. 20

IN THE DISTRICT COURT OF COLOMBO

**JOSEPH VANDER POORTEN of Colombo, presently
of Mataranka, Northern Territory, Australia**

.....*Plaintiff.*

No. 36982/M.

Nature : Money. Vs.

Class : V.

Amount : Rs. 70,000/-. 30

**MRS. HILDA VANDER POORTEN of "Preston",
No. 20, Alfred Place, Colombo.....*Defendant,***

On this 22nd day of November, 1955.

The plaintiff of the plaintiff abovenamed appearing by R. G. de Silva practising in business under the name, style and firm of "Samarasinghe & De Silva", his Proctor states as follows :

P 1
Plaint in
D.C.
Colombo
Case
No. 36982/M
22-11-55
--continued.

1. The defendant resides at Colpetty and the cause of action hereinafter set forth also arose at Colpetty aforesaid within the local limits of the jurisdiction of this Court.

2. Prior to the dates material to this action the plaintiff and defendant were living together as husband and wife at the premises called and known as "Preston", No. 20, Alfred Place in Colpetty; the said premises being fully furnished at the sole cost and expense of the plaintiff.

3. On or about the 7th day of July, 1951, the plaintiff abovenamed for reasons of health left Ceylon for Australia leaving the articles mentioned in the Schedule hereto in charge of his wife the defendant who continued to occupy and still continues to occupy the said premises known as "Preston" referred to in paragraph 2 hereof. The said articles are reasonably worth Rs. 70,000/-.

4. On or about the 19th October, 1955, the plaintiff abovenamed through his lawyers demanded of the defendant the return of the aforesaid articles but the defendant has wrongfully and unlawfully failed and neglected to return the same.

5. A cause of action thus accrued to the plaintiff to sue the defendant for the recovery of the said articles or the value thereof.

Wherefore the plaintiff prays :

- (a) That decree be entered in his favour directing the defendant to return to him the articles described in the Schedule hereto in good order and condition or in the alternative :
- (b) For judgment against the defendant for the value thereof totalling Rs. 70,000/- :
- (c) For costs and for such other and further relief as to this Court shall seem meet.

(Sgd.) SAMARASINGHE & DE SILVA,
Proctors for Plaintiff.

The Schedule Above Referred To :

	Rs. cts.
4 Double and treble lengths of suitings taken off his possession, valued	560·00
Large size Jewel/Cash steel box with secret lock other than the smaller one given my wife as a present by me	600·00
40 Large steel safe with combination secret lock	1,200·00

P 1
 Plaint in
 D.C.
 Colombo
 Case
 No. 36982/M
 22-11-55
 —continued.

	Rs. cts.
1 Smaller one similar to above handed to Mrs. J. Vander Poorten by Mr. J. S. Corrie by error before his departure on 2.7.52	1,000·00
1 Rolliex camera insurance claim taken and appropriated £ 60	800·00
1 Gold full hunter watch heirloom given me by father with his monogram engraved on it	600·00
Box containing my links, studs, etc., some Gold	200·00
Clothing old and new valued	750·00 10

VERANDAH

- 1 Teak Lounge
- 1 Electric Lamp glass shade
- 1 Canvas Lounge cover with chair back

SITTING ROOM

1 Settie (large)	
2 Chairs (small)	
2 G.O.H. Chairs	
4 Cane Chairs (green painted)	
1 Writing table (ladies)	20
1 Writing table chair	
4 Drink Stools with glass tops	
1 Campher wood box	
1 Card table	
1 Paper and book stand	
1 Teak Ornament stand (Nadun)	
1 Teak Flower pot stand	
1 Waste paper basket	
1 Kitul Pot stand for plants	
1 Writing Desk table lamp fixture with shades	30
4 Wall Electric lamps and Yellow Shades	
1 Teak stand electric lamp with parchment shade small holes 6	
1 Revolving Piano Stool	
1 Rubber door mat	
1 Teak round table (fancy small)	
4 Covered cushions (pink)	
1 Sponge rubber cushion	
7 Odd Settie cushions	
7 Teak Drink stools	40
2 Picture scenes	
2 Picture flowers	
1 Wall Mirror (oval)	
1 Plate Ash Tray	
2 Oxide Ash Trays	
1 Ornament Photo stand	
1 Celleuse table	
12 Short curtains with frills	
4 Long curtains with frills	
16 Nett curtains and one frill	50

- 2 Chair mats
- 2 Chair backs
- 3 Settie covers with 3 white tops
- 1 Green Settie cover
- 1 Fan

P 1
 Plaint in
 D. C.
 Colombo
 Case
 No. 36982/M
 22-11-55.
 —continued.

DINING ROOM

- 1 Large Dining table
- 12 Dining chairs
- 4 Nadun chairs
- 10 1 Glass teak 2 shelves cabinet
- 1 Filing cupboard (locked)
- 1 Telephone fixture
- 1 Dutch Chest with brass fittings
- 1 Kitul stand
- 1 Reading book-stand with brass fittings
- 1 Clock—removed by J. Vander Poorten to Terraces,
 Kadawatte
- 2 Large painting picture
- 2 Long Wall Mirrors
- 20 3 Photos painted (in frame)
- 1 Brass Wall Plate
- 1 Electric fan
- 2 Flowered lamp shades
- 2 Long curtains
- 1 Book-case (Locked) Glass damaged

BED ROOM No. 1

- 3 Teak beds sumnus mattress and 6 pillows
- 1 Teak large-mirrored wardrobe
- 2 Teak bedside tables with drawers
- 80 1 Small table (with 2 shelves)
- 2 Dressing tables with mirrors
- 2 Dressing table stools
- 1 Wardrobe (Nadun)
- 1 Teak show stand
- 1 Sapu corner stand
- 1 Low Nadun chair
- 1 Box-stand, painted white
- 2 Bedside carpets
- 2 Electric lamps with flower shades
- 40 1 Electric lamp with pink shade
- 1 Fan
- 1 Croner white-painted Medicine Chest
- 2 Small pictures
- 2 Large pictures
- 1 Waste paper basket
- 1 Cane basket for linen
- 1 Nadun Chest of drawers
- 1 Teak box stand
- 1 Curtain with rod for shoe stand
- 50 7 Short yellow curtains

P 1
 Plaint in
 D.C.
 Colombo
 Case
 No. 36982/M
 22-11-55.
 —continued.

