

Judgment  
2

1957

37

1952

Supreme Court of Ceylon  
No. 572 (Final) of 1949.

District Court, Colombo  
No. 2680

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

~~BETWEEN~~

BETWEEN

LLEWELLYN PERERA ABEYAWARDENE (Plaintiff) - *Appellant*  
(Substituted in the place of Danister Perera Abeyawardene and  
Geoffrey Perera Abeyawardene both since deceased.)

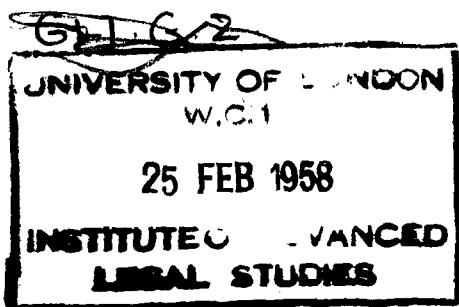
AND

MRS. CARMEN SYLVENE WEST (*nee* PEREIRA)  
of Anandagiri, Green Path, Colombo.....*Defendant—Respondent.*

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RECORD  
OF PROCEEDINGS

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49785

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Supreme Court of Ceylon  
No. 572 (Final) of 1949.

District Court, Colombo  
No. 2680

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

BETWEEN

1. DANISTER PERERA ABEYAWARDENE of Colombo.
2. GEOFFREY PERERA ABEYAWARDENE of Colombo.
3. LLEWELLYN PERERA ABEYAWARDENE  
of Colombo..... *Plaintiffs—Appellants*

AND

MRS. CARMEN SYLVENE WEST (*nee* PEREIRA)  
of Anandagiri, Green Path, Colombo..... *Defendant—Respondent.*

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RECORD  
OF PROCEEDINGS

---

No. 1

No. 1  
Journal  
Entries  
9-3-43 to  
29-1-52

**Journal Entries**

IN THE DISTRICT COURT OF COLOMBO

D. P. ABEYAWARDENA and others ..... *Plaintiffs.*

No. 2,680/L *Vs.*

MRS. C. S. WEST ..... *Defendant.*

**Journal**

The 9th day of March, 1943.

Messrs. Fernando & Fernando file appointment and plaint together with  
10 Pedigree and Abstract of Title.

Plaint accepted and Ss ordered for 9-6-43.

Sgd. S. C. SWAN,  
*Additional District Judge.*

26- 3-43 Proctors for plaintiff move that the summons returnable date be  
advanced to a date in April, 1943.

Allowed for 21-4-43.

Intld. S. C. S.,  
*A. D. J.*

31- 3-43 Summons issued on defendant.

20 21- 4-43 Fernando & Fernando for plaintiff.

Summons on defendant not served.

Re-issue for 14-7-43.

Intld. S. C. S.,  
*A. D. J.*

3- 5-43 Ss reissued on defendant.

14- 7-43 Ss served on defendant. Proxy filed.

Answer 1-9.

Intld. S. C. S.,  
*A. D. J.*

No. 1  
Journal  
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9-3-43 to  
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—continued

- 1- 9-43 John Wilson for defendant.  
Answer. Stand out 15/9.  
Intld. S. C. S.,
- 15- 9-43 Answer—S O 22/9.  
Intld. S. C. S.,
- 22- 9-43 Answer filed—stamps Rs. 3 tendered.  
Trial 14/3.  
Call upon plaintiff to supply deficiency. Stamps Rs. 3 affixed on  
deficiency and cancelled.  
Intld. S. C. S. 10
- 6- 3-44 Proctors for plaintiff move that the trial fixed for 14-3-44 be post-  
poned.  
Proctor for defendant consents.  
Of consent trial re-fixed for 6-7-44.  
Intld. S. C. S.,  
A. D. J.
- Case called again at the request of the Proctors.  
The date does not suit counsel.  
Trial re-fixed for 21st and 22nd September, 1944.  
Intld. S. C. S., 20  
A. D. J.
- 1- 5-44 Proctors for plaintiff file replication with notice to defendant.  
Replication understamped.  
Intld. S. C. S.,  
A. D. J.
- 25- 5-44 Proctor for defendant moves to amend the answer in terms of his  
motion.  
He files amended answer.  
Proctors for plaintiff have received notice.  
File. 30  
Intld. S. C. S.,  
A. D. J.



6- 9-44 As the defendant had to leave for India and is unable to be present in Court for the trial fixed for 21st and 22nd September, 1944, Proctor for defendant moves that the trial be postponed.

No. 1  
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—continued

Proctors for plaintiff consent.

Trial re-fixed for 18-5-45.

Intld. S. C. S.,  
A. D. J.

10- 5-45 As the defendant is in India and is unable to be present at the trial fixed for 18-5-45 Proctor for defendant moves to postpone the trial.

10

Proctors for plaintiff object to this application and take notice thereof for today.

*Vide* Proceedings.

Call on 14-5-45.

Intld. M. A. S.,  
A. D. J.

12- 5-45 Proctors for plaintiff file list of witnesses and documents and move for summons.

*Re* 6 obtain certified copies—Ss on rest allowed.

20

Intld. M. A. S.,  
A. D. J.

12- 5-45 Ss issued on 3 witnesses by plaintiff.

14- 5-45 Case called—*vide* application to postpone trial.

*Vide* proceedings.

Trial 17-7-45.

Intld. M. A. S.,  
A. D. J.

6- 7-45 Proctors for plaintiff file additional list of witnesses and move for summons on him.

30

They further state that they have obtained a copy of Special Case No. 116 and move to issue summons on the Secretary of this Court.

Allowed.

Intld. M. A. S.,  
A. D. J.

No. 1  
Journal  
Entries  
9-3-43 to  
29-1-52  
—continued

- 11- 7-45 Ss re-issued on 1 witness by plaintiff.  
 11- 7-45 Ss issued on 4 witnesses by plaintiff.  
 12- 7-45 Proctors for plaintiff file additional list of witnesses and documents  
 and move to issue summons on the witnesses.

Allowed.

Intld. M. A. S.,  
A. D. J.

- 12- 7-45 Summons issued on 3 witnesses by plaintiff.  
 13- 7-45 Proctor for defendant files additional list of witnesses and moves for  
 summons on the 1st and 2nd witnesses. 10

Summons allowed on 1st and 2nd.

Intld. M. A. S.,  
A. D. J.

- 13- 7-45 Ss issued on 2 witnesses by defendant.  
 16- 7-45 Proctors for plaintiff file additional list of witnesses and documents  
 and move to issue summons on the witnesses.

Summons allowed.

Intld. M. A. S.,  
A. D. J.

- 16- 7-45 Ss issued on witnesses by plaintiff. 20  
 17- 7-45 Trial.

No time— 4-12-45

14-12-45

Witnesses warned.

Intld. M. A. S.,  
A. D. J.

- 23-11-45 Ss issued on 9 witnesses by plaintiff.  
 30-11-45 Ss issued on 2 witnesses by defendant.  
 3-12-45 Defendant's additional list of witnesses filed.

4-12-45 Trial—*vide* proceedings.

Trial postponed for 15th and 16th July, 1946.

Intld. M. A. S.,  
A. D. J.

No. 1  
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29-1-52  
—continued

3- 7-46 As Mr. N. Nadarajah, K.C., who appears for the defendant is engaged in the Delimitation Commission and will be unable to appear on the 15th and 16th instant for which dates the trial of this case has been fixed, Proctor for defendant moves that Court do take the case off the trial roll of the 15th and 16th instant and refix the trial for some other date.

10

Let notice be given of this application to Proctor for defendant and case be called on 10-7-46.

Intld. M. A. S.,  
A. D. J.

10- 7-46 *Vide* application to postpone trial.

Mr. L. S. Fernando for plaintiff states he is ready for trial and objects to another date being given.

Mr. Wilson states an order for costs may be made against his clients.

Mr. Nadarajah, K.C., is engaged on public duty and I allow the application fixing this case for trial on 1-4-47.

20

Defendant will pay plaintiffs' incurred costs.

Sgd. S. S. J. G.

17- 3-47 Summons issued on 9 witnesses by plaintiff.

25- 5-47 As defendant and Mr. R. L. Pereira, K.C., a material witness for the defence, are both ill in London and are unable to attend Court on the 1st proximo Proctor for defendant files medical certificates and moves to postpone trial.

Proctors for plaintiffs received notice and object. They are prepared to allow Mr. Pereira's evidence taken on an adjourned date.

30 For proceedings see separate sheet.

Sgd. S. S. J. G.,  
A. D. J.

No. 1  
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—continued

21- 7-47 Ss issued on 9 witnesses of plaintiff.

21- 7-47 Ss issued on 3 witnesses by defendant.

4- 8-47 Trial—for proceedings see separate sheet.

Intld. S. S. J. G.,  
A. D. J.

Proctor files answer 17-9-47.

Trial on 4th and 8-12-47.

Intld. ....

17- 9-47 Answer filed.

Amended replication if necessary 1/10.

10

Intld. S. S. J. G.,  
A. D. J.

1-10-47 Messrs. Fernando & Fernando for plaintiff.

Amended replication if any.

Not ready—for 29/10.

Intld. S. S. J. G.,  
A. D. J.

29-10-47 Amended replication.

Filed—Trial on due date.

Intld. S. S. J. G., 20  
A. D. J.

27-11-49 Ss on 9 witnesses by plaintiff.

3-12-47 With notice to Proctor for defendant, Proctor for plaintiffs files  
additional list of witnesses and documents.

File.

Intld. S. S. J. G.,  
A. D. J.

4-12-47 Trial.

Mr. Adv. Hayley with Mr. Adv. Gratiaen and Mr. Adv. D. W. Fernando for plaintiff.

No. 1  
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29-1-52  
—continued

Mr. Adv. Choksy with Mr. Adv. Jayawardena and Mr. Adv. E. G. Wickremanayake and Mr. Adv. Rengenathan for defendant.

Trial to be held in B. Court on 8/12.

