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Judgment  
1, 1966

No. 41 OF 1964

Supreme Court of Ceylon,  
Application No. 346 of 1962,  
Appeals Nos. 151 (Final) of 1960,  
and 374 (Final) of 1960.

District Court of Galle,  
Case No. L/6177.

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

BETWEEN

MANIKPURA PEIRIS MUNASINGHE of Dangedera, Galle.  
1st Defendant - Respondent.  
*Appellant.*

AND

1. CYNTHIA PEARLINE VIDANAGE of Bataduwa, Galle.  
Plaintiff - Appellant.  
*Respondent.*
2. BERTRAM CLIVE VIDANAGE of Dangedera, Galle, now of  
Motor and Cycle Stores, Puttalam Road, Kurunegala.  
2nd Defendant - Respondent.  
*Respondent.*

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RECORD  
OF PROCEEDINGS

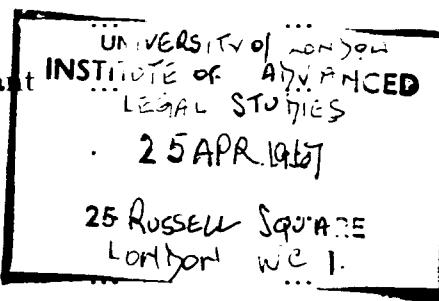
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INSTITUTE OF ADVANCED  
LEGAL STUDIES

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## EXHIBITS

## Plaintiff's Documents

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No. 41 OF 1964

Supreme Court of Ceylon,  
Application No. 346 of 1962,  
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District Court of Galle,  
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MANIKPURA PEIRIS MUNASINGHE of Dangedera, Galle.  
1st Defendant - Respondent.  
*Appellant.*

AND

1. CYNTHIA PEARLINE VIDANAGE of Bataduwa, Galle.  
Plaintiff - Appellant.  
*Respondent.*
2. BERTRAM CLIVE VIDANAGE of Dangedera, Galle, now of  
Motor and Cycle Stores, Puttalam Road, Kurunegala.  
2nd Defendant - Respondent.  
*Respondent.*

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RECORD  
OF PROCEEDINGS

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**JOURNAL ENTRIES**

**IN THE DISTRICT COURT OF GALLE**

C. P. VIDANEGE, Galle.

*Plaintiff.*

No. L-6177.

Class :

Amount : Rs. 34,000/-

*Vs.*

Nature : Declaration of Title.

Procedure : Regular.

M. P. MUNASINGHE & ANOTHER of Galle,

*Defendants.*

10

**JOURNAL**

The 28th day of May, 1959.

Mr. K. R. Alson de Silva, Proctor files appointment and **Plaint.**

Plaint accepted and Summons ordered for 6-7-59.

(Sgd.) M. A. M. HUSSAIN,  
*District Judge.*

10-6-59

Summons issued with Precept returnable the 3rd day of July, 1959.

(Intd.) .....

20

6-7-59

Summons not served on 1 and 2 D.

(1 D not in the village. 2 D at Kurunegala).

Reissue to same address for 24-8-59.

(Intd.) N. K.  
*D. J.*

1 Summons on 1 D reissued.

Intd.....

9-7-59

2 defendant Present.

30

Summons served.

24-8-59

Summons served on 1 D.

Proxy of 1 defendant filed by Mr. Abeywardena.

Answer on 14-9-59.

(Intd.) N. K.  
*D. J.*

14-9-59

Answer due.

*Vide* motion. Mr. Abeywardena moves for another date to file answer.

40

Answer for 28-9-59.

(Intd.) M. A. M. H.  
14-9-59  
*A. D. J.*

28-9-59

Declared a Public Holiday.

No. 1  
Journal  
Entries  
28-5-59  
to  
4-6-68  
—continued.

29-9-59  
Answer due filed by Mr. Abeywardena.

Call before D. J.

(Intd.) M. A. M. H.  
29-9-59

Trial — 2-12-59.

(Intd.) N. K.

24-10-59

Proctor for defendant tenders list of witnesses and documents — filed.

(Intd.)..... 10

5-11-59

1 Subpoena on 1st defendant's list to Colombo.

1 do to Kurunegala.

(Intd.) N. K.

6-11-59

Proctor for plaintiff tenders list of witnesses and documents and abstract of documents. He also moves for an order to deposit Rs. 80/- as batta to 2 and 3 witnesses in the list.

1. File list.

2. Issue Deposit Note for Rs. 80/-.

20

(Sgd.) N. KRISHNADASAN,  
D. J.

17-11-59

Proctor for plaintiff states that the Commissioner of Income Tax has informed him that copies of Income Tax returns of the plaintiff's husband are not available, but that he is prepared to give evidence and produce the necessary documents if and when he is summoned.

He therefore tenders Summons and moves that the Court be pleased to order the same to be issued on the Commissioner of Income Tax to cause the production of the plaintiff's husband's Income Tax returns and to give evidence and thereafter if necessary to cause the Commissioner to issue certified copies, as the plaintiff's husband P. D. Elaris is a witness for plaintiff to prove certain payments.

He also tenders Kachcheri Receipt No. 1269 of 17-11-59 for Rs. 50/- being batta to two witnesses.

**Order**

Support 20-11-59.

(Sgd.) N. KRISHNADASAN.

20-11-59

Support Journal Entry of 17-11-59.

Mr. Alson de Silva withdraws his application of 17-11-59.

No. 1  
Journal  
Entries  
28-5-59 to  
4-6-68  
—continued.

Trial 2-12-59.

(Sgd.) N. KRISHNADASAN.

23-11-59

Summons on 1 witness from plaintiffs list issued.

(Intd.) .....

24-11-59

Proctor for plaintiff tenders additional list of witnesses and moves that the same be filed and that an order to deposit Rs. 25/- as batta be issued.

10

List filed and Summons issued.

(Intd.) .....

30-11-59

Mr. Alson Silva moves that the Summons on one of his material witnesses viz :

Mr. Cecil Arasakularatne, Registered Accountant, which has been returned to court unserved, be handed to him for service.

Summons handed — original filed.

(Intd.) .....

20 Eo-die

Proctor for plaintiff tenders additional list of documents.

Eo-die

Proctor for 1st defendant tenders additional list of witnesses.

Filed.

(Intd.) .....

2-12-59

**Trial (1)**

Mr. K. R. Alson de Silva for plaintiff.

Mr. G. E. Abeywardena for 1 D.

30

No time.

Trial postponed for 7-3-60.

(Sgd.) N. KRISHNADASAN,  
D. J.

3-12-59

1. Requisition for Rs. 20/- issued to Mr. Cecil Arusakularatne, Registered Accountant in Colombo.

2. ,, ,, ,, 30/- ,, ,, Mr. E. Wijesundera, Proctor.

(Intd.) .....

No. 1  
Journal  
Entries  
28-5-59 to  
4-6-68  
continued.

10-2-60  
1 witness re-cited from plaintiff's lists.  
Summons issued to Colombo. (Intd.) .....

3-3-60  
2 witnesses cited from defendants' list filed.  
Summons handed and original filed. (Intd.) .....

7-3-60  
**Trial (2)** 10

Appearances as above.  
*Vide* proceedings.  
Further trial 14-3-60. (Sgd.) N. KRISHNADASAN,  
D. J.

14-3-60  
**Further Trial (3)**

Same appearances.  
*Vide* proceedings.  
Documents for 16-3-60. (Sgd.) N. KRISHNADASAN,  
D. J. 20

16-3-60  
Documents due.  
1D1, 1D1A, 1D2, 1D2A, and 1D3 filed.  
P1 — P21 filed.  
Judgment — 6-4-60. (Sgd.) N. KRISHNADASAN.

16-3-60  
Deficiency stamps (Rs. 9/12) due from Proctor for Plaintiff. 30  
(Intd.) .....

Deficiency stamps supplied.  
(Intd.)

22-3.  
6-4-60  
Judgment delivered in open Court.  
Plaintiff Present.  
1 Defendant Present.  
D/D — 14-4. (Sgd.) N. KRISHNADASAN. 40

11-4-60  
Proctor for plaintiff moves to deposit Rs. 24/- being fees for typed  
brief of this case, as the plaintiff intends appealing against the  
Judgment.  
Issue Paying-in-Voucher. (Sgd.) N. KRISHNADASAN,  
D. J.

Paying-in-Voucher issued.  
(Intd.).....  
11-4.

11-4-60

Mr. K. R. Alson de Silva, Proctor for plaintiff tenders petition of appeal of the plaintiff-appellant together with Kachcheri Receipt for Rs. 24/- being fees for type-written copy of case and the application for same and moves that the same be accepted and filed.

He also tenders uncanceled stamps to the value of Rs. 19/50 and Rs. 39/- for certificate in appeal and Supreme Court Judgment form respectively and moves that the same be accepted.

10 He also tenders notice of security and moves that the same be issued for service on 1 and 2 respondents and on the 1st respondent's Proctor.

Returnable 20-4-60

He also moves for an order to deposit Rs. 200/- as security for costs in appeal.

He also tenders notice of appeal together with copies of petition of appeal and moves that the same be issued in due course.

### Order.

1. Accept and file petition of appeal and application for type-written copies.
- 20 2. Accept stamps.
3. Issue notice of security for 20-4-60.
4. Issue Deposit Order for Rs. 200/-.
5. Accept and file notice of appeal to be issued in due course.

(Sgd.) N. KRISHNADASAN,  
D. J.

20-4-60

Notice of security served on 1 and 2 defendants-respondents and on Proctor for 1st defendant-respondent. (Mr. G. E. Abeywardena).

1st defendant-respondent is present.

20 2nd defendant-respondent is absent.

Mr. Abeywardena is present.

Mr. Silva tenders Kachcheri Receipt No. 959 of 11-4-60.

Security is accepted.

Mr. Silva also tenders Security Bond No. 2800 of 20-4-60.

Bond accepted.

Issue notice of appeal returnable 4-5.

(Intd.) M. A. H. M.  
A. D. J.

21-4-60

Proctor for defendant moves for an order to deposit Rs. 25/- being fees for type-written copy in this case.

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

(Intd.) ..... 10

4-5-60

Notice of appeal served on 1st defendant-respondent.

He is absent.

Not served on 2nd defendant-respondent.

Not found.

Reissue for 6-7-60.

(Intd.) .....

27-5-60

Proctor for plaintiff-appellant moves for an order to deposit a further sum of Rs. 20/- as additional fees for type-written copies in this case. 20

Order : issue.

(Sgd.) N. KRISHNADASAN.

Paying-in-Voucher Issued.

(Intd.)

27-5.

Kachcheri Receipt 1866 of 27-5-60 filed.

(Intd.)

30-5-60

Proctor for defendant moves that the appeal of the plaintiff in this case be abated under Rule 4 of the Civil Appellate Rules as the plaintiff-appellant has not complied with Rule 2 (1) of the Civil Appellate Rules in that the plaintiff has not deposited the prescribed fees Rs. 25/- for typewritten copies as provided in the schedule therein according to the class in this case and as such the plaintiff's appeal is fatal and has to be abated.

**Order.**

Issue notice on the plaintiff-appellant for 27-6.

(Sgd.) N. KRISHNADASAN.



4-6-60

Mr. K. R. Alson de Silva, Proctor for plaintiff-appellant states that objection has been taken that there is a deficit of a sum of Re 1/- on the original amount deposited for the type-written copies with the petition of appeal.

No. 1  
Journal  
Entries  
28-5-59 to  
4-6-63  
—continued.

He begs that the Court be pleased to note that a further sum of Rs. 20/- has been deposited by him on a later date and that the deficiency of Re. 1/- be deducted out of the sum of Rs. 20/- deposited later.

10 Note.

(Sgd.) N. KRISHNADASAN,  
D. J.

27-6-60

Notice to abate the appeal served on Proctor for plaintiff-appellant.

He is — present.

Not served on plaintiff-appellant.

— Not found.

Inquiry 27-7-60.

(Sgd.) N. KRISHNADASAN.

20 6-7-60

Notice of appeal served on 2nd D-respondent.

2 R is — absent.

Inquiry — 27-7.

(Sgd.) N. KRISHNADASAN.

27-7-60

### Inquiry (1)

*Vide* proceedings.

Order on 10-8-60.

(Sgd.) N. KRISHNADASAN.  
D. J.

30

10-8-60

Order delivered in open Court.

1 D — present.

Mr. Alson de Silva — present.

Mr. S. Abeywardena — present.

(Sgd.) N. KRISHNADASAN.

12-8-60

Mr. K. R. Alson de Silva tenders petition of appeal from plaintiff-

appellant with Kachcheri Receipt for Rs. 25/- being fees for type-written copies together with application for type-written copies and moves that same be accepted and filed.

He also tenders uncanceled stamps to the value of Rs. 19/50 and Rs. 39/- for certificate in appeal and Supreme Court decree respectively.

He also tenders notice of security on Proctor for 1st respondent and on respondents, returnable 24-8-60.

He also moves for an order to deposit Rs. 200/- as security for costs.

He also tenders notice of appeal with copies of petition of appeal. 10

1. Accept petition of appeal.
2. Register application for typewritten copies.
3. Affix stamps on necessary forms.
4. Issue notice of security for 24-8-60.
5. File notice of appeal to be issued after security is perfected.
6. Issue Paying-in-Voucher for Rs. 200/-.

(Sgd.) N. KRISHNADASAN.  
D. J.

3 Notices issued.

Paying-in-Voucher issued. 20

(Intd.)  
12-8.

24-8-60

Notice of security served on 1 and 2 defendants-respondents and on Mr. G. E. Abeywardena Proctor.

Mr. Abeywardena present. 1 defendant present.

Kachcheri Receipt for Rs. 200/- with bond tendered.

Accept security.

Issue notice of appeal.

28-9.

(Sgd.) M. A. M. HUSSAIN. 30

1-9-60

Proctor for 1st defendant-respondent moves for an order to deposit

Rs. 25/- being fees for type-written copies in the case.

Issue Paying-in-Voucher.

(Sgd.) N. KRISHNADASAN,  
D. J.

No. 1  
Journal  
Entries  
28-5-59 to  
4-6-63  
—continued.

28-9-60

Notice of appeal served on 1st defendant-respondent.

He is absent.

Not served on 2nd defendant-respondent.

— Not in the village.

10 Re-issue for 16-11-60.

(Intd.) A. E. B.  
A.D.J.

16-11-60

Notice of appeal not served on 2nd defendant-respondent.

— said to be at Kurunegala.

He is present.

List of documents 23-11.

(Intd.) M. A. M. H.

23-11-60

20 List of documents due —

— filed.

Forward record to Superme Court

(Sgd.) M. A. M. HUSSAIN.

6-1-61

Record sent to Supreme Court with Vol. II.

18-2-63

Case record received from Supreme Court together with Supreme Court Judgment.

30 Decree appealed from is set aside, and it is ordered that decree be entered declaring the plaintiff entitled to the premises described in the two schedules to the plaint and to the ejection of the 1st defendant therefrom.

Proctors concerned to note.

Call case on 14-3-63,

(Sgd.).....  
D. J.

19-2-63

No. 1  
Journal  
Entries  
28-5-59 to  
4-6-63  
—continued.

14-3-63

Called. *Vide* Journal Entry of 18-2-63.

Steps if any on 28-3-63.

(Sgd.) .....  
A. D. J.

28-3-63

14-3-63

Steps if any due.

Inquiry into question of authorized rent on 26-4-63.

(Sgd.) ..... 10  
A. D. J.  
28-3-63

30-3-63

Proctor for 1st defendant tenders motions stating that the 1st defendant in this case has filed papers in Supreme Court for leave to appeal to Her Majesty in Council from the Judgment of Supreme Court.

He files herewith petition and affidavit filed by the 1st defendant for leave to appeal and the notice of which has already been served on the plaintiff and the said matter is for inquiry on 4-4-63. 20

He moves that Court be pleased to note the same of record.

Note and file.

(Sgd.) .....  
A. D. J.

1-4-63

Proctor for plaintiff moves for an order of payment in his favour for Rs. 200/- deposited by him as security for defendant's costs, of the second appeal against the abatement of appeal.

Plaintiff consents.

Proctor for 1st defendant received notice.

30

Plaintiff's signature identified.

*Vide* Supreme Court Judgment — Pay.

(Sgd.) .....  
A. D. J.

3-4-63

Requisition for Rs. 200/- issued in favour of Mr. K. R. Alson de Silva.

(Intd.) ..... 40

6-4-63

Proctor for plaintiff tenders application for writ of delivery of possession and writ and moves that the application be allowed and writ be issued.

Issue writ of delivery of possession.

(Sgd.).....  
A. D. J.

No. 1  
Journal  
Entries  
28-5-59 to  
4-6-63  
—continued.

Assessment numbers given in the writ does not agree with those given in the plaint and decree.

(Intd.).....  
10-4-63.

15-4-63

10 Proctor for plaintiff tenders motion and for the reasons stated therein moves that the schedules be amended by striking off '548' and inserting '542' in its place, as in the Decree filed of record the number has been mentioned as '548' which is a mistake for No. 542.

He begs that the Writ of Possession tendered be issued.

Support on bench on 29-4-63.

(Sgd.) .....  
A. D. J.  
17-4-63.

16-4-63

20 1st defendant moves to revoke the proxy granted by him to Mr. D. H. B. Peiris.

Mr. Peiris consents. Revocation allowed.

(Sgd.) .....  
A. D. J.  
17-4-63.

Eo-die

30 Mr. P. G. Somadasa tenders fresh proxy from the 1st defendant together with his petition and affidavit and for the reasons stated therein moves that the Court be pleased to vacate the exparte order made on 8th instant allowing the issue of writ of possession pending hearing of their applications.

He also moves for a notice on the plaintiff to show cause why the proxy of the petitioner should not be allowed.

Support application on 29-4-63.

(Sgd.) .....  
A. D. J.  
17-4-63.

**Inquiry**

26-4-63

Inquiry into question of authorized rent on 29-4-63.

40 (Sgd.) .....  
A. D. J.  
26-4-63.

No. 1  
Journal  
Entries  
28-5-59 to  
4-6-63  
—continued.

**Inquiry**

29-4-63

Call on 15-5-63.

(Sgd.) .....  
D. J.

15-5-63

Called. *Vide* Journal Entry above.

*Vide* proceedings.

Order on 31-5-63.

(Sgd.) .....<sup>10</sup>  
A. D. J.  
15-5-63

Proceedings filed.

(Intd.)

25-5-63.

17-5-63

Proctor for plaintiff tenders motion stating that in this case the decree dated 6-4-60 from which the appeal was taken by the 1st defendant there is a typist's error in the assessment number of the second named land in the schedule namely No. 548 for No. 542<sup>20</sup> and for other reasons stated in the motion he moves that the court be pleased to have these called on Bench in order that he may support this motion to elucidate the difference between the decree of 6-4-60 and the new decree that he has tendered to court in terms of the Supreme Court Judgment.

He moves that this case be called on 21-5-63 to support this motion.

Copy of motion handed to the office of the proctor for 1st defendant.

Call on 21-5-63.

(Sgd.) .....<sup>30</sup>  
A. D. J.  
20-5-63.

21-5-63

Called. *Vide* Journal Entry of 17-5-63.

Notice 1st defendant's proctor re this application returnable 31-5-63.

(*Vide* proceedings of 15-5-63).

Order will not be delivered on 31-5-63.

(Sgd.) .....  
A. D. J.  
21-5-63.

31-5-63

Notices not issued on 1st defendant's proctor re. application of 17-5-63.<sup>40</sup>

Not tendered.

*Vide* telegram received from Registrar Supreme Court moving that this record be forwarded to him immediately.

No. 1  
Journal  
Entries  
28-5-59 to  
4-6-63  
—continued.

*Vide* proceedings.

Forward Record to Supreme Court forthwith.

(Sgd.) .....  
A. D. J.  
31-5-63

Proceedings filed.

(Intd.)  
31-5-63.

10

4-6-63

Record forwarded to Supreme Court (Vol. 1 and 2).

(Intd.) .....

---

No. 2

No. 2  
Plaint of the  
Plaintiff  
28-5-59

PLAINT OF THE PLAINTIFF

IN THE DISTRICT COURT OF GALLE

CYNTHIA PEARLINE VIDANAGE of

Bataduwa in Galle.

*Plaintiff.*

20

No. L-6177.

*Vs.*

1. MENIKPURA PEIRIS MUNASINGHE

2. BERTRAM CLIVE VIDANAGE both

of Dangedera, Galle.

*Defendants.*

On this 28th day of May 1959.

The plaint of the plaintiff abovenamed appearing by K. R. Alson de Silva, her Proctor states as follows :—

1. The plaintiff and the defendants reside at the respective places aforesaid within the jurisdiction of this Court and the cause of action hereinafter mentioned also arose within its jurisdiction.

2. The 1st defendant abovenamed was the owner of (a) an undivided one-fourth ( $\frac{1}{4}$ ) part or share of the land called Millagahawatta *alias* Midellagahawatta or Owita together with the entirety of the fifteen cubits house and the outhouses standing thereon bearing Municipal Assess-

30

No. 2  
Plaint of the  
Plaintiff  
28-5-59  
—continued.

ment No. 541 and (2) an undivided 11/20 parts or shares of the land called Millagahawatta Midellagahawatta together with the entirety of the buildings standing thereon bearing Municipal Assessment No. 540, both situated at Dangedera within the Four Gravets of Galle, Galle District, Southern Province and morefully described in the schedules 1 and 2 hereto annexed.

3. The said 1st defendant by his deed of Transfer No. 1343 dated 1st November, 1948 attested by Edwin Wijesurendra, Notary Public, sold and transferred the said premises to the plaintiff abovenamed for the sum of Rs. 20,500/- subject to the following conditions : *viz* :—

10

“ that if the defendants or the survivor of either of them shall be desirous of obtaining a re-transfer of the said premises and shall at any time within ten years from the date of the said deed pay to the plaintiff or her afore-written the said sum of Rs. 20,500/- with interest thereon at the rate of six per centum per annum from the date thereof till payment in full and shall cause to be prepared at their expense the necessary deed of transfer then the said plaintiff or her heirs shall sell and convey back the said premises to the 1st named defendant in either event whether the 1st defendant alone or both the defendants 20 should then be alive or to the survivor of either defendant if one or the other of them shall then be dead ; if both the defendants shall be dead then the heirs executors and administrators and assigns of the 2nd defendant alone shall be at liberty to claim such re-transfer. That the deed of re-transfer shall in any event be subject to the further condition that it shall be stated in the said deed of transfer that the said plaintiff or her aforewritten shall and will not warrant and defend title to the said premises or any part thereof nor become liable to refund the said sum of Rs. 20,500/- and interest 30 or any part thereof under any circumstances whatsoever save and except in the event of any dispute touching the said premises by reason of any act deed matter or thing done by her the said plaintiff or her aforewritten ”.

4. The said period of ten years expired on the 1st day of November, 1958 and neither the 1st defendant nor the 2nd defendant paid the said sum of Rs. 20,500/- and the interest agreed upon in the said deed of transfer No. 1343 nor did the defendants or either of them call upon the plaintiff to execute the deed of re-transfer contemplated in the said deed of transfer by offering the said sum of Rs. 20,500/- and interest as agreed 40 upon.

5. By such failure and neglect on the part of the defendants to pay the said sum of Rs. 20,500/- and interest within the period of ten years and call for a re-transfer from the plaintiff the defendants have confiscated the right to call for such re-transfer and the plaintiff is now the owner of the said premises.

6. On or about the 19th day of November 1958 the plaintiff above-



named informed the defendants by way of a lawyer's notice that the period of ten years expired on the 1st day of November 1958 and called upon the 1st defendant who is in occupation of the premises to quit and deliver over the same to the plaintiff.

No. 2  
Plaint of the  
Plaintiff  
28-5-59  
—continued.

7. The 1st defendant has not only failed and neglected to deliver over quiet possession of the said premises to the plaintiff but also is in unlawful and forcible possession thereof. He has cut down some valuable jak trees which were standing on the said lands. The plaintiff has thereby suffered loss and damage which she assesses at Rs. 150/- per month. The  
10 1st defendant is continuing to be in unlawful and forcible possession of the said premises although several attempts have been made to take over possession.

8. The 2nd defendant is made a party to these proceedings merely to give him notice of this action only as he has indicated by his letter that he has no objection to the plaintiff's occupation and possession of the premises in question.

9. The plaintiff values the said premises at Rs. 34,000/-.

10. A cause of action has thus accrued to the plaintiff to sue the 1st defendant and the 2nd defendant for a declaration of title to the said  
20 premises and to have the 1st defendant ejected therefrom and to recover damages at the rate of Rs. 150/- per month from the 1st defendant from the 1st day November 1958 till the plaintiff is restored to possession.

WHEREFORE the Plaintiff prays :—

- (a) That she be declared entitled to the premises described in the schedules 1 and 2 hereto.
- (b) That the 1st defendant be ejected therefrom and the plaintiff be placed in quiet possession thereof.
- (c) That the 1st defendant be ordered and decreed to pay to the plaintiff a sum of Rs. 900/- being damages at the rate of Rs. 150/- per month from 1st November 1959 for withholding for the plaintiff the possession of the said property and continuing damages thereafter at the same rate until the plaintiff is placed in quiet possession thereof.
- (d) For costs and for such other and further relief as to this court shall seem meet.

(Sgd.) K. R. ALSON DE SILVA,  
*Proctor for Plaintiff.*

The schedule above referred to :—

1. All that undivided one-fourth ( $\frac{1}{4}$ ) part or share of the soil and trees  
40 of the land called Millagahawatta *alias* Midellagahawatta or Owita to-

No. 2  
Plaint of the  
Plaintiff  
28-5-59  
—continued.

gether with the entirety of the fifteen cubits house and the out-houses standing thereon situated at Dangedera within the Four Gravets of Galle, Galle District, Southern Province and bearing Municipal Assessment No. 541 and bounded on the North by the High Road, East by the High Road, South by Kompadorugewatta and West by Millagahawatta *alias* Midellagahawatta containing in extent about one acre (1A-0R-0P).

2. All that undivided eleven upon twenty (11/20) part or share of the land called Millagahawatta *alias* Midellagahawatta situated at Dangedera aforesaid bearing Municipal Assessment No. 542 together with the entirety of the buildings standing thereon bearing Municipal Assessment No. 540<sup>10</sup> built by Menikpurage Adirian and bounded on the North by Hikgahaliyadda, East by the Owita of the same land, South by Kompadorugewatta and West by Hikgaha Liyadda *alias* Pedikumbura containing in extent four acres and twenty-nine perches (4A-0R-29P).

(Sgd.) K. R. ALSON DE SILVA,  
*Proctor for Plaintiff.*

No. 3  
Answer  
of the  
1st Defen-  
dant  
28-9-59

No. 3

ANSWER OF THE 1st DEFENDANT

IN THE DISTRICT COURT OF GALLE

CYNTHIA PEARLINE VIDANAGE OF

20

Bataduwa in Galle.

*Plaintiff.*

*Vs.*

No. L. 6177.

1. MENIKPURA PEIRIS MUNASINGHE
2. BERTRAM CLIVE VIDANAGE both  
of Dangedara, Galle.

*Defendants.*

On this 28th day of September 1959.

The answer of the 1st defendant abovenamed appearing by G. E.<sup>30</sup> Abeywardena, his Proctor, states as follows :—

1. This defendant admits his residence within the jurisdiction of this Court and denies everything else in the plaint inconsistent with this answer.

2. This defendant admits correctness of averments contained in paragraph 2 of the plaint and further states that he is still the beneficial owner of the premises mentioned therein.

3. Answering paragraph 3 of the plaint this defendant admits that the plaintiff's husband and the 2nd defendant got him to sign a document but denies that he ever sold the premises dealt with in the said document or that any beneficial interest in the properties mentioned therein passed to the plaintiff by the signing of the said document for the reasons mentioned hereafter. This defendant also puts the plaintiff to proof of the due execution of the deed referred to and to the payment of consideration thereon.

10 4. Further answering the same paragraph 3 of the plaint this defendant states that the conditions mentioned in the said document regarding the re-transfer within a period of ten years were inserted therein at the request of the plaintiff's husband and of the 2nd defendant in order to give an appearance of reality to the alleged money transaction mentioned in the attestation of the said deed and in order that the plaintiff and her brother the 2nd defendant may be benefited if this defendant died within the 10 years stipulated in the said deed to the exclusion of the 1st defendant's other intestate heirs.

20 5. By way of further answer this defendant states that this is a collusive action brought by the plaintiff and her brother the 2nd defendant who are children of a sister of the 1st defendant in order to deprive the 1st defendant of his ancestral and residential properties possessed exclusively by the 1st defendant for well over the prescriptive period and where the 1st defendant and his sister both of whom are unmarried and without children have been residing ever since their birth up to the present moment.

30 6. Further answering this defendant states that by the exertion of undue influence on this defendant by the plaintiff and her husband and brothers this defendant was induced to sign the document referred to in paragraph 3 of the plaint which was not the act and deed of this defendant as he was made to understand that the execution of an instrument of the nature of the deed referred to was the safest and the surest step to be taken in order to protect the properties dealt with in the said document from possible improvident hypothecation or alienation of them by the 1st defendant himself; a step that was necessary, according to the representations of the members of the plaintiff's family to ensure that the 1st defendant and his unmarried and childless sister Lilly will be able to live in their ancestral house till the end of their respective lives.

40 7. Still further answering the plaint this defendant states that there was no consideration whatsoever on the deed referred to and no beneficial interest in the property dealt with in the said deed passed to the plaintiff on the execution thereof and the plaintiff holds the said property in trust for this defendant who is entitled to a transfer of the legal title to the said properties from the plaintiff and which he now claims in reconvention.

8. This is a speculative action brought by the plaintiff at the instance of her husband and brothers one of whom is the 2nd defendant who never had any title to the premises though he is alleged to have joined in the deed referred to.

No. 3  
Answer of the  
1st Defendant  
28-9-59  
—continued.

9. This defendant further states that the plaintiff with the active participation of her husband and of her brother the 2nd defendant practised a fraud on him by representing to him that the execution of an instrument in the nature of the deed referred to was in the best interest of this defendant and got this defendant to sign the said document and she (the plaintiff) or the 2nd defendant cannot now be allowed to take advantage of their own fraud and claim the land as against this defendant.

10. This defendant also denies that any cause of action has accrued to the plaintiff to sue this defendant and he also denies that the plaintiff has suffered any damages whatsoever as a result of any action of this 10 defendant.

11. This defendant has also acquired a prescriptive title to the properties in question, the benefit of which he now claims.

WHEREFORE this Defendant Prays :—

- (a) That plaintiff's action be dismissed with costs.
- (b) That it be declared that the 1st defendant is the beneficial owner of the properties in question.
- (c) That the plaintiff be compelled to transfer the legal title to the properties in question in favour of the 1st defendant.
- (d) For costs and for such other and further relief as to this 20 Court may seem meet.

(Sgd.) G. E. ABEYWARDENA,  
*Proctor for 1st Defendant.*

Perused and settled by :

(Sgd.) S. S. J. GOONASEKERA,  
Advocate.

No. 4  
Issues  
Framed  
7-8-60

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No. 4

No. L/6177.

**Issues Framed**

7th March 1960.

Mr. Advocate Dias Abeysinghe instructed by Mr. K. R. Alson de 30  
Silva, for the plaintiff.

Mr. Advocate S. S. J. Goonasekera instructed by Mr. G. E. Abeywardena, for the 1st defendant.

Mr. Dias Abeysinghe suggests :

1. Is the plaintiff entitled to the premises described in the schedule to the plaint ?

2. Is the defendant in unlawful possession thereof since 1st November 1958 ?

3. If so, what damages is the plaintiff entitled to ?

Mr. Goonasekera suggests the following further issues :—

4. Was the 1st defendant made to sign document 1343 of 1st November, 1948 by the exercise of undue influence on him by the plaintiff, her husband and brother ?

5. Was document 1343 of 1-11-48 relied on by the plaintiff for her title, the act and deed of the 1st defendant ?

10 6. Was deed 1343 of 1-11-48 executed by the 1st defendant for valuable consideration ?

7. If issue No. 6 is answered in the negative, did any beneficial interest in the property mentioned in the said deed pass to the plaintiff ?

8. Does the plaintiff hold the properties dealt with in the said deed in trust for the 1st defendant ?

9. Is the 1st defendant entitled to claim a re-transfer of the legal title to the properties dealt with in the said deed from the plaintiff ?

10. Did the plaintiff practise a fraud on the 1st defendant ?

11. If so, can she take advantage of her own fraud ?

20 I accept all issues.

(Sgd.) N. KRISHNADASAN,  
D. J.

7-3-60

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## No. 5

### Plaintiff's Evidence

Mr. Dias Abeysinghe calls :—

**Edwin Wijesurendra.**—Affirmed.—56, Proctor, S.C., Galle.

(Shown Conditional Transfer 1343 of 1-11-48—P1).

30 I was the attesting Notary on this deed. This deed was attested by me on the 1st of November, 1948. On this deed, two persons called Menikpura Peiris Munasinghe and Bertram Clive Vidanage have transferred two contiguous properties to Cynthia Pearline Vidanage. Peiris is the 1st defendant. Cynthia Pearline Vidanage is the plaintiff.

No. 4  
Issues  
Framed  
7-3-60  
—continued

No. 5  
Plaintiff's  
Evidence  
—  
Evidence of  
E. Wijesurendra—  
Examination

No. 5  
Plaintiff's  
Evidence (contd.)  
—  
Evidence of  
E. Wijesurendra—  
Examination  
—continued

This deed contains a condition that this sum of Rs. 20,500/-, which is the consideration on this deed, if paid within a period of 10 years, should entitle the two vendors or their survivors, to ask for a re-transfer of the property from the plaintiff. In this deed, the owner of this property was the first transferor; the 2nd transferor was only joined to re-claim the property in the event of the 1st transferor dying within that period. In the attestation I have stated that the sum of Rs 20,500/- was acknowledged to have been received previously. The 1st defendant gave me the instructions for the drawing up of this deed. I read over the deed and explained it to him, and he understood the contents. It was at his instance that the 2nd transferor was also joined; this was done in my office. He explained to me as to why the 2nd transferor should also be joined. A sum of Rs. 500/- or a little more than that was paid in respect of stamp fees including my fees on this deed.

I went along with the 1st defendant to where the plaintiff was residing. Plaintiff has also signed this deed. One of the witnesses to this deed was one of her brothers. When we went to the house, plaintiff came out to the verandah of the house. I am unable to say whether she was after child-birth at that time. She did not look ill. I cannot say why she could not have come to my office. The 1st defendant brought a conveyance for me to go to the plaintiff's house.

Evidence of  
E. Wijesurendra  
Cross-examination

### Cross-examined.

When I got instructions to draft P1, I had the title deed in favour of the 1st defendant only. I was asked to insert the name of the 2nd defendant as a vendor, and he explained to me the purpose. I thought it was rather peculiar, and I asked him what the purpose was. He said that if he was not living at the time, the land could be re-claimed through his sister. I do not know B. C. Vidanage. Even now I do not know him. When I went to the house, I expected the money transaction to take place, and I asked the 1st defendant as to the consideration as it was a big amount. He said 'put it down as received before-hand'.

At that place I did not ask him anything. All that was relevant, I put down on the deed. At a later stage, a conversation ensued, and I asked the 1st defendant why he should take this money before-hand and not pay it at the time of the execution of the deed. That was after the deed was signed and when we were going away. He said that he did not take money on this deed and I asked him why he transferred the property. Then he said: 'Eka ape vedak' (that is our business). I am sure he said that he did not take the money and I asked him whether it was safe to do that. He said that it was alright between relations.

I cannot remember whether the 1st defendant said that the plaintiff was born in that house and was brought up in that house. All this conversation took place when we were going away.

**Re-examined.**

This conversation was purely between me and the 1st defendant. At the house of the plaintiff, the 1st defendant did not say anything.

(Sgd.) N. KRISHNADASAN,  
D. J.

**Cynthia Pearline Vidanage.**—Affirmed.—40, wife of T. G. Elaris, Bataduwa.

No. 5  
Plaintiff's  
Evidence  
(*contd.*)

Evidence of  
E. Wijesurendra  
Re-examination

Evidence of  
C. P. Vidanage  
Examination

I am the plaintiff. (Shown P1) On this deed the 1st and the 2nd defendants transferred to me two contiguous properties called Millagahawatta *alias* Midellagahawatta and Millagahawatta Midellagahawatta, being a 1/4th part of the first-named land and a 11/20 parts of the second-named land, for a consideration of Rs. 20,500/-. It was a conditional transfer. There was a condition in the deed for the 1st defendant or the 2nd defendant or their successors to re-transfer the property within a period of 10 years. The 1st defendant is my maternal uncle and the 2nd defendant (transferor) on this deed is my elder brother. I have also signed the deed as to the condition to re-transfer. This deed was signed in the house which has also been sold on this deed and in the house in which the 1st defendant now lives. When I was small, I used to go there; when my mother was alive I used to go there and even after my marriage, I used to go there.

On the day the deed was executed, I was expecting a child. I had to be admitted to hospital. Therefore I came and stayed in this house expecting to be admitted to hospital.

I know my uncle, the 1st defendant became entitled to these properties. I produce deed No. 747 of 1948 (P2) on which a person called Peter Wijetunga transferred these properties to my uncle. On this deed, P2, the consideration given is a sum of Rs. 15,000/-. I remember my uncle taking these properties from Peter Wijetunga for a sum of Rs. 15,000/-. At that time I was in this house. It is I who paid the money. I gave my uncle Rs. 20,500/- on that occasion.

I gave Rs. 20,500/- to the 1st defendant for him to buy the 4 lands from Peter Wijetunga in my name, out of which a sum of Rs. 500/- was to be paid as costs on the deed. 1st defendant asked me to give him the money and said that he would get the lands written in my name. Peter Wijetunga is my mother's uncle. He was a Proctor. These lands had been mortgaged in favour of the Samaranayakes and they became entitled to these lands. My grandfather, Adirian, had given this mortgage, so that the original owner of this land was Adirian. The Samaranayake I mentioned was Bastian de Silva Samaranayake. He died leaving a son, Charles Samaranayake. He was murdered by poisoning. When he died, he left his widow, Matilda, and children Miulin, Laura, Samson and Swarnalatha, the last two of whom were minors. Although the property was in the Samaranayakes, the defendant lived in this house. It was said that he was living in the house on lease bonds.

No. 5  
Plaintiff's  
Evidence (contd.)

Evidence of  
C. P. Vidanage  
Examination  
--continued.

I produce deed of lease No. 209 of 1924 (P3) for one year by which Don Bastian de Silva Samaranayake had given these lands, among other properties, to the 1st defendant. I also produce deed of lease No. 1387 of 1926 (P4) for one year by which the same Don Bastian de Silva Samaranayake had given these properties, among others, to the 1st defendant. I also produce deed of lease No. 2156 of 1927 (P5) for a period of 3 years by which Charles Samaranayake had given these two properties, among others, to the 1st defdtd. on a lease. During the pendency of that lease, Charles Samaranayake died, and his widow, Matilda, was tried and she went to jail, and until 1943 no<sup>10</sup> action was taken by the Samaranayakes in respect of this land. The heirs of Charles Samaranayake viz: the children—Miulin, Laura and the other two children, Samson and Swarnalatha who were represented by the Public Trustee filed plaint in the District Court of Galle. I produce the plaint filed in that case No. L/1018 of 1943 (P6). I produce the answer of the defendant dated 22-2-1944 (P7). In that case, he denied in his answer—P7--that there was a lease and that he did not come into occupation of the premises under the lease. I point to para 6(e) of his answer where he says that at the request of Charles Samaranayake he came to this house and denied that there<sup>20</sup> was a lease. The case went to trial and judgment went against the 1st defendant. I produce the decree in the case dated 20th August, 1945 (P8). After that decree, the heirs of Charles Samaranayake who were Miulin, Laura and Samson who was a major at that time on deed No. 460 of 17-11-1945 (P9) sold their rights to Peter Wijetunga. The other child, Swarnalatha, a minor, through the Public Trustee sold her share on deed No. 1169 of 26-11-1947 (P10) also to Peter Wijetunga, so that Peter Wijetunga became entitled to all the rights of Charles Samaranayake in these two properties in question, including other properties. I point out that the consideration on deed P9 is a<sup>30</sup> sum of Rs. 13,125/- and the consideration on deed P10 is Rs. 4,375/- so that Peter Wijetunga paid a sum of nearly Rs. 18,000/- on the two deeds P9 and P10 to the heirs of Charles Samaranayake for the purchase of these rights.

Peter Wijetunga may have paid at the instance of the 1st defendant. After he paid that sum, the 1st defendant continued to live in this land. Peter Wijetunga had several children. A daughter of Peter Wijetunga was to be married and it was on that occasion that Peter Wijetunga purchased these properties. Peter Wijetunga had to repay the daughter the money, and I was asked to buy. It is the 1st defen-<sup>40</sup> dant who asked me to buy these properties. I was also residing in the house at that time, and I was asked to buy. I was, at that time, about 5 years married. My husband was a trader; even today he is a trader.

I could have paid the money at that time. It was my husband's money that I was able to pay. My uncle, 1st defendant knew that my husband was capable of paying that sum of money. I took the money from my husband and gave it to the 1st defendant. I gave that money in August 1948; I cannot remember the date. I gave that money at one and the same time. 1st defendant said that he had arranged for the<sup>50</sup>



transfer and that he wanted Rs. 20,500/-; Rs. 20,000/- was the value of the land and Rs. 500/- was the fees to the Notary and stamps fees.

No. 5  
Plaintiff's  
Evidence  
(contd.)

Evidence of  
C. P. Vidanage  
Examination  
—continued.

10 B. C. Vidanage, 2nd defendant is my elder brother. He and G. M. Vidanage, my younger brother, were present when I gave the money. G. M. Vidanage is one of the witnesses to the deed — P1. Having given my uncle the money, I know that he went to the Notary to get a deed executed. He took the money from me stating that the lands could be written in my name. When he came back I asked him what happened. He said that the lands were written in his own name :  
20 that is the deed by which Peter Wijetunga sold to the 1st defendant for Rs. 15,000/-. I asked my uncle why he took Rs. 20,000/- from me and paid only Rs. 15,000/-. He said that he put the consideration as Rs. 15,000, so that stamp fees may be reduced. I asked him that after taking the money and promising to get the lands written in my name what I had to say to my husband. When P2 was executed, my husband was not in Galle. He came back after that and I told him what had happened. 1st defendant said that he would give me a conditional transfer to give the land back within 10 years on payment of the consideration with interest. He said that if he can get the land back he would do so. In pursuance of that promise to write the conditional transfer, he executed a conditional transfer — that is deed P1.

I did not exert pressure on the 1st defendant. I found fault with him for having got the deed P1 written in his name. To my knowledge, none of my brothers or my husband exerted any pressure on the 1st defendant to execute the deed. It is the 1st defendant who suggested that the conditional transfer should be given. B. C. Vidanage was also one of the transferors. It is at the suggestion of the 1st defendant that the 2nd defendant was also joined. Before the execution of P1, I did not know that the 2nd defendant would be joined in that deed.