6	Long stripped curtains	
1	Corner cupboard beige curtain	
1	Stand for clothes with pegs	
BATH ROOM		
1	Porcelain soap dish	
1	Bakelite soap dish	
1	Chromium soap dish stand	
1	Porcelain bath	
1	Porcelain lavatory pan with seat	
1	Lavatory box for paper	10
1	Porcelain wash basin (damaged)	
2	Glass shelves	
1	Mirror in wooden frame	
1	Chromium tumbler holder	
1	Chromium tooth brush holder	
1	Chromium shaving brush holder	
1	Wooden corner shelf	
1	Shelf with geyzer	
1	Rubber bath mat (Arpico)	
3	Hooks (bronze)	20
1	Chromium shower rose	
2	Chromium towel racks	
1	Bath stool	
1	Enamel mug	
BED ROOM No. 2		
2	Beds with mattress and 4 pillows	
1	Nadun Almirah	
1	Nadun dressing table	
1	Teak writing desk (childs damages, woodwork cracked)	
1	Teak bedside table with drawer	30
1	Dressing low stool	
1	Teak shoe rack	
1	Cane table (green painted)	
3	Hooks for clothes	
1	Lounge Rattan chair	
1	Corner cupboard for clothes	
2	Large pictures	
1	Wall bedside lamp and pink shade	
1	Glass figured lamp shade	
1	Box stand	40
1	Child's chest of drawers	
1	Basket for linen	
1	Fan	
1	Cornered cupboard beige curtain	
1	Green shoe rack curtain with red	
4	Pink long curtains	
4	Short beige curtains	
3	Bedside rugs	
1	Case bottom chair	
1	W. P. basket	50

BATH ROOM

- 1 Porcelain bath
- 1 Porcelain wash basin (damaged)
- 1 Chromium glass (tray)
- 1 Frameless mirror
- 1 Chromium tumbler stand
- 1 Chromium soap holder
- 1 Wooden corner shelf (painted silver)
- 2 Metal hooks for clothes
- 10 2 Chromium towel racks
- 1 Plate stand for soap
- 1 Geyzer
- 1 Wooden stool (green)
- 1 Basin (Enamel)
- 1 Aluminium bowl
- 1 Bucket
- 1 Chromium shower rose
- 1 Green Celol lamp shade
- 1 Enamel mug
- 20 2 Rubber mats
- 1 Paper holder
- 1 Curtain, long, pink
- 1 Short curtain

DRESSING ROOM

- 2 Corner wooden line cupboards
- 1 Box stand (teak)
- 2 Lace curtains
- 1 Green stripe curtain
- 1 Green coloured shade

80 BED ROOM No. 3

- 1 Teak bed with semnus mattress and 2 pillows
- 1 Shoe rack
- 1 Shoe stand
- 1 Large Nadun wardrobe almirah with mirror
- 1 Teak box stand
- 2 Waste paper baskets
- 1 Blue Parchment shade for electric lamp
- 2 Hooks on door for pegging clothes
- 65 1 Black metal box
- 40 1 Bed rest
- 1 Machine stand
- 4 Long pink flowered curtains
- 4 Beige short curtains
- 1 Cocktail cabinet

BATH ROOM

- 1 Bath
- 1 Geyzer
- 95 1 Porcelain fixture soap stand

P 1
 Plaint in
 D. C.
 Colombo
 Case
 No. 36982/M
 22-11-55.
 —continued.

P 1
 Plaint in
 D.C.
 Colombo
 Case
 No. 36982/M
 22-11-55.
 —continued.

2	Corner wooden shelves	
1	Fixture chromium stand for tumbler	
1	Fixture chromium stand for shaving brush	
1	Fixture chromium stand for soap dish	
1	Fixture glass shelf with chromium fittings	
2	Towel racks chromium fixtures	
1	Mirror on the wall	
1	Lavatory seat (porcelain)	
1	Lavatory paper box	
1	Bath stool	10
2	Hooks on bathroom door	
1	Celluloid soap dish	
1	Fixture lavatory towel rod	
1	Enamel jug	
1	Chromium shower rose	
1	Celluloid lamp shade	

BILLIARD ROOM-CUM-PANTRY

1	Jakwood sewing table	
1	Jak side table	
1	Polished small dining table rosewood	20
1	Corner cupboard glass doors	
1	Wooden corner shelve	
1	Glass almirah for silver	
1	Large electric and stand	
2	Green trays	
1	Plate sink and wooden drawing tray	
1	Old wireless cabinet	
3	Folding chairs	
1	Wooden trolley	
1	Marking board	30
1	Wall clock	
1	Fan	
1	Electric light lamp shade bowl	
1	Plain electric shade	
25	Billiard balls	
1	Wooden cutlery box	
1	Glass rack	
1	Green billiard table cover (removed by J. Vander Poorten)	
1	Green curtain	
1	Revolving table seater	40

VENESTA BOX

15	yards cream tussore	
7	yards cream tussore	
15	yards crash linen	
14	yards striped drill	
12	yards cream tussore	
22	yards white drill Tootals	
24	yards Mer. tussore white	
9	yards cream tapestry	
45/8	yards Aertex	50

	1	piece crash linen
	1	piece billiard cloth
	1	„ Blue linen
	1	„ Beige art silk
	2½	„ Beige Navy drill
	4	Beige cushion cloth
	8	Beige white long cloth for pillows
	7	Odd pieces, tricoline, blue striped
	20	yards long cloth
10	2	yards pique
	4½	yards satin drill
	1	piece mosquito net
	1	piece white organdy
	3	yards spotted cherry silk joy
	3½	yards green linen
	3½	yards rust linen
	3	yards red linen
	3½	yards Navy satin faced silk
	3	yards figured tobralco
20	3	yards figured linen
	4½	yards cherry linen
	2	yards checked linen Joy
	2	yards red flowered silk linen Joy
	2	Odd pieces linen
	1½	yards checked yellow tobralco
	2	yards yellow moss crepe
	1½	yards white satin-faced silk
	2	yards beige silk
	1½	yards sugar-coloured silk
30	1½	yards white silk
	4	yards white soft silk
	4½	yards blue twill
	4	yards green silk pyg. Joy
	5½	yards flannel
	5½	yards pink checked Viyella
	4	yards blue-flowered silk pgy. Joy
	4	yards pink crepe de chene
	4½	yards embroidery silk
	4	yards pink silk
40	4	yards pink satin
	4	yards pink rayon
	5	yards pink satin for pyg.
	5	yards blue stockinette
	8	yards pink stockinette
	5	yards blue striped silk
	1	yard strawberry silk
	4	yards pink silk
	3½	yards grey crepe-de-chene
	3½	yards figured blue silk
50	3½	yards striped blue crepe silk
	3½	yards wine striped linen
	3½	yards blue linen

P 1
 Plaint in
 D.C.
 Colombo
 Case
 No. 36982/M
 22-11-55.
 —continued.