Intld. S. S. J. G.,  
A. D. J.

10 5-12-47 Proctor for defendant moves to amend the amended answer by substituting for the present sub-para 15 (e) the following new sub-para :

“ The Order of the 18th June, 1896 was null and void as—  
(i) the said order was made without jurisdiction and *ultra vires*,  
and/or (ii) as the application in the said proceedings was not one  
within the scope of the provisions of the Entail and Settlement  
Ordinance, and/or (iii) as the application on which it was founded  
was not made by the proper person or persons who could have  
made the application but was made upon an application of persons  
who were not in law entitled to make the same.”

20 He also files herewith answer as amended.

Proctors for plaintiff take notice subject to objections which shall  
be taken at the trial.

Call on 8-12-47.

Intld. V. E. R.,  
A. D. J.

8-12-47 Case called—*vide* above.

Mr. Goonesekera, A.D.J. on sick leave.

30 Mr. Choksy with Mr. E. B. Wickremanayake, Mr. U. A. Jayasundera  
and Mr. Renganathan instructed by Mr. John Wilson, for  
defendant.

Mr. F. A. Hayley, K.C., with Mr. Gratiaen, Mr. D. W. Fernando  
instructed by Messrs. Fernando & Fernando for plaintiffs.

No. 1  
Journal  
Entries  
9-3-43 to  
29-1-52  
—continued

Trial re-fixed for 24th and 29th June, 1948.

Intld. V. E. R.,  
A. D. J.

20- 4-48 As Mr. B. K. Billimoria a material witness for the defendant is leaving for the United Kingdom early in May and will not be in Colombo on the 24th and 29th June, 1948, for which dates the trial of the above case is fixed, Proctor for defendant moves that the Court be pleased to record the evidence of Mr. B. K. Billimoria *de bene esse* on any date convenient to Court between the 16th April and 3rd May, 1948.

10

Proctors for plaintiffs take notice.

Evidence of Mr. B. K. Billimoria to be recorded on 28-4-48.

Sgd. ....,  
A. D. J.

28- 4-48. Evidence of Mr. Billimoria.

7- 6-48 Plaintiff's additional list of witnesses and documents filed with notice to Proctor for defendant.

Intld. ....,

7- 6-48 Plaintiffs' additional list of witnesses filed. Copy of list sent by registered post to Proctor for defendant.

20

Intld. ....,

7- 6-48 Ss on 12 witnesses by plaintiff.

24- 6-48 Trial—*vide* proceedings.

Further hearing 29-6-48.

Intld. ....

29-6-48 Further hearing—*vide* proceedings.

Further hearing on 30-6-48.

Intld. ....  
A. D. J.

- 30- 6-48 Further hearing—*vide* Proceedings.  
Further hearing on 1-7-48.  
Intld. . . . ., *A. D. J.*
  
- 1- 7-48 Further hearing—*vide* proceedings.  
Judgment on 29-7-48.  
Intld. . . . ., *A. D. J.*
  
- 1- 7-48 Proctor for plaintiffs files documents P1 to P8 with list.  
10 Intld. . . . .
  
- 12- 7-48 Proctor for defendant files documents D1 to D43 with list.  
Intld. . . . .
  
- 29- 7-48 Judgment delivered.  
Intld. . . . ., *A. D. J.*
  
- 30- 7-48 Proctor for plaintiffs tenders stamps to the value of Rs. 3 being  
deficiency of stamp duty.  
File.  
20 Intld. . . . ., *A. D. J.*
  
- 2- 8-48 Proctor for defendant-appellant files petition of appeal and tenders  
notice of tendering security to be served through Court on the  
plaintiffs-respondents to the petition and moves that the notice be  
issued for service forthwith.  
He also tenders stamps to the value of Rs. 90 for S.C. Judgment and  
Certificate in appeal.  
He also applies for typewritten copies and moves for a Paying-in-  
Voucher for Rs. 25.  
1. Petition of appeal accepted.  
30 2. Issue notice of appeal for 13-8-48.

No. 1  
Journal  
Entries  
9-3-43 to  
29-1-52  
—continued

- 3. Affix stamps to the respective forms.
- 4. Issue paying in voucher for Rs. 25 and Rs. 250.

Sgd. . . . . ,  
A. D. J.

2- 8-48 Notice of security issued to 1-5 plaintiffs-respondents.

3- 8-48 Paying-in-Voucher for Rs. 250 and Rs. 25 issued.

13- 8-48 Notice served on 2nd plaintiff.

Not served on 1st and 3rd plaintiffs. They are said to be evading service—re-issue on them for 22/9.

Security accepted (Rs. 250 has been deposited) bond signed. 10

Intld. S. S.,  
D. J.

13- 8-47 Proctor for appellant tenders bond to prosecute appeal together with K. R. for Rs. 250 and Rs. 25 and notice of appeal.

File bond and Kachcheri receipts.

Issue notice of appeal for 22-9-48.

Intld. S. S.,  
D. J.

13- 8-48 Notice of appeal issued.

Notice of tendering security re-issued.

Intld. . . . . 20

24- 8-48 Proctors for defendants file decree for signature.

Decree signed.

Intld. . . . . ,  
A. D. J.

22- 9-48 Notice of tendering security served on 1st and 3rd plaintiffs-respondents.

Notice of appeal served on 1st-3rd plaintiffs-respondents.

Forward record to Supreme Court in due course.

Intld. . . . . , 30  
A. D. J.



- 17- 2-49 Proctors for plaintiffs-respondents apply for two copies of the type-written brief and forward a M.O. for Rs. 50 in favour of G.A., W.P. and move that it be forwarded to G.A., W.P. with a Paying-in-Voucher.

No. 1  
Journal  
Entries  
9-3-43 to  
29-1-52  
—continued

Allowed.

Issue Paying-in-Voucher for Rs. 50 and forward M.O. to G.A., W.P.

Intld. . . . . ,  
*A. D. J.*

- 10 18- 2-49 Paying-in-voucher for Rs. 50 issued and forwarded to G.A., W.P. with M.O.

Intld. . . . .

- 7- 3-49 Kachcheri Receipt 2119/53830 of 19-2-49 for Rs. 50 filed.

Intld. . . . .

- 30- 9-49 Record forwarded to Supreme Court without briefs.

Intld. . . . . ,  
*Secretary.*

- 22-10-51 The Registrar, S.C., returns the record with a copy of judgment, as it is considered and adjudged that the appeal is allowed with costs of both Courts.

- 20 File.

Intld. . . . . ,  
*A. D. J.*

- 29- 1-52 The Registrar, S.C. calls for the record to enable him to get a type-script prepared for transmission to H. M. the King in Council.

Forward.

Intld. L. W. DE S.,  
*A. D. J.*

No. 2  
Plaint of the  
Plaintiffs  
9-3-43

No. 2

Plaint of the Plaintiffs

IN THE DISTRICT COURT OF COLOMBO

- 1. DANISTER P. ABEYAWARDENA,
- 2. GEOFFREY P. ABEYAWARDENA,
- 3. LLEWELLYN P. ABEYAWARDENA, all of Colombo..... *Plaintiffs.*

No. 2,680. Vs.

MRS. CARMEN SYLVENE WEST (*nee* PEREIRA) of "Anandagiri,"  
Green Path, Colombo ..... *Defendant*

On this 9th day of March, 1943. 10

The plaint of the plaintiffs appearing by Llewellyn Solomon Fernando, Proctor of the Hon'ble the Supreme Court, practising under the name, style and firm of Fernando & Fernando, states as follows :—

1. The defendant resides and the land which is the subject matter of this action is situate at Colombo within the jurisdiction of this Court.

2. The persons named Mututantrige Siman Fernando and his wife, Colombapatabendige Maria Perera, who were married in community of property were entitled to the several lands and premises fully described in the First and Second Schedules hereto.

3. By Deed of Gift No. 2,110 dated 4th October, 1883, attested by 20 C. de A. Gooneratne, Notary Public, they conveyed the land and premises described in the First Schedule hereto by way of gift to their daughters Cecilia and Jane Fernando subject to the following conditions :—

(a) that the said Siman Fernando shall during his life time be entitled to take use and appropriate to his own use the issues, rents and profits of the said premises and that after his death in the event of his wife C. Maria Perera surviving him she shall during her lifetime be entitled to take use and appropriate to her own use a just half of the said issues, rents and profits, the other half being taken used and appropriated by the 30 donees, to wit, the said M. Cecilia Fernando and M. Jane Fernando.

(b) that the said donees M. Cecilia Fernando and M. Jane Fernando shall not nor shall either of them be entitled to sell, mortgage, lease for a longer term than four years at a time or otherwise alienate or encumber the said premises nor shall the same or the rents and profits thereof be liable to be sold in execution for their debts or for the debts of any or either of them and the said premises shall after their death devolve on their lawful issues respectively and in the event of any one of the said donees dying without leaving lawful issues her share right and interest in the said premises shall devolve on and revert to the surviving donees subject however to the conditions and restrictions aforesaid.

No. 2  
Plaint of the  
Plaintiffs  
9-3-43  
—continued

10

4. Upon an application made in that behalf by the said M. Siman Fernando and C. Maria Perera under the provisions of section 4 of the Entail and Settlement Ordinance No. 11 of 1876 of Special Proceedings No. 116, this Court by its Order dated 18th June, 1896 authorised the exchange of the land and premises described in the First Schedule hereto for the lands and premises described in the Second Schedule hereto. The said Order further authorised the transfer of the land and premises described in the First Schedule hereto to the said M. Siman Fernando free of the conditions and restrictions imposed by the said Deed No. 2,110 and the transfer by the said M. Siman Fernando and C. Maria Perera to the said Cecilia and Jane Fernando of the lands and premises described in the Second Schedule hereto subject to certain conditions set out in the said Order.