30 After the deed was executed, I came to know of it. On that deed only the two properties which are the subject-matter of this action were included. Peter Wijetunga had bought these two properties and also other properties from Charles Samaranayake. I came to know that the 1st defendant bought the other lands which belonged to Charles Samaranayake; they had been bought by the 1st defendant and his sister.

40 I know that the 10-year condition expired on the 10th of October 1958, and after the lapse of the 10-year period, I sent a letter of demand through my proctor to the 1st defendant. There was no reply to that letter of demand. 1st defendant has continued to be in possession and he refused to give possession of the properties.

I asked that I be declared entitled to these properties and for ejectment of the 1st defendant. I have claimed damages at the rate of Rs. 150/- per month from the 1st defendant. I cannot say whether Rs. 150/- is the income from these properties. I claim these properties from 1st November, 1958.

No. 5  
Plaintiff's  
Evidence (contd.)

Evidence of  
C. P. Vidanage  
Examination  
—continued.

At the time of the writing of P1, my husband was in Colombo. My husband, except supplying the money, had nothing to do with this transaction between me and the 1st defendant. I have known the 1st defendant all my life. 1st defendant has no other lands in his own right except these lands. He has no money ; I was there and I know it. I was very small when he did business.

Evidence of  
C. P. Vidanage  
Cross-examination

### Cross-examined

I said that these properties originally belonged to my grandfather Adirian. He was a plumbago dealer. I came to know that he dug for plumbago. There had been 10 children in that family, one was 10 Proctor Munasinghe of Colombo, another was my uncle who went to England and died there. Peiris was also one brother; another called John who died without marriage or issue. The others were all females. My mother was Emmy and my father was Kosgaladurage Jandoris. There were 4 of us in the family, myself Bertram, Clive 2nd defendant and Jeffry and another brother who was drowned.

Most of the children of Adirian died without marriage and some of those who married had no children. My uncle, Edward, had no children. My other uncle, John, had no children. Lenty died when he was studying in England and the other is Peiris who is not 20 married. He is the 1st defendant. All the four male descendents of Adirian had no children. Out of the females, Emmy, my mother's sister died without marriage or issue. Lily is alive and she is not married. The only surviving children of Adirian are the 1st defendant and Lily.

This house is Adirian's ancestral house. All along, my uncle, 1st defendant and Lily have been living in this house. Adirian was, at one time, a rich man. I have not seen him. I know that he was a rich man. His son who went to England died there in 1912. I do not know that Adirian was later like a mad man. I do not know how long 30 Adirian lived after that. I do not know when Adirian died. I was very small at that time.

Adirian had mortgaged his rights to Bastian Samaranayake. I do not know what he did with the mortgage because I was small at that time. I know that Samaranayake put the bond in suit and he became entitled to all the lands that were mortgaged. Bastian Samaranayake became entitled to the lands on the mortgage bond. My mother and I have been living in this house all along. Till this transaction, the 1st defendant was very fond of me. When there was some trouble, I used to inform my uncle about it. After I got married, if there was 40 any trouble, I used to tell him. My husband's father died 12 years ago and my father died not more than one year ago. My father lived in Baddegama. My husband's house is in Bataduwa. Even today I am living in my husband's house at Bataduwa. I did not spend much of my time in the house in dispute. I had no troubles as such to complain to my father.

I was in the house in dispute as I was expecting to enter hospital. My first confinement was at Baddegama in my father's house. For the second confinement, I came to live in the house in question because it is nearest to the hospital. Dangedera is closer to the hospital than Bataduwa. Bataduwa to Dangedera is  $2\frac{1}{2}$  miles. When my mother was alive, I used to live in the big house. Therefore I came to stay in this house to go to the hospital because it was closer. There was no married person in that house. I had a servant for my work at that time

No. 5  
Plaintiff's  
Evidence  
(*contd.*)

Evidence of  
C. P. Vidanage  
Cross-examination  
—*continued.*

10 My second child was born in this house. I was bad in my first confinement. If I became bad in my second confinement, I expected to gain admission to the hospital. There was no necessity to enter hospital and the child was born in the house.

(Shown letter dated 21-12-44 — 1D1) My husband is T. D. Elaris. He is a Drugs Merchant in Gabo's Lane, Pettah, Colombo.

(Mr. Goonesekera marks the envelope as 1D1A) I got married in November 1944. My first child was born in 1947, and the second child was born in 1948. I have signed 1D1 in English as 'C. P. Vidanage'. It is my hand-writing. The signature is also mine.  
20 I am unable to read as my eye-sight is not very good.

(Counsel reads letter 1D1).

My husband had bought a house in Peliyagoda, although he had said that he would buy it in the name of his sister. I have said in this letter that I speak to my husband only on business. His sister told me about a house, although my husband did not tell me anything about it. I have said in this letter that my uncle loves me, I cannot always be wiping my tears. I am glad, I am glad, I am glad to get rid of him by going to Court. I do not know when I will ever get rid of all these worries. A letter had been received and that letter had  
30 been torn and the pieces put near a coconut tree. My husband is angry with me. Without giving occasion for shedding so much of tears, if you will get me separated from my husband, you will become a Buddha. There is nothing that the husband and the sister are not capable of. This is a letter which I have written to my uncle, 1st defendant from Bataduwa. I had no trouble with my husband at the time of the transaction. At that time, there was a sister of my husband living there who had separated from her husband and she used to harrass me. That is how I understood things at that time. I wanted a divorce from my husband at that time.

40 I was living with my uncle, 1st defendant from my childhood, and whenever there was trouble, I used to tell him. My mother was not living at that time. I had no other elderly relations. My uncle was my nearest relation. My uncle was also very fond of me.

My three brothers also spent their life in this house. My father used to spend for me. My father was living in Ampegama. When my

No. 5  
Plaintiff's  
Evidence (contd.)

Evidence of  
C. P. Vidanage  
Cross-examination  
—continued.

mother died, I was 8 or 9 years old. My mother and all of us lived in this house and my father was at Ampegama. Because we had to attend school, we lived here and my father spent for us. My uncle sent my three brothers to school, and my father spent for the schooling. After my mother died, it was my mother's sister, Lily, who was doing everything for us. She was also fond of us. I was the only female in the family.

My father owned lands; he dug for plumbago. He dealt with plumbago. I was given a land and a house and a paddy field as dowry by my father. He had other lands also. I came to know that there was a land called Nilhena owned by my father long ago. I also heard that he owned Muttettuhena in Godaduwa. I do not know whether he made all his money on these two lands. The 1st defendant redeemed the land in Godaduwa from the money I gave him. I do not know anything about Nilhena. I only know about Godaduwa. I know that with the Rs. 20,500/- I gave the 1st defendant four lands would be released. Two lands have been dealt with in P1. Both these lands are adjacent lands. Both these lands are taken as one land. The other two lands are Pelikumbura and Koratuwatta. Godaduwa does not come into these four lands. I do not know that my uncle, 1st defendant released Godaduwa and Nilhena. I do not know that he redeemed these two lands and transferred Nilhena to my father. I do not know whether my father and the 1st defendant dug for plumbago in Nilhena.

I know my brother, Bertram's signature. (Shown a letter written by Bertram) I cannot say whether this is the signature of my brother, Bertram. I do not know very much of my father's signature. He used to sign long ago as Jandoris Kosgallana Durage. (Shown a letter) I do not know whose signature this is.

I cannot say how much the house and the land are worth today. I know the amount I gave the 1st defendant for these premises. I gave the money to the 1st defendant to pay Peter Wijetunga.

My husband is a businessman in Gabo's Lane. He has a Bank account. He imports things from abroad. He has several Bank accounts. It is my uncle the 1st defendant who took the money promising that he would transfer the land to me; that is why I gave the money to redeem the land. I gave him the money and asked him to transfer the land to me. I paid him in notes tied up in a bundle and wrapped in a cloth. I handed the money and asked the 1st defendant to count the money and take it. The money was counted in the presence of both of us. B. C Vidanage, my elder brother, and my other brother, G. M. Vidanage, and the 1st defendant were counting the money. When I gave the money, my second child was not born. It was very near the second confinement. I told my husband about this property and my husband brought the money in cash and gave it to me. I told this to my husband in the 1st defendant's residing house. He used to come to the house.

(Sgd.) N. KRISHNADASAN,  
D. J.

7-3-60.

No time. Trial postponed for 14-3-60.

(Sgd.) N. KRISHNADASAN,  
D. J.  
7-3-60.

**Trial Resumed.**

14-3-1960.

No. 5  
Plaintiff's  
Evidence  
(*contd.*)  
—  
Evidence of  
C. P. Vidan-  
age  
Cross-  
examination  
—*continued.*

Same appearances as before.

Mr. Dias Abeysinghe calls —

**Cynthia Pearline Vidanage.**—Affirmed : recalled :

10 Cross-examined by Mr. Goonesekera (*contd.*)

Proctor Wijetunga who transferred it to the 1st defendant was my mother's cousin. I do not know if he did business. I attended his funeral. I do not know if he had five liquor shops in Colombo. I can only say that he was a proctor. I do not know if he even practised as a proctor. In 1D1, I had complained that my husband was not supporting me and that my husband was giving me only Rs. 20/- or Rs. 30/- per month. (passages in 1D1 read) I have stated so at that time. (certain passages read to witness) I did not make any false allegations against my husband at that time. That is how I understood matters at that time.

20

Q. What you have stated in this letter is true — namely you got only Rs. 20/- or Rs. 30/- per month ?

A. I may have written like that those days. I cannot say whether that statement is correct or not.

Adjourned for lunch.

(Sgd.) N. KRISHNADASAN,  
D. J.

**After the Luncheon Interval.**

**Cynthia Pearline Vidanage.**—Affirmed : recalled :

30 (Shown 1D2) This is one of the letters I wrote and it is signed by me. 1D2A is the envelope which had been sent by me and it is addressed to one Lily Munasinghe, a sister of the 1st defendant. It was written by me from Bataduwa. It has been written on one of my husband's note heads. I call 'Lily Munasinghe' as 'ලීලි මුනසිංහ'. In this letter I have complained that my husband had brought a stick to punish me. A sister of my husband used to harass me. I do not know what happened on that occasion.

Q. If you wrote that he brought a stick to strike you, then it must be correct ?

40 A. I think it is wrong to state so,

No. 5  
Plaintiff's  
Evidence (contd.)  
-----  
Evidence of  
C. P. Vidanage  
Cross-examination  
—continued.

At that time life was new to me and I could not understand things at that time. I may have written like that to my aunt. That is a letter which I wrote. For a long time I have had no trouble. My husband did not prevent me from going to our 'mulgedera'. I cannot remember what happened during that period. I cannot say whether what I have stated in this letter is true or not. 1D2 is dated 1-8-45.

Q. Up to a certain point of time, you had trouble with your husband?

A. I had some trouble with one of his sisters. I had no trouble with my husband.

10

Q. Then what you have written in these letters is not true?

A. I cannot remember what happened then.

From the time of my marriage, life was very happy and smooth. I spent my married life without any trouble. 1st defendant had asked me to write to him whenever I had any trouble, and if there was any trouble, I would write to him. All these things were the result of certain actions on the part of my sister-in-law. Sometimes my husband used to listen to his sister and he would get annoyed. Sometimes when I found that my husband had given certain articles to my sister, I used to get angry with him. My husband used to give money for the home expenses to my sister and so I used to be angry with him. He gave money to the sister saying that I could not manage the household affairs. 20

These lands in dispute were bought by Proctor Wijetunga from the Samaranayakes and then he transferred them to my uncle Peeris. Money for the purchase was taken from me and the lands were written in favour of the 1st defendant. I do not know if on the same day another deed was written by Proctor Wijetunga in favour of my aunt 'පුංචි අම්මා'. The notary who attested that deed was Proctor Nimal Kulasuriya. That was the deed in favour of the 1st defendant. 30 Nimal Kulasuriya is also related to me and that deed was attested on the 9th August, 1948, in the Proctor's office. He took money from me and he (the 1st defendant) got the deed executed at the Notary's office. It is correct to say that the deed was attested in my house. That deed was attested in my house. The deed of 1-11-48 was attested in my house. That was the deed in my favour. Proctor Wijetunga did not come to our house, on the day that deed in favour of the 1st defendant was executed. I do not know if Nimal Kulasuriya is a witness for me in this case. I stated that Wijetungas wanted money because one of his daughters was to get married. I do not know if his daughter got married in 1951. I know the fact that she is married. 40 Wijetunga used to come to our house in Dangedera. He used to come there once in a way. I cannot say whether he would come to Galle on Sundays. I know he used to come to Galle,

**Re-examined.**

I got married in November, 1943. (Shown 1D1). This letter was written in 1944. (Shown 1D2). This letter was written in 1945. In the early days of my married life, the household matters were attended to by his sister. I did not have much to do with the household affairs then. As a result of that, there was friction between myself and my sister-in-law. I have three children by my husband. My first child was born in February, 1947. The second child was born in October, 1948 and the third child was born in 1950. After the birth of the children, there has been no displeasure between myself and my husband.

(Sgd.) N. KRISHNADASAN,  
D. J.

**Paragahadurage Elaris.**—Affirmed 53 years, Trader, Bataduwa.

I am the husband of the plaintiff. 1st defendant is an uncle of my wife. On deed P1 of 1-11-48, 1st defendant had given a conditional transfer of his residing house and the land of the 1st defendant in favour of my wife. The land is described as two allotments of land. On that deed the consideration was said to have been a sum of Rs. 20,500/-. That deed was attested on 1-11-48. At that time I was in Colombo.

Q. Was it paid on that day ?

A. I cannot say when it was paid.

Q. Did you have occasion to give any money to your wife ?

A. Yes.

Q. When did you give her the money.

A. That was in the middle of August 1948.

Q. What was the amount you gave ?

A. I gave her a sum of Rs. 20,500/-.

Q. For what purpose ?

A. To get a land.

Q. From whom, and what was the land ?

A. It was said that the land belonged to M. Peeris Munasinghe and that a sum of Rs. 20,500/- was needed. The extent of the land was five acres. My wife wanted that sum of money to buy the land from M. P. Munasinghe the 1st defendant of Dangedera. I gave her that money.

No. 5  
Plaintiff's  
Evidence  
(contd.)

Evidence of  
C. P. Vidan-  
age  
Re-  
examination

Evidence of  
P. D. Elaris.  
Examination.

No. 5  
Plaintiff's  
Evidence (contd.)  
—  
Evidence of  
P. D. Elaris  
Examination  
—continued.

Q. Did you know what those lands were ?

A. I do not know about it.

Q. You did not know any of those lands ?

A. I knew the ' mulgedera ' and the land.

Q. And the others you did not know ?

A. Yes.

I did not see the other lands nor were they pointed out to me. I am a trader in Colombo. After having given the money to my wife, I went back to Colombo.

Q. Do you know whether in fact the 1st defendant had written a deed <sup>10</sup> in her favour after you had given her the sum of Rs. 20,500/- ?

A. I questioned my wife whether the matter was attended to as agreed and then my wife told me that the uncle had gone and done that.

Q. Was the deed written in the name of your wife ?

A. I did not look into it.

Q. Did you know in whose favour it was written ?

A. No. I did not find that out.

I am a trader in Colombo in oilman stores, medicines and other miscellaneous articles. I deal in provisions, sundries. I have a business <sup>20</sup> in Chilaw and in Colombo as well. My business in Colombo deals in medicines. I import medicines for which licences are issued. I import medicines from China, Singapore, Burma, Australia, England, Germany and from all over the world. I do business to the extent of about Rs. 70,000/- to Rs. 75,000/- a month. I keep books of account. I pay income tax. My books are duly audited every year.

I produce audited account from 1-1-48 to 31-12-48 (P11), in which the sum of Rs. 20,500/- has been shown among other things as investment on mortgage loan in the name of C. P. Vidanage (wife's account). I produce a copy of the audited account from 1-1-49 to 31-12-49 marked <sup>30</sup> P12 which again shows a sum of Rs. 20,500/- as an investment against C. P. Vidanage. I produce another copy of the trading and profit and loss account for the period 1-1-50 to 31-12-50 marked P13 also showing the same amount of Rs. 20,500/- as an investment on my wife's account. I produce a copy of the trading and profit and loss account for the period ending 31st December, 1951 marked P14, in which the same investment under my wife's account is entered. It shows the name ' C. P. Vidanage ' the sum of Rs. 20,500/-.—I produce



a trading and profit and loss account for the period 1-1-52 to 31-12-52 marked P15 which also shows this investment in my wife's name. I produce balance sheet as at the 31st December, 1953 marked P16 which shows this investment under my wife's name. I produce the balance sheet for the year ending 31st Dccember, 1954 marked P17. This investment in my wife's name is again shown in it. I produce the balance sheet dated 31-12-55 marked P18 showing the same investment in my wife's name. I produce the balance sheet dated 31-12-56 marked P19 showing this investment in my wife's name. I also produce the balance sheet as at 31-12-56 marked P20 which also shows this investment in my wife's name. I also produce the balance sheet as at 31-12-57 marked P21 showing this investment in my wife's name.

No. 5  
Plaintiff's  
Evidence  
(contd.)

Evidence of  
P. D. Elaris  
Examination  
—continued.

For the purpose of my business, I normally reside at Barber Street, Colombo. I come to Gaile once a week or twice a week. Sometimes I come there once in two or three weeks. On those occasions I come to my wife's residing house.

### Cross-examined.

I am a trader in a large way. I have several bank accounts. I have accounts in the National Bank, the Indian Overseas Bank and the Bank of Ceylon. I gave my wife Rs. 20,500/- in cash. I gave her two 1,000 rupee bundles and one 500 rupee bundle. No, I gave her two 10,000 bundles and one 500 rupee bundle. I brought this money in currency notes. I brought it from Colombo. I have always with me about Rs. 20,000 to 30,000 in cash. That money is in the safe. I did not get this money from the bank. This sum of money was in my safe, and I gave it to her. She said that she wanted this money to take some of the lands which belonged to her uncle M. P. Munasinghe. She did not state that the lands were to be bought from Wijetunga but she said that a deed was to be obtained from her uncle. She said that she wanted to buy some property from her uncle and that the lands were not then in the name of her uncle. The lands had been in the name of a proctor and she wanted to buy those lands direct from that proctor. The money had been given to the 1st defendant but the deed was to be written in the name of my wife. She said that his uncle would get the lands for her. The lands were in the name of a proctor at that time. The 1st defendant had promised my wife that when the money was given to the proctor, the deed would be written in her favour. I accepted her statement. To my knowledge, there was no displeasure between myself and my wife. I did not bring a stick to punish my wife on any date. If she has stated so in a letter, it is wrong. I do not know if she had written letters to her uncle stating that she wanted to get a divorce from me. I gave her no occasion for her to write letters like that. If she had stated so, it is all her imagination. We got on very well after our marriage. She was new to our place and to the environments and it took time for her to get used to those environments. I know nothing of the letters written by her to her uncle about her getting a divorce.

Evidence of  
P. D. Elaris  
Cross-  
examination

Rs. 20,500/- is a fairly big amount of money.

No. 5  
Plaintiff's  
Evidence (contd.)

Evidence of  
P. D. Elaris  
Cross-examination  
—continued.

Q. Did you not inquire from you wife about the details of this transaction ?

A. I asked her about it.

She said that she was buying six lands in extent about  $5\frac{1}{2}$  acres. I thought that according to the situation of the lands they were worth that amount. I knew where those lands were. They were at the Dandegedera junction. The residing house and the land is at the Dandegedera junction and the other lands were said to be some distance away, but I did not examine them.

As she wanted the money to buy the lands, I gave her this money. 10

Q. Did you inquire after what had happened soon after you gave her the money ?

A. Yes.

Q. What did she tell you ?

A. I asked her whether the matter was attended to on the day fixed as agreed.

She said that her uncle went and got the deed written as agreed. She did not state that everything was alright. She did not state that it was not done according to the direction given. Later when I asked her she said that it had not been done in the way we wanted it done. 20 I questioned her in about the end of October. That was about  $2\frac{1}{2}$  months after I had given her the money. In between that period I had not forgotten the fact of my having given this money. I did not give this money to an outsider. The parties were my wife and my uncle and I inquired about it only after  $2\frac{1}{2}$  months. Even before that, she told me that the deed was in the Notary's office and that it had not been brought to the house. Till the deed was sent back from the Land Registry, I did not know in what form the deed had been written. It is after it was returned from registration that I came to know a deed had been executed. In the deed two lands in extent  $2\frac{1}{2}$  30 acres inclusive of the house had been mentioned and that deed had been written in the name of my wife. It was also noticed that the deed was a mortgage.

Q. You gave money to buy a land ?

A. Yes.

Q. From whom ?

A. M. P. Munasinghe was to be the vendor.

There had been a mortgage of this property in favour of a proctor and that mortgage had to be redeemed. The principal and the interest on

the mortgage amounted to Rs. 20,500/- and on payment of that money, a deed was to be given by M. P. Munasinghe in favour of my wife. It was on that condition that my wife was given Rs. 20,500/- by me.

Q. That was to pay off the mortgage ?

A. No. The land was to be bought from M. P. Munasinghe.

Q. Proctor Wijetunga did not come into the picture at all ?

A. I do not know about it.

Q. When did you come to know that the deed had not been written in your wife's name ?

10 A. It was about 1½ months later, that I came to know that a deed had not been written in my wife's name.

Q. Then what did you do ?

A. I found fault with her for attending to this transaction in this manner. I told her that I gave her Rs. 20,500/- to get a certain thing done but that has not been done and then I went away.

I did not speak to the 1st defendant. I did not speak one word with the 1st defendant.

20 I have my books of account all regularly kept. I have been carrying forward this sum of Rs. 20,500/- in the balance sheet from year after year and even to-day this amount appears in our books. The original balance sheet has been sent to the Income Tax Department and I am not having the originals. The balance sheet must have been prepared from my account books. The account books are in my office. I am not producing them. I am not producing the account books nor the original balance sheet. I am producing only what purports to be a true copy of the balance sheet. Some of these documents, have not been certified by anyone. No one has asked me to bring those original books. I have got the account books but I am not producing them. I have purported to produce true copies of certain balance sheets.

30 **Re-examined.**

Nil.

(Sgd.) N. KRISHNADASAN,  
D. J.

**Velu Gopalan.**—Affirmed, 40 years, Audit Clerk, New Chetty Street, Colombo.

I am a Clerk in the accounting firm of Cecil Arsekularatne & Co. I know Elaris the last witness. He has got his business in Gabo's Lane,

No. 5  
Plaintiff's  
Evidence  
(contd.)

Evidence of  
P. D. Elaris  
Cross-  
examination  
—continued.

Evidence of  
V. Gopalan  
Examination

No. 5  
Plaintiff's  
Evidence (contd.)  
—  
Evidence of  
V. Gopalan  
Examination  
—continued.

Colombo. My firm audits his books of account. (Shown P21) This is the balance sheet prepared and audited by me as at 31st December, 1957 and it has been certified by Arsecularatne & Co. The actual auditing was done by me personally. (Shown P20) This is a balance sheet as at the 31st December, 1956. It has been audited by our firm and certified by them as being in accordance with the books of account of P. D. Elaris. The books were checked against the vouchers and the balance sheet has been properly certified. It shows a correct state of affairs of the business according to the information given in the books.

The accounts were personally audited by me and I had access to all<sup>10</sup> the books. We further certify that P20 and P21 are correct statements of account.

At this stage, Mr. Dias Abeysinghe moves for a date to produce the books of account.

I refuse a date.

(Sgd.) N. KRISHNADASAN,  
D. J.

(Shown P19) This is a balance sheet as at the 31st December, 1956. It has been certified by our firm as showing a correct view of the state of affairs of the business according to the information given and as<sup>20</sup> shown by the books of account.

(Shown P18, P17 and P16) They are accounts for the years 1953-1957. These accounts have also been certified by our firm. P17 has a certificate by the firm : so is P18.

All this auditing from the years 1953-1957 were personally done by me as a Clerk of the firm of auditors.

(Shown P11 - P15) From 1953 to 1957—the auditing was done by Messrs. Arsecularatne & Co. Before 1953, the auditing was not done by Arsecularatne but I did it privately. I joined the firm of Arsecularatne & Co. in 1951. P14 is dated 30th November, 1954. P14 is the<sup>30</sup> Trading and Profit and Loss Account for the year ending 31st December, 1951.

In P14 there is the certificate by the firm of Arsecularatne & Co., that it is in accordance with the books of account of P. D. Elaris.

P11, P12 and P13 are for the years 1948, 1949 and 1950.

In these years the auditing was done by me. These documents have been given by me. I got those details from the account books of P. D. Elaris. I state that they are true copies.

The originals of these balance sheets are with me. The originals of the balance sheets P11, 12 and 13 are with me. 40

I certify them as 'true copies' from the originals. I have got them with me.

I produce the originals of P11, P12 and P13 as P11A, P12A and P13A.

I have also the orginials of P14 to P20. I produce them marked as:—

P14A, P15A, P16A, P17A, P18A, P19A and P20A.

P. D. Elaris submits his income tax returns to the Income Tax Department.

These balance sheets were submitted with the income tax returns.

I personally examined those books and I state that those books had been regularly kept.

10 P14-P21 represent a true and correct account of the affairs of the business of P. D. Elaris.

### Cross-examined.

The account books are in the office. I have not given evidence in a Court of law before.

I do not know if the originals of the account books have got to be produced if my evidence is to be accepted. There is nothing in P11 to show that it is a true copy. Nobody has signed it.

In P12 and P13, there is no certificate to show that it is a true copy. In P14, there is a certificate. P15 has no certificate. The certificates have not been signed by me.

### 20 Re-examined.

Nil.

(Sgd.) N. KRISHNADASAN,  
D. J.

Mr. Dias Abeysinghe closes his case reading in evidence P1 to P21 and P11A to P20A.

(Sgd.) N. KRISHNADASAN,  
D. J.

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## No. 6

### 1st Defendant's Evidence

30 Mr. Goonesekera calls :—

**Menikpurage Peiris Munasinghe.**—Affirmed : 75 years, Trader, Dangedera.

I am the 1st defendant in this case. Plaintiff and 2nd defendant are my sister's children.

No. 5  
Plaintiff's  
Evidence  
(contd.)

Evidence of  
V. Gopalan  
Examination  
—continued.

Evidence of  
V. Gopalan  
Cross-  
examination

No. 6  
1st Defen-  
dant's  
Evidence

Evidence of  
M. P. Muna-  
singhe  
Examination

I know these properties which forms the subject matter of this action.

These properties in dispute and some other properties were mortgaged to Bastian Samaranayake and he put the bond in suit and he bought these properties in his name.

I know Proctor Peter Wijetunge. I agreed with the heirs of Samaranayake to buy these lands from the heirs of the estate of Charles Samaranayake, namely Bastian Samaranayake's son. That was for a sum of Rs. 17,500/-.

I did not have money at that time. I had some amount of money but I did not have the full amount. Then I went to Colombo and told<sup>10</sup> Proctor Wijetunga that I did not have sufficient money to buy these properties. He said that he would put in the balance amount and get the lands for me.

I gave him Rs. 11,000/- on that occasion. I went to see him with my sister Lily. I met Peter Wijetunga at the Richmond Restaurant, his own property. Peter Wijetunga practised as a proctor and notary for about one or two months and thereafter he did business. He had many liquor shops in Colombo. He had five liquor shops. He had one shop at Kalutara and he had his office at the Richmond Restaurant. Originally the deed was to have been written in my<sup>20</sup> name but as I was short of money, it was agreed that the deed be written in favour of Peter. In pursuance of that agreement, deed P9 was written in the name of Peter Wijetunga, Proctor. That sum of Rs. 11,000/- belonged to me and to my youngest sister. Peter got the deeds written in his name. Peter Wijetunga asked us to live there. He said that he did not want anything, and asked me to give back the money he advanced whenever I had the money. Peter was my mother's brother's son. This was in 1945.

Proctor Wijetunga fell ill and so I got the lands written in my name. I got the deed P2 written in my name. I also got another deed<sup>30</sup> written in favour of my sister. For the Rs. 7,000/- that he advanced, he took only Rs. 4,500/- from me, and he waived the balance sum of Rs. 2,500/-. Thereafter deed P2 and another deed were written. That was in August, 1948. The deeds in my favour and in favour of my sister were written in my house at Dangedera and they were attested by Nimal Kulasuriya, Proctor. Nimal Kulasuriya was the brother-in-law of Peter's brother's son. At that time, the plaintiff was residing in my house. She knew Peter Wijetunga had transferred these lands to me and to my sister. Her brother too knew it. The two witnesses to P2 are one Wijetunga and the 2nd defendant. Udenis Wijetunga<sup>40</sup> the first witness is my witness to-day. Udenis was Peter's father's elder brother's son. I produce deed 48 dated 29th August, 1948 (same date as P2) attested by the same Notary marked 1D3. The consideration in 1D3 is Rs. 5,000/- and it was in favour of my sister Lily. There too these same witnesses had signed the deed as witnesses. I did not do anything to deceive the plaintiff or anybody else. Her brother was a witness to this deed. It is not correct to say that I got

this sum of Rs. 20,500/- from the Plaintiff. She did not have any money to give me. Her husband could not have given her so much of money. At that time she was not getting on very well with her husband. After their marriage, they did not get on very well. She was always appealing to me to get a divorce from her husband and she would state that I would attain 'Nibbana' if I were to help her to get a divorce from her husband.

No. 6  
1st Defen-  
dant's  
Evidence  
(contd.)

Evidence of  
M. P. Muna-  
singhe  
Examination  
—continued.

10 I admit that on 1-12-48, I transferred these properties in favour of the plaintiff on the deed P1. That was a conditional transfer, the condition being good for ten years. Plaintiff and her other brothers and sisters got together and told me that I was getting aged and that I would run through this property by digging for plumbago and therefore they asked me to write a deed in favour of my niece. Her husband also participated in that matter.

Q. Did you agree to it?

A. Yes. That is how this deed came to be written.

20 I had adopted Bertram Clive and he was staying in my house then. He also had the right to claim a reconveyance of these properties from the plaintiff if I failed to redeem it or if I were to die before the expiration of that period. They had got together and had that condition imposed on the deed. Mr. Wijesundera attested the deed and when I was questioned about the consideration I told him that there was no consideration. I said that it was a matter among the family members. There are ten members in our family, four males and six females. Out of the males, I am the only person who is alive. Out of the females, only Lily is alive. Both of us are unmarried. Lily is 65 years old.

#### Cross-examined.

30 I got the deed P2 executed on the 29th August, 1948, by Peter Wijetunga. The consideration on that deed was Rs. 15,000/-. On that deed two lands which are the subject matter of this action were conveyed.

Evidence of  
M. P. Muna-  
singhe  
Cross-  
examination

Q. In this deed, the full consideration passed before the Notary?

A. No. I gave less.

Q. When the Notary said that the full consideration was paid in cash in his presence, it is not correct?

A. Proctor Wijetunga counted the money and accepted it as correct.

It was Mr. Kulasuriya who attested that deed and in his attestation he says that the full consideration of Rs. 15,000/- was paid. He did not count the money.

40 Q. Without counting the money, he attested the deed and said that the full consideration had been paid?

No. 6  
1st Defendant's  
Evidence (contd.)

Evidence of  
M. P. Munasinghe  
Cross-  
examination  
—continued.

- A. Proctor Wijetunga said that the consideration was correct. What I state is that the money was not counted.

It was Peter Wijetunga who counted it. There was only a sum of Rs. 4,000/- odd at that time. The Notary would have seen it. The Notary gave the money to Proctor Wijetunga to be counted, but the Notary did not know that the full amount was not there. The Notary asked Peter whether the sum of Rs. 15,000/- was correct, and he said yes. Having counted the money he said that the amount was correct. He said so because Peter Wijetunga had taken the money earlier. I did not tell Proctor Kulasuriya that the money had been paid to him earlier. On the same another deed (1D3) was executed in favour of my sister Lily. There the consideration was a sum of Rs. 5,000/-.

- Q. What happened to that consideration ?

A. Peter gave the same amount of Rs. 4,000/- to me and asked me to pass that amount as the consideration on 1D3. Mr. Kulasuriya did not know about it. He did not know that it was the same amount passed earlier. When the Notary says that the full consideration of Rs. 5,000/- was paid in his presence, then that statement is not correct. Mr. Kulasuriya asked Peter whether the consideration was correct and he said 'yes'. Within a few minutes Proctor Kulasuriya perfunctorily satisfied that the consideration on these two deeds had passed before him. According to the attestation in these two deeds, a sum of Rs. 20,000/- had passed before the Notary. I paid the Notary's fees and stamp duty on these two deeds. I paid him a very little amount. I think he was paid Rs. 40/- or Rs. 50/- as Notary's fees. I cannot say how much was paid as stamp duty. Between the two of us namely myself and my sister, we did not have Rs. 20,000/-. My sister had about Rs. 4,000/- odd at the time of the execution of these two deeds.

- Q. Was there any reason why these two deeds should have been written by Peter Wijetunga in the name of the two persons instead of one ?

A. He wrote it in that manner because he said that he would write a deed in favour of my sister too. Previously Peter Wijetunga had purchased these properties from the heirs of Charles Samaranayake. That was with my money. The heirs of Charles Samaranayake had filed an action against me (P6) and as a result of that case, Peter Wijetunga had purchased this property. Decree went against me in that case. I stated in examination-in-chief that for the purchase of these properties by Peter, I had supplied him with a sum of Rs. 11,000/- and the arrangement was that he should buy them for Rs. 17,500/-, and out of that I was to furnish a sum of Rs. 11,000/-. There was a sum of Rs. 9,000/- with my sister and I promised to pay Rs. 2,000/- by selling some of the properties. Rs. 9,000/- belonged to my sister and Rs. 2,000 was my money. The heirs of Charles Samara-



nayake wrote two deeds in favour of Peter Wijetunga, namely P9 and P10. P9 is dated 17-11-1945 and P10 is dated 26-11-1947. The major portion of the consideration on these deeds was paid by me.

No. 6  
1st Defen-  
dant's  
Evidence  
(contd.)

Evidence of  
M. P. Muna-  
singhe  
Cross-  
examination  
—continued.

Q. Why did you not get the deed written in your favour ?

A. The agreement was to purchase two lands for Rs. 17,500/- within a period of one week.

Q. Can you give any reason why not even one of the deeds was written in your favour ?

10 A. I trusted Peter Wijetunga. I always trusted him in these matters. He said that he would prepare ' everything ' and give it to me.

(Shown P9) The consideration on P9 is Rs. 13,125/-, and the consideration on P10 was Rs. 4,375. P9 is by the wife and three major children and P10 was by the minor child. On the day the first deed was written I had Rs. 11,000/-.

Q. How was the consideration paid on the deed P9 ?

A. That amount was paid by Proctor Wijetunga and the land was bought by him. The entire sum of Rs. 9,000/- was paid by him.

20 Before I had given him the sum of Rs. 11,000/- he had put the amount and written the deed. The attestation in the deed shows that the full consideration was paid by Peter Wijetunge. Apart from my oral statement I have no document to show that I had paid Rs. 11,000/- to Peter Wijetunga. Although Wijetunga got deeds P9 and P10 written in his name, a major portion of the consideration was paid by me. I myself did not have any money. I am a person who has been adjudged an insolvent. That was long years ago—about 40 years ago. I have no properties in my name.

30 P1 was written in favour of the Plaintiff at the instance of her brothers. I was always falling ill and it was at the instance of her brothers that I gave this deed in her favour.

Q. That was done in order to preserve the property for me ?

A. Yes. Fearing that I would get indebted in digging for plum-bago, they got me to do it.

A conditional transfer was given as they agreed that it should be so. For the writing of this conditional transfer no money was paid. She was merely holding the properties for me.

Q. If that was the case why did you put down that figure of Rs. 20,500/- ?

No. 6  
1st Defendant's  
Evidence (contd.)

Evidence of  
M. P. Munasinghe  
Cross-examination  
—continued.

A. Plaintiff's brothers wanted that figure to be inserted in that deed. They said that if the full consideration was fixed at Rs. 20,500/- it would be better. It did not worry me when the consideration was put down at Rs. 20,500/- in the deed in favour of the plaintiff. It did not strike me that that was identical with the amount of Rs. 20,500/- paid to Wijetunga on P2 and 1D3. All the instructions for the drawing up of this deed in favour of the plaintiff were given by me to Proctor Wijesundera. It was the plaintiff's brothers who interfered and asked me to get these deeds written in this manner.

10

Normally I wear trousers. I cannot speak proper English. I speak in English when I do business. I passed the seventh standard in English about 50-60 years ago. I have had a number of cases in this Court.

In the action filed by the Public Trustee on behalf of Charles Samaranayake I filed an answer in that case. Decree went against me. I am still living in this house. The period of ten years has elapsed. I did not exercise my rights to ask for a re-transfer of this property.

#### Re-examined.

Nil.

(Sgd.) N. KRISHNADASAN,  
D. J.

20

Evidence of  
U. U. Wijetunga  
Examination

**Ukwattege Udenis Wijetunga.**—Affirmed : 73 years, Contractor, Dangedera.

Peter Wijetunga was my father's brother's son. He did not practice his profession as a Proctor. He was a business man. He was a dealer in liquor. He had four liquor shops in Colombo and one shop in Kalutara. I was the Manager of the Fourth Cross Street liquor shop known as the Richmond Restaurant. Peter Wijetunga had his office in Colombo at the Richmond Restaurant.

30

I remember the 1st defendant and his sister coming to see him (Peter) one day. The iron safe was in his office. I went into the office to open the iron safe and then I saw the 1st defendant and his sister asking Peter to buy the lands as Samaranayakes were requesting them to buy the lands back. The 1st defendant said on that occasion that he had not sufficient money with him and asked Peter to buy the lands having contributed the balance money. The 1st defendant said that he would get the lands back from him. The 1st defendant gave some money to Peter Wijetunga, on that occasion. Later Peter Wijetunga gave those properties to the 1st defendant and his sister Lily on P2 and 1D3. In both these deeds, I have signed as a witness. These two deeds were written in the house of the 1st defendant. Peter Wijetunga came there with me from Colombo on that occasion. 1st defendant gave some money to Peter. I do not know how much was paid to him. There was no talk of a balance amount and the deed was attested. At that time the plaintiff was not in the house.

**Cross-examined.**

I was a great friend of Wijetunga. He is my cousin and also a good friend. He trusted me with the key of the safe. He did not tell me how much money he got from the 1st defendant. Even casually he did not tell me that. The money was not counted at the time of the attestation of the deed. I did not see anyone counting the money. I went away having signed it as a witness. The Notary who attested the deed questioned Peter whether the amount of the consideration was correct and he said 'yes'.

10 The Notary did not take the money into his hands and give it to Peter. He himself did not count it.

**Re-examined.**

At the time this deed was executed, I was the Manager of his shop.

(Sgd.) N. KRISHNADASAN,  
D. J.

Mr. Goonesekera closes his case reading in evidence 1D1 - 1D3.

(Sgd.) N. KRISHNADASAN,  
D. J.

Call case on 16-3-60 for documents.

20 (Sgd.) N. KRISHNADASAN,  
D. J.

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**No. 7**
**Judgment of the District Court**

No. L/6177.

6th April, 1960.

**JUDGMENT**

Plaintiff is the niece of the 1st defendant and the sister of the 2nd defendant. Adirian, father of the 1st defendant was the original owner of the two properties mentioned in the schedule to the plaint. He had mortgaged these two properties with four other properties to Bastian de  
30 Silva Samaranayake, and on his failure to redeem them, Bastian de Silva Samaranayake became the owner in 1924. After the death of Bastian de Silva Samaranayake, his son, Charles Samaranayake, and after him, his widow and children became the owners.

1st defendant and his sister, Lily, the two surviving children of Adirian, continue to live in the first property mentioned in the plaint, and Peter Wijetunga, a cousin of the 1st defendant purchased the undivided interests of the widow and the children of Charles Samaranayake, who were majors, in the two properties mentioned in the plaint by P9 of 1945 for a sum of Rs. 13,125/-. The interests of the minor children were sold  
40 by the Public Trustee to Peter Wijetunga by P10 of 1947 for a sum of Rs. 4,375/-.

No. 6  
1st Defen-  
dant's  
Evidence  
(contd.)

Evidence of  
U. U. Wije-  
tunga  
Cross-  
examination

Evidence of  
U. U. Wije-  
tunga  
Re-  
examination

No. 7  
Judgment  
of the  
District  
Court  
6-4-60

No. 7  
 Judgment of the  
 District Court  
 6-4-60  
 —continued.

Adirian had 4 sons and 3 daughters. 1st defendant is an old bachelor, and his brothers died either before marriage or without children. The only daughter who married was plaintiff's mother, and she continued to live after her marriage in the first property mentioned in the plaint. She died when the children were young, and plaintiff and her 3 brothers stayed with the 1st defendant and were looked after by him and his sister Lily.

Peter Wijetunga transferred the two properties in question to the 1st defendant by P2 of 29th August, 1948 for a sum of Rs. 15,000/-. By 1D3 of the same date, he transferred the balance 4 properties to Lily for a sum of Rs. 5,000/-.

By P1 of 1-11-48, 1st defendant and the 2nd defendant one of the brothers of plaintiff transferred the two properties mentioned in the plaint to the plaintiff subject to the condition that she should re-transfer them to the 1st defendant if he paid a sum of Rs. 20,500/- within a period of 10 years, and in the event of his death she should transfer the properties to her brother, the 2nd defendant if he paid the Rs. 20,500/- before the said period.

The 10 year period has expired; 1st defendant is in possession of the properties and plaintiff has filed this action for declaration of title, ejectment and damages.

In the attestation of P1, the Notary has stated that no consideration passed in his presence and that it was acknowledged to have been received earlier.

Plaintiff's case is that in August, 1948, she paid a sum of Rs. 20,500/- to the 1st defendant in the presence of the 2nd defendant and one of her other brothers to buy from Peter Wijetunga the four properties, and the 1st defendant instead of buying the properties in her name, bought them in his name and that of his sister, and that when she found fault with him he conditionally transferred the two properties in question on 1-11-48. 30

Plumbago mining was the occupation of the 1st defendant.

The defence is that plaintiff and her brothers told the 1st defendant that he may run through his properties by again mining for plumbago, and induced him to transfer the properties in the name of the plaintiff with the condition of re-transfer in favour of the 2nd defendant whom he had adopted.

Plaintiff gave evidence that her husband was a wealthy trader, and that she got the Rs. 20,500/- from him and gave it to the 1st defendant in the presence of her two brothers. Neither of the brothers were called to support her evidence. 40

She was married in 1943, and letters, 1D1 and 1D2 written by her in 1944 and 1945, indicate that her relationship with her husband was not cordial, and that she desired a dissolution of her marriage. During the

early years of her marriage, she was found incompetent by her husband, and the household affairs were managed by her sister-in-law. For her first confinement she had gone to her father's house, and for her second, to the house of the 1st defendant and it was during this time that P1 was executed.