4 $\frac{1}{2}$	yards rust linen	
3 $\frac{1}{2}$	yards cherry large spotted silk	
4 $\frac{1}{2}$	yards dove grey crepe	
4 $\frac{1}{2}$	yards red-blue silk crepe	
3 $\frac{1}{2}$	yards green satin silk	
3	yards green satin silk	
4	yards blue silk (discoloured)	
3 $\frac{1}{2}$	yards white satin silk	
4	yards cherry sharkskin	
4	White crepe dechene	10
6	yards Blk. figured silk	
4	yards flowered georgette	
5	Red figured satin	
3 $\frac{1}{2}$	yards beige and white linen	
10	yards door curtains (floral)	
6	yards door curtains (single)	
22	yards long window curtains	
1	yard long frill	
10	yards short frills	
6	Yellow silk lace short curtains	20
4	Yellow cotton lace short curtains	
7	Teffatta short window curtains	
12	Cream lace window curtains	
2	Cream lace window curtains	
1	Cream lace window curtain	
12	Beige taffetta window curtains	
9	Beige Casement window curtains	
2	Lace door cretonne	
4	yards floral cretonne	
4	yards floral cretonne	30
6	yards net fancy	
3 $\frac{1}{2}$	yards net fancy	
1 $\frac{1}{2}$	yards cretonne	
12	Khaki-coloured filet window curtains	
1	Table cloth (Galle Convent)	
2	Swabs	
4	Large red checked kitchen towels	
3	Redborder checked kitchen towels	
5	Blue checked kitchen towels	
5	Yellow checked kitchen towels	40
3	Green border kitchen towels	
3	Yellow border kitchen towels	
4	yards cream dress linen	
3 $\frac{1}{2}$	yards pink dress linen	
3 $\frac{1}{2}$	yards flowered dress linen	
3 $\frac{1}{2}$	yards striped red linen	
1	piece green chintz	

DRINKS BOX 1

2	bottles Hamilton Port	50
1	bottle Chinzano Vermouth	
1	bottle Australian Dry Vermouth	

- 1 bottle Burgandy
- 1 bottle St. Julian (Red Wine)
- 9 bottles Black & White Whisky

Box 2

- 2 bottles Old Arrack
- 3 bottles Gin (3)
- 1 bottle Chateau Libertes (Red Wine)
- 1 bottle Claret
- 1 bottle Green Light

10 Box 3 MARKED 8

- 7 bottles Champagne
- 1 bottle Devonshire Cider
- 3 bottles Bols.
- 1 bottle O. T.
- 1 bottle Cognac Brandy
- 2 bottles Beehive Brandy
- 1 bottle Traunda Brandy
- 2 bottles Van der Hum
- 1 bottle Creme de menthe
- 1 bottle Vermouth

20

Box C*Towels*

- 4 Double striped blue towels
- 3 Double striped orange towels
- 4 Multiple striped blue towels
- 2 Green checked towels
- 2 Red, yellow and green striped
- 1 Green, large
- 2 Hand towels, green
- 30 1 Embroidered, green
- 2 Red old double striped
- 1 Green old double striped
- 1 Blue old double striped
- 1 Yellow large double striped
- 3 White Turkish, new
- 3 White Turkish, old
- 2 White hand towels, old
- 5 Japanese white hand towels
- 4 Towelling H.T. (1 green), (1 orange and 2 white)
- 40 1 Dogs towels
- 1 Large blue L.

LINEN

- 12 Tea cloths
- 2 Tray cloths
- 2 Tapestry table cloths
- 6 Beige chair backs
- 4 Light fawn backs
- 4 Embroidered (L)

P 1
 Plaint in
 D.C.
 Colombo
 Case
 No. 36982/M
 22-11-55.
 —continued.

P 1
 Plaint in
 D.C.
 Colombo
 Case
 No. 36982/M
 22-11-55.
 —continued.

4	Embroidered (S)	
1	Velvet cushion cover	
6	Old bed spreads	
25	Odd runners	
2	Small blankets	
5	Meat covers	
3	Settee covers	
1	Old table cloth	
Box D		
6	Yellow markings	10
17	Red markings	
6	Hemstitched and marked white	
4	Plain red-stitched mark	
7	Unmarked	
PILLOW CASES		
2	Old pillow cases	
10	Hemstitched	
4	White markings	
8	Hemstitched and embroidered (2 patters)	
5	H.S. and small marking in white	20
2	Plain white marking	
3	Plain red marking	
6	Lavatory towel cords	
6	Inner pillow cases	
TABLE CLOTHS AND SERVIETTES		
5	White damask	
1	Coloured damask	
2	checked table cloths	
SERVIETTES		
30	Flowered damasks	30
23	Checked soft	
15	Table runners	
3	Tea serviettes (lace edge)	
15	Drawn, thread	
6	Cross stitched	
1	Coloured	
12	Tray cloths	
TABLE MATS		
18	Blue stitched	
12	Yellow, large	40
12	Scallop J.P., small	
20	Open work	
1	Lacette	
1	Tea cosy—2 loose	
8	Asbestos	
12	Green	
3	Green, L.	

CUSHION COVERS (BOX C)

- 4 Strawberry
- 3 Dark green
- 3 Black
- 3 Soiled linen bags

P 1
 Plaint in
 D.C.
 Colombo
 Case
 No. 36982/M
 22-11-55.
 —continued.