5. In pursuance of the said Order of Court the land and premises described in the First Schedule hereto were transferred to the said M. Siman Fernando by Deed No. 1,399 dated 23rd June, 1896, attested by Arthur Alwis, Notary Public, free of the conditions and restrictions imposed by the said Deed No. 2,110 and the land and premises described in the Second Schedule hereto were transferred to the said Cecilia and Jane Fernando by the said M. Siman Fernando and C. Maria Perera by Deed No. 1,398 dated 23rd June, 1896 attested by the said Arthur Alwis, Notary Public.

6. By reason of the averments in paragraphs 4 and 5 above the plaintiffs state that the lands and premises described in the Second Schedule hereto became subject to the conditions and restrictions imposed by the said Deed No. 2,110 by virtue of the section 8 of the Entail and Settlement Ordinance No. 11 of 1876.

7. By Deed No. 1,401 dated the 23rd June, 1896 the said M. Cecilia Fernando transferred an undivided half share of the said lands and premises described in the Second Schedule hereto to M. Siman Fernando and thereupon M. Siman Fernando and M. Jane Fernando became co-owners.

8. By Deed No. 2,180 dated 30th June, 1900 the said M. Jane Fernando and the said M. Siman Fernando among themselves partitioned the said lands described in the Second Schedule hereto and under the said partition the land

40

No. 2  
 Plaint of the  
 Plaintiffs  
 9-3-43  
 —continued

and premises described in the Third Schedule hereto were allotted to the said M. Jane Fernando in lieu of and as and for her undivided half share of the said lands and premises described in the Second Schedule hereto.

9. The said M. Jane Fernando thereafter held and possessed the land described in the Third Schedule hereto subject to the conditions and restrictions contained in Deed No. 2,110 aforesaid.

10. The said M. Siman Fernando and C. Maria Perera are now both dead. The said M. Jane Fernando died on or about the 6th May, 1933 leaving her surviving children the plaintiffs and the plaintiffs thereupon became entitled to the said land in the Third Schedule hereto described. 10

11. The defendant who has no manner of title to the land and premises fully described in the Fourth Schedule hereto which is a defined portion of the land and premises described in the Third Schedule hereto is in wrongful and unlawful possession of the same to the loss and damage of the plaintiffs in a sum of Rs. 2,500 per annum. The plaintiffs claim against the defendant the sum of Rs. 7,500 being the loss and damage suffered by them for the last three years.

12. The land and premises in the Fourth Schedule hereto described are reasonably worth the sum of Rs. 50,000.

Wherefore the plaintiffs pray—

- (a) that they be declared entitled to the land and premises fully 20 described in the Fourth Schedule hereto, and that a Commission do issue to D. H. Kalupahana, Licensed Surveyor to survey the said land and premises.
- (b) for damages in Rs. 7,500 and for further damages at the rate of Rs. 2,500 per annum from date hereof until they are restored to the possession of the said land and premises.
- (c) that the defendant be ejected from the said land and the plaintiffs be restored to possession thereof.
- (d) for costs of this action and for such other and further relief in the premises as to this Court shall seem meet. 30

Sgd. FERNANDO & FERNANDO,  
*Proctors for Plaintiffs.*

*The First Schedule Above Referred to :*

All that the land and premises (comprising two allotments) marked lots 4 and 5, Maradahn Ward No. 8, and of the extent of three acres two roods and thirty-eight decimal two-four perches situated at Colombo.

*The Second Schedule Above Referred to :*

No. 2  
 Plaint of the  
 Plaintiffs  
 9-3-43  
 —continued

(a) All that allotment of land situated at Marandhan Cinnamon Gardens and bounded on the north-east by land said to belong to the Crown ; on the south-east by the land described in Plan No. 64,104 and on all other sides by land reserved for public purposes and containing in extent four acres one rood and eight perches according to the Government Title Plan No. 64,105 dated 24th June, 1865 and authenticated by W R. Noad, Acting Surveyor-General, excluding therefrom the following portions to wit : (1) a portion in extent two roods and twenty-six and a half perches sold to Dr. W. P. Charsley ; (2) another 10 portion containing in extent two roods and twenty-seven perches sold to William Boyan ; and (3) another portion in extent two roods and nine perches sold to Juanis de Silva.

(b) An allotment of land situated at Marandhan aforesaid and bounded on the north by land reserved for public purposes along the road on the east by a road ; on the south by land purchased by M. Siman Fernando ; and on the west by land described in Plan No. 64,105 and containing in extent one acre and seventeen perches according to the figure of survey and description thereof No. 74,323 authenticated by A. B. Fyers, Surveyor-General, bearing date the 13th day of February, 1869.

20 (c) An allotment of land situated at Marandhan aforesaid and bounded on the north by land described in Plan No. 74,323 on the east by a road ; on the south by land said to belong to the Crown ; and on the west by land described in Plan No. 64,105 containing in extent one acre two roods and twelve perches according to the Government Title Plan thereof No. 74,534 dated the 6th day of March, 1869 authenticated by the said A. B. Fyers, excluding therefrom a portion in extent two roods and thirty-two perches sold to the said Juanis de Silva.

*The Third Schedule Above Referred to :*

All that the eastern portion of the three contiguous allotments of land and the buildings standing thereon called and known as Siriniwasa and situated 30 at Edinburgh Crescent, Colombo (and marked A, B and C in the plan thereof dated the 20th June, 1900, made by J. de Silva, Surveyor and comprising—

(a) a portion of land described in Title Plan No. 74,323 ; (b) the whole of the remaining portion of the land described in Title Plan No. 74,534 ; and (c) a portion of the land described in Title Plan No. 64,105) and bounded on the north by Green Path ; on the east by the road known as Edinburgh Crescent ; on the south by the boundary wall ; and on the west by the remaining portion allotted to M. Siman Fernando ; and containing in extent two acres and five perches according to the said figure of survey.

No. 2  
 Plaint of the  
 Plaintiffs  
 9-3-43  
 —continued

*The Fourth Schedule Above Referred to :*

A portion of land called Siriniwasa, situated at Edinburgh Crescent aforesaid ; and bounded on the north by Green Path ; on the east by Edinburgh Crescent ; on the south by Public Library premises ; and on the west by Anandagiri premises or lots " D " and " E " in Plan No. 581 dated 20th June, 1910, made by Juan Silva, Surveyor ; and containing in extent about two roods and twenty-five perches.

Sgd. FERNANDO & FERNANDO,  
*Proctors for Plaintiffs.*

*Memo of Documents Relied on by the Plaintiffs*

10

1. Deed No. 2,110 dated 4th October, 1883.
2. Special Case No. 116 of this Court.
3. Deed No. 1,399 dated 23rd June, 1896.
4. Deed No. 1,398 dated 23rd June, 1896.
5. Deed No. 1,401 dated 23rd June, 1896.
6. Deed No. 2,180 dated 30th June, 1900.

Sgd. FERNANDO & FERNANDO,  
*Proctors for Plaintiffs.*

M. SIMAN FERNANDO  
×  
C. MARIA PERERA

No. 2  
Plaint of the  
Plaintiffs  
9-3-43  
—continued

2110  
4-10-83

½ of land in Schedule 1  
Cecilia

½ of land in Schedule 1  
Jane

1399 of 23-6-1896

M. Siman Fernando of land in  
Schedule 1

Half of land in Schedule 2

1401/23-6-96

Lands in Schedule 2  
1398/23-6-96

½ of land in Schedule 2  
Cecilia

½ of land in Schedule 2 Jane who  
entered into a partition deed No.  
2180 of 30-6-1900 and who got  
land in 3rd Schedule

Jane dd.  
leaving

Plaintiffs

No. and date Notary	Grantor	Grantee	Share or entirety	Land and boundaries
2110 4-10- 1883 C. de A. Guna- ratna Giff	Mututantrige Siman Fernan- do and Colom- bepatabendige Maria Perera	1. Mututantri- ge Cecilia Fernando and 2. Mututantri- ge Jane Fernando	Entirety in equal Shares	<p>All these two contiguous allotments No. 4 and 5 of land now forming one property with the buildings thereon situated at Maradana Ward No. 8 Municipality of Colombo.</p> <p>Subject to the conditions</p> <p>(1) that the said M. S. Fernando shall during his lifetime be entitled to take use and appropriate the issues rents and profits of the said premises and that after his death and in the event of his wife C. Maria Perera surviving him she shall during her lifetime be entitled to take use and appropriate a just half of the said issues, rents and profits the other half being taken by the donees.</p> <p>(2) that the said donees shall not nor shall either of them be entitled to sell mortgage lease for a longer term than four years at a time or otherwise alienate or encumber the said premises nor shall the same or the rents and profits thereof be liable to be sold in execution for their debts or for the debts of either of them and the said premises shall after their death devolve on their lawful issue respectively and in the event of any one of the said donees dying without lawful issue her share right and interest in the said premises shall devolve on and revert to the surviving donee.</p>



No. and date Notary	Grantor	Grantee	Share or entirety	Land and boundaries	This deed has been executed in pursuance of the order in special Proceedings No. 116 of this court
1398 28.6.1896 A. W. Alwis Gift	Mututantrige Siman Fernando and Colom-bepatabendige Maria Perera	1. Mututantrige Cecilia Fernando and 2. Mututantrige Jane Fernando	Entirety in equal shares	<p>All these the allotments of land situated at Edinburgh Crescent Flower Road and Green Path Cinnamon Gardens Colombo and the buildings thereon called Srimiwasa bearing Assessment No. 8.</p> <p>(i) Land situated at Maradana Cinnamon Gardens Colombo bounded on the N. E. by lands said to belong to the Crown S. E. by land described in plan No. 64104 and on all other sides by land reserved for public purposes. Extent A4 R1 P08 (subject to certain exclusions.</p> <p>(ii) Land situated as above N. by land reserved for public purposes along the road E. by a road S. by land purchased by M. Siman Fernando W. by land described in Plan No. 64105.</p> <p style="text-align: center;">A R P 1 0 17</p> <p>(iii) Land situated at Cinnamon Gardens aforesaid N. by land described in Plan No. 74323 E. by a road S. by land said to belong to the Crown W. by land described in Plan No. 64105</p> <p style="text-align: center;">A R P 1 2 12</p> <p>Subject to the conditions:</p> <p>that they the said Mututantrige Cecilia Fernando and Mututantrige Jane Fernando shall not sell mortgage or otherwise alienate the said premises except with the consent of the said M. S. Fernando and C. Maria Perera or the survivor of them and that the said M. S. Fernando shall during his lifetime be entitled to take use and enjoy and appropriate to his own use the rents and profits of the said premises and that after his death and in the event of the said C. M. Perera surviving him she shall during her lifetime be entitled to take to her own use one just half of the rents, issues and profits the other half thereof being taken by the donees.</p>	