Her husband is a dealer in Ayurvedic drugs in Gabo's Lane, Colombo, and he was not wealthy at or about the time P1 was executed.

P11, P12 and P13 are alleged copies of income tax returns prepared by Velu Gopalan, one of plaintiff's witnesses.

10 The following are some of the figures from these returns for the 3 years 1948, 1949 and 1950 :—

		1948	1949	1950
		Rs. <u>cts.</u>	Rs. <u>cts.</u>	Rs. <u>cts.</u>
Value of opening stock of goods	...	3,176/26	2,417/37	3,729/03
Value of closing stock	...	2,417/37	3,729/03	12,041/95
Income tax he had paid	...	217/30	225/05	186/85
20 Cash in Bank	...	2,505/69	656/36	2,074/81
Sundry Creditors	...	14,850/82	36,507/93	36,238/94

In 1949 he had mortgaged his property for Rs. 15,000/- and in 1950 he had borrowed monies from Chettiars and others on interest.

In his returns for the years 1948 1957, he had shown a sum of Rs. 20,500/- as money invested by his wife on a primary mortgage carrying interest at 6 per cent and given to her relation, P. Munasinghe. He had mortgaged his only property for Rs. 15,000/-, and this is the largest asset, shown in his returns.

30 His books would have been the best evidence but they were not produced.

His evidence in respect of this transaction was very unsatisfactory.

He did not know the day on which his wife gave the money nor was he fully aware the purpose for which the money was given. He stated that the money was given to get one *land*, and when questioned by his Counsel whether he knew the *land*, his reply was that he did not know; when questioned again whether he did not know any of the *lands*, he said that he knew only the 'mul gedera'. He did not know whether deed P1 was written in his wife's name or in whose favour it was executed. His reply was that he did not look into it.

40 His evidence, if true, indicates that he had satisfied a whim of his wife by giving her a sum of Rs. 20,500/- and forgotten all about it afterwards.

No. 7  
 Judgment of the  
 District Court  
 6-4-60  
 —continued.

The consideration in P2, the deed executed by Peter Wijetunga in favour of 1st defendant is Rs. 15,000/-; the consideration in 1D3, the deed executed on the same day by Peter Wijetunga in favour of Lily is Rs. 5,000/-, and the consideration in P1 is Rs. 20,500/-, and plaintiff gave evidence that when Peter Wijetunga pressed for his money, 1st defendant wanted her to buy the properties and that she gave him the Rs. 20,500/- in the presence of her two brothers to get a transfer of *four lands* from Peter Wijetunga in her favour.

By P2, Peter Wijetunga had transferred *two lands* to the 1st defendant and by 1D3 he had transferred *four lands* to Lily. Her brother, the 2nd 10 defendant is a witness to deeds P2 and 1D3, and if her evidence is true, her brother had connived with the 1st defendant to defraud her.

1st defendant had brought up plaintiff after her mother's death. 1D1 indicates that she was fond of him and at the time P2 was executed, she was staying in his house for her confinement; he is an old bachelor with none to provide, and I find it difficult to believe that 1st defendant defrauded her by getting the properties transferred in his name and that of his sister.

I disbelieve the evidence of plaintiff that she gave 1st defendant a sum of Rs. 20,500/- as consideration for the two properties transferred on P1. 20

No consideration passed in the presence of the Notary. In conversation with the Notary soon after the execution of the deed, he had told him that no money passed on the transaction, and that he had not jeopardised his interests by executing P1 as the dealing was between relatives.

Plaintiff or her representative did not give instructions to the Notary and all instructions were given by the 1st defendant. This indicates that P1 was executed at the instance of the 1st defendant and that no one had got him to do it.

From the time of his father, 1st defendant was living in the house which was one of the properties mortgaged to Bastian de Silva Samara- 30 nayake, and he was anxious to redeem it. His evidence that his cousin, Peter Wijetunga, helped him to pay off Bastian de Silva Samaranayake's heirs is supported by his witness, Wijetunga who had signed P2 and 1D3 as a witness, and who was, at that time, employed under Peter Wijetunga.

The reason why 2nd defendant was brought into P1 as a vendor has not been fully and satisfactorily explained. It may be that the 1st defendant wished his adopted son to own the two properties on his giving plaintiff a sum of Rs. 20,500/- — this is only a surmise.

Taking into consideration the relationship between the 1st defendant and the plaintiff and the evidence of the Notary, I prefer to accept the 40 evidence of the 1st defendant that he transferred the two properties without receiving any consideration to deprive himself of his right of disposal.

(66) I answer issues :—

1. No.
2. No.
3. Nil.
4. No.
5. Yes.
6. No.
7. No.
8. Plaintiff has no title to the properties or has no beneficial interest  
in them.
9. Yes.
10. No.

I dismiss Plaintiff's action with costs.

(Sgd.) N. KRISHNADASAN,  
*District Judge.*  
6-4-60.

Judgment delivered in open Court in the presence of parties and their  
lawyers.

(Sgd.) N. KRISHNADASAN,  
*D. J.*  
6-4-60.

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**No. 8**

**Decree of the District Court**

**IN THE DISTRICT COURT OF GALLE**

**D E C R E E**

CYNTHIA PEARLINE VIDANAGE of Bataduwa,  
Galle.

*Plaintiff.*

No. L/6177.

*Vs.*

1. MENIKPURA PEERIS MUNASINGHE
2. BERTRAM CLIVE VIDANAGE both of  
Dangedera, Galle.

*Defendants.*

This action coming on for disposal before N. Krishnadasan Esquire, District Judge of Galle, on the 7th day of March, 1960, in the presence of Mr. R. Dias Abeysinghe, Advocate, instructed by Mr. K. R. Alson de Silva, Proctor on the part of the plaintiff and of Mr. S. S. J. Goonesekera, Advocate, instructed by Mr. G. E. Abeywardene, Proctor on the part of the 1st defendant and the 2nd defendant being absent, again on the 14th day of March, 1960, in the presence of the same counsel and finally on the 6th day of April, 1960.

No. 7  
Judgment  
of the  
District  
Court  
6-4-60  
—continued.

No. 8  
Decree  
of the  
District  
Court  
6-4-60

No. 8  
Decree of the  
District Court  
6-4-60  
—continued.

It is hereby ordered and decreed that the plaintiff's action in respect of the lands morefully described in the schedule hereto annexed be and the same is hereby dismissed with costs.

**The Schedule referred to :—**

1. All that undivided one-fourth (1/4) part or share of the soil and trees of the land called Millagahawatta *alias* Midellagahawatta or Owita together with the entirety of the fifteen cubits and the out houses standing thereon bearing Municipal Assessment No. 541, situated at Dangedera within the Four Gravets of Galle, Galle District Southern Province and bounded on the North by the High Road,<sup>10</sup> East by the High Road, South by Kompadorugewatta and West by Millagahawatta *alias* Midellagahawatta containing in extent about one acre (1A. 0R. 0P).

2. All that undivided eleven upon twenty (11/20) part or share of the land called Millagahawatta *alias* Midellagahawatta situated at Dangedera aforesaid bearing Municipal Assessment No. 548, together with the entirety of the buildings standing thereon bearing Municipal Assessment No. 540, built by Manikpura Adirian and bounded on the North by Hikgaha Liyadda, East by the Owita of the same land, South by Kompadorugewatta and West by Hikgaha Liyadda *alias*<sup>20</sup> Pedikumbura containing in extent four acres and twenty-nine perches (4A. 0R. 29P).

(Sgd.) A. E. BUULTJENS,  
*District Judge.*

This 6th day of April, 1960.

Drawn by :

(Sgd.) K. R. ALSON DE SILVA,  
*Proctor for Plaintiff.*

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**No. 9**

**Petition of Appeal to the Supreme Court**

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**IN THE DISTRICT COURT OF GALLE**

CYNTHIA PEARLINE VIDANAGE of Bataduwa,  
Galle.

*Plaintiff.*

No. L/6177

*Vs.*

1. MENIKPURA PEIRIS MUNASINGHE,

2. BERTRAM CLIVE VIDANAGE both of  
Dangedera, Galle,

*Defendants.*

No. 9  
Petition of  
Appeal to  
the Supreme  
Court  
11-4-60



(F)  
S. C. 151/1960.

No. 9  
Petition of  
Appeal to  
the Supreme  
Court  
11-4-60  
—continued.

**In the Supreme Court of the Island of Ceylon**

Cynthia Pearline Vidanage of Bataduwa,  
Galle.

and

*Plaintiff-Appellant.*

1. Menikpura Peeris Munasinghe,
2. Bertram Clive Vidanage both of  
Dangedera, Galle.

*Defendants-Respondents.*

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

On this 11th day of April, 1960.

The petition of appeal of the plaintiff-appellant abovenamed appearing by her Proctor K. R. Alson de Silva, states as follows :—

1. The plaintiff-appellant sued the 1st and 2nd defendants-respondents in the above styled action for a declaration of title to the two contiguous lands described in the schedule to the plaint, for ejection of the 1st defendant-respondent from the premises and for damages in a sum of Rs. 100/- per month for wrongful and unlawful possession from 1st November, 1958 against the 1st defendant-respondent.

2. The case for the plaintiff-appellant was that by deed of Transfer No. 1343 of 1st November, 1948 marked P1 the 1st defendant-respondent transferred the two properties mentioned in the schedule to the plaint to the plaintiff-appellant for a sum of Rs. 20,500/- subject to the proviso that if the 1st defendant-respondent paid back within ten years from the date of the deed the said sum of Rs. 20,500/- with interest thereon at six per centum per annum then the plaintiff-appellant would re-convey the said properties back to the 1st defendant-respondent. The proviso further stipulated that if the 1st defendant-respondent were to die within the said period of ten years contemplated in the deed then the plaintiff-appellant would re-convey the properties to the 2nd defendant-respondent and in any event the plaintiff-appellant could re-convey to the survivor of either the 1st or the 2nd defendants-respondents, upon re-payment of the stipulated sum within the said stipulated period.

3. The ten year period lapsed on the 31st October, 1958 and as from 1st November, 1958 the plaintiff-appellant contended that as no re-payment of the moneys had been made within that period by either the 1st or 2nd defendants-respondents the absolute title to the pro-

properties vested in her and that the 1st defendant-respondent remained in the occupation of the premises unlawfully without giving over possession to the plaintiff-appellant.

4. The 2nd defendant-respondent was made a party to give him notice of the action but no relief was claimed against him.

5. The 1st defendant-respondent filed answer and took up the defence that as no consideration passed on P1 no beneficial interest in the property passed to the plaintiff-appellant on the said deed and that the plaintiff-appellant held the said properties in trust for the 1st defendant-respondent. He also took up the further defence that “ the 10 said deed P1 was executed by him as the result of exertion of undue influence on him by the plaintiff-appellant, her husband and brothers one of whom was the 2nd defendant-respondent and that the document was not the 1st defendant-respondent’s act or deed. (2) that the plaintiff-appellant her husband and the 2nd defendant-respondent had practised a fraud on him by mis-representing the nature of the transaction (3) that the plaintiff-appellant’s action was speculative ”. On these several grounds he asked for a re-conveyance of the properties from the plaintiff-appellant in re-convention and asked for a dismissal of plaintiff’s action. 20

6. It was admitted by the parties that the plaintiff-appellant was a niece of the 1st defendant-respondent and that 2nd defendant-respondent was plaintiff-appellant’s brother.

7. The case proceeded to trial on the following issues :—

1. Is the plaintiff entitled to the premises described in the schedule to the plaint ?
2. Is the defendant in unlawful possession thereof since 1st November 1958 ?
3. If so what damage is the plaintiff entitled to ?
4. Was the 1st defendant made to sign the document 1343 of 1st 30 November, 1948 by the exercise of undue influence on him by the plaintiff her husband and brother ?
5. Was document 1343 of 1-11-48 relied on by the plaintiff for her title the act and deed of the 1st defendant ?
6. Was deed 1343 of 1-11-48 executed by the 1st defendant for valuable consideration ?
7. If issue No. 6 is answered in the negative did any beneficial interest in the property mentioned in the said deed passed to the plaintiff ?
8. Does the plaintiff hold the properties dealt with in the said deed 40 in trust for the 1st defendant ?

9. Is the 1st defendant entitled to claim a re-transfer of the legal title to the properties dealt with in the said deed from the plaintiff?
10. Did the plaintiff practise a fraud on the 1st defendant?
11. If so can she take advantage of her own fraud?
8. After trial the learned District Judge dismissed plaintiff-appellant's action and held that the 1st defendant was entitled to a re-conveyance of the properties in question and awarded costs to 1st defendant.
- 10 9. Being dis-satisfied and aggrieved at the judgment the plaintiff-appellant begs to appeal therefrom to Your Lordships' Court on the following among other grounds to be urged at the hearing of the appeal.
- (a) The said judgment is contrary to law and against the weight of evidence.
- (b) It is respectfully submitted that the learned District Judge has mis-directed himself in basing his judgment on his finding that no consideration passed on deed P1.
- 20 (c) The attestation in P1 is the effect that the consideration of Rs. 20,500/- was acknowledged to have been previously received and the question that arose was whether this consideration in fact has passed previously.
- (d) In addition to the plaintiff-appellant's own evidence that she did in fact get this sum from her husband and paid to the 1st defendant-respondent, she called her own husband to support this evidence and produced balance sheets and trading accounts of her husband's business marked P11 to P21 for the years 1948 to 1957 showing this sum of Rs. 20,500/- as moneys invested in his wife's name and given to P. Munasinghe the 1st defendant-respondent.
- 30 (e) In rejecting the evidence of the plaintiff-appellant and her husband on this point the learned District Judge lays stress on the fact that this evidence shows that her husband was not possessed of any great wealth at or about the time of this transaction. He has subjected the evidence both of the plaintiff-appellant and her husband to a close examination whereas he has not considered the evidence of the 1st defendant-respondent on this point.
- 40 (f) It is only too clear that the evidence of the 1st defendant-respondent on this question of consideration is utterly improbable and unworthy of credit and it is respectfully submitted that the learned District Judge should have weighed the evidence for the plaintiff-appellant on this point with the

story of the 1st defendant-respondent. He could then have been able to view the evidence for the plaintiff-appellant, not in isolation but in the light of what the 1st defendant-respondent has to say and have tested the veracity of one version or the other.

- (g) In view of the attestation in P1 that the consideration was acknowledged to have been received previously it is obvious that the burden of proof cast on the 1st defendant-respondent to dis-prove this was an onerous one and the oral evidence in the case on this point has to be viewed from the legal stand-<sup>10</sup> point ; such evidence should be unimpeachable. The questions that have to be answered are what did the attestation mean, and why, if no consideration passed previously as contended by the 1st defendant-respondent was this acknowledgement by the 1st defendant-respondent made at the execution of P1 ?
- (h) If the 1st defendant-respondent's story is true it is inconceivable why the 1st defendant-respondent should undertake to pay back gratuitously such a large sum as Rs. 20,500/- with interest at 6 per cent per annum to boot within ten<sup>20</sup> years.
- (i) The learned District Judge has failed to bring his mind to bear on the significant fact that emerges from the evidence that this amount of consideration Rs. 20,500/- is identical with the amount of consideration paid on P2 and 1D3 and the cost of the deeds, a fact which strongly support the plaintiff-appellant's case.
- (j) The learned District Judge in answering the issues clearly rejects the larger part of the 1st defendant-respondent's defence. If then the story of undue influence and fraud<sup>30</sup> as related by the 1st defendant-respondent is unacceptable, how can the rest of 1st defendant-respondent's story be made to square with this rejection ?
- (k) The learned District Judge it is respectfully submitted has made no finding that the plaintiff-appellant holds the property in trust for the 1st defendant-respondent. For it is the contention of the 1st defendant-respondent himself that the property is vested in the plaintiff-appellant but that as no consideration passed the beneficial interest was still with him. It is submitted in law that where there is no finding of trust<sup>40</sup> the 1st defendant-respondent cannot succeed.
- (l) The 1st defendant-respondent on his own admission is without means and has been so, for some considerable time, reaching back to a time before the alleged transaction in August, 1948. This fact does not seem to have weighed with the learned District Judge in considering the evidence in the case.

- (m) The plaintiff-appellant respectfully submits that there has been no proper evaluation of the evidence in this case and if a comprehensive view of the evidence is taken it is clear that the plaintiff's case must succeed.
- (n) The plaintiff-appellant respectfully submits that the evidence of the 1st defendant-respondent was merely an attempt on his part to vary and supplant the terms and conditions of a Notarial executed document, by him.

No. 9  
Petition of  
Appeal to  
the Supreme  
Court  
11-4-60  
—continued.

WHEREFORE THE PLAINTIFF-APPELLANT PRAYS :—

10 That the judgment of the learned District Judge be set aside.

That judgment be entered for plaintiff-appellant as prayed for in the plaint.

For costs and for such other and further relief as to Your Lordships Court shall seem meet.

(Sgd.) K. R. ALSON DE SILVA,  
*Proctor for Plaintiff-Appellant.*

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No. 10

Proceedings before the District Court

27th July, 1960.

No. 10  
Proceedings  
before the  
District  
Court  
27-7-60

20 Mr. Adv. Dias Abeysinghe instructed by Mr. K. R. Alson de Silva for the plaintiff-appellant.

Mr. Adv. S. S. J. Goonesekera instructed by Mr. G. E. Abeywardena for the defendant-respondent.

This is an inquiry into the application by the defendant-respondent to have the appeal abated on the ground that fees for type-written copies of the case had not been deposited within the specified time.

Mr. Goonesekera cites *Rule 2 (1) of the Civil Appellate Rules*.

Also cites *61 N.L.R. 393*

*59 N.L.R. 73* and

30 *52 N.L.R. 536, at page 545.*

Also refers to journal entries of 11-4-60 and 30-5-60.

Submits that the plaintiff-appellant is out of time and that the appeal be declared abated.

Mr. Dias Abeysinghe heard in reply :—

No. 10  
Proceedings  
before the  
District Court  
27-7-60.  
—continued.

Refers to journal entry of 11-4-60 which states that the appellant's proctor tendered a sum of Rs. 24/- instead of Rs. 25/-. The difference is slight. Submits that it would be harsh and unconscionable if the appeal is declared abated. Submits that appeal be allowed.

Cites 58 *N.L.R.* 166, at page 167.

The important thing that governs this case is time. The appellant's Proctor tendered a lesser amount for type-written copies and later when he found that the amount was short, he tendered a further sum.

(Sgd.) N. KRISHNADASAN, 10  
D. J.  
27-7-60.

Order for 10-8-60.

(Sgd.) N. KRISHNADASAN,  
D. J.  
27-7-60

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No. 11

Order of the District Court

No. 11  
Order of the  
District Court  
10-8-60

10th August, 1960

ORDER

20

This is an application by the defendant-respondent to have the appeal filed by the plaintiff abated on the ground that the prescribed fees for the type-written copies had not been deposited by the appellant in accordance with Rule 2, sub-rule (1) of the Civil Appellate Rules.

On 11-4-60 when the petition of appeal was filed, Kachcheri receipt for Rs. 24/- was tendered. The prescribed fee is Rs. 25/- and the plaintiff's Proctor deposited a further sum of Rs. 20/- on 20-4-60.

The appellant had failed to deposit fees for type-written copies when she filed her appeal.

In *A. P. Fernando vs. C. T. Anthony*<sup>1</sup>, it was held "that the provision of Rule 2 (1) of the Civil Appellate Rules, 1938, that an application for type-written copies 'shall be accompanied by the fees prescribed in the schedule hereto' is an imperative, and not merely a directory, provision of law. Failure to comply with it is fatal to the reception of the appeal".

In *Sopaya Peiris and another vs. Wilson de Silva*<sup>2</sup>, it was held by way of Obiter "(a) that where a Court is situated in a place in which there is a Kachcheri or Treasury Office, the prescribed fees should be deposited in the Kachcheri or Treasury Office and the receipt tendered along with the application under Rule 2 (1) for type-written copies".

In *A. Haji Habib & Co., vs. Kuthalathammal*<sup>3</sup>, it was held "that Rules 2 (1) and 4 of the Civil Appellate Rules, 1938, read together with the payment into Court Order, 1939, an appeal will be deemed to have abated if the application for typewritten copies is not accompanied by the Kachcheri receipt showing that the prescribed fees have been deposited in the Kachcheri".

No. 11  
Order of the  
District  
Court  
12-8-60  
—continued.

Following these authorities, I make order abating the appeal.

In *Abdul Cader vs. Sittinisa*<sup>4</sup>, the appellant had, by mistake, tendered Rs. 20/- instead of Rs. 25/- which was the prescribed fee, and the Supreme Court held "that as the respondents had not been in any manner prejudiced, the appellant should, as a matter of indulgence, be heard by way of revision".

The appellant did not lead evidence to show why Rs. 24/- and not Rs. 25/- was deposited. Even if this is an appropriate case for indulgence, this is a relief that can only be given by the Appellate Court.

(Sgd.) N. KRISHNADASAN,  
*District Judge.*  
10-8-60.

1. 58 N.L.R. 166

20

2. 59 N.L.R. 73

3. 61 N.L.R. 393

4. 52 N.L.R. 536

Order delivered in open Court in the presence of parties and their lawyers.

(Sgd.) N. KRISHNADASAN,  
*D. J.*  
10-8-60.

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No. 12

Petition of Appeal to the Supreme Court

IN THE DISTRICT COURT OF GALLE

CYNTHIA PEARLINE VIDANAGE of  
Bataduwa, Galle.

*Plaintiff.*

No. L/6177

*Vs.*

1. MENIKPURA PEERIS MUNASINGHE,
2. BERTRAM CLIVE VIDANAGE both of  
Dangedera, Galle.

*Defendants.*

No. 12  
Petition of  
Appeal to  
the Supreme  
Court  
12-8-60

30

No. 12  
Petition of Appeal  
to the  
Supreme Court  
12-8-60

(F)  
S. C. 374/1960.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

Cynthia Pearline Vidanage of  
Bataduwa, Galle.

and

*Plaintiff-Appellant.*

1. Menikpura Peeris Munasinghe,
2. Bertram Clive Vidanage both of  
Dangedera, Galle.

*Defendants-Respondents.* 10

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

On this 12th day of August, 1960.

The Petition of appeal of the abovenamed plaintiff-appellant appearing by K. R. Alson de Silva, her Proctor, states as follows :—

1. The plaintiff-appellant sued the 1st and 2nd defendants-respondents in the above styled action for a declaration of title to the two contiguous lands described in the schedule to the plaint, for ejection of the 1st defendant-respondent from the premises and for damages in a sum Rs. 100/- per month for wrongful and unlawful possession 20 from 1st November, 1958, against the 1st defendant- respondent.

2. The case for the plaintiff-appellant was that by deed of transfer No. 1343 dated 1st November, 1948 marked P1 the 1st defendant-respondent transferred the two properties mentioned in the schedule to the plaint to the plaintiff-appellant for a sum of Rs. 20,500/- subject to the proviso that if the 1st defendant-respondent paid back within ten years from the date of the deed the said sum of Rs. 20,500/- with interest thereon at the rate of six per centum per annum then the plaintiff-appellant would re-convey the said properties back to the 1st defendant-respondent. The proviso further stipulated that if the 1st 30 defendant-respondent were to die within the said period of ten years contemplated in the deed then the plaintiff-appellant would re-convey the said properties to the 2nd defendant-respondent and in any event the plaintiff-appellant could re-convey to the survivor of either the 1st or the 2nd defendants-respondents upon re-payment of the stipulated sum within the said stipulated period.

3. The ten year period lapsed on the 31st October, 1958 and as from 1st November, 1958 the plaintiff-appellant contended that as no re-payment of the moneys had been made within that period by either the 1st or 2nd defendants-respondents the absolute title to the 40 properties vested in her and that the 1st defendant-respondent re-



mained in the occupation of the premises unlawfully without giving over possession to the plaintiff-appellant.

No. 12  
Petition of  
Appeal to  
the Supreme  
Court  
12-8-60  
—continued.

4. The 2nd defendant-respondent was made a party to give him notice of the action but no relief was claimed against him.

10 5. The 1st defendant-respondent filed answer and took up the defence that as no consideration passed on P1 no beneficial interest in the property passed to the plaintiff-appellant on the said deed and that the plaintiff-appellant held the said properties in trust for the 1st defendant-respondent. He also took up the further defence that “ the said deed P1 was executed by him as the result of exertion of undue influence on him by the plaintiff-appellant, her husband and brothers one of whom was the 2nd defendant-respondent and that the document was not the 1st defendant-respondent’s act or deed. (2) That the plaintiff-appellant her husband and the 2nd defendant-respondent had practised a fraud on him by mis-representing the nature of the transaction (3) that the plaintiff-appellant’s action was speculative. On these several grounds he asked for a re-conveyance of the properties from the plaintiff-appellant in reconveyance and asked for a dismissal of plaintiff’s action.

20 6. It was admitted by the parties that the plaintiff-appellant was a niece of the 1st defendant-respondent and that the 2nd defendant-respondent was plaintiff-appellant’s brother.

7. The case proceeded to trial on the following issues :—

1. Is the plaintiff entitled to the premises described in the schedule to the plaint ?
2. Is the defendant in unlawful possession thereof since 1st November, 1958 ?
3. If so what damages is the plaintiff entitled to ?
- 30 4. Was the 1st defendant made to sign the document 1343 of the 1st November, 1948 by the exercise of undue influence on him by the plaintiff her husband and brother ?
5. Was document 1343 of 1-11-48 relied on by the plaintiff for her title the act and deed of the 1st defendant ?
6. Was deed 1343 of 1-11-48 executed by the 1st defendant for valuable consideration ?
7. If issue No. 6 is answered in the negative did any beneficial interest in the property mentioned in the said deed passed to the plaintiff ?
- 40 8. Does the plaintiff hold the properties dealt with in the said deed in trust for the 1st defendant ?

No. 12  
Petition of Appeal  
to the  
Supreme Court  
12-8-60  
—continued.

9. Is the 1st defendant entitled to claim a re-transfer of the legal title to the properties dealt with in the said deed from the plaintiff ?
  10. Did the plaintiff practise a fraud on the 1st defendant ?
  11. If so, can she take advantage of her own accord ?
8. After trial the learned District Judge dismissed the plaintiff-appellant's action and had that 1st defendant-respondent was entitled to a reconveyance of the properties in question and awarded costs to the 1st defendant-respondent.
9. Being dissatisfied and aggrieved at the said judgment the 10 plaintiff-appellant tendered petition of appeal to Your Lordships' Court on the following among other grounds to be urged at the hearing of the appeal.
- (a) The said judgment was contrary to law and against the weight of evidence.
  - (b) It was respectfully submitted that the learned District Judge had mis-directed himself in basing his judgment on his finding that no consideration passed on deed P1.
  - (c) The attestation in P1 is to the effect that the consideration of Rs. 20,500/- was acknowledged to have been previously 20 received and the question that arose was whether this consideration in fact had passed previously.
  - (d) In addition to the plaintiff-appellant's own evidence that she did in fact get this sum from her husband and paid to the 1st defendant-respondent, she called her own husband to support this evidence and produced balance sheets and trading accounts of her husband's business marked (P11) to (P21) for the years 1948 to 1957 showing this sum of Rs. 20,500/- as moneys invested in his wife's name and given to P. Munasinghe the 1st defendant-respondent. 30
  - (e) In rejecting the evidence of the plaintiff-appellant and her husband on this point the learned District Judge laid stress on the fact that this evidence showed that the husband was not possessed of any great wealth at or about the time of this transaction. He had subjected the evidence both of the plaintiff-appellant and her husband to a close examination whereas he had not considered the evidence of the 1st defendant-respondent on this point.
  - (f) It is only too clear that the evidence of the 1st defendant-respondent on this question of consideration is utterly im- 40probable and unworthy of credit and it was respectfully submitted that the learned District Judge should have weighed

the evidence of the plaintiff-appellant on this point with the story of the 1st defendant-respondent. He could then have been able to view of the evidence for the plaintiff-appellant, not in insolation but in the light of what the 1st defendant-respondent had to say and had tested the veracity of one version or the other.

No. 12  
Petition of  
Appeal to  
the Supreme  
Court  
12-8-60  
—continued.

- 10 (g) In view of the attestation in P1 that the consideration was acknowledged to have been received previously it is obvious that the burden of proof cast on the 1st defendant-respondent, to disprove this was an onerous one and the oral evidence in the case on this point has to be viewed from the legal stand point ; such evidence should be unimpeachable. The questions that have to be answered are what did the attestation mean and why, if no consideration passed previously as contended by the 1st defendant-respondent was this acknowledgment by the 1st defendant-respondent made at the execution of P1 ?
- 20 (h) If the 1st defendant-respondent's story was true it is inconceivable why the 1st defendant-respondent should undertake to pay back gratuitously such a large sum as Rs. 20,500/- with interest at six per cent per annum to boot within ten years.
- (i) The learned District Judge had failed to bring his mind to bear on the significant fact that emerges from the evidence that this amount of consideration Rs. 20,500/- is identical with the amount of consideration paid on P2 and 1D3 and the cost of the deeds, a fact which strongly support the plaintiff-appellant's case.
- 30 (j) The learned District Judge in answering the issues clearly rejected the larger part of the 1st defendant-respondent's defence. If then the story of undue influence and fraud as related by the 1st defendant-respondent is unacceptable how can the rest of the 1st defendant-respondent's story be made to square with this rejection ?
- 40 (k) The learned District Judge it is respectfully submitted has made no finding that the plaintiff-appellant held the property in trust for the 1st defendant-respondent. For it is the contention of the 1st defendant-respondent himself that the property is vested in the plaintiff-appellant but that as no consideration passed the beneficial interest was still with him. It is submitted in law that where there is no finding of trust the 1st defendant-respondent cannot succeed.
- (l) The 1st defendant-respondent on his own admission is without means and had been so for some considerable time reaching back to a time before the alleged transaction in August, 1948. This fact did not seem to have weighed

No. 12  
Petition of Appeal  
to the  
Supreme Court  
12-8-60  
—continued.

with the learned District Judge in considering the evidence in the case.

- (m) The plaintiff-appellant respectfully submitted that there had been no proper evaluation of the evidence in this case and if a comprehensive view of the evidence is taken it is clear that the plaintiff-appellant's case must succeed.
- (n) The plaintiff appellant respectfully submitted that the evidence of the 1st defendant-respondent was merely an attempt on his part to vary and supplant the terms and conditions of a Notarially executed document. 10

10. The plaintiff-appellant prayed that the judgment of the learned District Judge be set aside and judgment be entered for the plaintiff-appellant as prayed for in the plaint.

11. The plaintiff-appellant begs to submit (a) that on 11-4-1960 her proctor tendered the petition of appeal of the plaintiff-appellant together with the kachcheri receipt for Rs. 24/- being fees for the type-written copy of the case and the application for same and moved that the same be accepted and filed.

(b) He also tendered uncanceled stamps to the value of Rs. 19/50 and Rs. 39/- for certificate in appeal and S. C. Judgment and moved 20 that the same be accepted.

(c) He also tendered notice of security and moved that the same be issued for service on the 1st and 2nd defendants-respondents and on the 1st defendant-respondent's proctor returnable 20-4-1960.

(d) He also moved for an order to deposit Rs. 200/- as security for costs in appeal.

(e) He also tendered notice of appeal together with copies of petition of appeal and moved that the same be issued.

12. On these applications the learned District Judge made the following orders. 30

1. Accept the petition of appeal and application for type-written copies.
2. Accept stamps.
3. Issue notice of security.
4. Issue D/O for Rs. 200/-.
5. Accept and file notice of appeal to be issued in due course.

13. The plaintiff-appellant further submits that notice of security was served on the 1st and 2nd defendants-respondents and on Mr. G. E. Abeywardena Proctor for the 1st defendant-respondent. The 1st defendant-respondent and his Proctor being present in Court and the 2nd defendant-respondent being absent and the proctor for plaintiff-appellant having tendered the Kachcheri Receipt No. 959, security was accepted and Bond No. 2800 of 20-4-1960 was tendered and accepted by Court and notice of appeal was ordered to be issued returnable 4-5-60. No objection whatsoever was taken either against  
 10 the notice of security or application for type-written copies.

14. That on 21-4-60 the proctor for the 1st defendant-respondent moved for an order to deposit Rs. 25/- being fees for the type-written copies in the said case and a paying in voucher was issued.

15. That on 4-5-60 notice of appeal was served on the 1st defendant-respondent, who was absent and was not served on the 2nd defendant-respondent as he was not found. The notice of appeal was ordered to be reissued on the 2nd defendant-respondent returnable 6-7-60.

16. That on 27-5-60 the proctor for plaintiff-appellant moved for an order to deposit a further sum of Rs. 20/- as additional fees for type-written copies and K. R. No. 1866 of 27-5-60 was filed.  
 20

17. That on 30-5-60 Proctor for the 1st defendant-respondent moved that the appeal be abated under Rule 4 of the Civil Appellate Rules as the plaintiff-appellant has not complied with Rule 2 (1) of the Civil Appellate Rules in that the plaintiff has not deposited the prescribed fees Rs. 25/- for the type-written copies as provided in the schedule therein according to the class of the case and as such the plaintiff-appellant is fatal and has to be abated. On this the learned District Judge ordered notice on the plaintiff-appellant returnable 27-6-60.

19. That on 4-6-60 the proctor for plaintiff-appellant stated that objection had been taken by the 1st defendant-respondent that there was a deficiency of Re. 1/- on the original amount deposited for type-written copies with the petition of appeal and begged that the deficiency of Re. 1/- be deducted out of the sum of Rs. 20/- deposited later.  
 30

20. That on 27-6-60 notice to abate appeal was served on the proctor for plaintiff-appellant and the matter was fixed for inquiry on 27-6-60.

21. The plaintiff-appellant further begs to submit that at the inquiry held on 27-6-60 it was urged by the counsel for the plaintiff-appellant (a) that the Kachcheri receipt for the type-written copies was brought to Court on 11-4-60 along with the petition of appeal and all other necessary papers (b) that by an oversight on the part of the plaintiff-appellant's proctor only a sum of Rs. 24/- was deposited instead of Rs. 25/- as required by the Schedule to the Civil Appellate Rules (c) that the Court accepted this sum of Rs. 24/- for type-written copies on the same day (d) that no prejudice was caused to any party by this  
 40

No. 12  
Petition of Appeal  
to the  
Supreme Court  
12-8-60  
—continued.

error as there was almost always an additional fee to be deposited by the parties on being so informed by the District Judge or the Registrar of the Supreme Court who ever prepares the type-written copies.

22. As against these submissions the learned District Judge made order on the 10th August, 1960 that the appeal do abate.

23. Being dis-satisfied and aggrieved at the said order and judgment the plaintiff-appellant therefore begs to submit to Your Lordships' Court on the following among other grounds to be urged at the hearing of this appeal.

- (a) That the learned District Judge should have taken into con- 10  
sideration the fact that the Kachcheri Receipt and the appli-  
cation for type-written copies was filed along with the petition  
of appeal for a sum of Rs. 24/- a mere Re. 1/- less than the  
amount prescribed in the schedule to the Appellate Rules.
- (b) That it was a mere oversight on the part of the proctor for the  
plaintiff-appellant in having deposited a sum of Rs. 24/-  
instead of Rs. 25/-.
- (c) That the Court accepted the sum brought to Court as fees  
for type-written copies and that the same cannot be rejected 20  
now, by the same court, as insufficient.
- (d) That no prejudice is caused to the 1st defendant-respondent  
by the mere bringing of Rs. 24/- to Court instead of Rs. 25/-  
as the deposit of money for type-written copies cannot be  
treated as a closed chapter owing to the fact that a further  
sum of money has always to be brought to Court before the  
case is forwarded to Your Lordships' Court.
- (e) That the plaintiff-appellant should not be penalised for an  
error of judgment on a mistake of her proctor.
- (f) That untold hardship and irreparable loss and damage will be  
caused to the plaintiff appellant if the case could not be for- 30  
warded to Your Lordships' Court, as the plaintiff-appellant  
verily believes that she has good grounds for an appeal to Your  
Lordships' Court both in law and fact.
- (g) That the 1st defendant-respondent has taken an undue advan-  
tage over the plaintiff-appellant by the mistake or the error  
made by her in bringing a sum of money for type-written  
copies short of Re. 1/-.

WHEREFORE THE PLAINTIFF-APPELLANT PRAYS :—

That the said order and judgment of the learned District Judge abat-  
ing the Appeal be set aside. 40

That the appeal be forwarded to Your Lordships' Court.

That the plaintiff-appellant's claim be reviewed by Your Lordships' Court and that she be allowed to appeal from the learned District Judge's finding of 6th April, 1960.

For costs and for such other and further relief as to Your Lordships' Court shall seem meet.

(Sgd.) K. R. ALSON DE SILVA,  
*Proctor for Plaintiff-Appellant.*

No. 12  
Petition of  
Appeal to  
the Supreme  
Court  
12-8-60  
—continued.

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No. 13

10

**Application to the Supreme Court for Revision**

**IN THE SUPREME COURT OF THE ISLAND OF CEYLON**

In the matter of an application for revision in case  
No. 6177/L of the District Court of Galle.

CYNTHIA PEARLINE VIDANAGE of  
Bataduwa, Galle.

*Plaintiff.*

*Vs.*

1. MENIKPURA PEIRIS MUNASINGHE,
2. BERTRAM CLIVE VIDANAGE both of  
Dangedera, Galle.

*Defendants.*

CYNTHIA PEARLINE VIDANAGE of  
Bataduwa, Galle.

*Plaintiff-Petitioner.*

*Vs.*

1. MENIKPURA PEIRIS MUNASINGHE,
2. BERTRAM CLIVE VIDANAGE both of  
Dangedera, Galle.

*Defendants-Respondents.*

30

To : The Honourable the Chief Justice, and other Justices of the  
Supreme Court of the Island of Ceylon.

On this 30th day of July, 1962.

The petition of the abovenamed plaintiff-petitioner appearing by  
Mr. K. R. Alson de Silva, her proctor, states as follows :—

No. 13  
Application  
to the  
Supreme  
Court for  
Revision

(i) Petition  
of the  
Plaintiff  
30-7-62

No. 13  
Application to the  
Supreme Court  
for Revision

(i) Petition of the  
Plaintiff  
30-7-62  
—continued.

1. The plaintiff-petitioner sued the 1st and 2nd defendants-respondents in the above styled action for a declaration of title to the two contiguous lands described in the schedule to the plaint, for ejection of the 1st defendant-respondent from the premises and for damages in a sum of Rs. 100/- per month for wrongful and unlawful possession from 1st November, 1958, against the 1st defendant-respondent.

2. The case for the plaintiff-petitioner was that by deed of transfer No. 1343 dated 1st November, 1948 marked P1 the 1st defendant-respondent transferred the two properties mentioned in the schedule to the plaint to the plaintiff-petitioner for a sum of Rs. 20,500/- subject to the proviso that if the 1st defendant-respondent paid back within ten years from the date of the deed the said sum of Rs. 20,500/- with interest thereon at the rate of six per centum per annum then the plaintiff-petitioner would reconvey the said properties back to the 1st defendant-respondent. The proviso further stipulated that if the 1st defendant-respondent were to die within the said period of ten years contemplated in the deed then the plaintiff-petitioner would re-convey the said properties to the 2nd defendant-respondent and in any event the plaintiff-petitioner could re-convey to the survivor of either the 1st or the 2nd defendants-respondents upon repayment of the stipulated sum within the said stipulated period.

3. The ten year period lapsed on the 31st October, 1958 and as from 1st November, 1958 the plaintiff-petitioner contended that as no repayment of the moneys had been made within that period by either the 1st or 2nd defendants-respondents the absolute title to the properties vested in her and that the 1st defendant-respondent remained in the occupation of the premises unlawfully without giving over possession to the plaintiff-petitioner.

4. The 2nd defendant-respondent was made a party to give him notice of the action but no relief was claimed against him.

5. The 1st defendant-respondent filed answer and took up the defence that as no consideration passed on P1 no beneficial interest in the property passed to the plaintiff-petitioner on the said deed and that the plaintiff-petitioner held the said properties in trust for the 1st defendant-respondent. He also took up the further defence that "the said deed P1 was executed by him as the result of exertion of undue influence on him by the plaintiff-petitioner, her husband and brothers one of whom was the 2nd defendant-respondent and that the document was not 1st defendant-respondent's act or deed. (2) That the plaintiff-petitioner, her husband and the 2nd defendant-respondent had practised a fraud on him by mis-representing the nature of the transaction. (3) That the plaintiff-petitioner's action was speculative." On these several grounds he asked for re-conveyance of the properties from the plaintiff-petitioner in reconveyance and asked for a dismissal of plaintiff's action.



6. It was admitted by the parties that the plaintiff-petitioner was a niece of the 1st defendant-respondent and that the 2nd defendant-respondent was plaintiff-petitioner's brother.

7. The case proceeded to trial on the following issues :—

1. Is the plaintiff entitled to the premises described in the schedule to the plaint ?
2. Is the defendant in unlawful possession thereof since 1st November, 1958 ?
- 10 3. Was the 1st defendant made to sign the document 1343 of 1st November, 1948 by the exercise of undue influence on him by the plaintiff, her husband and brother ?
4. Was document 1343 of 1-11-48 relied on by the plaintiff for her title the act and deed of the 1st defendant ?
5. Was deed 1343 of 1-11-48 executed by the 1st defendant for valuable consideration ?
6. If issue No 6 is answered in the negative did any beneficial interest in the property mentioned in the said deed pass to the plaintiff ?
- 20 7. Does the plaintiff hold the properties dealt with in the said deed in trust for the 1st defendant ?
8. Is the 1st defendant entitled to claim a re-transfer of the legal title to the properties dealt with in the said deed from the plaintiff ?
9. Did the plaintiff practise a fraud on the 1st defendant ?
10. If so can she take advantage of her own accord ?

8. After trial the learned District Judge dismissed the plaintiff-petitioner's action and held that 1st defendant-respondent was entitled to a reconveyance of the properties in question and awarded costs to the 1st defendant-respondent.

30 9. Being dissatisfied and aggrieved at the said judgment the plaintiff-petitioner tendered petition of appeal to Your Lordship's Court on the following among other grounds to be urged at the hearing of the appeal.

- (a) The said judgment was contrary to law and against the weight of evidence.
- (b) It was respectfully submitted that the learned District Judge has misdirected himself in basing his judgment on his finding that no consideration passed on deed P1.

No. 13  
Application  
to the  
Supreme  
Court for  
Revision

(i) Petition  
of the  
Plaintiff  
30-7-62  
—continued.

No. 18  
Application to the  
Supreme Court for  
Revision

(i) Petition of the  
Plaintiff  
30-7-62  
—continued.