CANVAS CHAIR BACKS

- 4 Dark green stripes
- 3 Multi-coloured
- 4 Striped light green

10 Box D

- 1 Mattress cover
- 4 Blankets
- 6 Duines
- 7 Mosquito nets
- 2 Canvas bag covers
- 2 Canvas chair (chair covers—long lounge covers)

CROCKERY BOX C

- 12 Florida soap plates
- 24 Florida meat plates
- 20 6 Rose pattern meat plates
- 2 Cake plates (tea set C.A./C.)
- 4 Fruit Florida set
- 1 Cake plate (Ordinary white Dinner set)
- 5 Rose patters soup plates
- 12 Cheese plates with black and gold fancy border.

CROCKERY BOX

“Florida” Dinner Set

- 2 Large meat dishes
- 1 Small meat
- 30 12 Cheese plates (C)
- 13 Pudding plates (C)
- 4 Vegitable dishes
- 1 Sauce bowl
- 1 Milk jug
- 4 Pudding plates (Rose pattern dinner set)
- 1 Cheese do.
- 1 Soup tureen do.
- 1 Soup ladden do.
- 1 Soup tureen stand
- 40 1 Sugar bowl (Tea set C.A.C.)
- 1 Fruit stand (Ordinary white dinner set)
- 2 Bowls (Mrs. Bemelmans)
- 1 White milk jug
- 1 Salad bowl in teak
- 1 White pudding bowl

No. 1
 Plaint in
 D.C.
 Colombo
 Case
 No. 86982/M
 22-11-55.
 —continued.

CROCKERY BOX No. (E)

12	Breakfast cups and saucers	
9	Tea cups and saucers	
	Coffee set, blue	
12	Tea plates, C.A.C.	
2	Cake plates „	
12	Cups „	
12	Saucers „	
1	Fireproof egg “ Poacher ”	
1	Feeding cup	10
1	Butter dish packed in his box	
6	Fruit plates	
5	Cheese plates, 2 varieties „	
1	Bowl, C.A.C.	
1	Sauce board “ Florida ”	
1	Milk jug	

PYREX WARE BOX (G)

2	Round Casserole dishes with cover and handles	
1	Baking dish	
1	Divided dish—no cover	20
1	Sauce bowl	
1	Shallow Casserole and cover	
21	Butter dishes and cover (1 in use)	
1	Large oval Casserole and cover	
13	Shell dishes	
3	Extra covers	
1	Eight-sided Casserole dish and cover	
1	Long dish and 2 covers—Electrilix	
1	Cut glass tray—1 Small dish	
8	Ice cream plates	30
1	rolling pin glass	
5	Stoppers	
1	Caraffe	
2	Spirit lamps	
2	Small Jacobene jugs	
1	Small Sg. Electrolix dish	
1	Jelly mould glass dish	
1	Measure glass pyrex	
2	Odd moulds no handle	
1	Lemon saucer	40

Box (H)

1	Cona coffee boiler	
1	Britenwood vase	
1	Doll	
2	Floating bowl centre pieces	
1	Tall blue flower vase	
1	Fruit squashers	
18	Champagne glasses short and tall	
13	Wine glasses	

- 1 Pink table centre vase and mirror
- 10 Whisky glasses
- 1 Fancy tumbler
- 2 Funnels
- 1 Table lamp

P 1
 Plaint in
 D.C.
 Colombo
 Case
 No. 36982/M
 22-11-55.
 —continued.

IN BOX WITH HANDLES, LONG (I)

- 1 Alabasta figure
- 1 Box with small figure and birds
- 3 Pictures

10 Box (J)

- 1 Painted bowl
- 1 Gold-painted bowl

SILVER AND PLATED WARE (F)

- 2 Cake trays
- 1 Entree dish and cover
- 2 Casserole dish
- 2 Pepper mills (2 packed)
- 2 Sweet dishes
- 3 Sweet dishes on stand
- 20 1 Silver fruit dish
- 1 Tea set of 3 pieces
- 1 Tea set pot stand
- 1 Coffee set of 3 pieces
- 1 Mustard pot
- 2 Silver toast racks, E.P.N.S.
- 1 Silver sauce boat
- 1 Sugar dredger
- 3 Tea strainers and 1 stand
- 2 Silver boat-shaped sweet dishes
- 30 1 Sugar bowl with blue glass dish
- 2 Silver vases

All of the value of ... Rs. 65,000·00

TOTAL ... Rs. 70,000·00

Colombo, 22nd November, 1955.

Settled by :

MR. M. L. DE SILVA & MR. T. P. P. GOONETILLEKE
 (Advocates)

(Sgd.) SAMARASINGHE & DE SILVA,
 Proctor for Plaintiff.

P. 2.

Answer of the Defendant in D.C., Colombo,

Case No. 36982/M.

IN THE DISTRICT COURT OF COLOMBO

JOSEPH VANDER POORTEN of Colombo, presently of Australia..... Plaintiff.

No. 36982/M.

Vs.

10

MRS. HILDA VANDER POORTEN of Colombo.....Defendant.

This 29th day of June, 1956.

The answer of the defendant abovenamed appearing by Noel Austin Bernard in Stave, her proctor, states as follows :

1. Answering paragraph 1 of the plaint this defendant whilst admitting residence denies the rest of the averments contained therein.

2. Answering paragraph 2 of the plaint the defendant whilst admitting that they lived as husband and wife denies the rest of the averments contained therein.

3. Answering paragraph 3, 4 and 5 of the plaint the defendant denies the averments contained therein and puts the plaintiff to the strict proof thereof.

4. Further answering the defendant states that the plaintiff and defendant as husband and wife purchased the property called and known as " Preston ", No. 20, Alfred Place, Colpetty, Colombo, and the same was furnished at the joint expense of both, and or in the alternative that the plaintiff furnished the said house for the use and occupation of the defendant his wife as in law he was bound to maintain her during the time he was away from her house.

5. As a matter of law the defendant states that the claim if any of the plaintiff is prescribed.

30

6. Further answering the defendant states that prior to the departure of the defendant from his residence he had removed most of the articles in the schedule to the plaint together with the articles contained in the schedule hereto which are the personal belongings of the defendant and which the plaintiff removed without the defendant's knowledge and consent which the defendant values at Rs. 50,000/- and which amount or the articles mentioned herein the defendant claims in reconvention from the plaintiff.