No. and date Notary	Grantor	Grantee	Share or entirety	Land and boundaries	Freed of all restrictions contained in deed No. 2110 ( <i>supra</i> )
1399 23.6.1896 A. W. Alwis	Mututantrige Cicilia Fernando and Mututantrige Jane Fernando	M. Siman Fernando	Entirety	All these two contiguous allotments of land Nos. 4 and 5 now forming one property. (Same as in deed No. 2110 <i>supra</i> )	
1401 23.6.1896 A. W. Alwis	Mututantrige Cecilia Fernando	M. Siman Fernando	half share	(i) Land No. (i) in deed No. 1398 ( <i>Supra</i> ) (ii) Land No. (ii) in deed No. 1398 ( do ) (iii) Land No. (iii) in deed No. 1398 ( do )	
2180 30.6.1900 A. W. Alwis Deed of Partition	Between :-	Mututantrige Siman Fernando and Mututantrige Jane Fernando		Allotted to M. Jane Fernando. All that eastern portion of the aforesaid portion of the three contiguous portions bearing assessment No. 8 and marked A.B.C. in the Plan bearing date 20th June 1900 made by Juan de Silva Surveyor and comprising, (a) portion of the land described in T. P. 74323 (b) the whole of the remaining portion of the land described in T. P. No. 74534 and (c) the portion of the land described in T. P. No. 64105 and together bounded N. by Green Path E. by Edinburgh Crescent S. by boundary wall W. by remaining portion allotted to M. Siman Fernando	
Allotted to M. Siman Fernando All that Western Portion.				A R P 2 0 05	Sgd. FERNANDO & FERNANDO Proctors for Plaintiff
This 5th/9th day of March 1943.					

**Answer of the Defendant**

## IN THE DISTRICT COURT OF COLOMBO

1. DANISTER P. ABEYAWARDENA,
2. GEOFFREY P. ABEYAWARDENA.
3. LLEWELLYN P. ABEYAWARDENA, all of Colombo . . . . . *Plaintiffs.*

Vs.

MRS. CARMEN SYLVENE WEST (*nee* PEREIRA) of "Anandagiri",  
Green Path, Colombo . . . . . *Defendant.*

10 On this 22nd day of September, 1943.

The answer of the defendant abovenamed appearing by John Wilson, her Proctor, states as follows :—

1. The defendant admits the averments in paragraphs 1, 2, 7, 8 and 12 of the plaint. Save as hereinafter admitted the defendant denies the other averments in the plaint.

2. Answering paragraph 3 of the plaint the defendant states that the grantors upon deed No. 2,110 conveyed the lands and premises therein described upon and subject to the terms and conditions therein mentioned.

3. While admitting that M. Siman Fernando and C. Maria Perera  
20 purported to make an application under the Entail and Settlement Ordinance, the defendant denies that this Court authorised any such exchange of premises as is averred in paragraph 4 of the plaint and denies the further averments in the said paragraph save and except the averment that it authorised the transfer of the lands and premises described in the Second Schedule to the plaint, subject to the conditions relative to the transfer of these premises set out in the said Order.

4. The defendant admits the bare execution of the two deeds mentioned in paragraph 5 of the plaint and states that the said Cecilia Fernando and Jane Fernando became absolutely entitled to the lands and premises described in the Second Schedule to the plaint but subject only to the terms and conditions  
30 expressly mentioned in deed No. 1,398 and/or in the Order of the Court dated 18th June, 1896 and to no other terms or conditions.

5. The defendant denies the averments in paragraphs 6 and 9 of the plaint and states that, in any event, the Order of this Court of the 18th June, 1896 is final and conclusive as to the terms and conditions, if any or at all, upon

No. 3  
 Answer of the  
 Defendant  
 22-9-43  
 —continued

which the said Cecilia Fernando and Jane Fernando held the said lands and premises described in the Third Schedule to the plaint, and that the same is binding on the plaintiffs.

6. While admitting the deaths of Siman Fernando and Maria Perera and Jane Fernando as set out in paragraph 10 of the plaint the defendant denies that the plaintiffs have any right or title to the lands described in the Third Schedule to the plaint.

7. The defendant denies the averments in paragraph 11 of the plaint and states that she is in the lawful possession and enjoyment of the lands and premises (with the buildings thereon) described in the Fourth Schedule to the 10 plaint. The defendant accordingly denies that the plaintiffs are entitled to any of the reliefs prayed for in the plaint.

By way of further answer the defendant states as follows :

8. By Deed No. 3,129 dated 30th November, 1905 attested by Arthur Alwis of Colombo, Notary Public, the said Jane Fernando, acting with the consent and concurrence of her husband and with the consent of the said C. Maria Perera (as required by the terms and conditions of the said Deed No. 1,398) sold and conveyed the lands and premises in the Third Schedule to the plaint, to the said M. Simon Fernando who became the absolute owner thereof.

9. By Deed No. 4,218 of the 6th December, 1907 attested by R. F. de 20 Saram of Colombo, Notary Public, the said M. Simon Fernando sold and transferred the said lands and premises to M. James Fernando who thereupon became the absolute owner thereof.

10. The said James Fernando died on or about the 17th March, 1911, leaving a Last Will and Testament and also a Codicil which were duly proved in Testamentary proceedings No. 3,927 of this Court.

11. The Trustees under the said Last Will and Testament and Codicil of the said M. James Fernando by Deed No. 1,382 of the 12th July, 1924 attested by F. J. de Saram transferred and conveyed the lands and premises described therein to Cecil Clementi, then Colonial Secretary of Ceylon and to Robert 30 Neimann Thaine, the then Government Agent of the Western Province, as Trustees of the Sri Chandrasekere Fund.

12. Upon Deeds Nos. 290, 318 and 419 dated respectively the 20th December, 1924, 23rd March, 1925, and 19th January, 1926, all attested by F. W. de Vos of Colombo, Notary Public, Richard Lionel Pereira purchased, *bona fide* and for valuable consideration (*inter alia*) the lands and premises described in the Fourth Schedule to the plaint and thereby became the absolute owner and proprietor of the same free of any limitations or conditions and free of any alleged *fidei commissum* or the claims of any persons whomsoever.

13. The said R. L. Pereira by Deed No. 340 dated 20th April, 1935, attested by G. A. Caldera of Colombo, Notary Public, gifted the land and premises described in the Fourth Schedule to the plaint, to the defendant. The defendant thereafter built two modern houses on the said land at a cost of over Rs. 70,000 and the said land and houses are lawfully in her possession.

No. 3  
Answer of the  
Defendant  
22-9-43  
—continued

14. The defendant and her predecessors in title have been in the lawful possession of the said land and premises and of the buildings thereon, by a title independent of and adverse to the plaintiffs and all other persons and claim a title by prescriptive possession in addition to the title set out above.

10        15. As matters of law, the defendant further pleads :—

(a) That the said Deed No. 2,110 was not validly accepted according to law, on behalf of the donees thereunder and the said deed was of no force or effect.

20        (b) The said deed and the gift it purported to make and/or the *fidei commissum* which said Deed No. 2,110 purported to create (assuming that the said deed was valid and effectual as a donation) were rescinded or rendered nugatory by the Order of this Court in the said proceedings No. 116 ; and that, in any case, there was no *fidei commissum*, which could be operative, in existence after the said Order in the said proceedings. The defendant accordingly holds the land and premises forming the subject matter of this action free of any alleged *fidei commissum*.

(c) The said Order in the said proceedings is final and conclusive as to the conditions under which the lands and premises described in the said Deed No. 1,398 and is binding on the plaintiffs. The plaintiffs are estopped by the said Order.

30        (d) In view of the terms of the Order of this Court in the said proceedings, no *fidei commissum* attached to the lands and premises conveyed by the said Deed No. 1,398 ; or, alternatively, that as she is a successor in title to a *bona fide* purchaser for value without notice of any alleged *fidei commissum*, the defendant has acquired an absolute title to the premises forming the subject matter of this action and the plaintiffs cannot have or maintain this action as against her.

40        (e) That the said application in the said proceedings was not one coming within the scope of the provisions of the Entail and Settlement Ordinance, 1876 and the Order of the 18th June, 1896, in so far as it purported to be one made under the provisions of the said Ordinance was made without jurisdiction and was a nullity.

No. 3  
Answer of the  
Defendant  
22-9-43  
—continued

(f) That the only terms and conditions subject to which the lands and premises described in the said Deed No. 1,398 were held were those set out in the said deed and no others.

(g) The plaintiffs cannot maintain this action upon the said Deed No. 1,398 without having same rectified.

16. In the event of the Court holding that the land and premises described in the Fourth Schedule to the plaint were subject to a *fidei commissum* in accordance with the terms of the said Deed No. 2,110 and that the defendant is bound thereby the defendant claims a sum of Rs. 70,000 as compensation for improvements and a right of *jus retentionis* until she is paid the said sum. 10

Wherefore the defendant prays that plaintiff's action be dismissed or alternatively, that the plaintiffs jointly and severally be condemned to pay defendant the sum of Rs. 70,000 with interest thereon at 9 per centum per annum from the date of this action till date of decree and thereafter on the aggregate amount of the decree till payment in full, that the defendant be declared entitled to a *jus retentionis* over the said premises until payment of the said amount so decreed, that the defendant be awarded her costs in any event, and that she be granted such other or further relief in the premises though not herein specially prayed for as to the Court shall seem fit.