- (c) The attestation in P1 is to the effect that the consideration of Rs. 20,500/- was acknowledged to have been previously received and the question that arose was whether this consideration in fact had passed previously.
- (d) In addition to the plaintiff-petitioner's own evidence that she did in fact get this sum from her husband and paid to the 1st defendant-respondent she called her own husband to support this evidence and produced balance sheets and trading accounts of her husband's business marked P11 to P21 for the years 1948 to 1957 showing this sum of Rs. 20,500/-<sup>10</sup> as moneys invested in his wife's name and given to P. Munasinghe the 1st defendant-respondent.
- (e) In rejecting the evidence of the plaintiff-petitioner and her husband on this point the learned District Judge laid stress on the fact that this evidence showed that the husband was not possessed of any great wealth at or about the time of this transaction. He had subjected the evidence both of the plaintiff-petitioner and her husband to a close examination whereas he had not considered the evidence of the 1st defendant-respondent on this point. <sup>20</sup>
- (f) It is only too clear that the evidence of the 1st defendant-respondent on this question of consideration is utterly improbable and unworthy of credit and it was respectfully submitted that the learned District Judge should have weighed the evidence of the plaintiff-petitioner on this point with the story of the 1st defendant-respondent. He could then have been able to view of the evidence for the plaintiff-petitioner, not in isolation but in the light of what the 1st defendant-respondent had to say and had tested the veracity of one version or the other. <sup>30</sup>
- (g) In view of the attestation in P1 that the consideration was acknowledged to have been received previously it is obvious that the burden of proof cast on the 1st defendant-respondent, to disprove, this was an onerous one and the oral evidence in the case on this point has to be viewed from the legal stand point: such evidence should be unimpeachable. The questions that have to be answered are what did the attestation mean and why, if no consideration passed previously as contended by the 1st defendant-respondent was the acknowledgement by the 1st defendant-respondent made <sup>40</sup> at the execution of P1 ?
- (h) If the 1st defendant-respondent's story was true it is inconceivable why the 1st defendant-respondent should undertake to pay back gratuitously such a large sum as Rs. 20,500/- with interest at six per cent per annum to boot within the years.
- (i) The learned District Judge had failed to bring his mind to bear on the significant fact that emerges from the evidence that this

amount of consideration Rs. 20,500/- is identical with the amount of consideration paid on P2 and 1D3 and the cost of the deeds, a fact which strongly support the plaintiff-petitioner's case.

No. 13  
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(j) The learned District Judge in answering the issues clearly rejected the larger part of the 1st defendant-respondent's defence. If then the story of undue influence and fraud as related by the 1st defendant-respondent is unacceptable how can the rest of the 1st defendant-respondent's story be made to square with this rejection ?

(i) Petition  
of the  
Plaintiff  
30-7-62  
—continued.

(k) The learned District Judge it is respectfully submitted has made no finding that the plaintiff-petitioner held the property in trust for the 1st defendant-respondent, for it is the contention of the 1st defendant-respondent himself that the property is vested in the plaintiff-petitioner but that as no consideration passed the beneficial interest was still with him. It is submitted in law that where there is no finding of trust the 1st defendant-respondent cannot succeed.

(l) The 1st defendant-respondent on his own admission is without means and had been so for some considerable time reaching back to a time before the alleged transaction in August 1948. This fact did not seem to have weighed with the learned District Judge in considering the evidence in case.

(m) The plaintiff-petitioner respectfully submitted that there had been no proper evaluation of the evidence in this case and if a comprehensive view of the evidence is taken it is clear that the plaintiff-petitioner's case must succeed.

(n) The plaintiff-petitioner respectfully submitted that the evidence of the 1st defendant-respondent was merely an attempt on his part to vary and supplant the terms and conditions of a Notarially executed document.

10. The plaintiff-petitioner prayed that the judgment of the learned District Judge be set aside and judgment be entered for the plaintiff-petitioner as prayed for in the plaint.

10a. The said appeal is pending before Your Lordships' Court numbered as S. C. 151/60.

11. The plaintiff-petitioner begs to submit (a) that on 11-4-60 her proctor tendered the petition of appeal of the plaintiff-petitioner together with the Kachcheri receipt for Rs. 24/- being fees for type-written copy of the case and the application for same and moved that the same be accepted and filed.

(b) He also tendered uncanceled stamps to the value of Rs. 19/50 and Rs. 39/- for certificate in appeal and S. C. Judgment and moved that the same be accepted.

No. 13  
Application to the  
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(i) Petition of the  
Plaintiff  
80-7-62  
—continued.

- (c) He also tendered notice of security and moved that the same be issued for service on the 1st and 2nd defendants-respondents and on the 1st defendant-respondent's proctor returnable 20-4-1960.
- (d) He also moved for an order to deposit Rs. 200/- as security for costs in appeal.
- (e) He also tendered notice of appeal together with copies of petition of appeal and moved that the same be issued.

12. On these applications the learned District Judge made the following orders :—

10

1. Accept the petition of appeal and application for type-written copies.
2. Accept stamps.
3. Issue notice of security.
4. Issue D/O for Rs. 200/-.
5. Accept and file notice of appeal to be issued in due course.

13. The plaintiff-petitioner further admits that notice of security was served on the 1st and 2nd defendants-respondents and on Mr. G. E. Abeywardena, Proctor for the 1st defendant-respondent. The 1st defendant-respondent and his Proctor being present in Court and the 2nd defendant-respondent being absent and the proctor for plaintiff-petitioner having tendered the Kachcheri Receipt No. 959, security was accepted by Court and Bond No. 2800 of 20-4-1960 was tendered and accepted by Court and notice of appeal was ordered to be issued returnable 4-5-60. No objection whatsoever was taken either against the notice of security or application for type-written copies.

14. That on 21-4-60 the proctor for the 1st defendant-respondent moved for an order to deposit Rs. 25/- being fees for the type-written copies in the said case and a paying-in-voucher was issued.

15. That on 4-5-60 notice of appeal was served on the 1st defendant-respondent, who was absent and was not served on the 2nd defendant-respondent as he was not found. The notice of appeal was ordered to be reissued on the 2nd defendant-respondent returnable 6-7-60.

16. That on 27-5-60 the proctor for plaintiff-petitioner moved for an order to deposit a further sum of Rs. 20/- as additional fees for type-written copies and K. R. No. 1866 of 27-5-60 was filed.

17. That on 30-5-60 Proctor for 1st defendant-respondent moved that the appeal be abated under Rule 4 of the Civil Appellate Rules as the plaintiff-petitioner has not complied with Rule 2 (1) of the Civil

Appellate Rules in that the plaintiff has not deposited the prescribed fees Rs. 25/- for the type-written copies as provided in the schedule therein according to the class of the case and as such the plaintiff-respondent is fatal and has to be abated. On this the learned District Judge ordered notice on the plaintiff-petitioner returnable 27-6-60.

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Application  
to the  
Supreme  
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(i) Petition  
of the  
Plaintiff  
30-7-62  
—continued.

19. That on 4-6-60 the proctor for plaintiff-petitioner stated that objection had been taken by the 1st defendant-respondent that there was a deficiency of Re. 1/- on the original amount deposited for type-written copies with the petition of appeal and begged that the deficiency of Re. 1/- be deducted out of the sum of Rs. 20/- deposited later.

20. That on 27-6-60 notice to abate appeal was served on the proctor for plaintiff-petitioner and the matter was fixed for inquiry on 27-6-60.

21. The plaintiff-petitioner further begs to submit that at the inquiry held on 27-6-60 it was urged by the counsel for the plaintiff-petitioner (a) that the Kachcheri receipt for the type-written copies was brought to Court on 11-4-60 along with the petition of appeal and all other necessary papers (b) that by an oversight on the part of the plaintiff-petitioner's proctor only a sum of Rs. 24/- was deposited instead of Rs. 25/- as required by the Schedule to the Civil Appellate Rules (c) that the Court accepted this sum of Rs. 24/- for type-written copies on the same day (d) that no prejudice was caused to any party by this error as there was almost always an additional fee to be deposited by the parties on being so informed by the District Judge or the Registrar of the Supreme Court whoever prepares the type-written copies.

22. As against these submissions the learned District Judge made order on the 10th August, 1960 that the appeal do abate.

22a. The said petitioner has appealed from the said order of abatement in S. C. No. 374/1960 and the said appeal is pending before Your Lordships' Court.

23. Being dissatisfied and aggrieved at the said order and judgment the plaintiff-petitioner appealed therefrom to Your Lordships' Court on the following among other grounds to be urged at the hearing of this petition.

(a) That the learned District Judge should have taken into consideration the fact that the Kachcheri Receipt and the application for type-written copies was filed along with the petition of appeal for a sum of Rs. 24/- a mere Re. 1/- less than the amount prescribed in the schedule to the Appellate Rules.

(b) That it was a mere oversight on the part of the proctor for the plaintiff-petitioner in having deposited a sum of Rs. 24/- instead of Rs. 25/-.

No. 13  
Application to the  
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(i) Petition of the  
Plaintiff  
—continued.

- (c) That the Court accepted the sum brought to Court as fees for type-written copies and that the same cannot be rejected now, by the same Court, as insufficient.
- (d) That no prejudice is caused to the 1st defendant-respondent by the mere bringing of Rs. 24/- to Court instead of Rs. 25/- as the deposit of money for type-written copies cannot be treated as a closed chapter owing to the fact that a further sum of money has always to be brought to Court before the case is forwarded to Your Lordships' Court.
- (e) That the plaintiff-petitioner should not be penalised for an error of judgment on a mistake of her proctor.
- (f) That untold hardship and irreparable loss and damage will be caused to the plaintiff-petitioner if the case could not be forwarded to Your Lordships' Court, as the plaintiff-petitioner verily believes that she has good grounds for an appeal to Your Lordships' Court both in Law and fact.
- (g) That the 1st defendant-respondent has taken an undue advantage over the plaintiff-petitioner by the mistake or the error made by her in bringing a sum of money for type-written copies short of Re. 1/-.

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24. The plaintiff-petitioner states that the averments in this petition are substantially the same as in the petitions of appeal filed in S. C. No. 151/60 and 374/60 and has not adduced any fresh grounds in this petition.

Being aggrieved by the learned District Judge's judgment dated 6-4-60 and the order of abatement dated 10-8-60 the plaintiff-petitioner begs to appeal therefrom to Your Lordships' Court by way of Revision on all the grounds as urged by this petitioner in paragraphs 9 (a) to (n) and 23 (a) to (g) of this petition.

WHEREFORE the plaintiff-petitioner prays that Your Lordships' Court acting in revision be pleased :—

- (a) To set aside the said order of abatement made by the learned District Judge.
- (b) To hear the plaintiff-petitioner's appeal bearing No. S. C. 151/60 against the judgment of the learned District Judge, and
- (c) To set aside the judgment of the learned District Judge, and
- (d) To enter judgment for plaintiff-petitioner as prayed for in the plaint, and
- (e) For costs and for such other and further relief as to Your Lordships' Court shall seem meet.

(Sgd.) K. R. ALSON DE SILVA,  
*Proctor for Plaintiff-Petitioner.*

**In the Supreme Court of the Island of Ceylon**

In the matter of an application for revision in Case No. 6177/L of the District Court of Galle.

CYNTHIA PEARLINE VIDANAGE of  
Bataduwa, Galle.

*Plaintiff.*

*Vs.*

1. MENIKPURA PEIRIS MUNASINGHE,
2. BERTRAM CLIVE VIDANAGE both of  
Dangedera, Galle.

*Defendants.*

CYNTHIA PEARLINE VIDANAGE of  
Bataduwa, Galle.

*Plaintiff-Petitioner.*

*Vs*

1. MENIKPURA PEIRIS MUNASINGHE,
2. BERTRAM CLIVE VIDANAGE both of  
Dangedera, Galle.

*Defendants-Respondents.*

20 I, Cynthia Pearline Vidanage of Bataduwa, Galle, do hereby solemnly, sincerely and truly declare and affirm as follows :—

1. I am the plaintiff-petitioner abovenamed.

2. I sued the 1st and 2nd defendants-respondents in the above-styled action for a declaration of title to the two contiguous lands described in the schedule to the plaint, for ejectment of the 1st defendant-respondent from the premises and for damages in a sum of Rs. 100/- per month for wrongful and unlawful possession from 1st November, 1958 against the 1st defendant-respondent.

30 3. My case was that by deed of transfer No. 1343 dated 1st November, 1948 marked P1 the 1st defendant-respondent transferred the two properties mentioned in the schedule to the plaint to me for a sum of Rs. 20,500/- subject to the proviso that if the 1st defendant-respondent paid back within ten years from the date of the deed the said sum of Rs. 20,500/- with interest thereon at the rate of six per centum per annum then I would reconvey the said properties back to the 1st defendant-respondent. The proviso further stipulated that if the 1st defendant-respondent were to die within the said period of ten years contemplated in the deed then I would reconvey the said properties to the 2nd defendant-respondent and in any event I could reconvey to the survivor of either the 1st or the 2nd defendants-respondents upon repayment of the stipulated sum within the said stipulated period.

No. 13  
Application  
to the  
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—continued.

(ii) Affidavit  
of the  
Plaintiff  
30-7-62

No. 13  
Application to the  
Supreme Court  
for Revision  
—continued.

(ii) Affidavit of the  
Plaintiff  
30-7-62  
—continued.

4. The ten year period lapsed on the 31st October, 1958 and as from 1st November, 1958 I contended that as no payment of moneys had been made within that period by either the 1st or 2nd defendants-respondents the absolute title to the properties vested in me and that the 1st defendant-respondent remained in the occupation of the premises unlawfully without giving over possession to me.

5. The 2nd defendant-respondent was made a party to give him notice of the action but no relief was claimed against him.

6. The 1st defendant-respondent filed answer and took up the defence that as no consideration passed on P1 no beneficial interest in the property<sup>10</sup> passed to me on the said deed and that I held the said properties in trust for the 1st defendant-respondent. He also took up the further defence that “ the said deed P1 was executed by him as the result of exertion of undue influence on him by me, my husband and brothers one of whom was the 2nd defendant-respondent and that the document was not the 1st defendant-respondent’s act or deed (2) That I, my husband and the 2nd defendant-respondent had practised a fraud on him by misrepresenting the nature of the transaction (3) that my action was speculative.” On these several grounds he asked for reconveyance of the properties from me in reconveyance and asked for a dismissal of my action. 20

7. It was admitted by the parties that I was a niece of the 1st defendant-respondent and that the 2nd defendant-respondent was my brother.

8. The case proceeded to trial on the following issues :—

1. Is the plaintiff entitled to the premises described in the schedule to the plaint ?
2. Is the defendant in unlawful possession thereof since 1st November, 1958 ?
3. Was the 1st defendant made to sign the document 1343 of 1st November, 1948 by the exercise of undue influence on him by the plaintiff, her husband and brother ? 30
4. Was document 1343 of 1-11-48 relied on by the plaintiff for her title the act and deed of the 1st defendant ?
5. Was deed 1343 of 1-11-48 executed by the 1st defendant for valuable consideration ?
6. If issue No. 5 is answered in the negative did any beneficial interest in the property mentioned in the said deed pass to the plaintiff ?
7. Does the plaintiff hold the properties dealt with in the said deed in trust for the 1st defendant ?
8. Is the 1st defendant entitled to claim a re-transfer of the legal<sup>40</sup> title to the properties dealt with in the deed from the plaintiff ?



9. Did the plaintiff practise a fraud on the 1st defendant ?

10. If so can she take advantage of her own accord ?

9. After trial the learned District Judge dismissed my action and held that the 1st defendant-respondent was entitled to a reconveyance of the properties in question and awarded costs to the 1st defendant-respondent.

10. Being dissatisfied and aggrieved at the said judgment I tendered petition of appeal to Your Lordships' Court on the following among other grounds to be urged at the hearing of this appeal.

- 10 (a) The said judgment was contrary to law and against the weight of evidence.
- (b) It was respectfully submitted that the learned District Judge has misdirected himself in basing his judgment on his finding that no consideration passed on deed P1.
- (c) The attestation in P1 is to the effect that the consideration of Rs. 20,500/- was acknowledged to have been previously received and the question that arose was whether this consideration in fact had passed previously.
- 20 (d) In addition to my own evidence that I did in fact get this sum from my husband and paid to the 1st defendant-respondent. I called my own husband to support this evidence and produced balance sheets and trading accounts of my husband's business marked P11 to P21 for the years 1948 to 1957 showing this sum of Rs. 20,500/- as moneys invested in his wife's name and given to P. Munasinghe, the 1st defendant-respondent.
- 30 (e) In rejecting my evidence and my husband's on this point the learned District Judge laid stress on the fact that this evidence showed that the husband was not possessed of any great wealth at or about the time of this transaction. He had subjected the evidence both of myself and my husband to a close examination whereas he had not considered the evidence of the 1st defendant-respondent on this point.
- 40 (f) It is only too clear that the evidence of 1st defendant-respondent on this question of consideration is utterly improbable and unworthy of credit and it was respectfully submitted that the learned District Judge should have weighed my evidence on this point with the story of the 1st defendant-respondent. He could then have been able to view of my evidence, not in isolation but in the light of what the 1st defendant-respondent had to say and had tested the veracity of one version or the other.

No. 18  
Application  
to the  
Supreme  
Court for  
Revision  
—continued.

(ii) Affidavit  
of the  
Plaintiff  
30-7-62  
—continued.

No. 13  
Application to the  
Supreme Court for  
Revision  
—continued.

(ii) Affidavit of the  
Plaintiff  
30-7-62  
—continued.

- (g) In view of the attestation in P1 that the consideration was acknowledged to have been received previously it is obvious that the burden of proof cast on the 1st defendant-respondent, to disprove, this was an onerous one and the oral evidence in the case on this point has to be viewed from the legal stand point : such evidence should be unimpeachable. The questions that have to be answered are what did the attestation mean and why, if no consideration passed previously as contended by the 1st defendant-respondent was the acknowledgment by the 1st defendant-respondent made at the execution of P1 ? <sup>10</sup>
- (h) If the 1st defendant-respondent's story was true it is inconceivable why the 1st defendant-respondent should undertake to pay back gratuitously such a large sum as Rs. 20,500/- with interest at 6 per cent per annum to boot within the years.
- (i) The learned District Judge had failed to bring his mind to bear on the significant fact that emerges from the evidence that this amount of consideration Rs. 20,500/- is identical with the amount of consideration paid on P2 and 1D3 and the cost of the deeds, a fact which strongly support my case. <sup>20</sup>
- (j) The learned District Judge in answering the issues clearly rejected the larger part of the 1st defendant-respondent's defence. If then the story of undue influence and fraud as related by the 1st defendant-respondent is unacceptable how can the rest of the 1st defendant-respondent's story be made to square with this rejection ?
- (k) The learned District Judge it is respectfully submitted has made no finding that I held the property in trust for the 1st defendant-respondent, for it is the contention of the 1st defendant-respondent himself that the property is vested in me but that as no consideration passed the beneficial interest was still with him. It is submitted in law that where there is no finding of trust the 1st defendant-respondent cannot succeed. <sup>30</sup>
- (l) The 1st defendant-respondent on his own admission is without means and had been so for some considerable time reaching back to a time before the alleged transaction in August, 1948. This fact did not seem to have weighed with the learned District Judge in considering the evidence in this case. <sup>40</sup>
- (m) I respectfully submitted that there had been no proper evaluation of the evidence in this case and if a comprehensive view of the evidence is taken it is clear that my case must succeed.

- (n) I respectfully submitted that the evidence of the 1st defendant-respondent was merely an attempt on his part to vary and supplant the terms and conditions of a Notarially executed document.

No. 13  
Application  
to the  
Supreme  
Court for  
Revision  
—continued.

11. I prayed that the judgment of the learned District Judge be set aside and judgment be entered for me as prayed for in the plaint.

11a. The said appeal is pending before Your Lordships' Court numbered as S. C. 151/60.

(ii) Affidavit  
of the  
Plaintiff  
30-7-62  
—continued.

12. I beg to submit :—

- 10 (a) that on 11-4-1960 my proctor tendered the petition of appeal of me together with the Kachcheri receipt for Rs. 24/- being fees for the type-written copy of the case and the application for same and moved that the same be accepted and filed.
- (b) He also tendered uncanceled stamps to the value of Rs. 19/50 and Rs. 39/- for certificate in appeal and S. C. Judgment and moved that the same be accepted.
- (c) He also tendered notice of security and moved that the same be issued for service on the 1st and 2nd defendants-respondents and on the 1st defendant-respondent's proctor returnable 20-4-60.
- 20 (d) He also moved for an order to deposit Rs. 200/- as security for costs in appeal.
- (e) He also tendered notice of appeal together with copies of petition of appeal and moved that the same be issued.

13. On these applications the learned District Judge made the following orders.

1. Accept the petition of appeal and application for type-written copies.
2. Accept stamps.
- 30 3. Issue notice of security.
4. Issue D/O for Rs. 200/-.
5. Accept and file notice of appeal to be issued in due course.

14. I further admit that notice of security was served on the 1st and 2nd defendants-respondents and on Mr. G. E. Abeywardena, Proctor for the 1st defendant-respondent. The 1st defendant-respondent and his Proctor being present in Court and the 2nd defendant-respondent being absent and my proctor having tendered the Kachcheri receipt No. 959, security was

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—continued.

(ii) Affidavit of the  
Plaintiff  
30-7-62  
—continued.

accepted by Court and Bond No. 2800 of 20-4-60 was tendered and accepted by Court and notice of appeal was ordered to be issued returnable 4-5-60. No objection whatsoever was taken either against the notice of security or application for type-written copies.

15. That on 21-4-60 the proctor for the 1st defendant-respondent moved for an order to deposit Rs. 25/- being fees for the type-written copies in the said case and a paying-in-voucher was issued.

16. That on 4-5-60 notice of appeal was served on the 1st defendant-respondent who was absent and was not served on the 2nd defendant-respondent as he was not found. The notice of appeal was ordered to be reissued on the 2nd defendant-respondent returnable 6-7-60.

17. That on 27-5-60 my proctor moved for an order to deposit a further sum of Rs. 20/- as additional fees for type-written copies and Kachcheri receipt No. 1866 of 27-5-60 was filed.

18. That on 30-5-60 Proctor for 1st defendant-respondent moved that the appeal be abated under Rule 4 of the Civil Appellate Rules as I have not complied with Rule 2 (1) of the Civil Appellate Rules in that I have not deposited the prescribed fees Rs. 25/- for the type-written copies as provided in the schedule therein according to the class of the case and as such I am fatal and has to be abated. On this the learned District Judge ordered notice on me returnable 27-6-60.

20. That on 4-6-60 my proctor stated that objection had been taken by the 1st defendant-respondent that there was a deficiency of Re. 1/- on the original amount deposited for type-written copies with the petition of appeal and begged that the deficiency of Re. 1/- be deducted out of the sum of Rs. 20/- deposited later.

21. That on 27-6-60 notice to abate appeal was served on my proctor and the matter was fixed for inquiry on 27-6-60.

22. I further beg to submit that at the inquiry held on 27-6-60 it was urged by my counsel (a) that the Kachcheri receipt for the type-written copies was brought to Court on 11-4-60 along with the petition of appeal and all other necessary papers (b) that by an oversight on the part of my proctor only a sum of Rs. 24/- was deposited instead of Rs. 25/- as required by the schedule to the Civil Appellate Rules (c) that the Court accepted this sum of Rs. 24/- for type-written copies on the same day (d) that no prejudice was caused to any party by this error as there was almost always an additional fee to be deposited by the parties on being so informed by the District Judge or the Registrar of the Supreme Court whoever prepares the type-written copies.

23. As against these submissions the learned District Judge made order on the 10th August, 1960 that the appeal do abate.

23a. I have appealed from the said order of abatement in S. C. No. 374/1960 and the said appeal is pending before Your Lordships' Court.

24. Being dissatisfied and aggrieved at the said order and judgment I appealed therefrom to Your Lordships' Court on the following among other grounds to be urged at the hearing of this petition.

No. 13  
Application  
to the  
Supreme  
Court for  
Revision  
—continued.

(ii) Affidavit  
of the  
Plaintiff  
30-7-62  
—continued.

(a) That the learned District Judge should have taken into consideration the fact that the Kachcheri Receipt and the application for type-written copies was filed along with the petition of appeal for a sum of Rs. 24/- a mere Re. 1/- less than the amount prescribed in the schedule to the Appellate Rules.

10 (b) That it was a mere oversight on the part of my proctor in having deposited a sum of Rs. 24/- instead of Rs. 25/-.

(c) That the Court accepted the sum brought to Court as fees for type-written copies and that the same cannot be rejected now, by the same Court, as insufficient.

20 (d) That no prejudice is caused to the 1st defendant-respondent by the mere bringing of Rs. 24/- to Court instead of Rs. 25/- as the deposit of money for type-written copies cannot be treated as a closed chapter owing to the fact that a further sum of money has always to be brought to Court before the case is forwarded to Your Lordships' Court.

(e) That I should not be penalised for a error of judgment on a mistake of my proctor.

(f) That untold hardship and irreparable loss and damage will be caused to me if the case could not be forwarded to Your Lordships' Court, as I verily believe that I have good grounds for an appeal to Your Lordships' Court both in Law and fact.

30 (g) That the 1st defendant-respondent has taken an undue advantage over me by the mistake or the error made by me in bringing a sum of money for type-written copies short of Re. 1/-.

25. I state that the averments in this petition are substantially the same as in the petitions of appeal filed in S. C. No. 151/60 and 374/60 and I have not adduced any fresh grounds in this petition.

Being aggrieved by the learned District Judge's judgment dated 6-4-60 and the order of abatement dated 10-8-60 I beg to appeal therefrom to Your Lordships' Court by way of Revision on all the grounds as urged by me in paragraphs 9 (a) to (n) and 23 (a) to (g) of the petition.

Signed and affirmed to at Galle  
this 30th day of July 1962.

(Sgd.) C. P. VIDANAGE.

40 Before me,

K. R. ALSON DE SILVA,  
*Justice of Peace.*

**No. 14**

**Judgment of the Supreme Court**

S. C. No. 151. D. C. Galle No. L. 6177, with S. C. No. 374.

D. C. Galle No. L. 6177, with Application No. 346/'62.

*Present* :— H. N. G. FERNANDO, J. and SRI SKANDA RAJAH, J.

*Counsel* :— H. W. JAYEWARDENE, Q.C., with A. SIVAGURUNATHAN and L. C. SENEVIRATNE for the Plaintiff-Appellant in both appeals and the Plaintiff-Petitioner in the Application.

G. P. J. KURUKULASOORIYA with N. M. S. JAYEWICKREME for the 1st Defendant-Respondent in both appeals and the 10 1st Defendant-Respondent in the application.

*Argued and decided on* :— 21st December, 1962.

H. N. G. FERNANDO, J.

The question of fact which the learned District Judge had to decide in this case was whether the plaintiff had with monies provided to her by her husband paid Rs. 20,500/- to the 1st defendant prior to the date of the execution of the deeds P2 and 1D3 in August, 1948. The plaintiff's case was that the family lands of her grandfather which had been sold in execution of a mortgage decree, were in 1948 held by one Peter Wijetunga and that her uncle, the 1st defendant, arranged to purchase the lands with 20 monies to be provided by the plaintiff. In fact, by the deed P2 the 1st defendant himself got a transfer of the residing land and by 1D3 Peter Wijetunga transferred three other lands to the 1st defendant's sister. When the plaintiff found that the deed for the plaintiff's residing land had not been obtained in her name, she states that she asked for a transfer to herself and that the deed P1 was thereafter executed in consequence of demands by her and her husband. It is stated in the deed P1 that the consideration was the sum of Rs. 20,500/-. According to the Attestation and according to the Notary's evidence, the 1st defendant at the time of the execution of P1 acknowledged that the purchase price had previously 30 been received by him. This constituted evidence of an admission by the 1st defendant of the truth of the plaintiff's evidence that she had some little time earlier advanced Rs. 20,500/- to the 1st defendant.

The story of the 1st defendant which the learned District Judge has believed is as follows :— The 1st defendant said that when Peter Wijetunga purchased the lands in 1945 he had done so with monies, the greater part of which (Rs. 11,000/-) had been provided by the 1st defendant and his sister. The deed in favour of Peter Wijetunga does not support this evidence, for it is there stated that the consideration was paid partly by cash and partly by a cheque for Rs. 10,000/- drawn by Peter Wijetunga. 40 According to the 1st defendant, when he got P2 in 1948 from Peter Wijetunga there was only a little cash to pay because the greater part of the

consideration of Rs. 15,000/- stated in P2 was already owing from Peter Wijetunga to the 1st defendant. The best method of testing the truth of this evidence was to examine the attestation clause in P2 which, if the 1st defendant's evidence be true, should have stated that although a part of the consideration was paid at the time of the execution the major balance part had previously been paid to or was owing by the vendor, Peter Wijetunga. But on this matter again the 1st defendant is contradicted by the attestation clause which is to the effect that the consideration was paid in cash at the time of the execution. It seems to us that these two points were  
10 sufficient to compel the District Judge to reject the 1st defendant's evidence.

The learned District Judge has referred in his judgment to the financial position of the plaintiff's husband and has apparently formed the conclusion that the plaintiff's husband could not have afforded to provide in 1948 a sum fo Rs. 20,500/- for the purchase of this property. We find, however, that in looking at the accounts of the business of the plaintiff's husband the learned District Judge has only been impressed by debit items and not by credit items. For instance, in regard to the year 1949 he points out that the plaintiff's husband has executed a mortgage bond for a loan of  
20 Rs. 15,000/-. But the learned District Judge failed to notice that in that same year the plaintiff's husband had purchased an estate for Rs. 45,000/-. It is not necessary to refer to other minor points which have influenced the Judge against the case for the plaintiff, but we are satisfied that none of them are supported by the evidence.

In the exercise of our powers in revision we set aside the decree appealed from and order that that decree be entered declaring the plaintiff entitled to the premises described in the two schedules to the plaint and to the ejection of the 1st defendant therefrom. In view of the relationship between the parties, there will be no order for damages except as from  
30 the date of the decree of this Court. The damages should be fixed at the authorized rent of the premises which will be determined by the District Judge when the record is returned to the District Court. The plaintiff will be entitled to costs in both Courts.

(Sgd.) H. N. G. FERNANDO,

*Puisne Justice.*

P. SRI SKANDA RAJAH, J.

I agree.

(Sgd.) P. SRI SKANDA RAJAH,

*Puisne Justice.*

## Decree of the Supreme Court

S. C. 151/60 (F) with S. C. 374/'60 (F) with S. C. Application No. 346/'62.

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

CYNTHIA PEARLINE VIDANAGE of  
Bataduwa, Galle.

*Plaintiff.*

*Vs.*

10

MENIKPURA PEIRIS MUNASINGHE of  
Dangedara, Galle, and another.

*Defendants.*

In S. C. Appeal No. 151/'60 (F)

CYNTHIA PEARLINE VIDANAGE of  
Bataduwa, Galle.

*Plaintiff-Appellant.*

*Against*

MENIKPURA PEIRIS MUNASINGHE of  
Dangedara, Galle, and another.

20

*1st and 2nd Defendants-Respondents.*

In S. C. Appeal No. 374/'60 (F)

CYNTHIA PEARLINE VIDANAGE of  
Bataduwa, Galle.

*Plaintiff-Appellant.*

*Vs.*

MENIKPURA PEIRIS MUNASINGHE of  
Dangedara, Galle, and another.

*1st and 2nd Defendants-Respondents.*

In S. C. Application No. 346/'62

30

In the matter of an application for Revision in D. C. Galle case  
No. 6177/L.

CYNTHIA PEARLINE VIDANAGE of  
Bataduwa, Galle.

*Plaintiff-Petitioner.*

*Vs.*

MENIKPURA PEIRIS MUNASINGHE of  
Dangedara, Galle, and another.

*1st and 2nd Defendants-Respondents,*



Action No. 6177/Land

District Court of Galle.

No. 15  
Decree  
of the  
Supreme  
Court  
21-12-62  
—continued.

This cause coming on for hearing and determination on the 21st day of December, 1962 and on this day, upon appeals preferred by the plaintiff-appellant before the Hon. Hugh Norman Gregory Fernando, Puisne Justice and the Hon. Ponnuduraisamy Sri Skanda Rajah, Puisne Justice of this Court, in the presence of Counsel for the Plaintiff-Appellant and 1st Defendant-Respondent in both Appeals and Plaintiff-Petitioner and 1st Defendant-Respondent in the Application.

10 Acting in revision, it is considered and adjudged that the decree appealed from be and the same is hereby set aside and it is ordered that decree be entered declaring the plaintiff entitled to the premises described in the two schedules to the plaint and to the ejectment of the 1st defendant therefrom.

It is further decreed that no order is made for damages except as from the date of the decree of this Court.

It is further decreed that damages should be fixed at the authorized rent of the premises which will be determined by the District Judge when the record is returned to the District Court.

20 It is further decreed that the plaintiff be entitled to costs in both Courts.

Witness the Hon. Hema Henry Basnayake, q.c., Chief Justice at Colombo, the 14th day of February, in the year One Thousand Nine Hundred and Sixty Three and of Our Reign the Eleventh.

(Sgd.) B. F. PERERA,  
*Deputy Registrar, Supreme Court.*

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No. 16

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

**IN THE SUPREME COURT OF THE ISLAND OF CEYLON**

30 **IN THE MATTER OF AN APPLICATION UNDER RULE 2 OF THE SCHEDULE  
TO THE APPEALS (PRIVY COUNCIL) ORDINANCE CHAPTER 85 FOR  
CONDITIONAL LEAVE TO APPEAL TO HER MAJESTY IN  
COUNCIL**

No. 16  
Application  
for  
Conditional  
Leave to  
Appeal to  
the Privy  
Council  
19-1-63

No. 16  
Application for  
Conditional Leave  
to Appeal to the  
Privy Council  
19-1-63  
—continued.

CYNTHIA PEARLINE VIDANAGE of  
Bataduwa, Galle.

*Plaintiff-Appellant.*

*Vs.*

1. MENIKPURA PEIRIS MUNASINGHE of  
Dangedera, Galle.

*1st Defendant-Respondent.*

2. BERTRAM CLIVE VIDANAGE of  
Dangedera, Galle.

*2nd Defendant-Respondent. 10*

D. C. Galle  
No. L. 6177

MENIKPURA PEIRIS MUNASINGHE of  
Dangedera, Galle.

*1st Defendant-Petitioner.*

*Vs.*

S. C. No. 346  
of 1962.

1. CYNTHIA PEARLINE VIDANAGE of  
Bataduwa, Galle.

*Plaintiff-Respondent.*

2. BERTRAM CLIVE VIDANAGE of  
Dangedera, Galle.

*2nd Defendant-Respondent. 20*

To :

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUDGES OF THE  
HONOURABLE THE SUPREME COURT OF THE ISLAND OF CEYLON

On this 19th day of January, 1963.

The Petition of the Defendant-Petitioner abovenamed appearing by  
UKWATTEGE RANJIT WIJETUNGE, his Proctor, states as follows :—

1. The Petitioner is the 1st Defendant-Respondent and the Respon-  
dents abovenamed are the Plaintiff-Appellant and the 2nd Defendant-  
Respondent respectively in S. C. Application No. 346 of 1962/D. C. Galle,  
Case No. L. 6177. 30

2. That being aggrieved by the judgment of this Court pronounced  
on the 21st day of December, 1962 in the above application to this Court,  
the Petitioner is desirous of appealing therefrom to Her Majesty the  
Queen in Council.

3. The said judgment of the Supreme Court is a final judgment and  
the matter in dispute on the appeal amounts to or is of the value of  
Rs. 5,000/- or upwards, and/or the appeal involves directly or indirectly  
some claim or question to or respecting property amounting to or of the  
value of Rs. 5000/- or upwards.

4. The Petitioner has within 14 days from the date of the said judgment given the Plaintiff-Respondent abovenamed the following notice of his intended application for leave to appeal to Her Majesty the Queen in Council.

“ Case No. S. C. 374/'60 (F) and 151/'60 (F) with application  
346/'62—D. C. Galle, L. 6177

Take Notice that I intend making an application to the Supreme Court for leave to appeal against the judgment of the Supreme Court to Her Majesty the Queen in Council within 30 days from the date of judgment in the above case.

This Notice is in terms of Rule 2 in the Schedule to the appeals to the Privy Council Ordinance Ch. 100 of Legislative Enactments of Ceylon.

(Sgd.) M. P. MUNASINGHE,  
*Defendant*”.

5. The aforesaid Notice of the Petitioner's intended application for leave to appeal to Her Majesty the Queen in Council was sent by the Petitioner to the Plaintiff-Respondent addressed to Bataduwa, Galle under registered cover on the 3rd day of January, 1963. The said letter has not been returned to the Petitioner by the Post Office for non-delivery.

6. The Petitioner has also sent by Ordinary Telegram on the 3rd day of January, 1963 the following Notice to the Plaintiff-Respondent.

“ TAKE NOTICE THAT I INTEND MAKING AN APPLICATION TO THE SUPREME COURT FOR CONDITIONAL LEAVE TO APPEAL TO HER MAJESTY THE QUEEN IN COUNCIL AGAINST THE JUDGMENT IN S. C. 374/60 (F) AND 151/60 (F) WITH APPLICATION 346/62—D. C. GALLE, L. 6177 WITHIN THIRTY DAYS OF SUCH JUDGMENT.

M. P. MUNASINGHE”.

7. The said telegram was sent by the Petitioner to the Plaintiff Respondent addressed to Bataduwa, Galle. The said telegram has not been returned to the Petitioner by the Post Office for non-delivery.

8. The 2nd Defendant-Respondent has been made a party to this action by the Plaintiff-Respondent only for the purpose of giving notice of her action and no relief was claimed as against the said 2nd Defendant Respondent and further this application does not prejudicially affect the interests, if any, of the 2nd Defendant-Respondent.

WHEREFORE the Petitioner Prays :—

- (a) that Your Lordships' Court be pleased to make Order granting the Petitioner Conditional Leave to Appeal to Her Majesty in Council from the said Judgment of the Supreme Court dated 21st December, 1962,
- (b) for costs, and
- (c) for such other and further relief as to Your Lordships' Court shall seem meet.

(Sgd.) U. R. WIJETUNGE,  
*Proctor for Petitioner.*

No. 16  
Application  
for  
Conditional  
Leave to  
Appeal to  
the Privy  
Council  
19-1-63  
—continued.

**Judgment of the Supreme Court granting Conditional Leave  
 to Appeal to the Privy Council**

Conditional leave to appeal to the Privy Council from the judgment given  
 in S. C. Application No. 346/62.

Application No. 14.

*Present :* BASNAYAKE, C. J. and ABEYESUNDERE, J.

*Counsel :* S. W. JAYASURIYA with D. S. WIJESINGHE for 1st  
 Defendant-Petitioner.

No appearance for Respondents.

10

*Argued and Decided on :* April 4, 1968.

BASNAYAKE, C. J.

We allow the application in the first instance upon the condition that the appellant shall within a period of one month from this date deposit with the Registrar of this Court a sum of Rs. 3,000/- as security for the due prosecution of the appeal, and the payment of all such costs as may become payable to the respondent in the event of the appellant not obtaining an order granting him final leave to appeal or of the appeal being dismissed for non-prosecution, or of Her Majesty in Council ordering the appellant to pay the respondent's costs of the appeal. The appellant shall by a bond in writing in favour of the Registrar of this Court secure that sum of Rs. 3,000/- for observance of the above conditions.

(Sgd.) HEMA H. BASNAYAKE,  
*Chief Justice.*

ABEYESUNDERE, J.

I agree.

(Sgd.) A. W. H. ABEYESUNDERE,  
*Puisne Justice.*

**Minute of Order granting Conditional Leave to Appeal to the  
Privy Council**

No. 18  
Minute of  
Order  
granting  
Conditional  
Leave to  
Appeal to  
the Privy  
Council  
4-4-63

**IN THE SUPREME COURT OF THE ISLAND OF CEYLON**

In the matter of an application for Conditional Leave to Appeal to the Privy Council under the Rules set out in the Schedule to the Appeals (Privy Council) Ordinance.

**MANIKPURA PEIRIS MUNASINGHE** of  
Dangedera, Galle.

*1st Defendant-Petitioner.*

S. C: Application  
No. 14 of 1963.

*Vs.*

1. **CYNTHIA PEARLINE VIDANAGE** of  
Bataduwa, Galle.

*Plaintiff-Respondent.*

2. **BERTRAM CLIVE VIDANAGE** of  
Dangedera, Galle, presently of  
Motor and Cycle Stores, Put-  
talam Road, Kurunegala.

*2nd Defendant-Respondent.*

The application of M. P. Munasinghe of Dangedera, Galle, for Conditional Leave to Appeal to Her Majesty the Queen in Council from the judgment and decree of the Supreme Court of the Island of Ceylon pronounced on the 21st day of December, 1962 in S. C. Application No. 346 of 1962 for Revision in D.C. Galle, Case No. L. 6177, having been listed for hearing and determination before the Honourable Hema Henry Basnayake, q.c., Chief Justice, and the Honourable Asoka Windra Hemantha Abeyesundere, q.c., Puisne Justice, in the presence of S. W. Jayasuriya, Esquire, with D. S. Wijesinghe, Esquire, Advocates, for the Petitioner and there being no appearance for the Respondents, order has been made by Their Lordships on the 4th day of April, 1963 allowing the aforementioned application for Conditional Leave to Appeal to Her Majesty the Queen in Council.

(Sgd.) J. W. SUBASINGHE,

*Registrar of the Supreme Court.*

**Affidavit of the 1st Defendant**  
**IN THE DISTRICT COURT OF GALLE**

No. L. 6177.

CYNTHIA PEARLINE VIDANAGE of  
Bataduwa.

*Plaintiff.*

*Vs.*

1. MANIKPURAGE PEIRIS MUNASINGHE,
2. BERTRAM CLIVE VIDANAGE both of  
Dangedara, Galle.

10

*Defendants.*

*Between*

MANIKPURAGE PEIRIS MUNASINGHE of  
Dangedara, Galle.

*1st defendant-petitioner.*

*Vs.*

CYNTHIA PEARLINE VIDANAGE of  
Bataduwa.

*Plaintiff-respondent. 20*

I, Manikpurage Peiris Munasinghe of Dangedara, Galle, do solemnly sincerely and truly declare affirm and say as follows :—

1. I am the 1st defendant-petitioner abovenamed.
2. The plaintiff-respondent abovenamed brought the abovestyled action for a declaration of title to the premises described in the schedule to the plaint.
3. The 1st defendant-petitioner filed answer and contested the plaintiff's claim to the premises mentioned in the schedule to the plaint.
4. This Court after trial dismissed the plaintiff's action with costs.
5. Thereafter the plaintiff appealed and the Supreme Court allowed 30 the appeal and declared the plaintiff entitled to the said premises and ordered the 1st defendant-petitioner be ejected from the said premises.
6. Thereafter the 1st defendant-petitioner applied to the Supreme Court for conditional leave to appeal to Her Majesty the Queen in Privy Council and the notice of the said application was duly served on the plaintiff-respondent,

7. The said application for conditional leave to appeal came up for hearing on the 4th instant and the said application was allowed.