P 2
Answer of
the Defen-
dant in D.C.
Colombo
Case
No. 36982/M
—29-6-56.

Wherefore the defendant prays that the Court be pleased to dismiss plaintiff's action with costs and to enter Judgment in favour of the defendant in reconvention in a sum of Rs. 50,000/- or the return of the articles mentioned herein, for costs and for such other and further relief as to this Court shall seem meet.

P 2
Answer of
the Defen-
dant in D-C.
Colombo
Case
No. 36982/M
29-6-56.
—continued.

(Sgd.) N. A. B. STAVE,
Proctor for Defendant.

The Schedule Above Referred To :

1. A stamp collection which I started 25 years ago, comprising of
10 the following :—
 - (a) 3 Red covered Stanley Gibbon's loose leaf books with stamps of British Commonwealth.
 - (b) 3 or more green covered Stanley Gibbon's loose leaf albums with stamps of foreign countries including U.S.A.
 - (c) 1 Smaller loose leaf album of Stanley Gibbon's with red cover containing stamps of the Universal Postal Union Stamps.
 - (d) One reddish brown covered album with stamps of the peace issue.
 - (e) Blue covered spare stamp album with spare stamps.
 - (f) Loose stamps in a box, stamps of Ceylon.
- 20 2. A Rollieflex camera with shaded lenses which I bought almost new from Mr. Durrant in a leather case with strap.
3. One G.E.C. Cooker which I purchased from Mrs. Bemelmans at the Auction Sale of her belongings and which was in use in the house.
4. One mantle piece or table clock (chiming) which I purchased at the sale of Mr. Doudney at Baur's flats during the war, this is now at the "Terraces", Kadawatte, in the use of one of Messrs. Aitken Spence's employees.
5. One pair of black suede and leather wedge shoes which I wore.
6. One navy blue suede shoes in a new condition which I bought from
30 Messrs. Millers Ltd.
7. Twelve or eighteen stainless knives marked with "P" on the handle, desert knives.
8. Twelve or eighteen stainless table knives marked with "P" on the handle.
9. Twelve Kandyan silver coffee spoons given me as a 25th anniversary.
10. Photograph of my son Brian which was hanging on the wall and which he replaced with his own photo which has since been removed.
11. A set of silver cutlery bought from Messrs. Leaven of Kandy with her monogram, some of which he left behind.

P 2
 Answer of
 the Defen-
 dant in D.C.
 Colombo
 Case
 No. 36982/M
 29-6-56.
 —continued.

12. One re-robed suit case (ladies) brown with a hasp in brass for padlock with twelve dress hangers.
13. One brown leather suit case the lock is a combination one.
14. One folding travelling almirah clock French make " Jaz ".
15. One travelling iron called " Gen " in a cardrobe box.
16. A roll of 50 yards wire mesh 1" unused which I had purchased for a poultry run.
17. All hose keys, one of them with a silver chain, one with a plastic chain and one without a chain including my safe keys.
18. *Jewellery* : One half-Hunter Gold wristlet watch with gold bracelet given to me by my father on my twenty-first birthday.
19. One diamonte broach-cum dress clip, purchased by me from Ciro Co.
20. One gold signet ring given me by Joe himself.
21. *Documents*. Letters written to me by my father in my girlhood also letters from my late unclce, George of Florida and various other letters.
 - (b) a note book belonging to my father in which he had written down all our birthdays and various notes .
 - (c) Certificate of my father's Will Certificate of A. J. Vander Poorten's Will. Certified copy of deed of gift No. 853. Certified copy of deed of gift No. 1031. Certified copy of Power-of-Attorney given me by Joe.
 Originals of Powers-of-Attorney given me by my brother, Rioty.
 Original marriage trust deed given me by my uncle, Edmund, who was one of the original Trustees.
22. Cheque counterfoils of the Imperial Bank of India, Colombo.
 Cheque counterfoils of the Mercantile Bank of India, Colombo.
 Red Monitor Exercise books in which was written out the details of my bank account.
23. Original letters written to me by Mr. P. G. Payne of Wembly. 30
24. Letters written to me by my brothers when in England in files.
25. Correspondence between me and the Public Trustee, Mr. S. F. H. Perera, regarding Pilagoda Valley Estate.

(Sgd.) N. A. B. STAVE,
Proctor for Defendant.

True copy of the plaint and answer filed of record in D.C., Colombo, Money Case, No. 36982.

(Sgd.) Illegible,
Assistant Secretary,
District Court,
Colombo,
 23-6-58.

D 1

**Statement of Account of Vander Poorten Estates for the
period 1-12-40 to 13-12-50.**

D 1
Statement
of Account
of Vander
Poorten
Estates for
the period
1-12-40—
31-12-50.

14-11-57.

VANDER POORTEN ESTATES

**Share of Income of Mr. and Mrs. J. Vander Poorten for the
period 1-12-1940 to 31-12-1950 and Distributions thereof.**

	Rs.
10 1. INCOME :	
9/20th Share of income for the period 1-12-1940 to 31-12-1950 as per statement 1 (a) dated 5-2-1954.	1,370,706
<i>Less</i> Income from Batagolla Estate in which Mrs. Vander Poorten is stated to derive no share—as per state- ment 1 (a) referred to above	137,293
Balance income of Mr. and Mrs. Vander Poorten	<u>1,233,413</u>
 2. DISTRIBUTION TO MR. J. VANDER POORTEN :	
July, 1941	22,500
October, 1941	45,000
20 March, 1942	90,000
November, 1942	18,000
July, 1943	22,500
February, 1944	22,500
May, 1944	22,500
August, 1944	45,000
December, 1944	27,000
June, 1945	54,000
June, 1946	36,000
September, 1946	22,500
30 December, 1946	1,640
May, 1947	27,000
May, 1947	7,453
June, 1950	67,500
	<u>531,093</u>
 3. DISTRIBUTIONS TO MR. AND MRS. VANDER POORTEN subsequent to 31-12-1950 in respect of Profits up to 31-12-1950 :	
During the year ended 31-3-1952 :	
To Mr. J. Vander Poorten	50,000
To Mrs. J. Vander Poorten	6,250
	<u>56,250</u>

D 1
Statement
of Account
of Vander
Poorten
Estates for
the period
1-12-40—
31-12-50.
14-11-57.
—continued.