Sgd. JOHN WILSON, 20  
Proctor for Defendant.

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No. 4

**Amended Answer of the Defendant**

IN THE DISTRICT COURT OF COLOMBO

1. DANISTER P. ABEYAWARDENA,
2. GEOFFREY P. ABEYAWARDENA,
3. LLEWELLYN P. ABEYAWARDENA, all of Colombo . . . . . *Plaintiffs.*

No. 2,680/L

V's.

MRS. CARMEN SYLVENE WEST (*nee* PEREIRA) of "Anandagiri",  
Green Path, Colombo . . . . . *Defendant.* 30

On this 22nd day of September, 1943.

The amended answer of the defendant abovenamed appearing by John Wilson, her Proctor, states as follows :—

1. The defendant admits the averments in paragraphs 1, 2, 7 and 8 of the plaintiff. Save as hereinafter admitted the defendant denies the other averments in the plaintiff.

No. 4  
Amended  
Answer of the  
Defendant  
22-9-43  
—continued

2. Answering paragraph 3 of the plaintiff the defendant states that the grantors upon Deed No. 2,110 conveyed the lands and premises therein described upon and subject to the terms and conditions therein mentioned.

3. While admitting that M. Siman Fernando and C. Maria Perera purported to make an application under the Entail and Settlement Ordinance, the defendant denies that this Court authorised any such exchange of premises 10 as is averred in paragraph 4 of the plaintiff and denies the further averments in the said paragraph save and except the averment that it authorised the transfer of the lands and premises described in the Second Schedule to the plaintiff subject to the conditions relative to the transfer of these premises set out in the said order.

4. The defendant admits the bare execution of the two deeds mentioned in paragraph 5 of the plaintiff and states that the said Cecilia Fernando and Jane Fernando became absolutely entitled to the lands and premises described in the Second Schedule to the plaintiff but subject only to the terms and conditions expressly mentioned in Deed No. 1,398 and/or in the Order of the Court dated 20 18th June, 1896 and to no other terms or conditions.

5. The defendant denies the averments in paragraphs 6 and 9 of the plaintiff and states that in any event, the Order of this Court of the 18th June, 1896 is final and conclusive as to the terms and conditions, if any or at all, upon which the said Cecilia Fernando and Jane Fernando held the said lands and premises described in the Third Schedule to the plaintiff and that the same is binding on the plaintiffs.

6. While admitting the deaths of Siman Fernando and Maria Perera and Jane Fernando as set out in paragraph 10 of the plaintiff the defendant denies that the plaintiffs have any right or title to the lands described in the Third 30 Schedule to the plaintiff.

7. The defendant denies the averments in paragraph 11 of the plaintiff and states that she is in the lawful possession and enjoyment of the lands and premises (with the buildings thereon) described in the Fourth Schedule to the plaintiff. The defendant accordingly denies that the plaintiffs are entitled to any of the reliefs prayed for in the plaintiff.

By way of further answer the defendant states as follows :

8. By Deed No. 3,129 dated 30th November, 1905, attested by Arthur Alwis of Colombo, Notary Public, the said Jane Fernando acting with the consent and concurrence of her husband and with the consent of the said C. Maria Perera 40 (as required by the terms and conditions of the said Deed No. 1,398) sold and

No. 4  
Amended  
Answer of the  
Defendant  
22-9-43  
—continued

conveyed the lands and premises in the Third Schedule to the plaint, to the said M. Siman Fernando who became the absolute owner thereof.

9. By Deed No. 4,218 of the 6th December, 1907, attested by R. F. de Saram of Colombo, Notary Public, the said M. Siman Fernando sold and transferred the said lands and premises to M. James Fernando who thereupon became the absolute owner thereof.

10. The said James Fernando died on or about the 17th March, 1911, leaving a Last Will and Testament and also a Codicil which were duly proved in Testamentary proceedings No. 3,927 of this Court.

11. The Trustees under the said Last Will and Testament and Codicil 10 of the said M. James Fernando, by Deed No. 1,382 of the 12th July, 1924 attested by F. J. de Saram, transferred and conveyed the lands and premises described therein to Cecil Clementi, then Colonial Secretary of Ceylon and to Robert Neimann Thaine, the then Government Agent of the Western Province as Trustee of the Sri Chandrasekere Fund.

12. Upon Deeds Nos. 290, 318 and 419 dated respectively the 20th December, 1924, 23rd March, 1925, and 19th January, 1926, all attested by F. W. de Vos of Colombo, Notary Public, Richard Lionel Pereira, purchased, *bona fide* and for valuable consideration (*inter alia*) the lands and premises described in the Fourth Schedule to the plaint and thereby became the absolute 20 owner and proprietor of the same free of any limitations or conditions and free of any alleged *fidei commissum* or the claims of any person whomsoever.

13. The said R. L. Pereira by Deed No. 340 dated 20th April, 1935, attested by G. A. Caldera of Colombo, Notary Public, gifted the land and premises described in the Fourth Schedule to the plaint, to the defendant. The defendant thereafter built two modern houses on the said land at a cost of over Rs. 70,000 and the said land and houses are lawfully in her possession.

14. The defendant and her predecessors in title have been in the lawful possession of the said land and premises and of the buildings thereon by a title independent of and adverse to the plaintiffs and all other persons and claim a 30 title by prescriptive possession in addition to the title set out above.

15. As matters of law, the defendant further pleads :—

(a) That the said Deed No. 2,110 was not validly accepted according to law, on behalf of the donees thereunder and the said deed was of no force or effect.

(b) The said deed and the gift it purported to make and/or the *fidei commissum* which the said Deed No. 2,110 purported to create (assuming that the said deed was valid and effectual as a donation) were rescinded or rendered nugatory by the order of this Court in said Proceedings No. 116 ; and that, in any 40



case, there was no *fidei commissum*, which could be operative, in existence after the said order in the said proceedings. The defendant accordingly holds the land and premises forming the subject matter of this action free of any alleged *fidei commissum*.

No. 4  
Amended  
Answer of the  
Defendant  
22-9-43  
—continued

- (c) The said order in the said Proceedings is final and conclusive as to the conditions under which the lands and premises described in the said Deed No. 1,398 and is binding on the plaintiffs. The plaintiffs are estopped by the said Order.
- 10 (d) In view of the terms of the Order of this Court in the said Proceedings, no *fidei commissum* attached to the lands and premises conveyed by the said Deed No. 1,398 ; or alternatively that as she is a successor in title to a *bona fide* purchaser for value without notice of any alleged *fidei commissum* the defendant has acquired an absolute title to the premises forming the subject matter of this action and the plaintiffs cannot have or maintain this action as against her.
- 20 (e) The Order of the 18th June, 1896, in so far as it purported to be one made under the provisions of the Entail and Settlement Ordinance was made without jurisdiction and was *ultra vires* and a nullity as (a) the application in the said Proceedings was not one coming within the scope of the provisions of the said Ordinance and was one which could not have been made thereunder ; and/or (b) the application upon which it was founded was not made by the proper person or persons who could have made the application, and the Order was made upon the application of persons who were not in law entitled to make the same.
- 30 (f) That the only terms and conditions subject to which the lands and premises described in the said Deed No. 1,398 were held were those set out in the said deed and no others.
- (g) The plaintiffs cannot maintain this action upon the said Deed No. 1,398 without having same rectified.
- (h) The *fidei commissum* alleged to be contained in Deed No. 2,110 dated the 4th October, 1888 cannot attach to the conveyance contained in Deed No. 1,398 dated 23rd June, 1896 in as much as the latter deed is earlier in point of time to deed No. 1,399 dated 23rd June, 1896 and contains conditions which are opposed to the terms and conditions in the said Deed No. 2,110.
- 40 (i) The plaintiffs are bound by the Order of this Court in the said Proceedings No. 116 and cannot maintain this action without having the said order revised or rectified.

No. 4  
Amended  
Answer of the  
Defendant  
22-9-43  
—continued

(j) The defendant as successor in title to purchasers for valuable consideration without notice of any defect in title cannot be affected by alleged irregularities and is entitled absolutely to the premises in question.

16. In the event of the Court holding that the land and premises described in the Fourth Schedule to the plaint were subject to a *fidei commissum* in accordance with the terms of the said Deed No. 2,110 and that the defendant is bound thereby the defendant claims a sum of Rs. 70,000 as compensation for improvements and a right of *jus retentionis* until she is paid the said sum.

17. The defendant denies that the allotment of land is worth Rs. 50,000 10 and states that the said land is reasonably worth the sum of Rs. 36,034.

Wherefore the defendant prays that the plaintiffs' action be dismissed: or alternatively, that the plaintiffs jointly and severally be condemned to pay defendant the sum of Rs. 70,000 with interest thereon at 9 per centum per annum from the date of this action till date of decree and thereafter on the aggregate amount of the decree till payment in full ; that the defendant be declared entitled to a *jus retentionis* over the said premises until payment of the said amount so decreed ; that the defendant be awarded her costs in any event, and that she be 20 granted such other or further relief in the premises though not herein specially prayed for as to the Court shall seem fit.

Sgd. JOHN WILSON,  
Proctor for Defendant.

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No. 5

Amended Answer of the Defendant

No. 5  
Amended  
Answer of the  
Defendant  
22-9-43

IN THE DISTRICT COURT OF COLOMBO

1. DANISTER P. ABEYAWARDENA,
2. GEOFFREY P. ABEYAWARDENA, and
3. LLEWELLYN P. ABEYAWARDENA, all of Colombo.....*Plaintiffs.* 30

No. 2,680. Vs.

MRS. CARMEN SYLVENE WEST (*nee* PEREIRA) of " Anandagiri",  
Green Path, Colombo . . . . . *Defendant.*

On this 22nd day of September, 1943.