8. The plaintiff-respondent on the 6th instant applied to this Court for execution of the Supreme Court Decree by issuing writ of possession to eject me the 1st defendant-petitioner from the said premises which said application has been allowed by the Court.

9. I beg to state that the plaintiff-respondent's application for execution is bad in law in that it was made after notice of the 1st defendant-respondent's application for conditional leave to appeal to the Privy Council was served on the plaintiff-respondent which application has since allowed on the 4th April, 1963 and the application for writ of possession was made in this Court on the 6th April, 1963 and allowed by the Court on 8th April, 1963.

10. I and my unmarried sister are residing in the premises which formed the subject matter of this action and we have nowhere else to go if the writ of possession is executed and irreparable loss will be caused to us if we were ejected from this house and premises where we are living from the time of their birth.

11. The present application of the plaintiff-respondent for writ of possession is an attempt on her part to force my hand to abandon the appeal to Her Majesty in Council.

The foregoing having been read and explained to the affirmant who appears to understand the contents thereof wrote his signature thereto and the same was affirmed to at Galle on this 13th day of April, 1963.

(Sgd.) M. P. MUNASINGHE,

Before me

(Sgd.) .....

*Commissioner for Oaths,  
Galle.*

30

**No. 20**

**Petition of the 1st Defendant**

**IN THE DISTRICT COURT OF GALLE**

No. L. 6177 CYNTHIA PEARLINE VIDANAGE of  
Bataduwa, Galle.

*Plaintiff.*

*Vs.*

**1. MENIKPURAGE PEIRIS MUNASINGHE,**

No. 19  
Affidavit of  
the 1st  
Defendant  
13-4-63  
—continued.

No. 20  
Petition of  
the 1st  
Defendant  
16-4-63

No. 20  
Petition of the  
1st Defendant  
16-4-63  
—continued.

2. BERTRAM CLIVE VIDANAGE both of  
Dangedera, Galle.

*Defendants.*

*Between*

MENIKPURAGE PEIRIS MUNASINGHE of  
Dangedera, Galle.

*1st Defendant-Petitioner.*

*Vs.*

CYNTHIA PEARLINE VIDANAGE of  
Bataduwa, Galle.

*Plaintiff-Respondent.*

10

On this 16th day of April, 1963.

The petition of the 1st Defendant-Petitioner abovenamed appearing by P. G. Somadasa his Proctor states as follows :—

1. The Plaintiff-Respondent abovenamed brought the above styled action for a declaration of title to the premises described in the schedule to the plaint.

2. The 1st defendant-petitioner filed answer and contested the plaintiff's claim to the premises mentioned in the schedule to the plaint.

3. This Court after trial dismissed the plaintiff's action with costs. 20

4. Thereafter the plaintiff appealed and the Supreme Court allowed the appeal and declared the plaintiff entitled to the said premises and ordered the 1st defendant-petitioner be ejected from the said premises.

5. Thereafter the 1st defendant-petitioner applied to the Supreme Court for conditional leave to appeal to Her Majesty the Queen in Privy Council and the notice of the said application was duly served on the plaintiff-respondent.

6. The said application for conditional leave to appeal to the Privy Council came up for hearing on the 4th instant and the said application was allowed. 30

7. The Plaintiff-Respondent on the 6th instant applied to this Court for execution of the Supreme Court Decree by issuing Writ of Possession to eject the 1st defendant-petitioner from the said premises which said application has been allowed by the Court.

8. The petitioner begs to state that the plaintiff's application for execution is bad in law in that it was made after notice of the 1st defendant-petitioner's application for conditional leave to appeal to the Privy Council was served on the plaintiff-respondent which application has since been allowed on the 4th April, 1963 and the application for Writ of Possession was made in this Court on the 6th April, 1963 and allowed by the Court on the 8th April, 1963.



9. The petitioner and his unmarried sister are residing in the premises which formed the subject matter of this action and the petitioner and his sister have nowhere else to go if the writ of possession is executed and irreparable loss will be caused to the petitioner and his sister if they were ejected from the said premises where they were living from the time of their birth.

10. The present application of plaintiff-respondent for a Writ of Possession is an attempt on her part to force the 1st defendant-petitioner's hands to abandon the appeal to Her Majesty the Queen in Council.

10 Wherefore the 1st defendant-petitioner that the Court will not order the writ of execution applied for and allowed ex parte to proceed against the petitioner and that the said Order allowing writ of possession be vacated pending the hearing of the present application and for costs and for such other and further relief as to this Court shall seem meet.

(Sgd.) P. G. SOMADASA,  
*Proctor for the 1st defendant-petitioner.*

No. 20  
Petition of  
the 1st  
Defendant  
16-4-63  
—continued.

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**No. 21**

**Application for Final Leave to Appeal to the Privy Council**

**IN THE SUPREME COURT OF THE ISLAND OF CEYLON**

No. 21  
Application  
for Final  
Leave to  
Appeal to  
the Privy  
Council  
30-4-63

20 Application  
No. 14/63

D. C. Galle  
No. L. 6177

S. C. No.  
346 of 1962

IN THE MATTER OF AN APPLICATION FOR FINAL LEAVE TO APPEAL TO HER MAJESTY THE QUEEN IN COUNCIL UNDER THE PROVISIONS OF PRIVY COUNCIL APPEAL CHAPTER 100 VOLUME 4 OF THE LEGISLATIVE ENACTMENTS OF CEYLON (1956 REVISED EDITION).

CYNTHIA PEARLINE VIDANAGE of  
Bataduwa, Galle.

*Plaintiff-Appellant.*

1. MANIKPURA PEIRIS MUNASINGHE of  
Dangedara, Galle.

30

2. BERTRAM CLIVE VIDANAGE of  
Dangedara, Galle and presently  
of Motor and Cycle Stores,  
Puttalam Road, Kurunegala.

*Defendants-Respondents.*

MANIKPURA PEIRIS MUNASINGHE of  
Dangedara, Galle.

*1st Defendant-Petitioner.*

*Vs.*

1. CYNTHIA PEARLINE VIDANAGE of  
Bataduwa, Galle,

40

*Plaintiff-Respondent.*

No. 21  
Application for  
Final Leave to  
Appeal to the  
Privy Council  
30-4-63  
—continued.

2. BERTRAM CLIVE VIDANAGE of  
Dangedera, Galle and presently  
of Motor and Cycle Stores, Put-  
talam Road, Kurunegala.

*2nd Defendant-Respondent.*

To :

THE HONOURABLE THE CHIEF JUSTICE AND OTHER JUDGES  
OF THE SUPREME COURT OF THE ISLAND OF CEYLON

On this 30th day of April, 1963.

The Petition of the Petitioner abovenamed appearing by U. R. Wijetunge, his Proctor states as follows :— 10

1. The Petitioner's application dated 19-1-63 for Conditional Leave to Appeal to Her Majesty the Queen in Council against the Judgment of this Court pronounced on 21st day of December, 1962 was granted by Your Lordship's Court on the 4th day of April, 1963.

2. On the 25th day of April, 1963, the petitioner has complied with the provisions of Rule 3 of the Rules of the Schedule to the Privy Council Appeals Chapter 100 Volume 4 of the Legislative Enactments of Ceylon (1956 Revised Edition). The security given by the petitioner was made by deposit of a sum of Rupees Three Thousand (Rs. 3,000/-) with the Registrar of the Supreme Court, and hypothecation by bond thereof. 20

3. On the 19th day of April, 1963 the petitioner has also deposited with the Registrar Supreme Court a sum of Rupees Three Hundred (Rs. 300/-) in compliance with the provisions of Rule 8 (a) of the Appellate Procedure (Privy Council) Order 1921.

4. The Petitioner has given due notices of this application for Final Leave to the 1st and 2nd Respondents as follows :—

“ Application for Final Leave to Appeal to Her Majesty the Queen in Council in S. C. 346/1962 D. C. Galle Case No. L. 6177.

Please take Notice that I have complied with the conditions on which leave to appeal to Her Majesty the Queen in Council has been granted to me by the Supreme Court on 4th day of April, 1963. I am now applying to the Supreme Court for Final leave to appeal to Her Majesty the Queen in Council in the above Supreme Court Appeal.

Colombo, 29th day of April, 1963.

(Sgd.) M. P. MUNASINGHE,  
*The Petitioner.*

(Sgd.) U. R. WIJETUNGA,  
*Proctor for Petitioner ”,*

5. The Petitioner has sent the notices identical with the notices referred to in para 4 addressed to the 1st and 2nd Respondents respectively under Express Registered covers and the petitioner has obtained receipts of posting from the Post Office.

No. 21  
Application  
for Final  
Leave to  
Appeal to  
the Privy  
Council  
30-4-63  
—continued.

WHEREFORE the Petitioner prays that Your Lordships' Court be pleased to :—

(a) Grant Final Leave to Appeal to Her Majesty the Queen in Council against the Judgment of this Court pronounced on the 21st day of December, 1962.

10 (b) for costs, and

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

(Sgd.) U. R. WIJETUNGA,  
*Proctor for Petitioner.*

No. 22

Proceedings before the District Court

No. 22  
Proceedings  
before the  
District  
Court  
15-5-63

L/6177

15th May, 1963.

MR. ADV. DIAS ABEYSINGHE, instructed for plaintiff.

MR. ADV. GOONASEKARA, instructed for 1st defendant.

20 Mr. Adv. Dias Abeysinghe submits that in this case the plaintiff has obtained judgment for declaration of title and ejection of the 1st defendant from the premises in suit. The Supreme Court had ordered that there will be no order for damages except as from the date of the S. C. Decree—the damages should be fixed at the authorised rent of the premises as determined by the District Judge when the record is returned to the District Court.

He submits that the plaintiff is waiving damages and he tenders a written motion to that effect.

30 He also submits a draft of the decree that should be entered in this case and moves that Court be pleased to sign this decree.

Mr. Adv. Goonasekera submits that an appeal is pending from the Supreme Court Judgment and security has been given with the Registrar of the Supreme Court. He produces a certified copy of the bond marked "X".

He submits that the application for execution of the decree should be made to the Supreme Court as the decree of the Supreme Court has superseded the decree of the District Court. Prima Facie evidence has been placed before this Court that there is an appeal pending to the Privy Council from the Supreme Court Judgment.

40 In these circumstances execution of the writ will cause grave hardship. Order on 31-5-63.

(Sgd.) .....  
A. D. J. 15-5-63

## No. 23

**Minute of Order granting Final Leave to Appeal to the  
Privy Council**

No. 23  
Minute of Order  
granting Final  
Leave to Appeal  
to the Privy  
Council  
28-5-63

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for Final Leave to Appeal to the Privy Council under the Rules set out in the Schedule to the Appeals (Privy Council) Ordinance.

MANIKPURA PEIRIS MUNASINGHE of  
Dangedera, Galle.

*1st Defendant-Petitioner. 10*

S. C. Application  
No. 210 of 1963

Vs.

1. CYNTHIA PEARLINE VIDANAGE of  
Bataduwa, Galle.

*Plaintiff-Respondent.*

2. BERTRAM CLIVE VIDANAGE of  
Dangedera, Galle, presently of  
Motor and Cycle Stores, Puttalam  
Road, Kurunegala.

*2nd Defendant-Respondent. 20*

The application of M. P. Munasinghe of Dangedera, Galle, for Final Leave to Appeal to Her Majesty the Queen in Council from the judgment and decree of the Supreme Court of the Island of Ceylon pronounced on the 21st day of December, 1962 in S. C. Application No. 346 of 1962 for Revision in D. C. Galle Case No. L. 6177, having been listed for hearing and determination before the Honourable Hema Henry Basnayake, Q.C., Chief Justice, and the Honourable Kingsley Herat, Puisne Justice, in the presence of S. W. Jayasuriya Esquire, with D. S. Wijesinghe Esquire, Advocates for the Petitioner and there being no appearance for the Respondents, order has been made by Their Lordships on the 23rd day of 30 May, 1963 allowing the aforementioned application for Final Leave to Appeal to Her Majesty the Queen in Council.

(Sgd.) J. W. SUBASINGHE,  
*Registrar of the Supreme Court.*

Proceedings before the District Court

No. 24  
Proceedings  
before the  
District  
Court  
31-5-63

L/6177.

31st May, 1963.

MR. ALSON DE SILVA for plaintiff.

MR. ADV. GOONASEKARA instructed for 1st defendant.

Mr. Alson de Silva mentions the journal entry of 17-5-63.

He submits that a clerical error in regard to the assessment number appears in the original decree from which an appeal had been taken. That decree has been set aside. In view of that he is not proceeding with the application to alter the assessment number in that decree. He submits a fresh decree in terms of the Supreme Court order for signature.

Mr. Adv. Goonasekara submits that this decree be submitted with notice to him.

Let plaintiff's proctor submit a draft decree with notice to 1st defendant's proctor.

After the proceedings of 15-5-63 I reserved my order on the matters submitted to me for today. In view of the application made by the proctor for plaintiff and the journal entry of 17-5-63, I made order on 21-5-63 that I will not be delivering my order on 31-5-63 till the question of the amendment of the decree was in the first instance considered. Now the question of the amendment of the decree does not arise. It remains now for me to deliver my order in regard to the matters argued before me on 15-5-63. In the meantime a telegram has been received from the Registrar, Supreme Court, asking that the record in this case be forwarded immediately to the Supreme Court. I therefore direct that this record be forwarded to the Supreme Court forthwith.

I will deliver my order in regard to the proceedings of 15-5-63 after the record is returned by the Supreme Court.

30

(Sgd.) .....  
A. D. J.  
31-5-63.

P 3  
Deed of Lease  
No. 209  
22-7-24

PART II

P 3

Deed of Lease No. 209

TRANSLATION

No. 209  
Deed of Lease :

5 Lands  
Rs. 500/-.

The lessor Wehellege Don Bastian de Silva Samaranayake Appuhamy of Talpe doth hereby lease the property described in the schedule hereto annexed unto Menikpura Pieris Munasinghe of Dangedera for one year from 22nd July, 1925 for a sum of Rs. 500/- and subject to the conditions hereinafter mentioned :— 10

X X X

The schedule above referred to :—

1 and 2 X X X

3. An undivided 11/20 share of the soil and trees together with all the buildings built by Menikpurage Adirian and standing thereon of the land called Millagahawatta *alias* Midellagahawatta situated at Dangedera, within the four gravets, Galle District, Southern Province and bounded on the North by Higgaha Liyadda, East by the Owita of the same land, South by Kompadorugewatta, West by Higgaha Liyadda *alias* Pedi Kumbura and containing in extent 4 acres and 29 perches being premises held and possessed by the lessor by right of purchase on Fiscal's transfer No. 14017, 14015 and 14016 all dated 31-10-1912. 20

4. X X X

5. An undivided one fourth share of the soil and trees together with the fifteen cubits house and other houses standing thereon of the land called Millagahawatta *alias* Midellagahawatta *alias* Owita situated at Dangedera aforesaid and bounded on the North and East by the high roads, South by Kompadorugewatta, West by Millagahawatta *alias* Midellagahawatta and containing in extent about one acre being premises held and possessed by the lessor by right of purchase on deed No. 29480 dated 14-6-1906 attested by Mr. C. D. A. Seneviratne, Notary Public. 30

Executed on this 22nd July, 1924 at Unawatuna.

Witnesses :	(Sgd.) In English.
	(Sgd.) In English.
X X X	
(Sgd.) In Sinhalese.	
(Sgd.) In Sinhalese.	

(Sgd.) D. D. JAYAWARDENA,  
*Notary Public,*

Attested on 22nd July, 1924 by :

(Sgd.) D. D. JAYAWARDENA,

*Notary Public,*

Galle District.

P 3  
Deed of  
Lease  
No. 209  
22-7-24  
—continued.

(Seal)

Translated by :

(Sgd. Illegibly.

*Sworn Translator.*

---

P 4

**Deed of Lease No. 1387**

P 4  
Deed of  
Lease  
No. 1387  
3-4-26

10

**TRANSLATION**

No. 1387.

Deed of Lease.

Rs. 500/-.

The lessor Wehillage Don Bastian de Silva Samaranayake Appuhamy of Talpe doth hereby lease the property described in the schedule hereto annexed unto the lessee Menikpura Pieris Munasinghe of Dangedera for one year from 1st April, 1926 for Rs. 500/- and subject to the following terms and conditions :—

X X X X

20 The schedule above referred to :—

1. X X X

2. An undivided 11/20 share of the soil and trees together with all the buildings built by Menikpura Adirian and standing thereon of the land called Millagahawatta *alias* Midellagahawatta situated at Dangedera,

P 4  
Deed of Lease  
No. 1387  
3-4-26  
—continued.

within the four gravets, Galle District, Southern Province and bounded on the North by Higgaha Liyadda, East by the Owita of the same land, South by Compadorugewatta, West by Higgaha Liyadda *alias* Pedi Kumbura and containing in extent 4 acres and 29 perches being premises held and possessed by me the lessor under and by virtue of the Fiscal's Transfer No. 14015 dated 31-10-1912 and 14017 dated the same day.

3. X X X X

4. An undivided one fourth share of the soil and trees together with fifteen cubits house and other houses thereon of the land called Millagahawatte *alias* Midellagahawatta *alias* Owita situated at Dangedera aforesaid 10 and bounded on the North and East by the high road, South by Kompadorugewatta, West by Millagahawatta *alias* Midellagahawatta and containing in extent about one acre being premises held and possessed by me the lessor by right of purchase on deed No. 29480 dated 14th June, 1906 attested by Mr. C. D. A. Seneviratne, Notary Public.

5 and 6 X X X

Executed on this 3rd April, 1926 at Unawatuna.

(Sgd.) Illegibly.

(Sgd.) M. P. MUNASINGHE.

Witnesses :

20

X X X

(Sgd.) In Sinhalese.

(Sgd.) J. H. ULAWITA.

(Sgd.) D. D. JAYAWARDENA,  
*Notary Public.*

Attested on 3rd April, 1926 by :

(Sgd.) D. D. JAYAWARDENA,  
*Notary Public.*

Galle District.

(Seal)

30

Translated by :

(Sgd.) Illegibly.  
*Sworn Translator.*



## Deed of Lease No. 2156

P 5  
Deed of  
Lease  
No. 2156  
23-6-27

## TRANSLATION

No. 2156.  
Deed of Lease.

7 Lands.  
Rs. 500/-.

The lessor Charlis de Alwis Samaranayake of Talpe doth hereby lease the property described in the schedule hereto annexed unto Menikpura Pieris Munasinghe of Dangedera for one year from 1st April, 1927 for a sum of Rs. 500/- and subject to the following terms and conditions :—

10                    X                    X                    X                    X

The schedule above referred to :—

1.    X                    X                    X

2. An undivided 11/20 share of the soil and trees together with the buildings No. 540 and built by Menikpura Adirian and standing thereon of the land called Millagahawatta *alias* Midellagahawatta situated at Dangedera within the four gravets, Galle District, Southern Province and bearing assessment No. 542, and bounded on the North by Higgaha Liyadda, East by the Owita of the same land, South by Kompadorugewatta, West by Higgaha Liyadda *alias* Pedi Kumbura and containing in  
20 extent 4 acres and 29 perches and held and possessed under and by virtue of testamentary Case No. 6309 of the District Court of Galle.

3.    X                    X                    X                    X

4. An undivided one fourth share of the soil and trees together with the fifteen cubits house and other buildings standing thereon of the land called Millagahawatta *alias* Midellagahawatta *alias* Owita situated at Dangedera aforesaid and bearing assessment No. 541 and bounded on the North and East by the high roads, South by Kompadorugewatta, West by Millagahawatta *alias* Midellagahawatta and containing in extent about one acre and held and possessed in the same manner.

30    5 to 7    X                    X                    X

Executed on this 23rd June, 1927 at Unawatuna.

(Sgd.) Illegibly.  
(Sgd.) Illegibly.

Witnesses :

X                    X                    X  
(Sgd.) Illegibly.  
(Sgd.) Illegibly.

(Sgd.) D. D. JAYAWARDENA.  
*Notary Public,*

P 5  
Deed of Lease  
No. 2156  
23-6-27  
—continued.

Attested on 23rd June, 1927 by :

(Sgd.) D. D. JAYAWARDENA,

*Notary Public,*

Galle District.

(Seal)

Translated by:

(Sgd.) Illegibly.

*Sworn Translator,*

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**P 6 & P 7**

P 6  
Plaint in D. C.  
Galle,  
Case No. 1018  
7-12-43

**P 6 — Plaintiff in D. C. Galle Case No. 1018**

10

**IN THE DISTRICT COURT OF GALLE**

1. Samson de Alwis Samaranayake — late minor by the Public Trustee his next friend but now of full age.
2. Swarnalatha de Alwis Samaranayake, both of Kumbalwella, Galle (minors) by their next friend
3. The Public Trustee of the Island of Ceylon.
4. Neelin de Alwis Samaranayake,
5. Laura de Alwis Samaranayake, both of Kumbalwella, Galle.

*Plaintiffs.*

No. 1018.

*Vs.*

20

**MENIKPURA PIERIS MUNASINGHE of  
Dangedera, Galle,**

*Defendant.*

This 7th day of December, 1943.

The plaint of the plaintiffs abovenamed appearing by their Proctor C. L. Wickremasinghe and M. L. N. Wickremasinghe practising in partnership under the name style and firm of C. L. & M. L. N. Wickremasinghe states as follows :—

P 6  
Plaint in  
D. C. Galle  
Case  
No. 1018  
7-12-43  
—continued.

1. The 1st, 2nd, 4th and 5th plaintiffs reside at Kumbalwella within the local limits of the Jurisdiction of this Court and the 3rd plaintiff is the Public Trustee of the Island of Ceylon.
2. The defendant resides at Dangedera within the local limits of the  
10 Jurisdiction of this Court.
3. That one Wehellege Bastian de Alwis Samaranayake was entitled to the lands called (1) Pashawulowita Kalawita and Paralanga Liadde (2) Pedicumbura (3) Eramudugaha Kumbura (4) Muttetuhenawatta (5) Millagahawatta *alias* Midellagahawatta or Owita and (6) Midellagaha *alias* Midellagahawatte situated at Dangedera, Kumbalwella and Kapuhempola all of which are within the local limits of the Jurisdiction of this Court and described more fully in the schedule " A " hereto.
4. That in lieu of the undivided interest in Millagahawatta *alias* Midellagahawatta or Owita and Midellagahawatta *alias* Millagahawatta  
20 described as the 5th and 6th named lands in schedule " A " hereto the said Wehellege Bastian de Alwis Samaranayake was in possession of the allotment of land described in schedule " B " hereto.
5. The said Wehellege Bastian de Alwis Samaranayake died leaving a Last Will and Testament by which he devised the aforesaid lands to his son Charles de Alwis Samaranayake.
6. The aforesaid Last Will and Testament was proved in Testamentary Case No. 6309 of this Court and probate thereof was issued to Charles de Alwis Samaranayake the executor named in the said Will.
7. The said Charles de Alwis Samaranayake gave a lease of the  
30 aforesaid lands to the defendant by deed of lease No. 2156 dated 23rd June, 1927 for one year.
8. That Charles de Alwis Samaranayake died intestate on 21st April, 1928 leaving as heirs 4 children the 1st, 2nd, 4th and 5th plaintiffs who were all minors on the said date.
9. The estate of the said Charles de Alwis Samaranayake was duly administered in Testamentary proceedings No. 6646 of this Court.
10. The 1st and 2nd plaintiffs are yet minors and the Public Trustee  
the 3rd plaintiff has by order of Court dated 23rd November, 1943 in proceedings No. 2569 of this Court been appointed Next Friend.
- 40 11. The 4th and 5th plaintiffs are now above the age of 21 years.

P 6  
 Plaint in D. C.  
 Galle Case  
 No. 1018  
 7-12-48  
 —continued.

12. The abovenamed defendant is disputing the title of the said plaintiffs to the said lands and has been and is still continuing to be in wrongful and forcible possession of the said lands to detriment and damage of the plaintiffs.

13. The predecessors in title of the plaintiffs have been for over ten years in the undisturbed and uninterrupted possession of the said lands by a title adverse to and independent of all others and have acquired prescriptive title thereto and the plaintiffs claim the benefit of their prescriptive title.

14. The value of the subject matter of this action is about <sup>10</sup>Rs. 10,000/-.

15. The plaintiffs are entitled to claim damages at Rs. 500/- per year from the date of expiry of the said lease No. 2156 namely the 23rd June, 1928.

Wherefore the plaintiffs pray that they be declared entitled to the aforesaid lands and the defendant be ejected therefrom and the plaintiffs be quieted in possession thereof (2) for damages at Rs. 500/- a year from 23rd June, 1928 till possession is restored (3) for costs (4) for such other further relief as to this Court shall seem meet, to grant.

20

(Sgd.) C. L. & M. L. N. Wickremasinghe,  
*Proctors for Plaintiffs.*

#### The Schedule " A " above referred to :

1. All the soil and fruit trees of the Kalawita and Owita filled up from Pashawul Owita and the adjoining Paralanga Liadde situated at Dangedera within the Four Gravets of Galle, Galle District, Southern Province, bounded on the North by a portion of this land, East by a lot of this land belonging to the estate of Ali Deedi, South by Sinne Marikange Wela and West by Road from Galle to Hirimbura and Akmeemana containing in extent 3R and 21.68 perches. <sup>30</sup>

2. All that defined Lot No. 2 of Lot A of Pedicumbura Wila addera Owita *alias* Lot B of Pahala Higgahaliadda and Midellagaha Owita *alias* Lot of Eramudugahaliadda situated at Kumbalwella aforesaid bounded on the North by Bataganwilawatta, East by Pahalahiggahaliadda, South by Kankanangewila and Meddewatta and West by Lot 1 containing in extent 1A. 0R. 30.22 perches.

3. An undivided  $\frac{1}{3}$  share of the land called Eramudugaha Kumbura *alias* Higgahaliadda situated at Kumbalwella aforesaid bearing assessment No. 84 G, bounded on the North by the High Road, East by Sikurugewatte, South by Kankanange Kumbura and West by the Kum-<sup>40</sup>bura belonging to Martin Muhandiram and Bataganwila containing in extent 1A. 2R. 18.60 perches.

4. An undivided 5/12 and 5/72 share of the soil and trees of the land called Muttetuhewawatta situated at Kapuhempola and bounded on the North by Kajjugahaaddara Kumbura and Muttetuwattahena deniya, East and South by land sold by Crown and West by Muttetuhewawatta-deniya containing in extent about one acre.

P 6  
Plaint in  
D. C. Galle  
Case  
No. 1018  
7-12-43  
—continued.

5. An undivided 1/4 share of the soil and fruit trees of the land called Millagahawatta *alias* Midellagahawatta or Owita together with the fifteen cubits house and out houses standing thereon situated at Dangedera aforesaid bearing assessment No. 541, bounded on the North by High Road, East by the High Road, South by Kompadorugewatta and West by Millagahawatta *alias* Midellagahawatta containing in extent about one acre.

6. An undivided 11/20 share of the soil and fruit trees of the land called Millagahawatta *alias* Midellagahawatta situated at Dangedera aforesaid bearing assessment No. 542, together with the buildings standing thereon bearing assessment No. 540, built by Menikpura Adirian and bounded on the North by Higgahaliadda, East by the Owita of this land, South by Kompadorugewatta and West by Higgahaliadda *alias* Pedi Kumbura containing in extent 4A. 0R. 29 perches.

20

**The Schedule " B " above referred to :**

All that defined portion of the land called Millagahawatta *alias* Midellagahawatta and the adjoining Owita together with everything standing thereon situated at Dangedera aforesaid and bounded on the North by the High Road, East by the Road and boundary wall, South by the boundary wall and another defined portion of the same land and West by a fence separating another portion of the same land containing in extent 3R. 22 perches.

(Sgd.) C. L. & M. L. N. WICKREMASINGHE,  
*Proctors for Plaintiffs.*

30

**P 6 & P 7 (Continued)**

**P 7 — Answer of the Defendant in D. C. Galle Case No. 1018**

**IN THE DISTRICT COURT OF GALLE**

SAMSON DE ALWIS SAMARANAYAKE of  
Kumbalwella and another.

*Plaintiffs.*

No. L. 1018.

v s

MENIKPURA PIERIS MUNASINGHE of  
Dangedera, Galle.

*Defendant.*

P 7  
Answer  
of the  
Defendant  
in D. C.  
Galle Case  
No. 1018  
22-2-44

P 7  
 Answer of the  
 Defendant in  
 D. C. Galle  
 Case No. 1018  
 22-2-44  
 —continued.

On this 22nd day of February, 1944.

The answer of the defendant abovenamed appearing by Edwin Wijesurendra his proctor states as follows :—

1. The defendant admits the averments in paragraphs 1, 2 and 6 of the plaint.

2. Except as is hereinafter admitted the defendant denies all and singular the allegations contained in paragraphs 3, 4, 7, 12, 13 and 15 of the plaint.

3. Answering paragraph 5 of the plaint the defendant states that the said Bastian de Alwis Samaranayake left a last will. 10

4. Answering paragraph 8 of the plaint the defendant states that the said Charles de Alwis Samaranayake died leaving as his heirs his wife Matilda Samaranayake and the said children 1, 2, 4 and 5 plaintiffs.

5. The defendant puts the plaintiffs to the proof of the averments contained in paragraphs 9, 11 and 14 of the plaint.

6. Further answering the defendant states :—

(a) That the premises No. 1, 2, 3, 5 and 6 referred to in schedule A to the plaint belonged to Adirian the father of the defendant and the said premises No. 4 in the said schedule and another land belonged to the defendant. 20

(b) That it was agreed between the said Adirian and Bastian de Alwis Samaranayake (referred to in paragraph 5 of the plaint) that the said premises should be purchased by the said Bastian de Alwis Samaranayake for the said Adirian and that the said Bastian de Alwis Samaranayake should transfer the said lands and the premises No. 4 and the other land to the defendant on the payment of the sum of Rs. 16,000/-.

(c) That by about the year 1925 the defendant or his said father had paid a sum of Rs. 12,750/- to the said Bastian de Alwis Samaranayake. 30

(d) That thereafter it was agreed between the said Charles de Alwis Samaranayake and the defendant that on the defendant paying the balance sum of Rs. 3,250/- the said Charles de Alwis Samaranayake should transfer the said premises to the defendant.

(e) On or about the 23rd June, 1927 at the request of the said Charles de Alwis Samaranayake the defendant signed the said lease 2156, but that neither the said Charles de Alwis Samaranayake nor the defendant intended to give or take a lease of the said premises. 40

(f) That the defendant did not enter into possession of the said premises under the said instrument or as a lessee of the said Charles de Alwis Samaranayake nor was any consideration paid by the defendant to the said Charles.

(g) That thereafter about the month of February, 1928 it was agreed between the said Charles de Alwis Samaranayake and the defendant that the defendant should give up any rights that the said instrument No. 2156 purported to give to the defendant and that the said Charles de Alwis Samaranayake should release the defendant from any obligations that the said instrument purported to create.

(h) That in pursuance of the said agreement about the month of February, 1928 the defendant gave up the rights aforesaid and the said Charles de Alwis Samaranayake released the defendant of the said Obligations.

7. For a further answer the defendant states that the said instrument No. 2156 could not and did not pass any interest in the lands described in Schedule B to the defendant.

8. Further answering the defendant states that the defendant has been in the undisturbed and uninterrupted possession of the lands in question for a period of over ten years by title adverse to and independent of the plaintiffs and has thereby acquired a prescriptive title thereto.

9. For a further answer the defendant states that there is a misjoinder of parties and of causes of action and that the plaintiffs cannot maintain this action.

10. For a further and an alternative answer the defendant states that the defendant has been in bona fide possession of the said premises and has caused improvements to the same at his expense and that the value of the improvements amounts at least to Rs. 10,000/- and that he is entitled to claim the said sum from the plaintiffs.

WHEREFORE the defendant prays :—

(a) That the plaintiffs' action be dismissed.

(b) In the event that the plaintiffs being declared entitled to the lands in question that the plaintiffs be ordered to pay to the defendant the said sum of Rs. 10,000/- as compensation for improvements and that the defendant be declared entitled to remain in possession of the said lands until the said sum of Rs. 10,000/- is paid to him.

P 7  
 Answer of the  
 Defendant in  
 D. C. Galle  
 Case No. 1018  
 22-2-44  
 —continued.

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

(Sgd.) D. A WICKREMASINGHE,  
*Proctor for Defendant.*

Settled by :

(Sgd.) J. M. JAYAMANNA,

(Sgd.) A. R. H. CANAKERATNE,  
*Advocates.*

P 6 & P 7  
 —continued.

No. 1018.

9th January, 1945.

Mr. Adv. E. B. Wickremanayeke instructed by Messrs. Wickremasinghe for 10 the plaintiffs.

Mr. Adv. Suntheralingam instructed by Mr. Wijesurendra for the defendant.

Mr. Wickremanayeke opens his case and suggests the following issues :—

- (1) Are the plaintiffs entitled to the lands which are the subject matter of this action ?
- (2) Has the defendant been in wrongful possession of the said lands from the 23rd June, 1928 ?
- (3) If so, what damages are the plaintiffs entitled to ?
- (4) Was there an agreement by Bastian de Alwis Samaranayake to 20 transfer these lands to the defendant on payment of a sum of Rs. 16,000/- ?
- (5) If so, is the said agreement enforceable in the absence of a notarial document ?
- (6) Is the judgment and decree in case No. 31207 of the District Court of Galle resjudicata between the plaintiffs and the defendant ?

Mr. Suntheralingam objects to issue No. 6. He states that there was no issue as to an agreement in that case. He suggests the following issues :—

- (7) Was Bastian de Alwis Samaranayake entitled to lands specified 30 in schedule A to the plaint ?
- (8) Did Bastian de Alwis Samaranayake possess the lands specified in schedule B in lieu of the 5th and 6th lands in schedule " A " ?



- (9) Did Bastian de Alwis Samaranayake devise to Charles any or all of the properties specified in schedule A ?
- (10) Is Matilda Samaranayake, the widow of Charles, one of the heirs of Charles ?
- (11) If so, is she entitled to any share in any or all the properties specified in schedule A ?
- (12) Can this action be had and maintained without Matilda Samaranayake being made a party to this action ?
- 10 (13) Did Charles de Silva Alwis Samaranayake give a lease of the lands to the defendant by lease No. 2156 of 23-6-1927 ?
- (14) Did the lease of indenture No. 2156 operate as a lease ?
- (15) Did any consideration pass on the said lease ?
- (16) Was the defendant in possession of the lands only by virtue of No. 2156 ?
- (17) Could the aforesaid lease No. 2156 have created any rights in favour of the defendant in respect of the lands in schedule B ?
- (18) Did lease No. 2156 create any obligation on the defendant in respect of the land described in schedule B ?
- 20 (19) Was it agreed in February, 1928 between Charles de Alwis Samaranayake and the defendant that all rights, if any, under the lease No. 2156, were to be extinguished as far as both parties were concerned ?
- (20) If so were they in fact extinguished ?
- (21) (a) Are the 4th and 5th plaintiffs above the age of 21 years ?
- (22) Did the lands 1, 3 and 6 specified in schedule A to the plaint belong to Adirian, the father of the defendant ?
- (23) Did the lands 2 and 4 specified in schedule A to the plaint belong to the defendant ?
- (24) Did land No. 5 belong to John Munasinghe ?
- 30 (25) Has the defendant or his father at the end made payments of Rs. 12,750/- to Bastian de Silva Alwis Samaranayake under issue No. 4 of the agreement ?
- (26) Did Charles de Alwis Samaranayake agree with the defendant that the said lands would be transferred to the defendant on the payment of the balance sum of Rs. 3,250/- ?

- (27) Has the defendant acquired prescriptive title to any or all lands ?
- (28) What is the value of
- (a) the cause of action ?
- (b) the subject matter of the action ?
- (29) Are the plaintiffs entitled to claim damages at Rs. 500/- a year from the date of the expiry of the lease No. 2156 ?
- (30) Can the plaintiffs claim ejection of the defendant from the aforesaid lands ?
- (31) Is there a misjoinder of causes of action or of parties ? 10
- (32) Has the defendant been in bona fide possession of the lands ?
- (33) Has the defendant made improvements to the lands at his own expense ?
- (34) If so, what is the cost of such improvement ?
- (35) Is the defendant entitled to claim compensation for the improvements ?
- (36) If so, what amount ?
- (37) Is the devolution of title set out in paragraphs 5 to 8 of the plaint correct ?
- (38) Are the plaintiffs entitled to have and maintain this action if the 20 values are more than Rs. 10,000/- stated in the plaint as the value of the subject matter of this action ?

Mr. Wickremanayeke objects to issues 10, 11 and 12 on the ground that they are not pleaded. He objects to issues 14, 17 and 18.

Mr. Wickremanayeke suggests an alternative to issues 17 and 18.

- (39) Was it intended between Charles de Alwis Samaranayake and the defendant that the lease No. 2156, should be given effect to ?

Mr. Wickremanayeke admits issues 22, 23 and 24.

He suggests a corollary to issue No. 26.

- (40) If so, is the said agreement enforceable in law ?

Mr. Suntheralingam calls —

P 6 & P 7  
—continued.

**A. Moonesinghe.** — Affirmed :

I am the defendant in this case. My father was Adirian Munasinghe. He was a man of affluent circumstances. He made plenty of money by prospecting for plumbago. One of my brothers was given a higher education by my father and he went to England winning a Government scholarship. He is my younger brother. Later my father got into financial difficulties primarily because of the expense he had incurred on behalf of my brother and also because of the price of plumbago going down and  
10 he had to borrow money.

For most of his loans he went to Bastian Samaranayake. To my knowledge loans were given on mortgage of properties. Bastian was a well known money lender charging 15, 18 and 20 per cent. Some of those properties were also sold when they still belonged to my father. Lands 1, 2, 3, 5 and 6 in the schedule were sold. Samaranayake bought them at these Fiscal's sales. After they were bought at the Fiscal's sales my father transferred one of the lands to one of my brothers. That is land No. 5 to John Munasinghe. It was after the sale to Samaranayake. We were possessing it. He did not transfer it back to my father. The land  
20 called Millahena was transferred back by Samaranayake to my father. After the lands were purchased by Bastian my father got a deed of lease. After the deed of lease my father got a deed from Bastian and he mortgaged them again and went on dealing like that. I myself had mortgaged some of these properties. Even after Samaranayake bought the lands we pay him and when the principal and interest were paid then Bastian retransferred them. Until the amount is paid in full the lands are not retransferred to us. All along we are in possession. From our birth we have been in possession. I know the lease that was executed by me, some time before Bastian died. I did not pay any money as rent. It is stated in the  
30 attestation that money was paid. Bastian himself paid the notary and we pay Bastian later. That was the system. Nominally we pay but it is Bastian who pays and he gets it back. The deeds were in favour of Bastian. I did not consider to be the owner of these properties. I have myself paid large sums of money. We get receipts. I was sent a notice by Mr. Abeygoonewardena, Proctor, and I handed them to him. That was when he became the administrator. I also received a letter of demand from Mr. Abeygoonewardena. After I received the letter of demand I received a post card asking me to see him, I saw him. I gave him the receipts in that connection to show that I had paid amounts.  
40 I told my proctor that a large sum of money had been paid as interest and principal and that was when I was owner. I cannot remember Samuel or Charles coming to see me. Samuel Abeygoonewardena lives near Pedigekumbura. It may be that I scolded them if they came and interfered with my lands. I know the deed of lease in favour of Charles. It was not a deed of lease. It was not meant to be a lease.

**Q.** You know that deed of lease No. 2156 was executed ?

**A.** Yes. That is the deed in my favour.

P 6 & P 7  
—continued.

Q. What was the purpose of that deed when you were in possession of that land ?

A. I had to pay some money to Charles Samaranayake.

I had no documents to rely. Because I had no documents on which I could rely and even if there were disputes to my lands, I would not be able to take steps without any documents, therefore this document was executed.

I had to pay him Rs. 3,250/- and because I had to pay money I took this deed of lease. It was not meant to be a deed of lease.

Q. You were all along living on the land ?

10

A. Yes.

Q. Were you paying any rent ?

A. I was not paying any rent.

Q. What were you paying ?

A. I was paying interest and principal.

These lands were worth very much more in 1943 than in 1926. They were worth about five times more. Mr. Abeyagoonewardena stated that they are worth about twice. I have a knowledge of the value of lands. I know lands 5 and 6 referred to in schedule A to the plaint. According to the plaint, in lieu of these lands 5 and 6 Bastian enjoyed a divided portion. 20

I have all along possessed and enjoyed them as my own property, I was born on this land. That is lands Nos. 5 and 6. Lands 1, 2, 3 and 4 are contiguous lands. Land No. 4 is a plumbago land at Katuhenpola. That is a separate land. Lands 1, 2, 3, 5 and 6 are contiguous properties. From the year 1928 I was the owner of the properties. (To Court : I had paid all the money and became the owner) I got these lands from my father, I got these lands by right of paternal inheritance. My father died in 1922. My father was the original owner of these properties. At his death I inherited them. My father's estate was not administered. I was the sole heir. I have brothers and sisters living. I paid the money and they did not come to interfere. I paid the money and became the owner. (To Court : By virtue of that payment I became the owner adverse to my brothers and sisters). At the time of my father's death, nominally these properties were in the name of Bastian. My brothers and sisters did not take any interest. I know the transaction between my father and myself. I paid money on account of these lands from time to time to them. Because of these payments I regarded myself as the owner of these properties. Land No. 5 belongs to my brother John Munasinghe. I cannot say whether my father gave a deed or got a transfer from Bastian. I know that a 1/4 share of Millagahawatta belongs to my brother. What 40 I believe is that my father gave it.

(Mr. Wickremanayeke objects to this evidence as it would be the contents of a document if there was such a transfer). I have made improvements to the Dangedera Property. I have added a room to a kitchen. I cemented the floor and I have renovated the roof. It is a very old house, it is about 80 years old. After 1928 I renovated this building, I spent about Rs. 5,000/- to Rs. 6,000/- for this renovation. I have also planted the land with coconut and jak. I have filled up the low portions.