4. BALANCE DUE TO MR. AND MRS. VANDER POORTEN :			
Profits up to 1-12-1940 that remained undistributed	...	107,922	
Profits from 1-12-1940 to 31-12-1950	... ..	1,370,706	
			<u>1,478,628</u>
<i>Less</i> Transfer to Reserve Fund during the year to			
31-3-1941	... ..	50,000	
Errors adjusted in the accounts for the year ended			
31-3-1945	... ..	131	
			<u>1,428,497</u>
9/20th Share of Mr. Vander Poorten (including Mrs. Vander			10
Poorten's share income from 1-12-1940)	... ..	642,824	
<i>Deduct</i> : Distributions up to 31-12-1950 as in (2) above...		531,093	
Distribution subsequent to 31-12-1950 as in (3)			
above	... ..	56,250	
			<u>55,481</u>
	Rs. ...		<u><u>55,481</u></u>

5. MRS. VANDER POORTEN'S SHARE IN THE BALANCE INCOME			
OF RS. 55,481/- MAY BE COMPUTED AS UNDER :—			
1/20th Share in income of all estates other than Batagolla			
Estate—1/20th of Rs. 1,233,413 as in (1) above	... ..	61,671	
<i>Deduct</i> : 1/9th share of distribution of profits pertaining			
to share of profits of Mrs. Vander Poorten from			20
Estates other than Batagolla. (Please see			
note 3 below)	... ..	50,494	
Amount paid to Mrs. Vander Poorten direct	... ..	6,250	
			<u>4,927</u>
	Balance Rs. ...		<u><u>4,927</u></u>

QUALIFICATIONS :

- (1) Share in the sum of Rs. 50,000/- transferred to Reserve Account during the year ended 31-3-1941 is treated entirely belonging to Mr. J. Vander Poorten.
- (2) Undistributed profits at 1-12-1940 less the transfer to Reserve Fund have been treated as to have come out for distribution first and consequently deducted from distributions made up to 31-12-1950 in respect of profits up to 31-12-1950 to arrive at balance profits due to Mrs. Vander Poorten.

(3) The sum of Rs. 50,494/- is arrived at as under :—

	Distribution up to 31-12-1950	...	...	531,093	
	Less Distribution relating to profits up to 30-11-1940				
	—9/20 of (Rs. 107,922 less Rs. 50,000/-)	...	...	26,065	
					<u>505,028</u>
	Less Distribution relating to profits of Batagolla—				
	$\frac{137,293}{1,370,706} \times \text{Rs. } 505,028$	...	...	50,585	
					<u>454,443</u>
10	1/9th share thereof	...	...	Rs. ...	<u><u>50,494</u></u>

D 1
Statement
of Account
of Vander
Poorten
Estates for
the period
1-12-40—
31-12-50.
14-11-57
—continued.

(Sgd.) AIYAR & SONS,
Chartered Accountants.

Colombo,

Dated : 14th November, 1957.

Vander Poorten Estates

SHARE INCOME OF MRS. J. VANDER POORTEN FROM 1ST JANUARY, 1951 TO 31ST MARCH, 1956 AND DISTRIBUTION THEREOF.

	Rs.	Rs.
20 For the period 1-1-1951 to 31-3-1951 :		
As per statements of accounts for the period	...	4,094
Deduct : Share of Batagolla income included in		
Rs. 4,094/- (79/221 of Rs. 2,017/-)	...	721
		<u>3,373</u>
For the year ended 31st March, 1952, as per statements		
of accounts	Loss	263
For the year ended 31st March, 1953, as per statements		
of accounts	Loss	1,383
For the year ended 31st March, 1954, as per statements		
of accounts	Loss	6
30 For the year ended 31st March, 1955, as per statements		
of accounts	Profit	3,426
For the year ended 31st March, 1956, as per statements		
of accounts	Loss	1,825
		<u><u>3,322</u></u>

D 1
Statement
of Account
of Vander
Poorten
Estates for
the period
1-12-40—
31-12-50.
14-11-57
—continued.

Amounts distributed :

						Rs. cts.
During the year ended	31-2-1953	...	...	...	...	1,380·80
Do.	31-3-1955	...	...	...	...	1,060·78
Do.	31-3-1956	...	...	...	...	—
					Rs. ...	<u>2,441·58</u>

(Sgd.) AIYAR & Co.,
Chartered Accountants.

Colombo,

Dated : 14th November, 1957.

10

Mrs. H. Vander Poorten

**SHARE INCOME FROM GREENWOOD, WEYWELTALAWA
AND NORMANDY ESTATES AND DISTRIBUTION
THEREOF.**

DISTRIBUTABLE INCOME :		Rs.	Rs.
Income for the period 1-10-1946 to 30-4-1949 as per statement 1 (b) dated 5th February, 1954. ...			2,977
Income for the period 1-5-1949 to 31-3-1956 (as per statements of accounts of Messrs. Aitken Spence & Co., Ltd.) :			20
1-5-49 to 31-3-50 ...	...	14,373	
Year ended 31-3-51 ...	...	34,637	
Do. 31-3-52 ...	...	5,921	
Do. 31-3-53 ...	...	11,157	
Do. 31-3-54 ...	...	34,136	
Do. 31-3-55 ...	...	29,589	
Do. 31-3-56 ...	...	7,030	
		<u>136,843</u>	
Deduct : 1/9th Share of Capital Expenditure debited to Asset Account—			30
1950—51 ...	...	3,078	
1951—52 ...	...	695	
1952—53 ...	...	1,278	
1953—54 ...	...	54	131,738
		<u>Total ...</u>	<u>134,715</u>

Note :

D 1
Statement
of Account
of Vander
Poorten
Estates for
the period
1-12-40—
31-12-50.
—
14-11-57
—continued.