The amended answer of the defendant abovenamed appearing by John Wilson, her Proctor states as follows :—

No. 5  
Amended  
Answer of the  
Defendant  
22-9-43  
—continued

1. The defendant admits the averments in paragraphs 1, 2, 7 and 8 of the plaintiff. Save as hereinafter admitted the defendant denies the other averments in the plaintiff.

2. Answering paragraph 3 of the plaintiff the defendant states that the grantors upon Deed No. 2,110 conveyed the lands and premises therein described upon and subject to the terms and conditions therein mentioned.

3. While admitting that M. Simon Fernando and C. Maria Perera purported to make an application under the Entail and Settlement Ordinance, the defendant denies that this Court authorised any such exchange of premises as is averred in paragraph 4 of the plaintiff and denies the further averments in the said paragraph save and except the averment that it authorised the transfer of the lands and premises described in the Second Schedule to the plaintiff, subject to the conditions relative to the transfer of these premises set out in the said order.

4. The defendant admits the bare execution of the two deeds mentioned in paragraph 5 of the plaintiff and states that the said Cecilia Fernando and Jane Fernando became absolutely entitled to but subject only to the terms and conditions expressly mentioned in Deed No. 1,398 and/or in the order of the Court dated 18th June, 1896 and to no other terms or conditions.

5. The defendant denies the averments in paragraphs 6 and 9 of the plaintiff and states that in any event the order of this Court of the 18th June, 1896 is final and conclusive and to the terms and conditions, if any or at all, upon which the said Cecilia Fernando and Jane Fernando held the said lands and premises described in the Third Schedule to the plaintiff, and that the same is binding on the plaintiffs.

6. While admitting the deaths of Simon Fernando and Maria Perera and Jane Fernando as set out in paragraph 10 of the plaintiff the defendant denies that the plaintiffs have any right or title to the lands described in the Third Schedule to the plaintiff.

7. The defendant denies the averments in paragraph 11 of the plaintiff and states that she is in the lawful possession and enjoyment of the lands and premises (with the buildings thereon) described in the Fourth Schedule to the plaintiff. The defendant accordingly denies that the plaintiffs are entitled to any of the reliefs prayed for in the plaintiff.

By way of further answer the defendant states as follows :—

8. By Deed No. 3,129 dated 30th November, 1905 attested by Arthur Alwis of Colombo, Notary Public the said Jane Fernando acting with the consent

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—continued

of the said C. Maria Perera (as required by the terms and conditions of the said Deed No. 1,398) sold and conveyed the lands and premises in the Third Schedule to the plaint, to the said M. Simon Fernando who became the absolute owner thereof.

9. By Deed No. 4,218 of the 6th December, 1907 attested by R. F. de Saram of Colombo, Notary Public, the said M. Simon Fernando sold and transferred the said lands and premises to M. James Fernando who thereupon became the absolute owner thereof.

10. The said James Fernando died on or about the 17th March, 1911, leaving a Last Will and Testament and also a Codicil which were duly proved in 10 Testamentary Proceedings No. 3,927 of this Court.

11. The Trustee under the said Last Will and Testament and Codicil of the said M. James Fernando by Deed No. 1,382 of the 12th July, 1924, attested by F. J. de Saram transferred and conveyed the lands and premises described therein to Cecil Clementi, the Colonial Secretary of Ceylon and to Robert Neimann Thaine, the then Government Agent of the Western Province at Trustees of the Sri Chandrasekere Fund.

12. Upon Deeds Nos. 290, 318 and 419 dated respectively the 20th December, 1924, 23rd March, 1925 and 19th January, 1926, all attested by F. W. de Vos of Colombo, Notary Public, Richard Lionel Pereira, purchased 20 *bona fide* and for valuable consideration (*inter alia*) the lands and premises described in the Fourth Schedule to the plaint and thereby became the absolute owner and proprietor of the same free of any limitations or conditions and free of any alleged *fidei commissum* or the claims of any persons whomsoever.

13. The said R. L. Pereira by Deed No. 340 dated 20th April, 1935, attested by G. A. Caldera of Colombo, Notary Public gifted the land and premises described in the Fourth Schedule to the plaint, to the defendant. The defendant thereafter built two modern houses on the said land at a cost of over Rs. 70,000 and the said land and houses are lawfully in her possession.

14. The defendant and her predecessors in title have been in the lawful 30 possession of the said land and premises and of the buildings thereon, by a title independent of and adverse to the plaintiffs and all other persons and claim a title by prescriptive possession in addition to the title set out above.

15. As matters of law, the defendant further pleads :

(a) that the said deed No. 2,110 was not validly accepted according to law on behalf of the donees thereunder and the said deed was of no force or effect.

(b) The said deed of gift it purported to make and/or the *fidei commissum* which the said Deed No. 2,110 purported to create

(assuming that the said deed was valid and effectual as a donation) were rescinded or rendered nugatory by the order of this Court in the said Proceedings No. 116, and that in any case, there was no *fidei commissum*, which could be operative in existence after the said order in the said proceedings. The defendant accordingly holds the land and premises forming the subject matter of this action free of any alleged *fidei commissum*.

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—continued

- 10 (c) The said order in the Proceedings is final and conclusive as to the conditions under which the land and premises described in the said Deed No. 1,398 and is binding on the plaintiffs. The plaintiffs are estopped by the said order.
- 20 (d) In view of the terms of the order of this Court in the said proceedings, no *fidei commissum* attached to the lands and premises conveyed by the said Deed No. 1,398 or alternatively that as she is a successor in title to a *bona fide* purchaser for value without notice of any alleged *fidei commissum* the defendant has acquired an absolute title to the premises forming the subject matter of this action and the plaintiffs cannot have or maintain this action as against her.
- 30 (e) The order of the 18th June, 1896, in so far as it purported to be one made without jurisdiction and was *ultra vires* and a nullity as (a) the application in the said proceedings was not one coming within the scope of the provisions of the said Ordinance and was one which could not have been made thereunder; and/or (b) the application upon which it was founded was not made by the proper person or persons who could have made the application and the order was made upon the application of persons who were not in law entitled to make the same.
- (f) That the only terms and conditions subject to which the lands and premises described in the said Deed No. 1,398 were held were those set out in the said deed and no others.
- (g) The plaintiffs cannot maintain this action upon the said Deed No. 1,398 without having same rectified.
- 40 (h) The *fidei commissum* alleged to be contained in Deed No. 2,110 dated 4th October, 1888 cannot attach to the conveyance contained in Deed No. 1,398 dated 23rd June, 1896 in as much as the latter deed is earlier in point of time to Deed No. 1,399 dated 23rd June, 1896 and contains conditions which are opposed to the terms and conditions in the said Deed No. 2,110.

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—continued

- (i) The plaintiffs are bound by the order of this Court in the said Proceedings No. 116 and cannot maintain this action without having the said order revised or rectified.
- (j) The defendant as successor in title to purchasers for valuable consideration without notice of any defect in title cannot be affected by the alleged irregularities and is entitled absolutely to the premises in question.

16. (a) The petitioners in special case No. 116 represented to Court that they apprehend that it was not desirable nor beneficial for the 1st and 2nd respondents (Cecilia and Jane) to hold in common the aforesaid property called the "Priory" and the petitioners being now in more affluent circumstances are anxious to make better provision for their unmarried daughters the 1st and 2nd respondents by giving to them the several allotments of land (described in the Schedule B annexed to the petition in the said case) and all that house and buildings bearing No. 8 called and known as "Sirinivasa", situated at Edinburgh Crescent, Flower Road and Green Path, Cinnamon Gardens, Colombo, in lieu of and instead of the said premises called the "Priory".

(b) The said representations were false to the knowledge of the petitioners in the said special case No. 116 and were fraudulently made without any *bona fide* intention of making any better provision for the said daughters as alleged by them by giving to them both the entirety of the several allotments of land described in the Schedule B annexed to the petition in the said case and all that house and building bearing No. 8 called and known as "Sirinivasa", situated at Edinburgh Crescent, Flower Road and Green Path, Cinnamon Gardens, Colombo, in lieu of the "Priory" but with the fraudulent object of inducing the Court to make an order which would enable the petitioners to give effect to a preconceived and secret scheme of the petitioner to get back the "Priory" free of the *fidei commissum* imposed by the petitioners themselves and without giving the whole of "Sirinivasa" in lieu thereof.

(c) The said order is null and void and of no force or avail or ought to be set aside.

17. In the event of the Court holding that the said land and premises described in the Fourth Schedule to the plaint were subject to a *fidei commissum* in accordance with the terms of the said Deed No. 2,110 and that the defendant is bound thereby the defendant claims a sum of Rs. 70,000 as compensation for improvements and a right of *jus retentionis* until she is paid the said sum.

18. The defendant denies that the allotment of land is worth Rs. 50,000 and states that the said land is reasonably worth the sum of Rs. 36,034.

Wherefore the defendant prays that the plaintiffs' action be dismissed: or alternatively, that the plaintiffs jointly and severally be condemned to pay defendant the sum of Rs. 70,000 with interest thereon at nine per centum per annum from the date



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of the lands and premises described in the Second Schedule to the plaint, subject to the conditions relative to the transfer of these premises set out in the said order.

4. The defendant admits the bare execution of the two deeds mentioned in paragraph 5 of the plaint and states that the said Cecilia Fernando and Jane Fernando became absolutely entitled to but subject only to the terms and conditions expressly mentioned in Deed No. 1,398 and/or in the order of the Court dated 18th June, 1896 and to no other terms or conditions.

5. The defendant denies the averments in paragraphs 6 and 9 of the plaint and states that in any event the order of this Court of the 18th June, 1896 is final and conclusive and to the terms and conditions, if any or at all, upon which the said Cecilia Fernando and Jane Fernando held the said lands and premises described in the Third Schedule to the plaint, and that the same is binding on the plaintiffs.

6. While admitting the deaths of Simon Fernando and Maria Perera and Jane Fernando as set out in paragraph 10 of the plaint the defendant denies that the plaintiffs have any right or title to the lands described in the Third Schedule to the plaint.