**XXD :**

Before the bond becomes 10 years old, he put the bond in suit. After  
 10 plumbago is dug out, we pay the principal and interest. I have got Nilhena and Godaduwa which are both plumbago lands. They were sold and transferred back to me, but again I have mortgaged them. I have given the numbers of these deeds, I have paid Rs. 12,750/-. Those receipts I have handed to the proctor Mr. Abeygoonewardena. I told my proctor that I handed them to Mr. Abeygoonewardena. The receipts were given to Mr. Abeygoonewardena to be shown to the widow of Don Bastian. Promises were held out to me that they were to be returned to me. That was at the time there was the administration of the estate. I took a lease just before Charles Samaranayake died. That was about one year  
 20 before his death. Shortly before the expiry of the lease he died. I do not know whether the children were minors at that time. Mr. Abeygoonewardena was the administrator. I was living in these very lands. I did not go to take possession of these lands. Bastian bought them at the auction sales so that later we may buy them. Improvements were made in 1928 and 1929. I also effected improvements before that. (To Court : I effected those improvements after 1928). Why should I keep accounts and obtain receipts when I improve my own lands. I did not keep any accounts. I also went to the Insolvency Courts. That was in 1921 or  
 30 1922. I have got plumbago removed to this land from Nilhena and Godaduwa. But these lands were all in the name of Bastian according to the deeds. I had also paid before that to Bastian. I paid money in 1924, 1925 and 1926. I completed the payment of interest and principal at the end of 1925. At that time Bastian was alive. I had to pay something more. I did not ask him for a retransfer because I had to pay something more to him. When Bastian died there were still a sum of Rs. 3,000/- odd still payable to him. I paid that amount to Charles and completed payments in February, 1928. Before he could transfer them he was murdered. He promised to give me a transfer immediately he received letters of administration. In 1921 and 1922 I had not paid any-  
 40 thing to Bastian. I had plumbago on this land which I had removed from the lands Nilhena and also bought plumbago. My assignee did not sell up plumbago because it was not worth even five cents. I dug for plumbago in my lands though in the deeds they were mentioned as having belonged to Bastian. I got Rs. 15,000/- to Rs. 20,000/- from plumbago.

**Re-examined :**

When my father was the owner of Nilhena it was bought by Bastian who had allowed my father to make use of the land. At one stage, plumbago

P 6 & P 7  
—continued.

was not of any use. What I had stocked I sold and I was able to pay back the debts.

(Sgd.) R. R. SELVADURAI,  
D. J.

Mr. Suntheralingam closes his case reading in evidence D1, D2, portions marked A, B and C and D3.

Judgment on 12th July, 1945.

(Intd.) R. R. S.  
D. J.

I, A. E. de Silva, Secretary of the District Court of Galle do hereby 10 certify that the foregoing are true copies of the plaint, answer, issues and evidence of A. Moonesinghe in D. C. Galle, Case No. L. 1018.

(Sgd.) .....  
Secretary.

D. C. Galle, 9-11-59.

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P 8

Decree of the District Court in D. C. Galle, Case No. 1018

DECREE

IN THE DISTRICT COURT OF GALLE

1. SAMSON DE ALWIS SAMARANAYAKE late a minor but now of 20 full age,
2. SWARNALATHA DE ALWIS SAMARANAYAKE minor by
3. THE PUBLIC TRUSTEE OF CEYLON as next friend
4. NEELIN DE ALWIS SAMARANAYAKE and
5. LAURA DE ALWIS SAMARANAYAKE.

No. L. 1018.

Vs.

Plaintiffs.

MENIKPURA PEIRIS MUNASINGHE of  
Dangedera.

Defendant.

This action coming on for final disposal before R. R. Selvadurai 80 Esquire, District Judge of Galle on the 20th day of August, 1945 in the presence of Messrs. C. L. & M. L. N. Wickremasinghe, Proctors for the plaintiffs and in the presence of the defendant.

It is ordered and decreed that the plaintiffs be and they are hereby declared entitled to the lands described in the schedule hereto.

P 8  
Decree of the  
District Court in  
D. C. Galle  
Case No. 1018  
20-8-45

It is further ordered and decreed that the defendant be ejected from the said lands and the said plaintiffs put and placed in quiet possession thereof.

It is further ordered and decreed that the defendant do pay to the plaintiffs Rs. 1,000/- as damages up to date of action and thereafter Rs. 500/- per annum as damages from the date of action until the possession of the said lands are restored to the plaintiffs.

And it is further ordered and decreed that the defendant do pay to the plaintiffs their costs of this case.

10

(Sgd.) R. R. SELVADURAI,  
*District Judge.*

Galle, 20th day of August, 1945.

### Schedule

(1) All the soil and fruit trees of the Kalawita and Owita filled up from Pashawal Owita and the adjoining Paralangaliadde situated at Dangedera within the Four Gravets of Galle, Galle District, Southern Province, bounded on the North by a portion of this land, East by a lot of this land belonging to the estate of Ali Deedi, South by Sinne Marikkange Wela and West by Road from Galle to Hirimbura and Akmeemana containing in  
20 extent 3 roods and 21·63 perches.

(2) All that defined lot 2 of Lot A of Pedicumbura, Wila Addera Owita *alias* Lot B of Pahala Higgahaliadda and Midellagahaowita *alias* lot of Eramudugahaliadda situated at Kumbalwella aforesaid bounded on the North by Bataganwilawatta, East by Pahalahiggahaliadda, South by Kankanangewila and Meddawatta and West by Lot No. 1 containing in extent 1A. 0R. 30·22 perches.

(3) An undivided  $\frac{1}{3}$  share of the land called Eramudugaha Kumbura *alias* Higgahaliadda situated at Kumbalwella aforesaid bearing assessment No. 84G, bounded on the North by High Road, East by Sikurugewatta,  
30 South by Kankanange Kumbura and West by Kumbura belonging to Mr. Martin Muhandiram and Bataganwilawatta containing in extent 1A. 2R. 18·60 perches.

(4) An undivided  $\frac{5}{12}$  and  $\frac{5}{72}$  shares of the soil and trees of the land called Muttettuhewatta situated at Kapuhempola aforesaid bounded on the North by Kajjugahaaddera Kumbura and Muttettuwattahenedeniya East and South by land sold by Crown and West by Muttettuhewatte-deniya containing in extent about an acre.

(5) An undivided  $\frac{1}{4}$  share of the soil and fruit trees of the land called Millagahawatta *alias* Midellagahawatta or Owita together with the 15  
40 cubits house and out houses standing thereon situated at Dangedera aforesaid bearing assessment No. 541, bounded on the North and East by High Roads, South by Kompadorugewatta and West by Millagahawatta *alias* Midellagahawatta containing in extent about one acre,

P 8  
Decree of the  
District Court in  
D. C. Galle  
Case No. 1018  
20-8-45  
—continued.

(6) An undivided 11/20 share of the soil and fruit trees of the land called Millagahawatta *alias* Midellagahawatta situated at Dangedera aforesaid bearing assessment No. 542 with the buildings standing thereon bearing assessment No. 540 built by Menikpura Adirian and bounded on the North by Higgahaliadda, East by the Owita of this land, South by Kompadorugewatta and West by Higgahaliadda *alias* Pedikumbura containing in extent 4A. 0R. 29 perches.

(Sgd.) R. R. SELVADURAI,  
*District Judge.*

Drawn by :  
C. L. WICKREMASINGHE.

10

I, A. E. de Silva, Secretary of the District Court of Galle do hereby certify that the foregoing is a true copy of the decree in D. C. Galle Case No. L. 1018.

(Sgd.) .....  
*Secretary.*

District Court,  
Galle, 5-11-59.

1 D 1  
Letter from  
C. P. Vidanage to  
M. P. Munasinghe  
21-12-44

1 D 1

20

**Letter from C. P. Vidanage to M. P. Munasinghe**

**TRANSLATION**

21-12-44.  
Colombo.

May Three Gems Bless :

For reference to loving Punchi Mama. As my Star is bad manufactured an amulet. The amulet manufactured first was burst. Prepared a picture with gum and its legs were broken. I went to Dewale with two little ones and offered milk rice and came. Mapilincho went to the spot where the amulet was given for manufacturing. When called up for me and two little ones and while coming that a cycle tied with a betel box 30  
hit to the eldest one and broken down the empty milk rice chatty in my hand. House at Peliyagoda has taken in the name of younger sister. When I questioned she said for her name, talking with me only for a work, talking much with younger sister, promised not to tell the secret and got news of the execution of the deed in respect of the house in favour of the younger sister, elder brothers Lily akka know about the same, but no said as I spoke the ill of the younger sister, heart is not good with him, if Punchi Mamala love me unable to be always shedding tears. I wish, wish, wish to separate from him by instituting a case, I never think even in 40  
dream to get rid of these troubles, I wrote and sent a letter that although my wrongs were told with them. Can't advice even in my absence? Can I cast remarks if any he is spoken to me by younger sister, that letter has been removed and handed to me. She looked into and tore off and thrown the pieces near the root of the Coconut tree, he is angry with me



for giving out the indifferences done to me, that the next world's Buddhism would be gained if got me off separated from him and saved the life without accumulating much cries. It does not matter to us, if when big persons and Kings were separating, there is no pleasure in my heart, it is only a matter giving me Rs. 20-30 Will give me anything what I demand, let us separate by telling the brothers, difficulty in my heart about the examination of Punchi Aiyya, Younger sister told secrets while I was returning from the well with Aiyya and younger sister. I did not know till I came. I did not hear, not available other cruets to be done by this  
 10 brother and sister.

Your Loving Niece,

(Sgd.) C. P. VIDANAGE.

Translated by :

(Sgd.) Illegibly,  
*Sworn Translator.*

---

1 D 1A

Envelope Addressed to M. P. Munasinghe

ENVELOPE

From :

20

P. D. ELARIS,

Drugs Merchant,

Nos. 14, 40, Second Gabo's Lane,

Pettah,

Colombo.

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To :

M. P. MUNASINGHE Esqr.,

Dangedera,

Galle.

(POST MARK — GALLE -- 22 DE — 44)

1 D i  
 Letter from  
 C. P. Vidanage to  
 M. P. Munasinghe  
 21-12-44  
 —continued.

1 D 1A  
 Envelope  
 Addressed  
 to M. P.  
 Munasinghe

1 D 2  
Letter from  
C. P. Vidanage to  
Lily Munasinghe  
1-8-45

1 D 2

Letter from C. P. Vidanage to Lily Munasinghe

TRANSLATION

P. D. ELARIS,

Drugs and General Merchant,

No. 12, 14, 40, Gabo's Lane, Pettah,

1-8-1945.

May The Triple Gem Bless You :

To Kind Punchi Amma.

10

I am feeling the illness little by little. The "Kasaya Watoruwa" will be on the mirror table. One "Neli" out of the two "Kasaya Nellies" took first and the "Kasaya Neli" drunk later were given for stomach discharge. Please send that "Watoruwa" to enable me to drink a quarter of the "Kasaya" I shall drink it and see without telling the vedamahatmaya. I was asked not to come to Dangedera. If I came there I was asked not to come here. I was told that "Kasaya" will be boiled and given, although it is told in that way many days have passed after leaving. It is not difficult to boil and drink. Do not feel so much as before. If you are going to Colombo please inform me to send my<sup>20</sup> cloth for dyeing. I was asked whether it should be sold. There is a talk of buying some other lands recently. I heard saying:— Whether it is forgotten about the work that was talked about. A stick was brought in the night to beat me. It is about the size of a finger, what should be done must be done being in good terms. Do not inform that I told you these things. Let us do the work we arranged. Useless of Kindness.

Loving niece,

(Sgd.) C. P. VIDANAGE.

If the medicine I took is not good enough to take again, I had good effects of the medicine. I took mentioned in the "Watoru" of Veda<sup>30</sup> Mahatmaya, asked "Mallie" to take the "Watoru" and tell that I am feeling "Gesma=beating" in the belly little by little and asked for a "Kasaya" and come. Send Rs. 2/- with the "Watoruwa". I shall pay that. I can drink any amount of the "Kasaya" that I drank. As I am better of that "Kasaya" I think that there is no harm in drinking it.

Translated by :

(Sgd.) Illegibly,  
*Sworn Translator.*

**Enevelope Addressed to Lily Munasinghe**

1 D 2A  
Envelope  
Addressed  
to Lily  
Munasinghe

**ENVELOPE**

P. D. ELARIS,

Drugs Merchant,

Nos. 14, 40, Second Gabo's Lane,

Pettah,

Colombo.

10

LILY MUNASINGHE,

Dangedera,

Galle.

(POST MARK — GALLE — 2 AU — 45)

**P 9**

**Deed of Transfer No. 460**

P 9  
Deed of  
Transfer  
No. 460  
17-11-45

Copy Application No. 1960.

3-11-59.

Prior Registration :— A 243/132, A 172/212, A 211/139, B 43/161,  
A 172/210, A 243/133, Galle.

**No. 460**

20 To All To Whom These Presents Shall Come (1) Louisa Matilda de Alwis Samaranayake (widow of the late Charles de Alwis Samaranayake) (2) Neileen de Alwis Samaranayake (3) Laura de Alwis Samaranayake and (4) Samson de Alwis Samaranayake all of Unawatuna in Galle (hereinafter called and referred to as "the said Vendors").....

**SEND GREETINGS :**

Whereas by right of inheritance from the late Charles de Alwis Samaranayake the said Vendors are the lawful owners and proprietors and seized and possessed of and otherwise well and sufficiently entitled to all those several lands and premises in the schedule hereto fully described.....

P 9  
Deed of Transfer  
No. 460  
17-11-45  
—continued.

And whereas the said Vendors have agreed with Peter de Silva Wijetunga of Colombo (hereinafter called and referred to as "the said Vendee") for the absolute sale and transfer unto the said Vendee of all their right title and interest in and to the said several lands buildings and premises and to the trees and plantations standing thereon and to everything belonging thereto at or for the price or sum or Rupees Thirteen Thousand One Hundred and Twenty Five (Rs. 13,125/-) free from all encumbrances whatsoever.....

Now Know Ye and These Presents Witness that in pursuance of the said agreement and in consideration of the said sum of Rupees Thirteen <sup>10</sup> Thousand One Hundred and Twenty Five (Rs. 13,125/-) of lawful money of Ceylon well and truly paid by the said Vendee to the said Vendors at the execution of these presents (the receipt whereof the said Vendors do and each of them doth hereby admit and acknowledge) the said Vendors do and each of them doth hereby sell grant convey assign transfer set over and assure unto the said Vendee Peter de Silva Wijetunga his heirs executors administrators and assigns all their right title and interest in and to the said several lands premises in the said schedule hereto fully described and in and to the buildings trees and plantations standing thereon together with all rights privileges easements servitudes advantages and <sup>20</sup> appurtenances whatsoever thereto belonging or appertaining or used or enjoyed therewith or reputed or known to be part parcel or member of the same or held to belong or be appurtenant thereto and all the estate right title interest property possession benefit claim and demand whatsoever of the said Vendors in to upon or out of the same and every part or portion thereof.....

To Have And To Hold the said premises hereby sold and conveyed or expressed or intended so to be unto the said Vendee his heirs executors administrators and assigns absolutely for ever.....

And the said Vendors do and each of them doth hereby for them- <sup>30</sup> selves their and each of their respective heirs executors and administrators covenant declare and agree with and to the said Vendee his heirs executors administrators and assigns that they have good right full power and lawful and absolute authority to sell and convey their right title and interest in and to the said lands buildings and premises described in the said schedule hereto in manner aforesaid unto the said Vendee and his aforewritten and that the same are free from all encumbrances charges seizures leases or liens whatsoever and that they have not made done or committed or been party or privy to any act deed matter or thing whatsoever where- by or by means whereof the same or any portion thereof shall or may be <sup>40</sup> impeached imperilled encumbered or prejudicially affected in title charge estate or otherwise howsoever and that they shall and will always warrant and defend the title to the same and every part and portion thereof only in respect of any acts done by them but not otherwise unto the said Vendee and his aforewritten against any person or persons whomsoever and that they shall and will at all times hereafter at the request and cost and all times hereafter at the request and cost and expense of the said Vendee or his aforewritten make do and execute or cause or procure to be made done and executed all such further and other

acts deeds assurances matters and things whatsoever for the better and more perfectly and effectually assuring and vesting the said premises by way of transfer and conveyance in him the said Vendee and his aforewritten as by him or them shall or may be reasonably required.....

P 9  
Deed of  
Transfer  
No. 460  
17-11-45  
—continued.

In witness whereof the said Vendors do set their respective hands hereunto and to two others of the same tenor and date as these presents at Galle on this Seventeenth day of November, One Thousand Nine Hundred and Forty Five.....

**The Schedule above referred to :**

10 All the right title and interest of the Vendors in and to the following lands and premises, to wit :—

1. All the soil and fruit trees of the Kalawita and Owita filled up from Pashawul Owita and the adjoining Paralanga Liadda situated at Dangedara within the Four Gravets of Galle, Galle District, Southern Province and bounded on the North by a portion of this land, East by a lot of this land belonging to the estate of Ali Deedi, South by Sinne Marikange Wela and West by the road from Galle to Hirimbura and Akmeemana containing in extent three roods and twenty one decimal six three perches (A0-R3-P21·63).....

20 2. All that defined Lot No. 2 of Lot A of Pedicumbura Wela Addara Owita *alias* Lot B of Pahala Higgahaliadda and Midellagaha Owita *alias* Lot of Eramudugahaliadda situated at Kumbalwela within the Four Gravets aforesaid and bounded on the North by Bataganwillawatta, East by Pahalahiggahaliadda, South by Kankanangewila and Meddewatta and West by Lot No. 1 containing in extent one acre no roods and thirty decimal two two perches (A1-R0-P30·22).....

3. An undivided one third share of all that land called Eramudugahakumbura *alias* Higgahaliyadda situated at Kumbalwella aforesaid bearing assessment No. 84G bounded on the North by the high road, East by  
30 Sikuregewatta, South by Kankanangekumbura and West by the Kumbura belonging to Martin Muhandiram and Bataganwila containing in extent one acre two roods and eighteen decimal six nought perches (A1-R2-P18·60).....

4. An undivided five twelfth plus five upon seventy two shares of all that land called Muttettuhawatta situated at Kapuhenpola within the Four Gravets of Galle, aforesaid and bounded on the North by Kajjugahaddarakumbura and Muttetuwhattahenedeniya, East and South by land sold by Crown and West by Muttettuhawattadeniya containing in extent about one acre (A1-R0-P0).....

40 5. An undivided one fourth share of all that land called Millagahawatta *alias* Midellagahawatta or Owita together with the fifteen cubits house and out houses standing thereon situated at Dangedera aforesaid bearing assessment No. 541 bounded on the North by the high road, East

P 9  
Deed of Transfer  
No. 460  
17-11-45  
—continued.

by the high road, South by Kompadorugewatta and West by Millagahawatta *alias* Midellagahawatta containing in extent about one acre (A1-R0-P0).....

6. Undivided eleven upon twenty (11/20) shares of all that land called Millagahawatta *alias* Midellagahawatta situated at Dangedera aforesaid bearing assessment No. 542 together with the buildings standing thereon bearing assessment No. 540 built by Menikpura Adirian and bounded on the North by Higgahaliadda, East by Owita of this land, South by Kompadorugewatta and West by Higgahaliyadda *alias* Pedikumbura containing in extent four acres and twenty nine perches 10 (A4-R0-P29).....

(Sgd.) I. M. SAMARANAYAKE.

(Sgd.) N. DE A. SAMARANAYAKE.

(Sgd.) L. DE A. SAMARANAYAKE.

(Sgd.) D. C. SAMARANAYAKE.

Witnesses :

1. (Sgd.) E. WANIGASEKERA.

2. (Sgd.) M. P. MUNASINGHE.

(Sgd.) G. H. N. KULASOORIYA,  
*Notary Public.* 20

I, Gangaboda Hewage Nimal Kulasooriya of Galle, in the Island of Ceylon, Notary Public, by lawful authority duly admitted and enrolled do hereby certify and attest that the foregoing instrument having been duly read over and explained by me the said Notary to the within named executants Louisa Matilda de Alwis Samaranayake, Neileen de Alwis Samaranayake, Laura de Alwis Samaranayake and Samson de Alwis Samaranayake who signed as "L. M. Samaranayake", "N. de A. Samaranayake", "L. de A. Samaranayake" and "S. C. Samaranayake" respectively and all of whom are known to me, in the presence of Edwin Wanigasekera of Kumbalwella in Galle and Manikpurage Peiris Munasinghe of Dangedera in Galle who signed as "E. Wanigasekera" and "M. P. Munasinghe" respectively, the subscribing witnesses thereto both of whom are known to me the same was signed by the said executants and by the said witnesses and also by me the said Notary in my presence and in the presence of one another all being present at the same time at Galle on this Seventeenth day of November, One Thousand Nine Hundred and Forty Five.....

I further certify and attest that three stamps of the value of Rupees Two Hundred and Twenty (Rs. 220/-) and one stamp of the value of Rupee One (Re. 1/-) were supplied by me and affixed to the duplicate 40 and original hereof respectively, that out of the full consideration of Rs. 13,125/- a sum of Rs. 3,125/- was paid in cash in my presence and the

balance sum of Rs. 10,000/- was paid by Cheque No. T 341853 drawn by Vendee on the Hongkong and Shanghai Banking Corporation Ltd., Colombo, in favour of the 4th named Vendor and that before the foregoing instrument was so read over and explained by me the said Notary as aforesaid in the duplicate on page 1 in line 26 the word "Vendors" was rectified, on page 3 line 1 the words "only in respect of any acts done by them but not otherwise" were interpolated, between the words "thereof" and "unto", lines 32 and 33 were expunged and the words "one acre no roods and thirty decimal two two perches (A1-R0-P22) were substituted, in line 34, "an undivided one third share of" were interpolated, before the word "all" on page 4 line 5 "an undivided five twelfth plus five upon seventy two shares of" were interpolated before the word "all", in line 10 "an undivided one fourth share of" were interpolated before the word "all" in line 17 "undivided eleven upon twenty (11/20) shares of" were interpolated before the word "all" in the original on page 2 line 8 the word "Appurtenances" and in line 9 the word "therewith" were rectified, in line 34 the words "only in respect of any acts done by them but not otherwise" were interpolated between the words "thereof" and "unto" on page 3 lines 32 and 33 were expunged and the words "extent one acre no rood and thirty decimal two two perches (A1-R0-P30-22) were substituted in line 34, "an undivided one third share of" were interpolated before the word "all" on page 4 line 5 "an undivided five twelfth plus five upon seventy two shares of" were interpolated before the word "all" in line 10, "an undivided one fourth share of" were interpolated before the word "all" in line 17 "undivided eleven upon twenty (11/20) shares of" were interpolated before the word "all".

P 9  
Deed of  
Transfer  
No. 460  
17-11-45  
—continued.

(Sgd.) G. H. N. KULASOORIYA,  
*Notary Public.*

(Seal)

30 Date of Attestation :

17th November, 1945.

I, S. Weerasinghe, Additional Registrar of Lands, Galle, do hereby certify that the foregoing is a true copy of a deed of Transfer made from the duplicate filed of record, in this office and the same is granted on the application of K. R. Alson de Silva Esqr., Proctor S. C. of Galle.

(Sgd.) S. WEERASINGHE,  
*Additional Registrar of Lands.*

Land Registry,

Galle, 25th November, 1959.

40 Copied by :— (Intd.)

Exd. by :— (Intd.)

**Deed of Transfer No. 1169**

Application No. D 7052/9-11-59.

Prior Registration : Galle A 243/132 ; A 172/211 ; A 211/139 ; B 43/161 ;  
A 172/210 ; A 243/133.

**No. 1169**

To All To Whom These Presents Shall Come Don Edmund Wijewardene the Public Trustee of Ceylon, Colombo as the Curator of the Estate of the Minor Swarnalatha de Alwis Samaranayake, (hereinafter sometimes called and referred to as the Public Trustee). 10

**SENDS GREETING :—**

Whereas by right of inheritance from the late Charles de Alwis Samaranayake and by virtue of Decree entered in Case No. 1018 of the District Court of Galle, Swarnalatha de Alwis Samaranayake is the lawful owner and seised and possessed of and otherwise well and sufficiently entitled to an undivided one-fourth share from and out of all those several lands and premises in the schedule hereto fully described.

And Whereas the said Swarnalatha de Alwis Samaranayake is a minor and the Public Trustee has been appointed curator of the Estate of the said minor Swarnalatha de Alwis Samaranayake in Curatorship Case No. 614 of the District Court of Galle.

And Whereas the Public Trustee as such Curator as aforesaid was granted permission by the order of Court dated 17th September, 1946 in the said Curatorship Case No. 614 to sell the right title and interest of the said minor Swarnalatha de Alwis Samaranayake in all those several lands and premises in the schedule hereto fully described.

And Whereas the Public Trustee as such Curator as aforesaid in pursuance of the said order of Court has agreed with Peter de Silva Wijetunga of Colombo (hereinafter called and referred to as the Vendee) for the absolute sale and transfer unto the said Vendee all the right title and interest of the said Swarnalatha de Alwis Samaranayake in and to the said several lands and premises and to the trees and plantations thereon at or for the price or sum of Rupees Four Thousand Three Hundred and Seventy Five (Rs. 4,375/00) free from all encumbrances whatsoever. 30

Now Know Ye And These Presents Witness that in pursuance of the said agreement and in consideration of the said sum of Rupees Four Thousand Three Hundred and Seventy Five (Rs. 4,375/00) of lawful money of Ceylon well and truly paid by the said Vendee to the said Public Trustee as such Curator as aforesaid (the receipt whereof the said Public Trustee as such Curator as aforesaid doth hereby admit and acknowledge) the said Don Edmund Wijewardene the Public 40



Trustee as such Curator as aforesaid doth hereby sell grant convey assign transfer set over and assure unto the said Peter de Silva Wijetunga his heirs executors administrators and assigns all the right title and interest of the said Swarnalatha de Alwis Samaranayake in and to the said several lands and premises in the schedule hereto fully described and in and to the buildings trees plantations and everything standing thereon together with all rights privileges easements servitudes advantages and appurtenances whatsoever thereto belonging or appertaining thereto or used or enjoyed therewith or reputed or known as part and parcel of the same  
 10 or held to belong or appurtenant thereto and all the estate right title interest property possession benefit claim and demand whatsoever of the said minor Swarnalatha de Alwis Samaranayake in to upon or out of the same and every part thereof.

To Have And To Hold the said premises hereby sold and conveyed or expressed or intended so to be unto the said Vendee his heirs executors administrators and assigns absolutely for ever.

And the Public Trustee as such Curator as aforesaid doth covenant declare and agree with and to the said Vendee his heirs executors administrators and assigns that the said lands and premises are free from all  
 20 encumbrances created by the said Public Trustee as such Curator as aforesaid and that he as such Curator as aforesaid hath not made done or committed or been party or privy to any act deed matter or thing whatsoever whereby or by means whereof the same or any portion thereof shall or may be impeached or imperilled encumbered or prejudicially affected in title charge estate or otherwise howsoever and that the said Public Trustee as such Curator as aforesaid shall and will at all times hereafter at the request cost and expense of the said Vendee or his aforewritten make do and execute or procure to be done and executed all such further and other acts deeds assurances matters and things whatsoever for the better and more perfectly and  
 30 effectually assuring and vesting the said premises by way of transfer and conveyance in him the said Vendee and his aforewritten as by him or them shall or may be reasonably required.

In witness whereof the said Don Edmund Wijewardene the Public Trustee of Ceylon as Curator as aforesaid doth set his hand and affix his official seal hereunto and to two others of the same tenor and date as these presents at the Office of the Public Trustee at Melbourne Avenue, Bambalapitiya in Colombo on this twenty sixth day of November, one thousand nine hundred and forty seven.

#### The Schedule above referred to:

40 All the right title and interest of Swarnalatha de Alwis Samaranayake in and to the following lands and premises to wit :—

1. All the soil and fruit trees of Kalawita and Owita filled up from Pashawul Owita and the adjoining Paralanga Liyadda situated at Dangedera within the Four Gravets of Galle in the District of Galle, Southern Province and bounded on the North by a portion of this land, East by a lot of this land belonging to the Estate of Ali Deedi, South by Sinno

P 10  
Deed of Transfer  
No. 1169  
26-11-27  
—continued.

Marikkange Wela and West by the Road from Galle to Hirimbura and Akmeemana in extent Three Roods and Twenty one decimal six three perches (A0-R3-21·63P).

2. All that defined Lot No. 2 of Lot A of Pedicumbura Welaaddara Owita *alias* Lot B of Pahala Higgahaliadda and Midellagaha Owita *alias* Lot of Eramudugahaliadde situated at Kumbalwella within the Four Gravets aforesaid and bounded on the North by Bataganwillawatte, East by Pahalahiggahaliadde, South by Kankanangewila and Meddewatta and West by Lot No. 1 containing in extent one acre no roods and thirty decimal two two perches (A1-R0-P30·22). 10

3. An undivided one-third share of all that land called Eramudugaha Kumbura *alias* Higgahaliadda situated at Kumbalwella aforesaid bearing assessment No. 84G bounded on the North by the High Road, East by Sikurugewatta, South by Kankanange Cumbura and West by the Cumbura belonging to Martin Muhandiram and Bataganwila containing in extent one acre two roods and eighteen decimal six nought perches (A1-R2-P18·60).

4. An undivided five twelfth plus five upon seventy two shares of all that land called Muttetuhewatta situated at Kapuhempola within the Four Gravets of Galle aforesaid and bounded on the North by Kajugaha-<sup>20</sup> addara Cumbura and Muttetuwattehenedeniya, East and South by land sold by Crown and West by Muttetuhewattadeniya containing in extent about one acre (A1-R0-P0).

5. An undivided one fourth share of all that land called Millagahawatta *alias* Midellagahawatta or Owita together with the fifteen cubits house and the outhouses standing thereon situated at Dangedera aforesaid bearing assessment No. 541 bounded on the North by the High Road, East by the High Road, South by Kompadorugewatta and West by Millagahawatta *alias* Midellagahawatta containing in extent about one acre (A1-R0-P0). 30

6. All that right title and interest whatsoever of the said Swarnalatha de Alwis Samaranayake in to and out of all that land called Millagahawatte *alias* Midellagahawatta situated at Dangedera aforesaid bearing assessment No. 542 together with the buildings standing thereon bearing assessment No. 540 built by Menikpurage Adirian and bounded on the North by Higgahaliadda, East by the Owita of this land, South by Kompadorugewatta and West by Higgahaliadda *alias* Pedikumbura containing in extent four acres and twenty nine perches (A4-R0-P29).

(Sgd.) Illegibly.

(Sgd.) Illegibly.

40

(Sgd.) Illegibly.

(Sgd.) C. H. DE SILVA,  
Notary Public.

I, Christopher Henry de Silva of Colombo in the Island of Ceylon Notary Public do hereby certify and attest that the foregoing instrument having been duly read over by Don Edmund Wijewardene, The Public Trustee of Ceylon the executant withinnamed who is known to me and who signed the same as "D. E. Wijewardene" and affixed the common seal of the Public Trustee of Ceylon in the presence of Joseph John Raymond Fernando of Moratuwa and Don Piyadasa Ponnampereuma of Indra Lane, Bambalapitiya in Colombo who signed respectively as "J. J. R. Fernando" and "D. P. Ponnampereuma" the subscribing witnesses hereto  
 10 who are also known to me the same was signed by the said Don Edmund Wijewardene and by the said witnesses and the Common seal of the Public Trustee of Ceylon was affixed in my presence of one another all being present at the same time at the Office of the Public Trustee, Melbourne Avenue, Bambalapitiya in Colombo on this twenty sixth day of November, one thousand nine hundred and forty seven.

P 10  
 Deed of  
 Transfer  
 No. 1169  
 26-11-47  
 —continued.

I further certify and attest in the original on page 5 in line 9 the word "one" was interpolated and in line 10 the figures "21" were written in ink and in the duplicate on page 4 in line 10 the word "one" and in line 11 the figures "21" were written in ink and on page 5 in line  
 20 26 the letter "ge" were interpolated before the foregoing instrument was read and explained as aforesaid; that the consideration herein mentioned was acknowledged to have been received and that the duplicate of this instrument bears four stamps of the value of Rs. 76/- and the original one stamp of the value of Re. 1/-.

Which I attest,

(Sgd.) C. H. DE SILVA,

*Notary Public.*

Date of Attestation :

26th November, 1947.

80 I, .....Registrar of Lands, Colombo, do hereby certify the foregoing is a true copy by mechanical process of duplicate of deed No. 1169 dated 26-11-1947 attested by Notary C. H. de Silva filed in this office, and is issued on the application of Mr. S. M. Vitanage of Galle.

(Sgd.) Illegibly.

*Additional Registrar of Lands.*

Land Registry,

Colombo, 18-11-59.

## Deed of Transfer No. 747

Registered A262/33 — 34.

Galle, 30th August, 1948.

(Sgd.) Illegibly.  
*Registrar.*

Land Registry,

13357/30 August, 1948.

Galle.

Prior Registration :— A 172/210, A 243/133.

10

## TRANSFER

No. 747.

Rs. 15,000/-.

Know All Men By These Presents That, I, Peter de Silva Wijetunga of Dangedera in Galle, presently of Colombo (hereinafter sometimes called and referred to as the vendor) for and in consideration of the sum of Rupees Fifteen Thousand (Rs. 15,000/-) of lawful money of Ceylon well and truly paid to me by Menikpura Peiris Munasinghe of Dangedera in Galle, (hereinafter sometimes called and referred to as the vendee) the receipt whereof I do hereby admit and acknowledge, have granted, bargained, sold, assigned, transferred, and set over and do by these present grant, 20 bargain, sell, assign, transfer and set over unto the said vendee his heirs executors, administrators, and assigns all those the premises fully described in the schedule hereto annexed together with all and singular the rights, ways, easements, advantages, servitudes and appurtenances whatsoever thereto belonging or in any wise appertaining or usually held, occupied, used or enjoyed therewith or reputed or known as part or parcel thereof, and together with all estate right, title interest, claim and demand, whatsoever of me the vendor of, in, to upon or out of the said premises and every part thereof and together with all the title deeds vouchers and other writings held or relating thereto which said premises 30 have been held and possessed by me vendor as per the title hereinafter recited.

To Have And To Hold the said premises hereby sold and conveyed with the rights, and appurtenances unto him the said vendee his heirs, executors, administrators and assigns absolutely for ever.

And I the said vendor for myself, my heirs, executors and administrators do hereby covenant promise and declare with and to the said vendee his heirs, executors, administrators and assigns that the said premises hereby sold and conveyed are free from any encumbrances whatsoever and that I have not at any time heretofore made done or com- 40

mitted or been party or privy to any act, deed matter or thing whatsoever whereby or by means where of the said premises or any part thereof are is can shall or may be impeached or encumbered in the title charge estate otherwise howsoever and that I and my aforewritten shall and will at all times hereafter warrant and defend the same and every part thereof unto him the said vendee against any person or persons whomsoever, and further also shall and will at all times hereafter at the request and cost of the said vendee or his aforewritten do and execute or cause to be done and executed all such further and other acts, deeds assurances  
 10 matters and things whatsoever, for the further and more perfectly assuring the said premises hereby sold and conveyed and every part thereof unto him the said vendee and his aforewritten as by the said vendee or his aforewritten as shall or may be reasonably required.

In witness whereof I the said vendor do hereunto and to two others of the same tenor and date as these presents set my hand at Galle on this Twenty Ninth day of August, One Thousand Nine Hundred and Forty Eight.

**The Schedule above referred to :**

All the right title and interest of the vendor in and to the following  
 20 lands and premises to wit :—

1. An undivided one fourth (1/4) share of all that land called Millagahawatta *alias* Midellagahawatta or Owita together with the entirety of the fifteen cubits house and the outhouses standing thereon situated at Dangedera within the Four Gravets of Galle District, Southern Province, bearing assessment No. 541 bounded on the North by the High Road, East by the High Road, South by Kompadorugewatta and West by Milla-  
 gahawatta *alias* Midellagahawatta containing in extent about one acre (A1-R0-P0).

2. An undivided eleven upon twenty (11/20) shares of all that land  
 30 called Millagahawatta *alias* Midellagahawatta situated at Dangedera aforesaid bearing assessment No. 542 together with the entirety of the buildings standing thereon bearing assessment No. 540 built by Menikpurage Adirian and bounded on the North by Higgahaliadde, East by Owita of this land, South by Kompadorugewatta and West by Higgahaliadde *alias* Pedikumbura containing in extent Four acres and Twenty Nine perches (A4-R0-P29).

Being premises held and possessed by me the said vendor under and by virtue of Deed No. 460 dated 17th November, 1945 attested by the same Notary attesting these presents and on Deed No. 1169 dated 26th  
 40 November, 1947 attested by C. H. de Silva of Colombo, Notary Public.

(Sgd.) Illegibly.

Signed in the presence  
 of us.....

1. (Sgd.).....WIJETUNGA.
2. (Sgd.) B. E. VIDANAGE.

(Sgd.) G. H. N. KULASOORIYA,  
*Notary Public,*

P 2  
Deed of Transfer  
No. 747  
29-8-48  
—continued.

I, Gangabodde Hewage Nimal Kulasooriya of Galle in the Island of Ceylon, Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over by Peter de Silva Wijetunga the executant withinnamed, who signed this instrument as 'P. de S Wijetunga' and who is known to me in the presence of Ukwattege Udenis Wijetunga and Bertram Clive Vidanage, both of Dangedera in Galle, who signed as 'U. U. Wijetunga' and 'B. C. Vidanage' respectively the subscribing witnesses hereto (both of whom are known to me the same was signed by the said executant and also by the said witnesses, and by me the said Notary in my presence and in the presence of one another, all being pre- 10 sent at the same time at Galle aforesaid on this Twenty Ninth day of August, in the year One Thousand Nine Hundred and Forty Eight.

And I do hereby certify and attest that Four stamps of the value of Rupees Two Hundred and Forty (Rs. 240/-) and one stamp of the value of Rupee one (Re. 1/-) were supplied by me and affixed to the duplicate and original hereof respectively, that the full consideration herein mentioned was paid in cash in my presence and that before the foregoing instrument was so read over and explained as aforesaid in the duplicate on page 2 line 29 the word 'share' was rectified.

Which I Attest,

20

(Sgd.) G. H. N. KULASOORIYA,  
*Notary Public.*

(Seal)

Date of Attestation :  
29th August, 1948.

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1 D 3

Deed of Transfer No. 748

Application No. 2080/19-11-59.

Prior Registration :— A 243/132, 172/211, 211/139, B 43/161.

TRANSFER

30

No. 748.

Rs. 5000/-.

Know All Men By These Presents that I, Peter de Silva Wijetunge of Dangedera in Galle, presently of Colombo (hereinafter sometimes called and referred to as the vendor for and in consideration of the sum of Rupees Five Thousand (Rs. 5000/-) of lawful money of Ceylon well and truly paid to me by Menikpura Lily Munasinghe of Dangedera in Galle (hereinafter sometimes called and referred to as the vendee) the receipt whereof I do hereby admit and acknowledge have granted, bargained sold assigned transferred, and set over and do by these presents grant, bargain

1 D 3  
Deed of Transfer  
No. 748  
29-8-48

sell assign, transfer and set over unto the said vendee her heirs, executors, administrators and assigns all these the premises fully described in the schedule hereto annexed together with all and singular the rights, ways easements, advantages, servitudes and appurtenances, whatsoever thereto belonging or in any wise appertaining or usually held, occupied used or enjoyed therewith or reputed or known as part or parcel thereof, and together with all estate right, title, interest, claim and demand, whatsoever of me the vendor of, in to upon or out of the said premises and every part thereof and together with all the title deeds vouchers and other  
<sup>10</sup> writings held or relating thereto, which said premises have been held and possessed by me vendor as per the title hereinafter recited.

To Have And To Hold The said premises hereby sold and conveyed with the rights and appurtenances unto her the said vendee her heirs, executors, administrators and assigns absolutely for ever, and I the said vendor for myself, my heirs, executors, administrators do hereby covenant promise and declare with and to the said vendee her heirs, executors, administrators and assigns that the said premises hereby sold and conveyed are free from any encumbrances whatsoever and that I have not at any time heretofore made done or committed or been party or  
<sup>20</sup> privy to any act, deed matter or thing whatsoever whereby or by means whereof the said premises or any part thereof are is can shall or may be impeached or encumbered in the title charge estate otherwise howsoever and that I and my aforewritten shall and will at all times hereafter warrant and defend the same and every part thereof unto her the said vendee against any person or persons whomsoever and further also shall and will at all times hereafter at the request and cost of the said vendee or her aforewritten do and execute or cause to be done and executed all such further and other acts, deeds, assurances matters and things whatsoever, for the further and more perfectly assuring the said premises here-  
<sup>30</sup> by sold and conveyed and every part thereof unto her the said vendee and her aforewritten as by the said vendee or her aforewritten as shall or may be reasonably required.

In witness whereof I the said vendor do hereunto and to two others of the same tenor and date as these presents set my hand at Galle on this twenty ninth day of August, One Thousand Nine Hundred and Forty Eight.

**The Schedule above referred to :**

All the right title and interest of the vendor in and to the following lands and premises to wit :—

- <sup>40</sup> 1. All the soil and fruit trees of the Kalawita and Owita filled up from Pashawul Owita and the adjoining Paralanga liadda situated at Dangedera within the Four Gravets of Galle, Galle District, Southern Province and bounded on the North by a portion of this land, East by a Lot of this land belonging to the estate of Ali Deedi, South by Sinna Marikange Wela and West by the road from Galle to Hirimbure and Akmeemana, containing in extent three roods and twenty one decimal six three perches (A0-R3-P21.63).

1 D 8  
Deed of Transfer  
No. 748  
29-8-48  
—continued.

2. All that defined Lot No. 2 of Lot A of Pedikumbura Welaaddara-owita *alias* Lot B of Pahala-Higgahaliadda and Midellagahaowita *alias* Lot of Eramudugahaliadda situated at Kumbalwella within the Four Gravets aforesaid and bounded on the North by Batagamwilawatta, East by Pahalahiggahaliadda, South by Kankanangewila and Meddewatta and West by Lot No. 1 containing in extent one acre no roods and thirty decimal two two perches (A1-R0-P30·22).

3. An undivided one third share of all that land called Eramudugaha Kumbura *alias* Higgahaliadda situated at Kumbalwella aforesaid bearing assessment No. 84G bounded on the North by the high road,<sup>10</sup> East by Sikurugewatta, South by Kankanange Cumbura and West by the Cumbura belonging to Martin Muhandiram and Batagamwalawatta containing in extent one acre two roods and eighteen decimal six nought perches (A1-R2-P18·60).

4. An undivided five twelfth plus five upon seventy two shares of all that land called Muttettuhenaawatte situated at Kapuhempola, within the Four Gravets of Galle aforesaid and bounded on the North by Kajjugahaddara Cumbura and Muttettuwattahenedeniya, East and South by land sold by Crown and West by Muttettuhenewattadeniya containing in extent about one acre (A1-R0-P0).<sup>20</sup>

Being premises held and possessed by me the said vendor under and by virtue of Deed No. 460 dated 17th November, 1945 attested by the same Notary attesting these presents and or Deed No. 1169 dated 26th November, 1947 attested by C. H. de Silva of Colombo, Notary Public.

Signed in the presence

of us.