1. It is considered that capital expenditure whether debited to Profit and Loss Account or not has to be deducted in arriving at distributable income.
2. In arriving at the income of the year ended 31-3-1952, a sum of Rs. 1,955/- being 1/9th share of legal expenses incurred on partition actions, has been deducted.
- 10 3. In arriving at the income of the year ended 31-3-1953, a sum of Rs. 333/- being 1/9th share of legal expenses incurred, has been deducted.
4. Profits shown above relating to the period 1-10-46 to 30-4-49 relate only to Greenwood while the figures shown for periods subsequent to 30-4-49 relate to Greenwood, Weyweltalawa and Normandy Group.
5. Income shown for the following years are after deduction of 1/9th share of capital expenditure as under :—

					Rs.
	Period 1-10-46 to 31-3-47	...	...	...	941
	Year to 31-3-48	...	...	...	2,429
20	„ 31-3-49	...	...	...	721
	„ 31-3-51	...	...	...	451
	„ 31-3-52	...	...	...	1,835
	„ 31-3-54	...	...	...	55

Distributions made :

There is no information available as to what part of income of Rs. 2,977/- being the income up to 30-4-1949, the date on which Messrs. Aitken Spence & Co., Ltd., took over management of the estates, had been distributed.

2. Subsequent to taking over of management of the estates by Messrs. 30 Aitken Spence & Co., Ltd., share of profits of each co-owner is credited and drawings are debited to his or her account so that the balance appearing in his or her account is the balance due. Subject to the adjustment due for share of capital expenditure debited to the assets account, the balance is the distributable amount.

3. Mrs. Vander Poorten's account as appearing in the books of Messrs. Aitken Spence & Co., Ltd. up to 31-3-1956 is as under :—

D 1
Statement
of Account
of Vander
Poorten
Estates for
the period
1-12-40—
31-12-50.
—
14-11-57.
—continued.

	Rs.	Rs.
Share of profits from 1-5-49 to 31-3-56		136,843
<i>Add</i> Excess of assets over liabilities on Greenwood and Weyweltalawa		46
		<u>136,889</u>
<i>Deduct</i> : Share of Reserve credited in 1949-50 accounts		722
<i>Drawings</i> :		
Year ended 31-3-51	108,838	
„ „ 31-3-52	15,324	10
„ „ 31-3-53	176	
„ „ 31-3-54	5,528	
„ „ 31-3-55	378	
„ „ 31-3-56	1,178	
	<u>131,422</u>	
<i>Less</i> Distributions out of Vander Poorten Estates profits appropriated	6,281	125,141
	Balance	<u>11,026</u>
 AMOUNT STILL TO BE DISTRIBUTED :		
Distributable income after Messrs. Aitken Spence took over management		20 131,738
<i>Less</i> Deductions as above Rs. 722 + 125, 141		125,863
	Rs. ...	<u>5,875</u>

(Sgd.) AIYAR & Co.,
Chartered Accountants.

Colombo,
Dated ; 14th November, 1957,

**STATEMENT OF ACCOUNT SHOWING INCOME OF MRS. J. VANDER
POORTEN AND INCOME TAX THEREON**

D 3

INCOME OF MRS. J. VANDER POORTEN AND INCOME TAX THEREON

ACCOUNT YEAR	1	2	3	4	5	6	7	8	9	10	11	12	13	14
	From Vander Poorten Estates	From Greenwood, Normandy & Weywetalawa, Estates.	From Cannelle Estate.	From Rents.	From Interest	From Dividends.	Total.	Interest Paid.	Balance Income of Mr. & Mrs. Vander Poorten.	Total Income of Mr. & Mrs. Vander Poorten.	Total Tax.	Tax deducted at Source on dividends Income of Mr. & Mrs. Vander Poorten.	Net Tax.	Share of Nett Tax on Mrs. Vander Poorten's Income.
Year ended:														
31-3-1941	8,094	—	Loss 195	—	1,800	105	4,804	—	4,804	115,218	20,805	1,929	18,876	705
31-3-1942	14,294	—	17	—	1,714	Not available	16,025	—	16,025	166,265	37,729	2,104	35,625	3,433
31-3-1943	10,714	—	786	—	1,800	182	12,982	—	12,982	180,905	27,046	2,746	24,300	2,411
20 31-3-1944	8,246	—	1,344	—	1,518	317	11,425	—	11,425	120,287	27,298	2,860	24,438	2,321
31-3-1945	12,325	—	—	—	983	525	13,788	—	13,788	167,771	68,047	3,908	64,139	5,269
31-3-1946	8,232	—	—	—	1,314	309	9,855	—	9,855	122,383	41,722	3,664	38,058	3,065
31-3-1947	4,312	1,087	—	—	684	700	6,783	—	6,783	87,361	22,770	3,401	19,369	1,493
31-3-1948	138	3,829	—	—	445	2,915	7,327	—	7,327	68,981	16,258	3,437	12,816	1,361
31-3-1949	Loss 597	1,824	—	708	1,000	1,884	4,819	—	4,819	55,065	11,034	3,048	7,986	699
31-3-1950	2,313	18,979	—	630	1,000	2,644	20,566	373	20,193	174,543	75,265	4,534	70,731	8,183
	63,071	20,719	1,952	1,338	11,158	9,581	107,819	373	107,446	1,208,799	347,969	31,631	316,338	28,940

Notes:

- This statement should be regarded as approximate. It has been prepared from income tax statements of Mr. Vander Poorten and takes no account of what income was actually received by Mrs. Vander Poorten direct.
- Only for certain years taxes have been paid and for certain other years full taxes levied have not been paid. In particular assessment for 1950/51 is not final and tax taken into account is approximate.
- The column headed "Income from Greenwood, Normandy and Weywetalawa", shows income from Greenwood only during the years 1946/47, 1947/48 and 1948/49.
- Figures in column 9 show the income without taking into account adjustments for Colombo, Dated: 16th November, 1957.
- Figures in Columns 10 and 11 relate to adjusted income for tax purposes.
- Figures in Column 14 is proportionate tax on the amount shown in column 9, on the basis of the figures in Columns 10 and 13.
- Another way of arriving at the tax on Mrs. Vander Poorten's income would be to calculate the proportion of the figure in column 11 on the basis of figures in column 10 and then deduct from the figure so arrived tax deducted at source on dividends income of Mrs. Vander Poorten.

(Sgd.) Aiyar & Co.,
Chartered Accountants.

D 2
Account
showing
Distrib-
table Share
Income from
Estates for
the period
1-12-40—
31-3-56—
18-11-57.

Account showing Distributable Share Income from Estates
for the Period 1.12.40—31.3.56.