7. The defendant denies the averments in paragraph 11 of the plaint and states that she is in the lawful possession and enjoyment of the lands and premises (with the buildings thereon) described in the Fourth Schedule to the plaint. The defendant accordingly denies that the plaintiffs are entitled to any of the reliefs prayed for in the plaint.

By way of further answer the defendant states as follows :—

8. By Deed No. 3,129 dated 30th November, 1905, attested by Arthur Alwis of Colombo, Notary Public, the said Jane Fernando acting with the consent of the said C. Maria Perera (as required by the terms and conditions of the said Deed No. 1,398) sold and conveyed the lands and premises in the Third Schedule to the plaint, to the said M. Simon Fernando, who became the absolute owner thereof.

9. By Deed No. 4,218 of the 6th December, 1907 attested by R. F. de Saram of Colombo, Notary Public, the said M. Simon Fernando sold and transferred the said lands and premises to M. James Fernando who thereupon became the absolute owner thereof.

10. The said James Fernando died on or about the 17th March, 1911, leaving a Last Will and Testament and also a Codicil which were duly proved in Testamentary Proceedings No. 3,927 of this Court.

11. The Trustee under the said Last Will and Testament and Codicil of the said M. James Fernando by Deed No. 1,382 of the 12th July, 1924, attested by F. J. de Saram, transferred and conveyed the lands and premises described



therein to Cecil Clementi, the Colonial Secretary of Ceylon and to Robert Neimann Thaine, the then Government Agent of the Western Province as Trustees of the Sri Chandrasekere Fund.

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Amended  
Answer of the  
Defendant  
22-9-43  
—continued

12. Upon Deeds Nos. 290, 318 and 419 dated respectively the 20th December, 1924, 23rd March, 1925, and 19th January, 1926, all attested by F. W. de Vos of Colombo, Notary Public, Richard Lionel Pereira, purchased *bona fide* and for valuable consideration (*inter alia*) the lands and premises described in the Fourth Schedule to the plaint and thereby became the absolute owner and proprietor of the same free of any limitations or conditions and free of any alleged *fidei commissum* or the claims of any persons whomsoever.

13. The said R. L. Pereira by Deed No. 340 dated 20th April, 1935, attested by G. A. Caldera, of Colombo, Notary Public, gifted the land and premises described in the Fourth Schedule to the plaint, to the defendant. The defendant thereafter built two modern houses on the said land at a cost of over Rs. 70,000 and the said land and houses are lawfully in her possession.

14. The defendant and her predecessors in title have been in the lawful possession of the said land and premises and of the buildings thereon, by a title independent of and adverse to the plaintiffs and all other persons and claim a title by prescriptive possession in addition to the title set out above.

20 15. As matters of law, the defendant further pleads :

(a) That the said Deed No. 2,110 was not validly accepted according to law on behalf of the donees thereunder and the said deed was of no force or effect.

30 (b) The said deed of gift it purported to make and/or the *fidei commissum* which the said Deed No. 2,110 purported to create (assuming that the said deed was valid and effectual as a donation) were rescinded or rendered nugatory by the order of this Court in the said proceedings No. 116, and that in any case, there was no *fidei commissum*, which could be operative, in existence after the said order in the said proceedings. The defendant accordingly holds the land and premises forming the subject matter of this action free of any alleged *fidei commissum*.

(c) The said order in the proceedings is final and conclusive as to the conditions under which the lands and premises described in the said Deed No. 1,398 and is binding on the plaintiffs. The plaintiffs are estopped by the said order.

(d) In view of the terms of the order of this Court in the said proceedings, no *fidei commissum* attached to the lands and premises

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Amended  
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Defendant  
22-9-43  
—continued—

conveyed by the said Deed No. 1,398, or alternatively that as she is a successor in title to a *bona fide* purchaser for value without notice of any alleged *fidei commissum* the defendant has acquired an absolute title to the premises forming the subject matter of this action and the plaintiffs cannot have or maintain this action as against her.

- (e) The order of the 18th June, 1896 was null and void as (i) the said order was made without jurisdiction and was *ultra vires*, and/or (ii) as the application in the said proceedings was not one within the scope of the provisions of the Entail and Settlement Ordinance, and/or (iii) as the application on which it was founded was not made by the proper person or persons who could have made the application but was made upon the application of persons who were not in law entitled to make the same. 10
- (f) That the only terms and conditions subject to which the lands and premises described in the said Deed No. 1,398 were held were those set out in the said deed and no others.
- (g) The plaintiffs cannot maintain this action upon the said Deed No. 1,398 without having same rectified. 20
- (h) The *fidei commissum* alleged to be contained in Deed No. 2,110 dated 4th October, 1888 cannot attach to the conveyance contained in Deed No. 1,398 dated 23rd June, 1896 in as much as the latter deed is earlier in point of time to Deed No. 1,399 dated 23rd June, 1896 and contains conditions which are opposed to the terms and conditions in the said Deed No. 2,110.
- (i) The plaintiffs are bound by the order of this Court in the said proceedings No. 116 and cannot maintain this action without having the said order revised or rectified.
- (j) The defendant as successors in title to purchasers for valuable consideration without notice of any defect in title cannot be affected by the alleged irregularities and is entitled absolutely to the premises in question. 30

16. (a) The petitioners in special case No. 116 represented to Court that they apprehend "that it was not desirable nor beneficial for the 1st and 2nd respondents (Cecilia and Jane) to hold in common the aforesaid property called "Priory", and the petitioners being now in more affluent circumstances are anxious to make better provision for their unmarried daughters the 1st and 2nd

respondents by giving them the several allotments of land (described in the Schedule B annexed to the petition in the said case) and all that house and buildings bearing No. 8 called and known as "Sirinivasa", situated at Edinburgh Crescent, Flower Road and Green Path, Cinnamon Gardens, Colombo, in lieu of and instead of the said premises called the "Priory".

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(b) The said representations were false to the knowledge of the petitioners in the said special case No. 116 and were fraudulently made without any *bona fide* intention of making any better provision for the said daughters as alleged by them by giving to them both the entirety of the several allotments of land described in the Schedule B annexed to the petition in the said case and all that house and buildings bearing No. 8 called and known as "Sirinivasa", situated at Edinburgh Crescent, Flower Road and Green Path, Cinnamon Gardens, Colombo, in lieu of the "Priory" but with the fraudulent object of inducing the Court to make an order which would enable the petitioners to give effect to a preconceived and secret scheme of the petitioners to get back the "Priory" free of the *fidei commissum* imposed by the petitioners themselves and without giving the whole of "Sirinivasa" in lieu thereof.

(c) The said order is null and void and of no force or avail or ought to be set aside.

17. In the event of the Court holding that the said land and premises described in the Fourth Schedule to the plaint were subject to a *fidei commissum* in accordance with the terms of the said Deed No. 2,110 and that the defendant is bound thereby the defendant claims a sum of Rs. 70,000 as compensation for improvements and a right of *jus retentionis* until she is paid the said sum.

18. The defendant denies that the allotment of land is worth Rs. 50,000 and states that the said land is reasonably worth the sum of Rs. 36,034.

Wherefore the defendant prays that the plaintiffs' action be dismissed; or alternatively, that the plaintiffs jointly and severally be condemned to pay defendant the sum of Rs. 70,000 with interest thereon at 9 per centum per annum from the date of this action till date of decree and thereafter on the aggregate amount of the decree till payment in full: that the defendant be declared entitled to a *jus retentionis* over the said premises until payment of the said amount so decreed: that the defendant be awarded her costs in any event, and that she be granted such other or further relief in the premises though not herein specially prayed for as to the Court shall seem meet.

Sgd. JOHN WILSON,  
Proctor for Defendant.

No. 7  
Replication  
of the Plaintiffs.  
20-4-44

No. 7

Replication of the Plaintiffs.

IN THE DISTRICT COURT OF COLOMBO

- 1. DANISTER P. ABEYAWARDENA,
- 2. GEOFFREY P. ABEYAWARDENA,
- 3. LLEWELLYN P. ABEYAWARDENA, all of Colombo..... *Plaintiffs.*

No. 2680.

*Vs.*

Mrs. CARMEN SYLVENE WEST (*nee* PEREIRA) of "Anandagiri,"  
Green Path, Colombo..... *Defendant*

On this 20th day of April, 1944.

10

The Replication of the plaintiffs above named appearing by Llewellyn Solomon Fernando, Proctor of the Hon'ble the Supreme Court, practising under the name, style and firm of Fernando & Fernando, states as follows :—

1. The plaintiffs join issue with the defendant on the denials in the answer of the averments contained in the plaint.

2. Replying to paragraph 4 of the answer the plaintiffs deny that upon the execution of Deed No. 1398 in pursuance of the order in Special Proceedings No. 116 of this Court, Cecilia Fernando and Jane Fernando became absolutely entitled to the lands and premises described in the Second Schedule to the plaint subject only to the terms and conditions expressly stated in the said Deed and/or in the said Order of Court and to no other terms or conditions. 20

3. Replying to paragraph 5 of the answer the plaintiffs while admitting that the said Order of Court, in so far as it authorised the exchange of the lands and premises described in the First Schedule to the plaint for the lands and premises described in the second schedule to the plaint, is binding on them, deny that the said Order of Court is final and conclusive as to the terms and conditions, if any, or at all, upon which the said Cecilia Fernando and Jane Fernando held the said lands and premises described in the said second Schedule.

4. Replying to paragraph 8 of the answer the plaintiffs admit that 30 by Deed No. 3129 the said Jane Fernando purported to sell and convey the lands and premises described in the Third Schedule to the plaint to M. Siman Fernando, but states that the said Deed No. 3129 only operated to convey to the said M. Siman Fernando the fiduciary interest of the said Jane Fernando in and to the said lands and premises.