1. (Sgd.) U. U. WIJETUNGA.

(Sgd.) P. DE S. WIJETUNGA.

2. (Sgd.) B. C. VIDANAGE.

(Sgd.) G. H. N. KULASOORIYA,<sup>30</sup>  
*Notary Public.*

I, Gangabodde Hewage Nimal Kulasooriya of Galle in the Island of Ceylon, Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over by Peter de Silva Wijetunga, the executant within named, who signed this instrument as "P. de S. Wijetunga" and who is known to me in the presence of Ukwattege Udenis Wijetunga and Bertram Clive Vidanage both of Dangedera in Galle who signed as "U. U. Wijetunga" and "B. C. Vidanage" respectively the subscribing witnesses hereto (both of whom are known to me), the same was signed by the said executant and also by the said witnesses, and by<sup>40</sup> me the said Notary in my presence and in the presence of one another, all being present at the same time at Galle aforesaid on this twenty ninth day of August, in the year of one thousand nine hundred and forty eight.



And I do hereby certify and attest that the consideration herein mentioned was paid in cash in my presence, that Four Stamps of the value of Rupees Eighty Two (Rs. 82/-) and One Stamp of the value of Rupee one (Re. 1/-) were supplied by me and affixed to the duplicate and original hereof respectively and that before the foregoing instrument was so read and explained as aforesaid in the duplicate on page 2 line 21 'nought' was interpolated between 'six' and 'perches' in line 22 'seventy' was typed over an erasure and in the original on page 3 line 20 'nought' was interpolated between 'six' and 'perches' and in line 21 'seventy' was typed over an erasure.

1 D 8  
Deed of  
Transfer  
No. 748  
29-8-48  
—continued.

Which I attest,

(Sgd.) G. H. N. KULASOORIYA,  
*Notary Public.*

(Seal)

Date of Attestation :

29th August, 1948.

I, S. Weerasinghe, Additional Registrar of Lands, Galle, do hereby certify that the foregoing is a true copy of a deed of Transfer made from the duplicate filed of record in this office, and the same is granted on the application of Mr. M. P. Munasinghe of Dangedera, Galle.

(Sgd.) S. WEERASINGHE,  
*Additional Registrar of Lands.*

Land Registry,  
Galle, 24-11-1959.

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P 1

**Deed of Transfer No. 1343**

Registered A 262/33,34,  
Galle, 2 Nov. 1948.

P 1  
Deed of  
Transfer  
No. 1343  
1-11-48

80

(Sgd.) Illegibly  
*Registrar of Lands.*

Prior Registration A 262/33 & 34.  
(Search dispensed with).

No. 1343

Know All Men By These Presents That, (1) Menikpura Peiris Munasinghe and (2) Bertram Clive Vidanage both of Dangedera in Galle,

P 1  
Deed of Transfer  
No. 1343  
1-11-48  
--continued.

(hereinafter sometimes called and referred to as the said vendors for and in consideration of the sum of Rupees Twenty Thousand Five Hundred (Rs. 20,500/-) only of lawful money of Ceylon well and truly paid to the said vendors by Cynthia Pearline Vidanage of Dangedera aforesaid (hereinafter sometimes called and referred to as the said vendee) the receipt whereof the said vendors do hereby admit and acknowledge have granted bargained, sold, assigned, transferred, and set over, and do by these presents, grant, bargain, sell assign transfer and set over unto the said vendee her heirs executors administrators and assigns the lands and premises fully described in the schedule hereto together with all and 10 singular the rights, ways, easements, advantages, servitudes and appurtenances whatsoever thereto belonging or in anywise appertaining or usually held, occupied, used or enjoyed therewith or reputed or known as part or parcel thereof, and together with all the estate, right, title, interest, property claim and demand, whatsoever of the said vendor in, to, upon, or out of the said premises and every part thereof and together with all the title, deeds, vouchers, and other writings therewith held or relating thereto which said premises have been held and possessed by the said first named vendor under and by virtue of Bill of Sale No. 747 dated 29th August, 1948 attested by G. H. N. Kulasoorya, Notary Public. 20

To Have And To Hold the said premises hereby sold and conveyed with the rights and appurtenances unto her the said vendee her heirs, executors, administrators and assigns absolutely for ever subject to the provisions and conditions hereinafter contained.

And said vendors for themselves their heirs, executors and administrators do hereby covenant promise and declare with and to the said vendee her heirs, executors, administrators and assigns that the said premises hereby sold and conveyed are free from any encumbrance whatsoever and that they have not at any time heretofore made done or committed or been party or privy to any act deed matter or thing whatsoever 30 whereby or by means whereof the said premises or any part thereof are is can shall or may be impeached or encumbered in title charge, estate or otherwise however and that they and their aforewritten shall and will at all times hereafter warrant and defend the same and every part thereof unto the said vendee and her aforewritten against any person or persons whomsoever and further also shall and will at all times hereafter at the request and cost of the said vendee or her aforewritten do and execute or cause to be done and executed all such further and other acts, deeds, assurances, matters and things whatsoever for the further and more perfectly assur- 40 ing the said premises hereby sold and conveyed and every part thereof unto the said vendee or her aforewritten as shall or may be reasonably required.

Provided always and it is hereby expressly declared and agreed by and between the said Vendors and the said Vendee that if the said Vendors or the survivor of either of them shall be desirous of obtaining a re-transfer of the said Premises and shall at any time within ten (10) years from date hereof pay to the said Vendee or her aforewritten the said sum of Rs. 20,500/- with interest thereon at the rate of six per cent (6%) per annum from date hereof till payment in full and shall cause to be prepared at their expense the necessary deed of retransfer then the said 50 Vendee or her aforewritten shall sell and convey back the said premises

to the said first-named Vendor or in either event whether the first-named Vendor alone or both Vendors should then be alive, or to the survivor of either Vendor if one or the other of them shall then be dead : if both Vendors shall be dead then the heirs, executors, administrators and assigns of the second-named Vendor alone shall be at liberty to claim such re-transfer. The deed of re-transfer shall in any event be subject to the following condition to wit :— that it be stated therein that the said Vendee or her aforewritten shall and will not warrant and defend title to the said premises or any part thereof nor become liable to refund the said  
10 sum of Rs. 20,500/- and interest or any part thereof under any circumstances whatsoever save and except in the event of any dispute touching the said premises by reason of any act, deed, matter or thing done by her the said Vendee or her aforewritten.

In witness whereof the said Vendors and the said Vendee do hereunto and to two others of the same tenor and date as these presents set their respective hands, at Dangedera in Galle on this First day of November, One Thousand Nine Hundred and Forty Eight.

#### The Schedule above referred to :

1. All that undivided one fourth ( $1/4$ ) part or share of the soil and  
20 trees of the land called Millagahawatta *alias* Midellagahawatta or Owita together with the entirety of the fifteen cubits house and the out-houses standing thereon situated at Dangedera within the Four Gravets of the District of Galle, Southern Province, bearing Municipal Assessment No. 541 and bounded on the North by the High Road, East by the High Road, South by Kompadorugewatta and West by Millagahawatta *alias* Midellagahawatta, containing in extent about one acre (A1-R0-P0).

2. All that undivided eleven upon twenty ( $11/20$ ) parts or share of the land called Millagahawatta *alias* Midellagahawatta situated at Dangedera aforesaid bearing Municipal Assessment No. 542 together with the  
30 entirety of the buildings standing thereon bearing Municipal Assessment No. 540 built by Menikpurage Adirian, and bounded on the North by Higgahaliyadda, East by the Owita of the same land, South by Kompadorugewatta, and West by Higgahaliyadda *alias* Pedikumbura containing in extent four acres and twenty nine purches (A4-R0-P29).

Witnesses :

Signed in the presence of us and  
we do hereby declare that we are  
well-acquainted with the said ex-  
cutants and know their proper  
40 names occupations and residences. }

1. (Sgd.) Illegibly.

(Sgd.) M. P. MUNASINGHE.

2. (Sgd.) In Sinhalese.

(Sgd.) B. C. VIDANAGE.

This is the signature of Wijenarayana  
Wickrematillake William Singho.

(Sgd.) C. P. VIDANAGE.

(Sgd.) E. WIJESUNDERA,  
*Notary Public.*

P 1  
Deed of Transfer  
No. 1343  
1-11-48  
—continued.

I, Edwin Wijesundera of Galle in the Island of Ceylon, Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me the said Notary to the said (1) Menikpura Peiris Munasinghe of Dangedera in Galle, who has signed this deed as 'M. P. Munasinghe' and who is known to me, and to the said (2) Bertram Clive Vidanage, and (3) Cynthia Pearline Vidanage, both of Dangedera aforesaid, who have signed this deed as 'B. C. Vidanage' and 'C. P. Vidanage' respectively, and both of whom are not known to me in the presence of Geoffrey Malcolm Vithanage of Dangedera in Galle, who has signed this deed as 'G. M. Vithanage' and Wijenarayana Wickrema-<sup>10</sup> tillake William Singho of Kandewatta in Galle, who has signed this deed in Sinhalese, the subscribing witnesses thereto who are both known to me the same was signed by the said executants and by me the said Notary, and also by the witnesses in my presence and in the presence of one another all being present at the same time at Dangedera in Galle aforesaid on this First day of November, One Thousand Nine Hundred and Forty Eight.

And I further certify and attest that both in the Original and in the Duplicate on page 1 in line 21 word 'Vendor' on page 2 lines 20 to 24 were deleted, in the Original on page 1 in line 22 figure '9' on page 2 in<sup>20</sup> the last line letter 'n' on page 3 in line 17 figure '0' in line 25 'A4' were rectified, in line 23 an extra letter was deleted, in the Duplicate on page 2 in line 27 two extra letters were deleted, in line 28 word 'desirous' in line 34 word 'Vendee' in line 38 word 'or' in line 42 word 'wit' on page 3 in line 3 word 'respective' in line 25 word 'perches' were rectified, before the foregoing was read over and explained by me as aforesaid, and that the full consideration of Rs. 20,500/- was acknowledged before me to have been previously received, and that the duplicate of this instrument bears seven stamps of the value of Rupees Three Hundred and Twenty Eight (Rs. 328/-) and the original one stamp of the value of one<sup>30</sup> Rupee and that the said stamps were supplied by me.

Which I Attest,

(Sgd.) E. WIJESURENDERA,

*Notary Public.*

(Seal)

Date of Attestation :

1st November, 1948.

**Copy of Trading Account of P. D. Elaris**  
 (TRUE COPY)

P. D. Elaris, Esqr., Nos. 12, 14, Gabo's Lane, Colombo 11  
 Trading Account from 1-1-1948 to 31-12-1948

To Opening Stock	198,087.52	
" Purchases	2,417.37	
" Gross Profits	Rs. 200,454.89	

**Profit & Loss Account From 1-1-48 to 31-12-48**

To Rent on Business Premises & Stock	3,582.00	
" Lighting Shop & Stores	288.45	
" Charity & Presents	112.50	
" Advertisements	155.00	
" Printing & Stationery	267.50	
" Postage & Telegrams	166.00	
" Income Tax paid	160.75	
" Mess charges paid to Staff	217.30	
" Salary to Staff as per list	5,716.58	
" Wages to Coolies, Loading & Unloading	5,731.50	
" Telephone Charges	1,901.56	
" Travelling & Sundries	211.45	
" Sundry Repairs	40.00	
" Clothes to Staff on Festival Days	30.00	
" Bank Commission	201.33	
" Bad Debts vide details	42.35	
" Nett Profit Transferred to Capital Account	18.71	
	292.39	
	8,125.69	
	Rs. 26,701.17	

Rs. 26,701.17

BALANCE SHEET AS ON 31ST DECEMBER, 1948	ASSETS
Sundry Creditors	190.09
Capital Account	624.41
Opening Balance	2,505.69
Add Profit for the year	8,482.84
	40.00
	2,417.37
	14,142.90
	1,945.36
	16,088.26
	180.00
	20,500.00
	Rs. 51,028.16

(†) The above Investment made Wife's Name:

No. 541, High Road, Galle related to Mr. P. Munasinghe of Galle, taken for a Primary Mortgage by deed No. 17081 on 2nd November, 1948 attested by  
 Edwin Wijayasundara, Notary Public, for Rs. 20,500/- @ 6% Interest. (Not Recovered)

### Copy of Trading Account of P. D. Elaris

(TRUE COPY)

P. D. Elaris, Esq., Nos. 12, 14, Gabo's Lane, Colombo 11  
Trading Account from 1-1-1949 to 31-12-1949

To Opening Stock	...	By Sales	...	199,520.13
" Purchases	2,417.37	" Closing Stock	...	3,729.08
" Gross Profits	172,648.06			
	28,183.73			
	<u>Rs. 208,249.16</u>			<u>Rs. 208,249.16</u>

#### Profit & Loss Account from 1-1-1949 to 31-12-1949

To Rent on Business Premises & Stores	3,087.00	By Gross Profits	...	28,183.73
Lighting	178.66	" Profit from No. 40 Shop Account	...	1,416.11
Charity & Presents	186.15			
Printing & Stationery	198.50			
Postage & Telegrams	199.98			
Income Tax Paid	225.05			
Mess Charges Paid to Staff	5,125.31			
Salary to Staff as per List	6,460.00			
Wages to Coolies for Loading & Unloading	2,157.19			
Telephone Charges & Rents	496.93			
Sundry Expenses:				
Clothes to Staff	264.00			
Electricity Light Repairs	17.95			
Court Exp: Collection of Debts	52.00			
Advertisements	12.00			
Charity Expenses	220.51			
Bank Commission	8.20			
Nett Profit	574.66			
	<u>Rs. 29,599.84</u>			<u>Rs. 29,599.84</u>

#### BALANCE SHEET AS AT 31ST DECEMBER, 1949

LIABILITIES	ASSETS
Sundry Creditors	Cash in Hand
Capital Account:	No. 40 Small Shop Current Account
Opening Balance	Cash at Bank
Add Profit for the year	Sundry Debtors
Staff Account	Electricity Deposit
Mortgage Loan Account:	Stock-in-Account
W.M. Fernando on bond No. 1438 of 9-7-49	P. D. Elaris—Account:
	Opening Balance
	Add Drawings
	Less Sale of Fields
	C. P. Vidanage (Wife's A/c)
	Investments
	Estate Account:
	Purchases
	Deed Expenses
	Manure
	Suspense Account
	<u>Rs. 101,080.43</u>
	<u>Rs. 101,080.43</u>

**Trading Account and Balance Sheet of P. D. Elaris (Colombo)**

(TRUE COPY)

P. D. Elaris, Esqr., Nos. 12, 14, Gabo's Lane, Colombo  
Trading & Profit & Loss Account for the year ended 31st December, 1951

To Stock as at 1-1-51 ... ..	12,041.95	By Sale ... ..	279,013.09
„ Purchases ... ..	262,195.08	„ Stock on 31-12-51 ... ..	35,203.73
„ Transporting Charges ... ..	3,442.50		
„ Gross Profit ... ..	36,537.29		
	<u>Rs. 314,216.82</u>		<u>Rs. 314,216.82</u>
To Rent Paid to Shop & Store ... ..	3,087.00	By Gross Profit ... ..	36,537.29
„ Electricity Charges ... ..	281.70	„ No. 40, Gabo's Lane Branch : Profits ... ..	1,606.34
„ Charity & Presents ... ..	30.00		
„ Printing & Stationery ... ..	71.00		
„ Postage & Telegrams ... ..	577.06		
„ Income Tax Paid ... ..	658.48		
„ Mess to Staff ... ..	9,268.60		
„ Salary & Bonus to Staff (as per schedule) ... ..	9,278.50		
„ Telephone Charges Rental & Calls ... ..	331.10		
Printing Calenders for Advertisements 725.00			
Travelling, Sundries & Licences ... 250.00			
	<u>975.00</u>		
„ Interest to Non-Bankers (as per schedule) ... ..	2,907.72		
„ Nett Profit ... ..	10,677.47		
	<u>Rs. 38,143.63</u>		<u>Rs. 38,143.63</u>

**BALANCE SHEET AS AT 31ST DECEMBER, 1951**

LIABILITIES		ASSETS	
Capital & Current Account :		Cash Account :	
As per last Balance Sheet ... ..	32,019.85	In Hand ... ..	1,431.76
Add Nett Profit ... ..	10,677.47	At National Bank ... ..	2,935.89
„ Ambagalande Account ... ..	27,954.80		
	<u>70,652.12</u>		4,367.65
Less Drawings ... ..	5,267.78	Electricity Deposit ... ..	40.00
	<u>65,384.34</u>	Stock-in-Trade ... ..	35,203.73
Trade Creditors (as per schedule) ... ..	25,789.14	Sundry Debtors (as per schedule) ... ..	3,176.00
Loan Creditors :		No. 40, Gabo's Lane Branch C/A ... ..	5,326.18
W. M. Fernando (Mortgage)		Investments in Wife's Name (C. P. Vidanage)	
As per last Balance Sheet ... ..	15,000.00	No. 541, High Road Galle (P. Munasinghe)	
Less Paid by Bond No. 1438		As per last Balance Sheet ... ..	20,500.00
of 19-1-51 ... ..	15,000.00	Staff Advances (as per schedule) ... ..	1,267.17
	<u>Nil.</u>	Properties Account :	
M. I. T. K. L. M. Firm, Pro-note		Ambagalande As per last Balance	
As per last Balance Sheet... ..	2,500.00	Sheet ... ..	47,045.20
Less Payments ... ..	2,500.00	Less Sale as per Deed No. 212 of	
	<u>Nil.</u>	19-9-1951 ... ..	75,000.00
W. A. Perera Pro-note ... ..	4,900.00		<u>27,954.80</u>
C. P. Vidanage by her Father		Less Transferred to Capital A/c ... ..	27,954.80
As per last Balance Sheet ... ..	2,350.00		Nil.
	<u>7,250.00</u>	Lunugala Rubber Estate :	
Employees Account (as per schedule) ... ..	4,466.25	Purchases by Deed No. 1719 of	
	<u>Rs. 102,889.73</u>	17-12-1951 ... ..	32,000.00
		Add Deed Expenses ... ..	1,909.00
			<u>33,009.00</u>
			<u>Rs. 102,889.73</u>

I certify that the above Balance Sheet as at 31st December, 1951 is in accordance with the books of accounts of Mr. P. D. Elaris, No. 12, 14, Gabo's Lane, Colombo, and information given by assessee.

Colombo, 30th November, 1954.

(Sgd.) CECIL ARSECULERATNE,  
Registered Accountant.

## P. D. Elaris, Esqr. (Colombo)

## List of Sundry Debtors as at 31-12-1951

K. D. Edwin, Grandpass	...	...	...	599·70
P. B. Umbitchy	...	...	...	136·25
Moona Noor Mohamed	...	...	...	296·62
Messrs. K. A. P. L.	...	...	...	733·81
A. P. Silva	...	...	...	1,409·62
				<u>Rs. 3,176·00</u>

## List of Salary Payment

M. K. Simon	...	...	...	1,400·00
A. Venugopal	...	...	...	1,220·00
S. Sellakuddy	...	...	...	1,580·00
R. D. Marquis	...	...	...	660·00
K. H. Edwin	...	...	...	580·00
R. Seniviratne	...	...	...	550·00
A. D. Charlis	...	...	...	580·00
H. G. Uppasena	...	...	...	490·00
W. M. Gunasekera	...	...	...	490·00
P. H. Wilbert	...	...	...	490·00
K. D. Somapala	...	...	...	525·00
M. D. Nandasena	...	...	...	220·00
G. Wijeyasinghe	...	...	...	410·00
S. Wilson	...	...	...	41·00
L. G. Sugathadasa	...	...	...	42·50
				<u>Rs. 9,278·50</u>

## Interest Paid to Non-Bankers

W. M. Fernando : Current Year	...	745·86	
Pre : Year	...	502·36	
		<u>1,248·22</u>	
W. A. Perera	...	...	105·00
A. S. A. Alagappa	...	...	150·00
A. M. N. D. Firm	...	...	376·00
A. N. A. Sinniah Konar	...	...	477·50
S. Subramaniyam	...	...	24·00
M. I. K. T. & M. Firm	...	...	527·00
			<u>Rs. 2,907·72</u>



Copy of Trading Account of P. D. Elaris

(TRUE COPY)

P. D. Elaris, Esqr., Nos. 12 & 14, Gabo's Lane, Colombo 11  
Trading & Profit & Loss Account from 1-1-1950 to 31-12-1950

To Opening Stock	...	3,729.08	By Sales	...	261,046.10
" Purchases	...	232,422.59	" Closing Stock	...	12,041.95
" Gross Profit	...	36,936.43			
					Rs. 273,088.05
To Rent on Business Premises & Stores	...	3,087.00	By Gross Profit	...	36,936.43
" Lighting	...	240.27	" Profit from No. 40 Small Shop Account	...	1,582.13
" Charity & Presents	...	73.50			
" Printing & Stationery	...	371.50			
" Postage & Telegrams	...	186.85			
" Income Tax Paid	...	355.11			
" Mess Charges Paid to Staff	...	6,471.75			
" Salary to Staff Paid as per List	...	9,898.18			
" Wages to Coolies for Loading & Unloading	...	3,030.05			
" Telephone Charges	...	332.45			
" Sundry Expenses :					
Advertisements	...	60.00			
Licence	...	18.00			
Presents	...	42.50			
Stationery	...	13.50			
Sundries	...	31.80			
		165.80			
" Interest to Non-Bankers as per List	...	1,748.00			
" Nett Profit	...	12,563.10			
					Rs. 38,518.56

BALANCE SHEET AS AT 31ST DECEMBER, 1950

LIABILITIES	ASSETS
Sundry Creditors	Cash in Hand
Capital Account :	No. 40 Small Shop Account : C/A
Opening Balance	Cash in Bank
Add Profit for the year	Sundry Debtors
Less Drawings A/c Transferred	Electricity Deposit
Employees Account	Stock-in-Trade
Mortgage Loan Account :	P. D. Elaris A/c
W. M. Fernando on Bond No. 1438	Opening Balance
Loan on Pro-note :	Add Drawings for the year and
I. T. T. K. L. M. Firm	Haliwalawatta House construc-
Private Loans :	tion Charges
C. P. Vidanage by her Father Account	Rs. 9,347.01
	Less Transferred to Capital A/c
	Rs. 27,481.00
	Rs. 27,481.00
	Nil.
	C. P. Vidanage (Wife's A/c)
	Estate Account
	Employees Account
	Rs. 98,091.17

P. D. Elaris, Esqr.

DETAILS OF INTEREST PAID

Name:	Paid:	Payable:
W. M. Fernando (Mortgage)	1,050.00	502.36
A. S. A. Firm	262.50	
W. A. Perera	15.00	
AM. ND. Firm	262.00	
M. I. T. K. L. M. Firm	158.50	
	<u>Rs. 1,748.00</u>	<u>Rs. 502.36</u>

RECONCILIATION

Interest paid as above in current year	...	...	...	1,748.00
Add W. M. Fernando on Mortgage Payable for the year	...	...	...	502.36
Less Claimed in 31-12-1949 Adjustment Statement Account	...	...	...	2,250.36
	...	...	...	379.17
	...	...	...	<u>Rs. 1,871.19</u>

**P. D. Elaris, Esq. (Colombo)****List of Employees Advances as at 31-12-1951**

R. D. Manis	...	...	...	412·83
H. G. Upasena	...	...	...	76·50
R. Seneviratne	...	...	...	39·74
A. D. Charles	...	...	...	192·33
K. H. Edwin	...	...	...	210·19
W. M. Gunasekera	...	...	...	335·58
				Rs. 1,267·17
				Rs. 1,267·17

**List of Employees Credits as at 31-12-1951**

M. M. Simon	...	...	...	650·00
A. Venugopal	...	...	...	500·00
S. Sellakutty	...	...	...	530·00
R. D. Manis	...	...	...	300·00
K. H. Edwin	...	...	...	250·00
R. Seneviratne	...	...	...	250·00
A. D. Charles	...	...	...	250·00
H. G. Upasena	...	...	...	250·00
P. H. Wilbert	...	...	...	506·95
K. D. Somapala	...	...	...	326·00
M. D. Nandasena	...	...	...	115·30
G. Wijesinghe	...	...	...	288·00
W. M. Gunasekera	...	...	...	250·00
				Rs. 4,466.25
				Rs. 4,466.25

**List of Sundry Creditors as at 31-12-1951****Trade :**

Abdul Hussain Jafferjee	...	...	...	1,273·42
V. K. Parvathi	...	...	...	3,788·75
Messrs. S. M. R.	...	...	...	8,196·86
A. A. Dawoodbhoy	...	...	...	2,668.18
A. R. S. Thirinamani Nadar	...	...	...	332·97
R. A. Mahalingam	...	...	...	717·63
Petty Trade Customers A/c	...	...	...	1,959·17
T. S. Sonachalam Pillai	...	...	...	2,427·10
K. Sangaralingam Pillai	...	...	...	826·69
Messrs. N. S. S.	...	...	...	104·30
A. M. Suthan	...	...	...	566·47
Mayer & Co.	...	...	...	380·98
M. A. M. Abdulla Saibo	...	...	...	249·35
S. M. S. Adam Saibo	...	...	...	156·60
Messrs. S. P. V. & Co.	...	...	...	378·45

**P. D. Elaris, Esqr. (Colombo)**

List of Sundry Creditors as at 31-12-1951—(Contd.)

<b>Trade :</b>			
A. K. Sanmugam Pillai	...	...	1,007·60
Sri Oversea Trading Co.	...	...	107·72
S. P. V. K. R.	...	...	128·50
P. S. Seyadu Abuthair	...	...	125·70
M. Popatlal & Co.	...	...	242·70
K. D. Edwin (Rent payable)	...	...	150·00
			<u>Rs. 25,789·14</u>

## Adjustment Account for Income

Adjusted Profit	...	14,273·67	By Nett Profit	...	10,677·47
			„ Charity & Presents		30·00
			„ Income Tax Paid		658·48
			„ Interest to Non-Bankers	...	2,907·72
					<u>Rs. 14,273·67</u>
		<u>Rs. 14,273·67</u>			<u>Rs. 14,273·67</u>

Income as above	...	...	14,273·67
Less Interest to Non-Bankers			
Current Year	...	2,907·72	
Less Pre : Year	...	502·39	
			<u>2,405·36</u>
Assessable Income	...	...	<u>Rs. 11,868·31</u>

## Trading Account and Balance Sheet of P. D. Elaris (Colombo)

(TRUE COPY)

P. D. Elaris, Nos. 12 &amp; 14, Gabo's Lane, Colombo 11

## Trading and Profit and Loss Account from 1st January, 1952 to 31st December, 1952

P 15  
Trading  
Account  
and  
Balance  
Sheet of  
P. D. Elaris  
(Colombo)  
31-12-52

To Opening Stock	...	...	35,203.73	By Sales	...	...	270,839.29
„ Purchases	...	...	202,532.89	„ Closing Stock	...	...	5,380.70
„ Gross Profits	...	...	38,483.37				
			<u>Rs. 276,219.99</u>				<u>Rs. 276,219.99</u>
To Rent on Business Premises	...	...	3,087.00	By Gross Profit	...	...	38,483.37
„ Lighting Charges	...	...	223.20				
„ Charity & Presents	...	...	910.00				
„ Printing & Stationery	...	...	54.50				
„ Postage & Telegrams	...	...	72.65				
„ Income Tax Paid	...	...	410.12				
„ Mess & Overtime Wages Paid to Staff	...	...	11,588.20				
„ Salary to Staff as per list	...	...	6,072.50				
„ Wages to Coolies Paid	...	...	2,940.00				
„ Telephone Calls & Rental	...	...	398.50				
„ Sundry Expenses :							
Advertisements & Calendars	...	720.50					
Licences	...	15.00					
Sundries Repairs	...	130.00					
Clothes to Staff (On Festival)	...	400.00					
Legal Expenses (On Collection Debts)	...	87.50					
New Weighing Machines	...	1,282.50					
			<u>2,635.50</u>				
„ Interest to Non-Bankers as per list	...	...	399.75				
„ Legal Expenses on Business Premises	...	...	145.00				
„ Nett Profit transferred to Capital Account	...	...	9,546.45				
			<u>Rs. 38,483.37</u>				<u>Rs. 38,483.37</u>

## BALANCE SHEET AS AT 31ST DECEMBER, 1952

LIABILITIES				ASSETS			
Sundry Creditors	...	...	24,662.03	Cash in Hand	...	...	596.45
Capital Account :				Cash at National Bank Ltd.	...	...	3,074.83
Opening Balance	...	65,384.34		Sundry Debtors	...	...	14,870.29
Add Profit for the year	...	9,546.45		Electricity Deposit	...	...	40.00
				Stock-in-Trade	...	...	5,380.70
Less Drawings	...	74,930.79		C. P. Vidanage (Wife's Account)	...	...	20,500.00
				Employees' Advances	...	...	1,471.79
Employees Accounts	...	...	70,254.50	Lunagala Estate Account :			
W. A. Perera (Pro-note) Account :			658.90	Opening Balance	...	33,009.00	
Opening Balance	...	4,900.00		Add Nett Loss for the year	...	338.10	
Add Further	...	2,000.00		Add Advances to Estate	...	431.51	
							<u>33,778.61</u>
Less Paid	...	6,900.00		Etambagahawatte Account :			
				Purchases as per details	...	12,000.00	
Private Loan :			2,000.00	Add Deed Expenses	...	550.00	
C. P. Vidanage (by her father) A/c							<u>12,550.00</u>
Opening Balance	...	2,350.00		Less Sold to M. K. Simon as per details	...	9,000.00	
Add further	...	100.00					<u>3,550.00</u>
				Haliwallawatte Kumburu Account :			
Less Paid	...	2,450.00		Purchases as per details	...	7,500.00	
				Add Deed Expenses	...	250.00	
Rent Payable	...	...	600.00				<u>7,750.00</u>
Rowland's Garage Account :			75.00	Rent Advance	...	...	136.25
Purchase of Car	...	10,587.25		Hillman Car No. EY 6974 Account :			
Less Instalment Paid	...	6,668.51		Cost on 12-9-52	...	10,587.25	
				Add Running Expenses	...	433.00	
			<u>3,918.74</u>				<u>11,020.25</u>
			<u>Rs. 102,169.17</u>				<u>Rs. 102,169.17</u>

Trading Account and Balance Sheet of P. D. Elaris (Colombo)

(TRUE COPY)

P. D. Elaris Esqr., Nos. 12, 14, Gabo's Lane, Colombo 11

BALANCE SHEET AS AT 31st DECEMBER, 1953

LIABILITIES	ASSETS
Capital & Current Account :	
As per last Balance Sheet	790.55
Add Nett Profit	1,685.87
	2,475.92
Less Drawings	
Trade Creditors (as per Schedule)	40.00
Loan Creditors "	2,053.80
W. A. Perera :	14,981.98
As per last Balance Sheet	20,500.00
Less Payments	2,114.87
	Nil
C. P. Vidanage by her father :	
As per last Balance Sheet	38,778.61
Employees Account (as per Schedule)	554.14
Rent Payable	38,224.47
Rowlands Garage Account :	
As per last Balance Sheet	3,550.00
Less Payments	7,750.00
	Nil
	10,140.00
	54,664.47
	11,020.25
	777.65
	11,797.90
	136.25
	Rs. 108,765.14

I certify that the above Balance Sheet as at 31st December, 1953 is in accordance with the Books of Accounts of Mr. P. D. Elaris, 12, 14, Gabo's Lane, Colombo and information given by Assessee.

Colombo, 30th November, 1954.

(Sgd.) CECIL ARSECULERATNE,  
Registered Accountant.

## P. D. Elaris, Esqr.

Nos. 12 &amp; 14, Gabo's Lane, Colombo 11

TRADING AND PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED 31<sup>ST</sup> DECEMBER, 1953

To Stock as at 1-1-52	...	...	By Sales	...	...	236,583.02
" Purchases	...	5,380.70	" Stock on 31-12-53	...	...	2,053.80
" Transporting Charges	...	194,176.85				
" Gross Profit 15½%	...	2,191.50				
		36,887.77				
		<u>Rs. 238,636.82</u>				<u>Rs. 238,636.82</u>
To Rent Paid to Shop & Stores	...	3,087.00	By Gross Profit	...	...	36,887.77
" Electricity Charges	...	252.18				
" Charity & Presents	...	145.00				
" Printing & Stationery	...	200.50				
" Postage & Telegrams	...	226.55				
" Income Tax Paid	...	896.04				
" Mess to Staff	...	11,175.00				
" Salary to Staff (as per Schedule)	...	8,644.11				
" Telephone Rental & Calls	...	425.05				
" Advertisements : Calendars	...	614.15				
" Licence	...	263.00				
" Audit Fee	...	105.00				
" Presents	...	40.00				
" Repairs to Business Premises	...	110.50				
" " Stores	...	166.25				
" " Hand Cart	...	83.00				
" Cloth to Staff	...	424.75				
" Name Board Repairs	...	350.00				
" Interest to Non Bankers (as per Schedule)	...	2,166.65				
" Nett Profit	...	525.00				
		9,154.69				
		<u>Rs. 36,887.77</u>				<u>Rs. 36,887.77</u>

Colombo, 30th November, 1954.

**P. D. Elaris Esqr. (Colombo)****Details of Salary Payments**

W. A. Perera	...	...	...	720·00
S. Sellakuddy	...	...	...	1,380·00
M. K. Simon	...	...	...	1,150·00
R. D. Manis	...	...	...	662·50
M. K. Peter	...	...	...	662·50
H. G. Uppasena	...	...	...	582·50
W. M. Gunasekera	...	...	...	552·50
K. D. Somapala	...	...	...	597·50
B. D. Wimalasena	...	...	...	390·00
W. Samy Silva	...	...	...	455·00
W. G. Wijesinghe	...	...	...	455·00
K. G. Edwin	...	...	...	757·50
N. Nandapala	...	...	...	69·00
H. W. Wimalasinghe	.....	...	...	111·81
W. A. Jayasinghe	....	...	...	98·80
				<hr/>
				Rs. 8,644·11
				<hr/> <hr/>

**Details of Interest Payments**

Messrs. A. M. N. Firm	...	...	...	120·00
L. A. Perera	...	...	...	200·00
W. A. Perera	...	...	...	205·00
				<hr/>
				Rs. 525·00
				<hr/> <hr/>

**List of Advance to Staff**

N. Nandapala	...	...	...	55·00
W. A. Jayasinghe	...	...	...	104·75
W. Samy Silva	...	...	...	202·93
W. G. Wijeyasinghe	...	...	...	1·43
K. D. Somapala	...	...	...	108·43
R. D. Manis	...	...	...	200·20
W. M. Gunasekera	...	...	...	944·41
H. W. Wimalasinghe	...	...	...	58·75
H. G. Uppasena	...	...	...	160·18
B. D. Wimalasena	...	...	...	278·79
				<hr/>
				Rs. 2,114·87
				<hr/> <hr/>



**P. D. Elaris Esqr. (Colombo)****List of Sundry Creditors as at 31st December, 1953**

M. Papatlal & Co.	...	...	...	242·70
Messrs. S. M. R. & Co.	...	...	...	5,212·25
A. A. Dawoodbhoy	...	...	...	464·94
K. D. Edwin	...	...	...	1,400·30
T. S. Sonachalam Pillai	...	...	...	808·84
K. Sangaralingam Pillai	...	...	...	584·00
L. A. Perera	...	...	...	1,700·00
Messrs. S. P. V. K. R.	...	...	...	1,019·51
V. K. Parwathinathan	...	...	...	1,646·75
Messrs. K. A. P. L.	...	...	...	1,441·63
A. Pedric Silva	...	...	...	865·54
Petty Trade Customers	...	...	...	8,423·58
R. A. Mahalingam	...	...	...	2,900·63
R. S. Santhanathan Pillai	...	...	...	588·82
			<b>Rs.</b>	<b>27,299·49</b>

**List of Employees Account as at 31st December, 1953**

W. Samy Silva	...	...	...	200·00
K. H. Edwin	...	...	...	422·08
S. Sellakuddy	...	...	...	300·00
M. K. Simon	...	...	...	250·00
R. D. Manis	...	...	...	250·00
N. Nandapala	...	...	...	69·00
H. W. Wimalasinghe	...	...	...	111·81
W. A. Jeyasinghe	...	...	...	98·30
H. G. Uppasena	...	...	...	200·00
W. M. Gunasena	...	...	...	200·00
K. D. Somapala	...	...	...	200·00
B. D. Wimalasena	...	...	...	150·00
W. G. Wijeyasinghe	...	...	...	200·00
C. O. Samaranyeke	...	...	...	1,500·00
M. K. Peter	...	...	...	381·20
			<b>Rs.</b>	<b>4,532·39</b>

**List of Sundry Debtors as at 31st December, 1953**

P. H. Karunasena	...	...	...	5,657·11
M. K. Simon	...	...	...	5,000·00
N. M. Abdul Wahid	...	...	...	1,691·62
T. Baba & Co.	...	...	...	2,633·20
			<b>Rs.</b>	<b>14,981·93</b>

## P. D. Elaris, Esqr.

## ADJUSTMENT ACCOUNT FOR INCOME TAX

Depreciation Account :				
Car EY 6974 cost at	...	10,587-25	...	...
Less above car for personal use 2/3	...	7,058-16	...	...
W. D. V. on 31-12-53	...	3,529-09 @ 25%	882-27	...
Car Expenses	...	Rs. 777-65 @ 1/3	259-22	...
Adjusted Profit	...	...	9,619-24	...
			<u>Rs. 10,760-73</u>	
				<u>Rs. 10,760-73</u>

Income as above	...	9,619-00
Less interest to Non Bankers	...	525-00
Assessable Income	...	<u>Rs. 9,094-00</u>

By Nett Profit	...	9,154-69
Charity & Presents	...	145-00
Income Tax	...	896-04
Presents	...	40-00
Interest to Non Bankers	...	525-00

### Trading Account and Balance Sheet of P. D. Elaris (Colombo)

(TRUE COPY)

P. D. Elaris, Esqr., Nos. 12 & 14, Gabo's Lane, Colombo 11  
Trading and Profit and Loss Account for the Year Ended 31st December, 1954

To Stock as at 1-1-54	...	By Sales	244,898.93
" Purchases	2,058.80	" Closing Stock	4,517.39
" Transporting Charges	207,908.31		
" Gross Profit	2,295.50		
	37,163.71		
	<u>Rs. 249,416.32</u>		<u>Rs. 249,416.32</u>
To Rent to Shop & Stores	3,087.00	By Gross Profit	37,163.71
" Electricity Charges	227.37		
" Charity & Presents	166.00		
" Printing & Stationery	203.50		
" Postage & Telegrams	21.50		
" Income Tax Paid	443.20		
" Mess Charges Paid to Staff	8,019.00		
" Telephone Rental & Calls	419.90		
" Fire Insurance Premium	190.25		
" Salary to Staff (as per Schedule)	10,794.51		
" Advertisements: Calendars	750.50		
" Licence	16.20		
" Fee to Auditor	300.00		
" Repairs to Business Premises	340.00		
" " Store	125.00		
" Cloth to Staff	550.00		
" Bank Charges	17.36		
" Telegraph Address	25.00		
" Salary to Part-time Clerk	150.00		
" Nett Profit	2,274.06		
	<u>11,317.42</u>		<u>Rs. 37,163.71</u>

### BALANCE SHEET AS AT 31ST DECEMBER, 1954

		ASSETS	
Capital & Current Account:			
As per last Balance Sheet	76,258.26	Cash Account:	
Add Profit for the Year	11,317.42	In Hand	254.79
	<u>87,575.68</u>	National Bank	5,852.60
	4,311.50	Indian Overseas Bank	540.87
Less Drawings	88,264.18	Electricity Deposit (as per last Balance Sheet)	6,648.26
Trade Creditors (as per Schedule)	24,654.22	Investments in Wife's name C. P. Vidanage:	40.00
Loan Creditors:		No. 541, High Road, Galle (P. Munasinghe)	20,500.00
C. P. Vidanage by her father	600.00	Stock-in-Trade	4,517.39
K. H. Wilson	17,700.00	Sundry Debtors (as per Schedule)	25,952.15
Employees Account (as per Schedule)	18,300.00	Rent Advance ( " )	5,578.12
Rent Payable	3,879.42	Properties Account (as per Schedule)	54,431.27
	75.00	Car No. EY 6974 (as per details)	12,505.63
	<u>Rs. 180,172.82</u>		<u>Rs. 180,172.82</u>

I certify that the above Balance Sheet as at 31st December, 1954 is in accordance with the Books of Account of P. D. Elaris, Esqr., Nos. 12, 14, Gabo's Lane, Colombo. The books were checked against vouchers for three months. In my opinion the above Balance Sheet is properly drawn up to show a correct view of the state of affairs of the business according to the information given me and as shown by the Books of Account.