Mrs. Hilda Vander Poorten

DISTRIBUTABLE SHARE INCOME FROM ESTATES FOR THE
PERIOD 1ST DECEMBER, 1940 TO 31ST MARCH, 1955.

VANDER POORTEN ESTATES :	Rs.	Rs.
As per our computation dated 15th March, 1955 ...	63,392	
Share of profit for the year ended 31st March, 1955...	3,426	
	<u>66,818</u>	¹⁰
Less Share of loss for the year ended 31-3-1956 ...	1,825	64,993

MR. AND MRS. VANDER POORTEN ESTATES :

As per our computation dated 15th March, 1955 ...	98,096
Share of profit for the year ended :	
31-3-1955 ...	29,589
31-3-1956 ...	7,030
	<u>134,715</u>
Total ...	<u>199,708</u>

The above sum of Rs. 199,708/- is shown in our com-
putation dated 14-11-1957 as under :—

1/20th share in income of Vander Poorten Estates for the period 1-12-1940 to 31-12-1950	61,671	20
1/20th share in income of Vander Poorten Estates for the period 1-1-1951 to 31-3-1956...	3,322	64,993
1/9th share in income of Mr. and Mrs. Vander Poorten Estates for the period 1-10-1946 to 31-3-1956 ...	...	134,715
	Rs. ...	<u>199,708</u>

(Sgd.) AIYAR & CO.,
Chartered Accountants.

Colombo,
Dated : 18th November, 1957.

Rules of Business for Current Deposit Accounts in the Mercantile

Bank of India, Ltd., Colombo Branch.

MERCANTILE BANK OF INDIA, LTD.

*(Incorporated in England, Liability of
Shareholders Ltd.)*

D 6
Rules of
Business for
Current
Deposit
Accounts in
the Mercan-
tile Bank of
India, Ltd.,
Colombo
Branch.

Authorised Capital	...	...	...	...	£3,000,000
Subscribed Capital	...	...	...	...	£1,800,000
Paid up	...	...	...	...	£1,050,000
10 Reserve Fund	...	...	...	...	£1,350,000

HEAD OFFICE :

15, Gracechurch Street, London E. C. 3.

BRANCHES :

Throughout the East and at Port Louis (Mauritius)
and New York.

AGENCIES IN :

All parts of the World.

LONDON BANKERS :

Bank of England and the Midland Bank, Ltd.

COLOMBO BRANCH :

Rules of Business for Current Deposit Accounts.

1. Accounts will not be opened for less than Rs. 2,000 and may not be overdrawn except under special arrangements with the Manager.

2. Accounts are balanced half-yearly on 30th June and 31st December.

3. A ledger fee is levied half-yearly on all accounts showing an average credit balance of under Rs. 2,000.

4. A commission of 25 cents will be charged on Cheques drawn for sums under Rs. 10.

5. The Bank supplies separate Paying-in-books for cash and cheques and Constituents are requested to use the appropriate books when paying in funds for their credit. With regard to cheques, drafts and of other negotiable instruments, it would facilitate work if clearing cheques on Colombo Banks were entered in one slip and separate slips used for other collection items with full particulars entered thereon. The counterfoils will be initialled by an officer of the Bank and person paying in should see that this is done.

6. Cheque forms are supplied by the Bank and application for new cheque books should be made on the form inserted in each book for the purpose. The Bank reserves to itself the right to refuse to honour cheques other than those drawn on the forms specially provided by the Bank. When cheque books are forwarded by post an acknowledgment receipt form is enclosed which customers are especially requested to return immediately duly signed.

7. When drawing cheques the amount should be written clearly both in words and figures in such a manner as to prevent alterations or the insertion of other words ; the word only should be added after the amount in writing, or a line drawn to fill the remaining space. Cheques altered in any way will not be paid unless such alterations bear the signature of the drawer in full.

The Bank will not hold itself responsible for the payment through oversight or owing to the pressure of business, of any cheques which may have been advised as lost, stolen or mislaid. The Bank will do all it can to protect the interest of the clients, but does not guarantee the non-payment of such cheques.

8. Cheques on Colombo Clearing Banks should be lodged on week days not later than 11.30 a.m. for clearance the same day. Cheques lodged on Saturdays will not be cleared until the following business day. A commission will be charged on all up-country cheques and Government Vouchers and other miscellaneous collection items in accordance with the scale in force at the time. Such items will not be credited until realised.

9. Pass Books are supplied by the Bank and should be sent in at least once a month to be written up and especially for the half-yearly balance on 30th June and 31st December.

Constituents are requested to examine all entries carefully and to report at once any error that they may detect therein, otherwise receipts of the pass book will be deemed an acknowledgment that the entries are correct up to the date of the last entry.

Customers must on no account write in their pass books.

10. Certificates of balance are sent for confirmation by Customers at the close of every half-year and the confirmation letters should be returned without delay, the Bank being immediately notified of any errors discovered.

10 The Bank will assume the balance to be correct if this confirmation letter is not returned within 10 days or in the case of certificates forwarded to outstations or abroad, within a reasonable time after despatch thereof.

N.B.—When pass books are returned to the Bank please note that letters and cheques must not be enclosed inside the pass book.

TRUSTEESHIPS AND EXECUTORSHIPS.

The Mercantile Bank of India, Ltd., is prepared to undertake these duties and desires to invite its constituents attention to some of the advantages secured by the appointment of a Bank as a trustee and/or Executor under a Will or Settlement.

20 CONTINUITY OF EXISTENCE.

Secrecy.

Immunity from Loss by Fraud.

Moderate fixed fees.

A booklet giving full particulars may be obtained on request.

Supreme Court of Ceylon,
S. C. 376 (Final) of 1958.

District Court of Colombo,
Case No. 84367/M.

In Her Majesty's Privy Council
on an Appeal from
The Supreme Court of Ceylon

BETWEEN

MRS. HILDA VANDER POORTEN of No. 20, Alfred Place,
Colpetty, Colombo.....Plaintiff-Respondent.
Appellant.

AND

JOSEPH VANDER POORTEN of No. 68, Wilpenna Street,
Eden Hills, South Australia.....Defendant-Appellant.
Respondent.

RECORD
OF PROCEEDINGS