(Sgd.) CECIL ARSECULERATNE,

**P. D. Elaris, Esq. (Colombo)****List of Trade Creditors as at 31st December, 1954**

Messrs. S. M. R. & Co.	...	...	...	3,003·55
A. A. Dawoodbhoy	...	...	...	667·27
K. D. Edwin	...	...	...	2,950·30
T. S. Sonalhalam	...	...	...	2,782·25
V. K. Parwathinathan	...	...	...	1,021·00
R. A. Mahalingam	...	...	...	959·76
Messrs. K. A. P. L.	...	...	...	217·88
Abdul Hussen Jafferjee	...	...	...	781·38
Petty Trade Customers	...	...	...	6,572·38
T. S. K. Seyed Mohamed & Co.	...	...	...	748·45
P. H. Robosinghe	...	...	...	2,000·00
P. H. Vearis	...	...	...	3,000·00
				<hr/>
				Rs. 24,654·22
				<hr/>

**Employees Account**

M. K. Peter	...	...	...	632·20
K. H. Edwin	...	...	...	412·08
K. D. Somapala	...	...	...	336·57
W. Wijeyasinghe	...	...	...	338·57
C. Samaranayake	...	...	...	360·00
N. Nandapala	...	...	...	100·00
W. P. Jayasinghe	...	...	...	150·00
W. Sany Silva	...	...	...	200·00
R. D. Manis	...	...	...	300·00
H. W. Wimalasinghe	...	...	...	100·00
H. G. Uppasena	...	...	...	250·00
W. M. Gunasekera	...	...	...	200·00
M. K. Simon	...	...	...	300·00
B. D. Wimalasena	...	...	...	200·00
				<hr/>
				Rs. 3,879·42
				<hr/>

**List of Sundry Debtors as at 31-12-1954**

P. H. Karunasena	...	...	...	5,657·21
M. K. Simon	...	...	...	5,000·00
A. P. Silva	...	...	...	294·94
K. S. Nadar	...	...	...	15,000·00
				<hr/>
				Rs. 25,952·15

## P. D. Elaris, Esq. (Colombo)

## Rent Advances

N. M. Abdul Wahid	...	...	...	1,691·62
P. B. Umbichy	...	...	...	3,886·50
				<u>Rs. 5,578·12</u>

## Properties Account

(1) Lunugala Rubber Estate Account :				
As per last Balance Sheet	...	33,224·47		
Add Advances to Estate for Expenditure	...	936·13		
		<u>34,160·60</u>		
Less Sale of Rubber	...	1,169·33		
				<u>32,991·27</u>
(2) Etambagahawatte Account — As per last Balance Sheet	...		3,550·00	
(3) Haliwalawatte Kumbura — do do	...		7,750·00	
(4) 117, Barber Street, Colombo — do do	...		10,140·00	
				<u>Rs. 54,431·27</u>

## Car No. EY 6974 Account

As per last Balance Sheet	...	...	...	11,797·90
Add Cost of Petrol & Oil	...	...	...	807·73
				<u>Rs. 11,605·63</u>

## List of Salary Payments as at 31st December, 1954

N. Nandapala	...	...	...	175·00
W. A. Jayasinghe	...	...	...	383·45
W. Suny Silva	...	...	...	651·03
M. K. Peter	...	...	...	650·00
W. Wijeyasinghe	...	...	...	500·00
K. H. Edwin	...	...	...	760·00
K. D. Somapala	...	...	...	700·00
R. D. Manis	...	...	...	985·20
H. G. Uppasena	...	...	...	939·43
W. M. Gunasekera	...	...	...	1,411·61
C. Samaranayake	...	...	...	1,020·00
H. Perera	...	...	...	750·00
M. K. Simon	...	...	...	1,200·00
B. D. Wimalasena	...	...	...	478·79
				<u>Rs. 10,794·51</u>

## P. D. Elaris, Esqr.

## ADJUSTMENT ACCOUNT FOR INCOME TAX

To Depreciation on Car No. EY 6974 :					
1/3 of W/D/V on 1-1-54	...	2,646.82	...	...	11,817.42
Less Depreciation @ 25%	...	661.71	...	...	166.00
		<hr/>			<hr/>
1/3 of W/D/V on 31-12-54	...	1,985.11	661.71	...	443.20
Car Expenses Rs. 807.73 @ 1/3rd	...	...	269.24	...	
Adjusted Profit	...	...	10,995.67	...	
			<hr/>		<hr/>
			Rs. 11,926.62		Rs. 11,926.62

## P. D. Elaris, Esqr.

## STATEMENT OF INCOME FROM AGRICULTURE FOR THE YEAR ENDED 31ST DECEMBER, 1954

				Lease Income as per last year
Haliwalla Watte Galle				
<i>alias</i>				
Katagahawatte	Mature 1 Acre and Immature ½	Coconuts	...	Rs. 125/-
Etambagahawatte	Galle	Mature 1 ½ Acres	...	" 50/-
Paddy Field :				
Etawelkella Kumbura			...	
Hapuwalana	Acres :—0-2-30	Paddy	...	100/-
Haliwalla Kumbura Galle	1-3-24	"	...	120/-
Lunugala Rubber Estate as per last statements Loss			...	395/-
			...	233/-
			<hr/>	<hr/>
			Total Income	Rs. 162/-

P. D. Elaris, Esqr.

## INCOME FROM LUNUGALA RUBBER ESTATE FROM 1ST JANUARY, 1954 TO 16TH JANUARY, 1954

Acres : Immature  
Mature20-0-00  
14-1-38  
34-1-38

## Expenses :

Tapping Wages	...	468.80
Sundry Wages	...	28.85
Transporting	...	10.00
Postage	...	1.80
Firewood	...	7.50
Medical Aid	...	29.75
Salary to Watcher	...	360.00
Travelling & Sundries	...	29.98
Nett Income	...	233.20
		<u>Rs. 1,169.33</u>

## By Sales of Rubber :

Rubber RSS 1042	...	1,080.56
" Scrap 300	...	88.77

Rs. 1,169.33

## Adjustment Account

To Stock as on 31-12-53	...	732.28	By Nett Income	...	233.20
			" Stock in Estate	...	Nil
			" Admissible Loss	...	499.08
		<u>Rs. 732.28</u>			<u>Rs. 732.28</u>

- The above Estate Rubber Trees are very old.
- Estate was worked from 1-1-54 to 16-1-54 only.
- Estate was not worked from 17-1-54 to 31-12-54.

P. D. Elaris, Esqr.

## INVESTMENTS ON WIFE'S NAME (C. P. VIDANAGE)

From Mr. P. Munasinghe, No. 541, High Road, Galle, on mortgage Bond No. 17081 dated 2-11-48. Rs. 20,500/- Interest @ 6% Payable Rs. 1,230/-

## Income from Dividend for the Year ended 31st December, 1954

Bank of Ceylon 2 Shares Nett	...	Rs. 5.94
Add Income Tax	...	" 3.06
Gross	...	Rs. 9.00

## Rental Income for the Year ended 31st December, 1954

Gross Rent.	864/-	Repairs	144/-	Nett Income.	576/-
117, Barber Street, Colombo					

Possession was taken over from 1-1-54.

Trading Account and Balance Sheet of P. D. Elaris (Colombo)

(TRUE COPY)

P. D. Elaris, Esqr., Nos. 12 & 14, Gabo's Lane, Colombo 11  
Trading and Profit and Loss Account for the Year ended 31st December, 1955

To Opening Stock	...	...	4,517.39	By Sales	...	...	328,925.32
„ Purchases	...	...	289,962.23	„ Closing Stock	...	...	16,992.93
„ Transporting Charges	...	...	2,805.00				
„ Gross Profit	...	...	48,633.63				
			<u>Rs. 345,918.25</u>				<u>Rs. 345,918.25</u>
To Rent to Shop & Stores	...	...	2,855.25	By Gross Profit	...	...	48,633.63
„ Electricity Charges	...	...	269.54				
„ Charity & Presents	...	...	25.00				
„ Postage & Telegrams	...	...	157.75				
„ Income Tax Paid	...	...	204.70				
„ Mess Allowances Paid to Employees	...	...	8,578.00				
„ Telephone Rental & Calls	...	...	499.65				
„ Printing & Stationery	...	...	213.00				
„ Salary to Staff (as per Schedule)	...	...	11,570.00				
„ Interest Payments (as per Schedule)	...	...	1,553.50				
„ Loss on Sale of Car	„	„	7,880.09				
„ Advertisements, Calendars	...	400.00					
„ Licence—Municipal	66.00						
„ „ New Comer	250.00						
			<u>316.00</u>				
„ Audit Fee	...	...	150.00				
„ Repairs to Business Premises	...	...	943.43				
„ Repairs to Cart & Weighing Machines	...	...	135.00				
„ Clothes to Staff	...	...	585.46				
„ Bank Charges	...	...	33.49				
„ Fire Insurance Premium	...	...	52.75				
„ Security Mortgage Bond Fee	...	...	400.00				
„ Sundries	...	...	73.55				
			<u>3,089.68</u>				
„ Nett Profit	...	...	11,737.47				
			<u>Rs. 48,633.63</u>				<u>Rs. 48,633.63</u>

BALANCE SHEET AS AT 31ST DECEMBER, 1955

LIABILITIES				ASSETS			
Capital & Current Account :				Cash in Hand	...	...	4,047.90
As per last Balance Sheet	...	83,264.18		„ at National Bank	...	...	32,950.59
Add Nett Profit for the Year	...	11,737.47		„ at Indian Overseas Bank	...	...	589.41
							<u>37,587.90</u>
Less Drawings	...	2,968.71		Electricity Deposits :			
			92,032.94	As per last Balance Sheet	...	...	40.00
Trade Creditors (as per Schedule)	...	...	21,138.16	Investments in Wife's Name (C. P. Vidanage)			
Loans on Pro-notes & Security Mortgage				No. 541, High Road, Galle (P. Munasinghe)	...	...	20,500.00
(as per Schedule)	...	...	62,700.00	Stock-in-Trade	...	...	16,992.93
Salaries due to Employees (as per Schedule)	...	...	5,705.99	Sundry Debtors (as per Schedule)	...	...	16,019.32
Rent Due	...	...	75.00	Rent Advance (N. M. Abdul Wahid)	...	...	1,691.62
				Properties Account (as per Schedule)	...	...	88,619.29
				Staff Advance (as per Schedule)	...	...	201.03
			<u>Rs. 181,652.09</u>				<u>Rs. 181,652.09</u>

I certify that the above Balance Sheet as at 31st December, 1955 is in accordance with the Books of Account of P. D. Elaris, Esqr., Nos. 12 & 14, Gabo's Lane, Colombo. The books were checked against vouchers for three months. In my opinion the above Balance Sheet is properly drawn up to show a correct view of the state of affairs of the business according to the information given me and as shown by the Books of Accounts.

Colombo, 6th June, 1956.

(Sgd.) CECIL ARSECULERATNE,  
Registered Accountant.



## P. D. Elaris, Esq. (Colombo)

## List of Salary Payments

M. K. Simon	...	...	...	1,400·00
R. D. Manis	...	...	...	980·00
K. D. Edwin	...	...	...	1,010·00
H. G. Uppasena	...	...	...	980·00
W. M. Gunasekera	...	...	...	980·00
K. D. Somapala	...	...	...	980·00
W. Wijeyasinghe	...	...	...	760·00
C. Samaranyake	...	...	...	1,020·00
W. Premadasa	...	...	...	300·00
W. A. Jayasinghe	...	...	...	600·00
W. Perera	...	...	...	960·00
W. Suny Silva	...	...	...	210·00
M. K. Peter	...	...	...	255·00
D. Arlis	...	...	...	800·00
W. Podisingho	...	...	...	78·75
B. K. Wilbert	...	...	...	131·25
I. D. Dharmasena	...	...	...	80·00
R. H. Wilson	...	...	...	15·00
H. R. Banda	...	...	...	30·00
				Rs. 11,570·00
				Rs. 11,570·00

## Interest Payments

1. M. Musthan	...	...	...	165·00
2. Messrs. A. M. N. Firm	...	...	...	938·50
3. J. Saverimuthu	...	...	...	450·00
				Rs. 1,553·50
				Rs. 1,553·50

## Trade Creditors as at 31st December, 1955

Messrs. S. M. R. & Co.	...	...	...	4,559·31
T. S. Sonachalam Pillai	...	...	...	2,797·28
V. K. Parvathy Nathan	...	...	...	479·50
A. Pedric Silva	...	...	...	24·41
Petty Trade Customers	...	...	...	9,999·46
Messrs. S. P. V. & Co.	...	...	...	2,188·50
Lanka Produce	...	...	...	404·05
M. A. M. Abdul Ibrahim	...	...	...	685·65
				Rs. 21,138·16
				Rs. 21,138·16

**P. D. Elaris, Esq. (Colombo)****Loans on Pro-notes & Security Mortgage as at 31st December, 1955**

<b>C. P. Vidanage — By her Father's A/c</b>			
As per last Balance Sheet	...	600·00	
Less Re-paid on 8-7-1955	...	600·00	
			Nil.
<b>K. H. Wilson</b>	...	17,700·00	} Hand Loan
<b>K. H. Francis</b>	...	5,000·00	
<b>D. Pieris</b>	...	10,000·00	
<b>Messrs. A. M. N. Firm</b>	...	10,000·00	Pro-notes
<b>J. Saverimuthu</b>	...	20,000·00	Security Mortgage
		<b>Rs. 62,700·00</b>	

**Salaries due to Employees as at 31st December, 1955**

<b>M. K. Peter</b>	...	...	647·20
<b>W. Premadasa</b>	...	...	185·69
<b>B. K. Wilbert</b>	...	...	61·56
<b>H. G. Uppasena</b>	...	...	513·82
<b>K. D. Somapala</b>	...	...	625·07
<b>W. Wijeyasinghe</b>	...	...	641·07
<b>W. A. Jayasinghe</b>	...	...	329·50
<b>R. D. Manis</b>	...	...	550·00
<b>K. H. Edwin</b>	...	...	842·08
<b>H. R. Banda</b>	...	...	10·00
<b>M. K. Simon</b>	...	...	500·00
<b>W. M. Gunasekera</b>	...	...	500·00
<b>C. Samaranyake</b>	...	...	300·00
			<b>Rs. 5,705·99</b>

**Sundry Debtors as at 31st December, 1955**

<b>P. H. Karunasena</b>	...	...	5,657·21
<b>M. K. Simon</b>	...	...	5,000·00
† <b>Messrs. V. A. T. P. A. &amp; Co., Chilaw</b>	...	...	5,000·00
<b>Messrs. K. A. P. L. Kandy As per Agreement No. 3753</b>	...	...	362·11
			<b>Rs. 16,019·82</b>

† Messrs. V. A. T. P. A., Chilaw :

Business and a property called Galhamy was taken on agreement by deed No. 3753 dated 20-11-1955 and advance paid to Rs. 5,000/- only.

## P. D. Elaris, Esqr. (Colombo)

## Rent Advances as at 31st December, 1955

As per last Balance Sheet ...	...	...	5,578·12
Less Received from P. D. Umbichy ...	...	...	3,886·50
			<u>Rs. 1,691·62</u>

## Properties Account as at 31st December, 1955

No. 1, Lunuhunugala Watta — 34-1-38.			
As per last Balance Sheet ...	...	32,991·27	
Add amount Advanced to Estate ...	...	698·02	
		<u>33,689·29</u>	
Less Sale of 12.1.12 Acres Bare Land to H. Sirisena by deed No. 7479 of 21-4-55 attested by J. A. Wijeyakoon, Notary Public. ...			
	...	5,000·00	
		<u>28,689·29</u>	
No. 2, Etambagahawatta :			
As per last Balance Sheet ...	...	3,550·00	
No. 3, Haliwallawatte (Kumbura) ...	...	7,750·00	
No. 4, 117, Barber Street, Colombo ...	...	10,140·00	
‡ No. 5, 14, Gabo's Lane, Colombo. Business Premises :			
Purchases ...	...	37,500·00	
Add Deed Expenses ...	...	990·00	
		<u>38,490·00</u>	
			<u>Rs. 88,619·29</u>
‡ No. 14, Gabo's Lane, Colombo was purchased from P. B. Umbichy by deed No. 2163 dated 28-9-55 attested by D. F. de Silva, Notary Public.			

## Staff Advances as at 31st December, 1955

1. W. Podisingho ...	...	...	68·04
2. I. D. Dharmasena ...	...	...	45·00
3. W. Perera ...	...	...	25·00
4. W. W. Gunasekera ...	...	...	62·99
			<u>Rs. 201·03</u>

P. D. Elaris, Esqr.

LUNUHUNUGALA WATTA

Acres Immature	20-0-0
Less Sold Immature	12-1-12
	<u>7-2-28</u>
" Mature	14-1-38
	<u>22-0-26</u>

## Income and Expenditure Account for the Period 1-1-55 to 31-12-55

To Tapping Wages	...	4,237.47	...	...	...
" Sundry Wages	...	576.06	...	...	...
" Transporting Charges	...	203.50	...	...	...
" Firewood	...	301.65	...	...	...
" Salary to Watcher	...	600.00	...	...	...
" Acreage Tax	...	20.50	...	...	...
" Labour Commission Fee Paid	...	86.98	...	...	...
" Acid	...	89.00	...	...	...
" Mess to Clerk & of Proprietor	...	1,254.55	...	...	...
		<u>Rs. 7,369.71</u>			
					<u>Rs. 7,369.71</u>

By Sales of Rubber :

R.S.S.

Scrap

Nett Loss

Adjusted Loss

R.S.S.

Scrap

Adjusted Loss

R.S.S.

Scrap

Adjusted Loss

R.S.S.

Scrap

Adjusted Loss

R.S.S.

Scrap

Adjusted Loss

R.S.S.

Scrap

Adjusted Loss

R.S.S.

Scrap

Adjusted Loss

R.S.S.

Scrap

Adjusted Loss

R.S.S.

Scrap

Adjusted Loss

R.S.S.

Scrap

Adjusted Loss

To Nett Loss as above	...	2,192.24	...	...	540.00
		<u>Rs. 2,192.24</u>			<u>Rs. 2,192.24</u>

## ADJUSTMENT ACCOUNT FOR INCOME TAX PURPOSES

To Loss on Sale of Car EY 6974 :	...	1,985.11	...	...	11,737.47
1/3 W.D.V. 1-1-55	...	1,666.67	...	...	25.00
Less 1/3 of Sale Price	...	318.44	...	...	204.70
Car Expenses (1/3 of 375.06)	...	125.02	...	...	1,553.50
Adjusted Profits from Trades	...	21,357.30	...	...	7,880.09
		<u>Rs. 21,800.76</u>			<u>Rs. 21,800.76</u>

By Nett Profit

Charity &amp; Presents

Income Tax

Interest Payments

Loss on Sale of Car

Security-Mortgage Expenses

Car No. EY 6974 Account

As per last Balance Sheet

Add cost of Petrol &amp; Oil etc.

Less sold on 19-8-55

Loss on above W/off in P &amp; L Account

As per last Balance Sheet

Add cost of Petrol &amp; Oil etc.

Less sold on 19-8-55

Loss on above W/off in P &amp; L Account

P. D. Elaris, Esqr.

## STATEMENT OF SUMMARY OF INCOME FOR THE YEAR ENDED 31st DECEMBER, 1955

## Agriculture :

Haliwalla Watta Galle	Mature 1 Acre	Coconuts	Leased as per last year	...	125.00
Kotagahawatte	Immature ½ "				
	1½ "				
Etainbagahawatte Galle	Mature 1½ Acres	"	"	...	50.00
Paddy Fields					
Etaweelkedella, Hapuwalana	0. 2. 30	Paddy	"	...	100.00
Haliwala Kumbura Galle	1. 3. 24	"	"	...	120.00
Less Lunuhunugala Estate Arunayake					395.00
Kegalle District					409.00
				Nett Loss	14.00
(2) Business as per Adjustments Account					21,357.00
(3) Investments on Wife's Name (C. P. Vidanage)					
From Mr. P. Munasinghe No. 54, High Road, Galle, on Mortgage Bond No. 17081 dated 2-11-48 for Rs. 20,500/- Interest @ 6% payable					1,230.00
(4) Dividends—Bank of Ceylon 2 Shares Nett	4.95				
Add Income Tax deducted	2.55				
					7.50
(5) Rental Income	Gross Rent	Rates	Repairs	Nett Income	
117, Barber Street, Colombo 13	864/-	144/-	144/-	576/-	576.00
(6) Loss in Agriculture as above	...	14/-			
Interest Payments as per schedule	...	1,553/-			
					23,170.00
					1,567.00
					21,603.00

Total Income ... Rs.

21,603.00

Trading Account and Balance Sheet of P. D. Elaris (Colombo)

(TRUE COPY)

P. D. Elaris, Esqr., Nos. 12 & 14, Gabo's Lane, Colombo 11  
Trading and Profit and Loss Account for the Year ended 31st December, 1956

To Opening Stock	...	...	16,992.93	By Sales	...	...	501,042.62
„ Purchases	...	...	423,809.88	„ Closing Stock	...	...	6,431.64
„ Transporting Charges	...	...	2,914.50				
„ Gross Profit	...	...	63,756.95				
			<u>Rs. 507,474.26</u>				<u>Rs. 507,474.26</u>
To Rent to Shop & Stores	...	...	2,160.00	By Gross Profit	...	...	63,756.95
„ Electricity Charges	...	...	331.77				
„ Charity & Presents	...	...	215.00				
„ Postage & Telegrams	...	...	231.00				
„ Income Tax Paid	...	...	390.74				
„ Mess Allowance Paid to Staff	...	...	9,886.00				
„ Telephone Rental & Calls	...	...	570.65				
„ Printing & Stationery	...	...	765.00				
„ Salary to Staff (as per Schedule)	...	...	15,342.51				
„ Interest Payments (as per Schedule)	...	...	3,085.50				
„ Advertisements & Calendars	...	682.50					
„ Licence—Municipal	...	33.00					
„ Licence—New Comer	...	250.00					
„ Audit Fees	...	175.00					
„ Business Premises Repairs	...	408.50					
„ Business Premises Rates	...	141.00					
„ Clothes to Staff	...	1,084.05					
„ Bank Charges	...	58.32					
„ Fire Insurance Premia	...	190.25					
„ Telegraph Address	...	50.00					
„ Presents	...	52.68					
„ Income Tax	...	45.37					
„ Legal Expenses	...	15.00					
„ Sundries	...	81.35					
			<u>3,267.02</u>				
„ Nett Profit	...	...	27,561.76				
			<u>Rs. 63,756.95</u>				<u>Rs. 63,756.95</u>

BALANCE SHEET AS AT 31ST DECEMBER, 1956

LIABILITIES				ASSETS			
Capital & Current Account :				Electricity Deposits	...	...	40.00
As per last Balance Sheet	...	92,932.94		Investments in Wife's Name :			
Add Nett Profit for the Year	...	27,561.76		No. 541, High Road, Galle (P. Munasinghe)	...	...	20,500.00
		<u>119,594.70</u>		Stock-in-Trade	...	...	6,431.64
Less Drawings	...	3,525.23		Sundry Debtors (as per Schedule)	...	...	6,339.66
		<u>116,069.47</u>		Rent Advance (N. M. Abdul Wahid)	...	...	1,691.62
Trade Creditors (as per Schedule)	...	55,400.88		Properties Account as per last Balance Sheet	...	...	88,619.29
Loans on Pro-Notes & Mortgage (as per Schedule)	...	46,950.00		Chilaw Branch Account :			
Salaries due to Employees (as per Schedule)	...	13,071.93		Capital Invested	...	76,000.00	
Rent Due	...	75.00		Current Account	...	27,955.87	
						<u>103,955.87</u>	
				Cash in Hand	...	597.06	
				At National Bank	...	2,760.13	
				At Indian Overseas Bank	...	632.01	
						<u>3,989.20</u>	
			<u>Rs. 231,567.28</u>				<u>Rs. 231,567.28</u>

I certify that the above Balance Sheet as at 31st December, 1956 is in accordance with the Books of Account of P. D. Elaris, Esqr., Nos. 12 & 14, Gabo's Lane, Colombo. The books were checked against vouchers for three months. In my opinion the above Balance Sheet is properly drawn up to show a correct view of the state of affairs of the business according to the information given to me and as shown by the Books of Accounts.

Colombo, 2nd October, 1957.

(Sgd.) CECIL ARSECULERATNE,  
Registered Accountant.

**P. D. Elaris, Esqr. (Colombo)**

Trade Creditors as at 31st December, 1956

Messrs. S. M. R. & Co.	...	...	4,701·81
„ T. S. Sonachalam Pillai	...	...	3,200·09
„ V. K. Parwatheynathan	...	...	2,904·00
„ S. P. V. & Co.	...	...	7,721·18
„ Lanka Produce Trading Co.	...	...	1,086·95
„ Abdul Hussen Jafferjee	...	...	958·26
„ Srinivasagam & Co.	...	...	1,647·95
„ S. A. P. S. & Co.	...	...	245·00
„ A. M. Sultan & Co.	...	...	488·42
„ K. Sangaralingam	...	...	374·88
„ A. Aiyasamy Nadar	...	...	21,051·00
„ Kasimari & Co.	...	...	550·00
„ Petty Trade Customers	...	...	10,481·34
			Rs. 55,400·88

Loans on Pro-notes & Mortgages as at 31st December, 1956

K. H. Wilson	...	...	15,700·00
K. H. Francis	...	...	2,500·00
J. Saverimuthu	...	...	20,000·00
A. M. N. Firm	...	...	6,250·00
N. Sivasubramaniam	...	...	2,500·00
			Rs. 46,950·00

P. D. Elaris, Esqr.  
List of Salary Payments

M. K. Simon	...	...	1,900·00
R. D. Manis	...	...	1,540·00
K. D. Edwin	...	...	935·00
K. G. Uppasena	...	...	935·00
W. M. Gunasekera	...	...	1,540·00
K. D. Somapala	...	...	1,540·00
G. Wijeyasinghe	...	...	1,320·00
W. Perera	...	...	640·00
W. A. Jayasinghe	...	...	1,080·00
B. K. Wilbert	...	...	990·00
I. D. Dharmasena	...	...	682·35
H. R. Banda	...	...	500·16
W. Podisingho	...	...	520·00
G. James	...	...	675·00
W. Prematilake	...	...	545·00
			Rs. 15,342·51

**P. D. Elaris, Esqr. (Colombo)****Interest Payments**

N. Sivasubramaniam	...	...	...	355·50
Messrs. A. M. N. Firm	...	...	...	785·00
J. Severimuthu	...	...	...	1,350·00
A. M. A. Sinniah Konar	...	...	...	30·00
W. A. Perera	...	...	...	37·50
W. S. J. Fernando	...	...	...	65·00
Messrs. M. M. K. K. M. Firm	...	...	...	312·50
A. S. A. Alagappakonar	...	...	...	100·00
				<hr/>
			Rs.	3,035·50
				<hr/> <hr/>

**Sundry Debtors as at 31st December, 1956**

P. H. Karunasena	...	...	...	5,657·21
M. K. Simon Rs. 5,000/- settled	...	...	Nil.	
Messrs. V. A. T. P. A. Chilaw Rs. 5000/- settled	...	...	Nil.	
Messrs. K. A. P. L. Kandy	...	...	...	72·95
„ Freudenberg & Co.	...	...	...	500·00
Mr. A. P. Silva	...	...	...	109·50
				<hr/>
			Rs.	6,339·66
				<hr/> <hr/>

**Salaries due to Employees as at 31st December, 1956**

M. K. Simon	...	...	...	1,000·00
M. K. Peter	...	...	...	604·70
H. G. Uppasena	...	...	...	868·82
K. H. Edwin	...	...	...	1,277·08
K. D. Somapala	...	...	...	991·63
C. Samaranyake	...	...	...	1,800·00
G. James	...	...	...	569·76
B. K. Wilbert	...	...	...	785·27
G. Wijeyasinghe	...	...	...	1,232·94
R. D. Manis	...	...	...	941·58
W. Podisingho	...	...	...	344·16
H. R. Banda	...	...	...	300·00
J. D. Dharmasena	...	...	...	500·00
W. A. Jayasinghe	...	...	...	750·00
W. Prematileke	...	...	...	300·00
W. M. Gunasekera	...	...	...	805·99
				<hr/>
			Rs.	13,071·93
				<hr/> <hr/>



**P. D. Elaris, Esqr.**

Nos. 12 & 14, Gabo's Lane, Colombo

**ADJUSTMENT ACCOUNT FOR INCOME TAX PURPOSES**

To Adjusted Profit	...	...	...	27,561.76
	...	...	...	215.00
	...	...	...	390.74
	...	...	...	3,035.50
	...	...	...	52.68
	...	...	...	45.37
	...	...	...	<hr/>
	...	...	...	<b>Rs. 31,301.05</b>
	...	...	...	<hr/>
	...	...	...	<hr/>

**Rs. 31,301.05**

**Rs. 31,301.05**

By Nett Profit ...  
 " Charity & Presents ...  
 " Income Tax Paid ...  
 " Interest Payments ...  
 " Presents ...  
 " Income Tax ...

## Trading Account and Balance Sheet of P. D. Elaris (Chilaw)

(TRUE COPY)

P. D. Elaris, Esqr., Chilaw

Trading and Profit and Loss Account for the Period from 1st March, 1956 to 31st December, 1956

To Purchases :				By Sale :			
Rice, Flour, Sugar, Provision & K'oil	...	403,817.17		Rice, Flour, Sugar, Provisions & K'oil	...	385,287.34	
Gross Profit	...	9,768.90		Closing Stock	...	28,298.73	
		<u>Rs. 413,586.07</u>				<u>Rs. 413,586.07</u>	
To Printing & Stationery	...	145.73		By Gross Profit	...	9,768.90	
Telephone Calls	...	371.85		Nett Loss	...	2,284.85	
Lighting Charges	...	359.83					
Mess to Staff	...	4,201.50					
Salaries & Wages to Staff	...	2,780.75					
Interest to J. A. Benedict	...	2,538.50					
Charity	...	21.00					
Telephone Rental	...	180.00					
Licence	...	163.50					
Repairs to Business Premises	...	286.00					
Clothes to Staff	...	121.71					
Rates on Business Premises	...	59.46					
Legal Expenses	...	57.50					
Bank Commission	...	35.70					
Stationery	...	62.25					
Travelling & Sundries	...	668.47					
		<u>1,634.59</u>					
		<u>Rs. 12,053.75</u>				<u>Rs. 12,053.75</u>	

P. D. Elaris, Esqr. (Chilaw Branch & Lorry Transport)  
Balance Sheet as at 31st December, 1956

LIABILITIES				ASSETS			
Capital Account	...	76,000.00		Goodwill :			
Head Office Current Account	...	27,955.87		Building	...	40,000.00	
Loan Account :				Furniture	...	6,000.00	
J. A. Benedict	...	10,000.00		Lorries :			
Salaries due to Staff	...	97.57		CY 3090	...	10,000.00	
Sundry Creditors	...	15,344.43		CL 3901	...	10,000.00	
				Goodwill	...	20,000.00	
						10,000.00	
						<u>76,000.00</u>	
				Deed Expenses	...	1,875.00	
							77,875.00
				Cost of Lorry CY 4325	...		6,281.40
				Deposits : Electricity	...	52.50	
				Caltex Ceylon Ltd.	...	3,797.00	
							<u>3,849.50</u>
				Stock-in-Trade	...		28,298.73
				Advance to Staff	...		458.35
				Cash at Bank	...	296.68	
				Cash in Hand	...	5,192.42	
							<u>5,489.10</u>
				Profit & Loss Account :			
				Nett Loss in Business	...	2,284.85	
				Nett Loss in Lorry Transporting	...	4,860.94	
							<u>7,145.79</u>
		<u>Rs. 129,397.87</u>					<u>Rs. 129,397.87</u>

I certify that the above Balance Sheet as at 31st December, 1956 is in accordance with the Books of Account of Mr. P. D. Elaris, Chilaw. The books were checked against vouchers for three months. In my opinion the above Balance Sheet is properly drawn up to show a correct view of the state of affairs of the business according to information given to me and as shown by the Books of Account.

Colombo, 3rd October, 1957.

CECIL ARSECULERATNE,  
Registered Accountant.

**P. D. Elaris, Esqr., (Chilaw Branch)**

**ADJUSTMENT ACCOUNT FOR INCOME TAX PURPOSES**

To Nett Loss :		2,538.50
" Business as per P. & L. Account	...	2,284.85
" Adjusted Profit	...	274.65
	<u>Rs. 2,559.50</u>	<u>21.00</u>
	<u>Rs. 2,559.50</u>	<u>2,538.50</u>

By Interest to J. A. Benedict ...  
" Charity ...

**P. D. Elaris, Esqr.**

**STATEMENT OF LORRY TRANSPORTING FOR THE PERIOD FROM 1ST MARCH, 1956 TO 31ST DECEMBER, 1956**

**Expenditure :**

	Lorry No. CY 3090	Lorry No. CL 3910	Total Expenditure	By Hire Receipts	CY 3090	CL 3901	Total
To Salaries to Driver & Cleaner	2,119.00	2,069.44	4,188.44	Receipts	8,203.72	9,935.91	18,139.63
" Repairs & Spareparts	1,607.37	2,836.73	4,444.10	Loss	2,853.61	2,007.33	4,860.94
" Licence	500.00	580.00	1,080.00				
" Fitness Certificate	105.00	—	105.00				
" Insurance	31.25	31.25	62.50				
" Tyres & Tubes	1,517.86	723.49	2,241.35				
" Route Licence Expenses	157.10	135.00	292.10				
" Petrol, Oil & Sundries	4,909.75	5,304.33	10,214.08				
" Battery	—	153.00	153.00				
" Subscription to Lorry Association	110.00	110.00	220.00				
	<u>Rs. 11,057.33</u>	<u>11,943.24</u>	<u>23,000.57</u>		<u>Rs. 11,057</u>	<u>11,943.24</u>	<u>23,000.57</u>

**STATEMENT OF LORRY DEPRECIATION AS AT 31ST DECEMBER, 1956**

Lorry No.	Value on 1-3-56	Rates	Depreciation for 10 Months	W/D/V on 31-12-56
CY — 3090	...	25%	2,083.35	...
CL — 3910	10,000.00	25%	2,083.35	7,916.65
CY — 4325	6,281.40	—	Not worked	6,281.40
	<u>Rs. 26,281.40</u>		<u>Rs. 4,166.70</u>	<u>Rs. 22,114.70</u>

**P. D. Elaris (Lorry Transport)**

**ADJUSTMENT ACCOUNT FOR INCOME TAX PURPOSES**

To Nett Loss :		9,027.64
" Lorry Transport as per Statement	...	4,860.94
" Lorry Depreciation as per Statement	...	4,166.70
	<u>Rs. 9,027.64</u>	<u>9,027.64</u>

By Adjusted Loss ...

Rs. 9,027.64

P. D. Elaris, Esqr.

## LUNUGALA WATTA

					a.	c.	v.	p.
Acres :	Immature	...	...	...	7	2	28	
	Mature	...	...	...	14	1	38	
					<hr/>			
					22	0	26	
					<hr/>			

Note : Trees being very old, the Estates were not worked.

## Opening Stock as at 31-12-55 as per Adjustment Account

R.S.S.	808	Lbs.	...	...	1,155.44	
Scrap	156	,,	...	...	87.30	
	<hr/>					1,242.74
	964	,,				
	<hr/>					
<i>Less Sale of Rubber during the year</i>			...	...		1,242.74
						<hr/>
						Nil
						<hr/>

P. D. Elaris, Esqr.

## SUMMARY OF INCOME FOR THE YEAR ENDED 31ST DECEMBER, 1956

	Mature Immature	1 Acre ½ "	Coconuts	Lease as in last Year		
					Mature	1 Acre 1½ Acres
(1) Agriculture :						
Haliwalawatte	} Galle			...	125.00	
Aliaswatta				...		
Kotagahawatta				...	...	
Etambagahawatte,	Galle	1½ Acres	"	...	50.00	175.00
Paddy Fields :						
Etawelakedella, Hapuwalana		Acres 0-2-30	...	Lease as in last Year	100.00	
Haliwala Kumbura, Galle		" 1-3-24	...	"	120.00	
Lunhunugala Estate, Aranayake, Kegalle (see separate Statements)				...		220.00 Nil
				...		395.00
(2) Business :						
Colombo As per Adjustment Account	...		...	...	31,301.00	
Chilaw	...		...	...	275.00	
(3) Investments in Wife's Name (C. P. Vidanage) as per last Year	...		...	...		31,576.00
(4) Dividend : Bank of Ceylon 2 Shares Nett	...		...	...	4.95	
Add Income Tax	...		...	...	2.55	
(5) Rental Income	Gross Rent		Rates	Repairs		7.00
117, Barber Street, Colombo	864.00		144.00	144.00		576.00
				Nett Income		576.00
						38,784.00
Deductions :						
Loss in Lorry Transporting	As per Adjustment Account				9,028.00	
Interest to Non-Bankers	Colombo Business			...		
	Chilaw Business			...	5,573.00	
						14,601.00
				Total Income		Rs. 19,183.00

## Trading Account and Balance Sheet of P. D. Elaris (Colombo)

(TRUE COPY)

P. D. Elaris, Esqr., Nos. 12 &amp; 14, Gabo's Lane, Colombo 11

## BALANCE SHEET AS AT 31ST DECEMBER, 1957

LIABILITIES	ASSETS
Capital & Current Accounts :	Property Account As per last Balance Sheet ... 88,619.29
As per last Balance Sheet ... 116,069.47	Investments in Wife's Name :
Add Profit for the Year ... 19,193.20	No. 54, High Road, Galle (Mr. P. Munasinghe) ... 20,500.00
	Chilaw Branch Account :
Less Drawings ... 185,262.67	Capital Invested ... 76,000.00
	Current Account ... 4,929.51
	80,929.51
Trade Creditors (as per Schedule) ... 131,371.07	5,454.77
Loans on Pro-Notes & Mortgages (as per Schedule) ... 28,417.62	
Salaries due to Staff (as per Schedule) ... 47,700.00	
Rent Due ... 1,321.03	1,691.62
	185.00
	1,506.62
	40.00
	1,546.62
	7,256.26
	1,490.20
	3,088.05
	Rs. 208,884.70
	Rs. 208,884.70

We certify that the above Balance Sheet as at 31st December, 1957 has been prepared by us and is in accordance with the Books of Account and information and explanation given us.

Colombo, 11th November, 1959.

(Sgd.) CECIL ARSECULERATNE & Co.,  
Registered Accountants.

## P. D. Elaris, Esqr.

Nos. 12 & 14, Gabo's Lane, Colombo 11  
Trading and Profit and Loss Account for the Year ended 31st December, 1957

To Opening Stock	...	6,431.64	...	350,965.85
" Purchases	...	303,614.59	...	5,454.77
" Transport Charges	...	3,017.00	...	
" Gross Profit C/d:	...	43,356.89	...	
		<u>Rs. 356,420.12</u>		<u>Rs. 356,420.12</u>
" Salaries to Staff (as per Schedule)	...	3,944.55	...	43,356.89
" Rent : Shop & Stores	...	2,160.00	...	
" Electricity Charges	...	300.42	...	
" Charity & Presents	...	424.88	...	
" Postage & Telegrams	...	140.55	...	
" Income Tax Paid	...	1,900.00	...	
" Mess Allowances Paid to Staff	...	9,379.00	...	
" Telephone Rental & Calls	...	576.60	...	
" Printing & Stationery	...	105.75	...	
" Interest Payments (as per Schedule)	...	2,302.50	...	
" General Expenses :				
Advertisements & Calendars	410.50			
Municipal Licences	51.20			
Import Control Licence	500.00			
Accountancy Fees	175.00			
Repairs to Premises	162.25			
Rates of Premises	210.36			
Prequisites to Staff	859.95			
Bank Debit Tax	45.85			
Telegraphic Address Charges	25.00			
Donationpens	28.00			
Legal Expenses Collection of Debts	333.90			
Repairs to Scales	113.50			
Sundries	13.93			
	<u>2,929.44</u>			
" Nett Profits	...	19,193.20	...	
		<u>Rs. 43,356.89</u>		<u>Rs. 43,356.89</u>

Colombo, 11th November, 1959.

**P. D. Elaris, Esqr. (Colombo)****Schedule of Trade Creditors as at 31st December, 1957**

Messrs. S. M. R. & Co.	...	...	1,436·39
„ T. S. Sonachelam Pillai	...	...	2,387·43
„ S. T. V. & Co.	...	...	3,125·85
„ N. Sivasubramaniam	...	...	734·30
„ Abdul Hussein Jafferjee	...	...	289·15
„ A. M. Sultan & Co.	...	...	1,290·60
„ V. K. Parwathey Nathan	...	...	1,236·50
„ Petty Trade Customers (Sundry Creditors)	...	...	16,773·84
„ Siriwardena	...	...	1,143·56
			<hr/>
			Rs. 28,417·62
			<hr/> <hr/>

**Schedule of Loans & Mortgages as at 31st December, 1957**

K. H. Wilson	...	...	25,700·00
J. Savari Muthu	...	...	20,000·00
Selladurai	...	...	2,000·00
			<hr/>
			Rs. 47,700·00
			<hr/> <hr/>

**Schedule of Salaries due to Staff as at 31st December, 1957**

M. K. Peter	...	...	604·70
H. G. Uppasena	...	...	68·82
K. H. Edwin	...	...	477·08
G. Jamis	...	...	170·43
			<hr/>
			Rs. 1,321·03
			<hr/> <hr/>

**Schedule of Sundry Debtors as at 31st December, 1957**

P. H. Karunasena	...	...	5,657·21
K. Sangaralingam	...	...	150·00
Messrs. K. A. P. L. Kandy	...	...	831·75
Kolannawa U. D. C.	...	...	50·00
A. Pedric Silva	...	...	567·30
			<hr/>
			Rs. 7,256·26
			<hr/> <hr/>



**P. D. Elaris, Esqr. (Colombo)**

## Schedule of Staff Advances as at 31st December, 1957

G. Wijeyasinghe	...	...	...	235·68
R. D. Manis ...	...	...	...	268·92
W. Podisingho	...	...	...	104·31
B. K. Wilbert	...	...	...	29·26
K. D. Somapala	...	...	...	541·17
W. M. Goonesekera	...	...	...	310·86
				<hr/>
				Rs. 1,490·20
				<hr/> <hr/>

## Schedule of Salaries to Staff as at 31st December, 1957

M. K. Simon	...	...	...	900·00
R. D. Manis ...	...	...	...	570·00
W. M. Goonesekera	...	...	...	570·00
W. K. Jinadasa	...	...	...	85·80
K. D. Somapala	...	...	...	600·00
G. Wijeyasinghe	...	...	...	450·00
B. K. Wilbert	...	...	...	300·00
W. Podisingho	...	...	...	120·00
G. Jamis ...	...	...	...	300·00
I. D. Dharmasena	...	...	...	33·75
H. D. Carolis ...	...	...	...	15·00
				<hr/>
				Rs. 3,944·55
				<hr/> <hr/>

## Schedule of Interest Payments as at 31st December, 1957

K. Savarimuthu	...	...	...	1,800·00
Selladurai ...	...	...	...	30·00
N. Sivasubramaniam (2,500/- A/c. Settled)	...	...	...	250·00
Messrs. K. M. P. M. Firm (2,000/- A/c. Settled)	...	...	...	135·00
Messrs. A. M. N. Firm (1,000/- A/c. Settled) ...	...	...	...	87·50
				<hr/>
				Rs. 2,302·50
				<hr/> <hr/>

**P. D. Elaris, Esqr. (Colombo)****STATEMENT OF ADJUSTED PROFITS FOR TAX PURPOSES**

Year of Assessment 1958/59

Nett Profits	...	...	...	19,198·00
Charity & Presents	...	...	...	425·00
Income Tax	...	...	...	1,900·00
Advertisements & Calendars	...	...	...	411·00
Donation	...	...	...	28·00
				<hr/>
		Adjusted Profits	... Rs.	<b>21,957·00</b>
				<hr/> <hr/>

No. **41 OF 1964**

Supreme Court of Ceylon,  
Application No. 346 of 1962,  
Appeals Nos. 151 (Final) of 1960,  
and 374 (Final) of 1960.

District Court of Galle,  
Case No. L/6177.

*In Her Majesty's Privy Council*  
*on an Appeal from*  
*The Supreme Court of Ceylon*

BETWEEN

MANIKPURA PEIRIS MUNASINGHE of Dangedera,  
Galle.....1st Defendant-Respondent.  
*Appellant.*

AND

1. CYNTHIA PEARLINE VIDANAGE of Bataduwa,  
Galle.....Plaintiff-Appellant.  
*Respondent.*
  
2. BERTRAM CLIVE VIDANAGE of Dangedera, Galle,  
now of Motor and Cycle Stores, Puttalam Road  
Kurunegala.....2nd Defendant-Respondent.  
*Respondent.*

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**RECORD**  
**OF PROCEEDINGS**

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