5. Replying to paragraph 9 of the answer the plaintiffs while admitting the execution by M. Siman Fernando of Deed No. 4218 purporting to sell and transfer the said lands and premises to M. James Fernando, state that the said deed operated to convey to the said M. James Fernando only the aforesaid fiduciary interest of the said Jane Fernando.

6. The plaintiffs admit the averments contained in paragraph 10 of the answer.

7. Replying to paragraph 11 of the answer the plaintiffs while admitting the execution of Deed No 1382 purporting to transfer and convey the lands and premises described therein, state that under the said Deed only the aforesaid fiduciary interest of the said Jane Fernando passed to Cecil Clementi and Robert Neimann Thaine.

8. Replying to paragraph 12 of the answer the plaintiffs while admitting that Richard Lionel Pereira purported to purchase, inter alia, the lands and premises described in the Fourth Schedule to the plaint upon the deeds recited in the said paragraph, deny that under the said deeds the said Richard Lionel Pereira became the absolute owner and proprietor of the said lands and premises free of any limitations or conditions and free of any alleged *fidei commissum* or the claims of any person whomsoever as alleged in the said paragraph 12.

9. Further replying to paragraph 12 of the answer the plaintiffs state that under the said deeds the said Richard Lionel Pereira became entitled in so far as the lands and premises described in the Fourth Schedule to the plaint are concerned, only to the aforesaid fiduciary interest of the said Jane Fernando.

10. Replying to paragraph 13 of the answer the plaintiffs while admitting that the said Richard Lionel Pereira purported to gift to the defendant the said lands and premises by Deed No. 340 state that they are unaware of the other averments contained in the said paragraph and put the defendant to the proof thereof.

11. Replying to paragraph 14 of the answer the plaintiffs deny that the defendant and her predecessors in title have had possession of the said lands and premises and the buildings thereon adverse to the plaintiffs for a period of ten years or over and that the defendant is entitled, in law, to claim a title by prescription thereto.

12. Replying to paragraph 15 of the answer the plaintiffs deny the averments of fact contained in sub paragraph (d) thereof and join issue with the defendant in the matter of law pleaded in sub-paragraphs (a), (b), (c), (d), (e), (f) and (g) of the said paragraph 14.

13. Replying to paragraph 16 of the answer the plaintiffs deny that the defendant is a *bona fide* improver and that she is entitled, in law, to compensation for improvements and to a *jus retentionis* until payment of compensation.

No. 7  
Replication  
of the Plain-  
tiffs.  
20-4-44  
—continued

14. Further answering the said paragraph 16 the plaintiffs deny that, in any event, the defendant is entitled to a sum of Rs. 70,000/- as compensation for improvements.

Wherefore the plaintiffs pray that defendant's claim in reconvention be dismissed and that judgment be entered in their favour as prayed for in the plaint.

Sgd. FERNANDO & FERNANDO,  
*Proctors for Plaintiff.*

No. 8  
Replication  
of the Plain-  
tiffs.  
29-10-47

**No. 8**

**Replication of the Plaintiffs**

10

IN THE DISTRICT COURT OF COLOMBO

1. DANISTER P. ABEYWARDENE
2. GEOFFREY P. ABEYWARDENE
3. LLEWELLYN P. ABEYWARDENE all of Colombo..... *Plaintiffs.*

No. 2680

vs.

MRS. CARMEN SYLVENE WEST (*nee* PEREIRA) of "Anandagiri,"  
Green Path, Colombo..... *Defendant*

On this 29th day of October, 1947,

The Replication of the plaintiffs abovenamed appearing by Llewellyn Solomon Fernando, Proctor of the Hon'ble the Supreme Court, practising under the name, style and firm of Fernando and Fernando, states as follows:—

1. The plaintiffs join issue with the defendant on the denials in the amended answer of the averments contained in the plaint.

2. Replying to paragraph 4 of the amended answer the plaintiffs deny that upon the execution of Deed No. 1398 in pursuance of the Order in Special Proceedings No. 116 of this Court, Cecilia Fernando and Jane Fernando became absolutely entitled to the lands and premises described in the Second Schedule to the plaint subject only to the terms and conditions expressly stated in the said Deed and/or in the said Order of Court and to no other terms or conditions.

30

3. Replying to paragraph 5 of the amended answer the plaintiffs while admitting that the said Order of Court, in so far as it authorised the exchange of the lands and premises described in the First Schedule to the plaint for the lands and premises described in the Second Schedule to the plaint, is binding on them, deny that the said Order of Court is final and conclusive as to the terms and conditions, if any or at all, upon which the said Cecilia Fernando and Jane Fernando held the said lands and premises described in the said Second Schedule.

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Replication  
of the Plain-  
tiffs.  
29-10-47  
—continued

10 4. Replying to paragraph 8 of the amended answer the plaintiffs admit that by deed No. 3129 the said Jane Fernando purported to sell and convey the lands and premises described in the Third Schedule to the plaint to M. Simon Fernando, but state that the said deed No. 3129 only operated to convey to the said M. Simon Fernando the fiduciary interest of the said Jane Fernando in and to the said lands and premises.

5. Replying to paragraph 9 of the amended answer the plaintiffs while admitting the execution by M. Simon Fernando of deed No. 4218 purporting to sell and transfer the said lands and premises to M. James Fernando state that the said deed operated to convey to the said M. James Fernando only the aforesaid fiduciary interest of the said Jane Fernando.

20 6. The plaintiffs admit the averments contained in paragraph 10 of the amended answer.

7. Replying to paragraph 11 of the amended answer the plaintiffs while admitting the execution of Deed No. 1382 purporting to transfer and convey the lands and premises described therein, state that under the said Deed only the aforesaid fiduciary interest of the said Jane Fernando passed to Cecil Clementi and Robert Niemann Thaine.

30 8. Replying to paragraph 12 of the amended answer the plaintiffs while admitting that Richard Lionel Pereira purported to purchase, *inter alia*, the lands and premises described in the Fourth Schedule to the plaint upon the deeds recited in the said paragraph, deny that under the said Deeds the said Richard Lionel Pereira became the absolute owner and proprietor of the said lands and premises free of any limitations or conditions and free of any alleged *fidei commissum* or the claims of any person whomsoever as alleged in the said paragraph 12.

9. Further replying to paragraph 12 of the amended answer the plaintiffs state that under the said Deeds the said Richard Lionel Pereira became entitled in so far as the lands and premises described in the Fourth Schedule to the plaint are concerned, only to the aforesaid fiduciary interest of the said Jane Fernando.

40 10. Replying to paragraph 13 of the amended answer the plaintiffs while admitting that the said Richard Lionel Pereira purporting to gift to the

No. 8  
Replication  
of the Plain-  
tiffs.  
29-10-47  
—continued

defendant the said lands and premises by Deed No. 340 state that they are unaware of the other averments contained in the said paragraph and put the defendant to the proof thereof.

11. Replying to paragraph 14 of the amended answer the plaintiffs deny that the defendant and her predecessors in title have had possessions of the said lands and premises and the buildings thereon adverse to the plaintiffs for a period of ten years or over and that the defendant is entitled, in law, to claim a title by prescription thereto.

12. Replying to paragraph 15 of the amended answer the plaintiffs deny the averments of fact contained in sub-paragraphs (d) and (f) thereof and join issue with the defendant on the matters of law pleaded in sub-paragraphs (a) (b) (c) (d) (e) (f) (g) (h) (i) and (j) of the said paragraph 15.

13. Further replying to sub-paragraph (a) of paragraph 15 of the amended answer the plaintiffs state—

- (a) That the said deed of gift No. 2110 was validly accepted according to law on behalf of the donees thereunder.
- (b) that in any event subsequent to the execution of Deed No. 2110 the gift in favour of the donees was ratified and/or confirmed by the donees themselves and/or on their behalf.

14. Replying to paragraph 16 of the amended answer the plaintiffs — 20

- (a) admit the averments contained in sub-paragraph (a) ;
- (b) deny the averments contained in sub-paragraph (b) ; and
- (c) join issue with the defendants on the matter of law pleaded in sub-paragraph (c).

15. Replying to paragraph 17 of the amended answer the plaintiffs deny that defendant is a *bona fide* improver and that she is entitled in law, to compensation for improvements and to a *jus retentionis* until payment of compensation.

16. Further replying to the said paragraph 17 of the amended answer the plaintiffs deny that, in any event, the defendant is entitled to a sum of Rs. 70,000/- as compensation for improvements. 30

Wherefore the plaintiffs pray that defendant's claim in reconvention be dismissed and that judgment be entered in their favour as prayed for in the plaint.

Sgd: FERNANDO & FERNANDO,  
*Proctors for Plaintiffs.*



**Proceedings to Fix Date of Trial**

10-5-45

Adv. Gratiaen for plaintiff

Adv. Choksy for defendant

Mr. Choksy who appears in support of the motion tendered for a date states that the defendant is away in India and is unable to be present on the 18th May for which date the trial in this case is fixed.

Mr. Gratiaen objects and points out that there is no material to satisfy the Court that the defendant is unable to be present on the 18th.

Mr. Choksy states that he can call Mr. R. L. Pereira, K.C., the father of the defendant to give evidence to satisfy the Court that the defendant is unable to be present.

Mr. Gratiaen states he will be satisfied if a written statement giving the grounds for her absence is produced from Mr. R. L. Pereira.

Call case for this purpose on 14/5.

Sgd. M. A. SAMARAKOON,  
A. D. J.

14-5-45 Adv. Gratiaen instructed by M/s. Fernando & Fernando for the  
20 plaintiffs.

Adv. Choksy instructed by Mr. John Wilson for the defendant.  
Counsel heard.

Mr. R. L. Pereira, K.C., the father of the defendant explains to me the circumstances of the absence of the defendant.

I am satisfied that she cannot be present on 18-5-45 the next trial date. I would accordingly fix the trial for 17-7-45.

The costs payable by the defendant to the plaintiffs for the trial date 18-5-45 will be the taxed costs unless proctors otherwise agree.

Sgd. M. A. SAMARAKOON,  
A. D. J.

30

17-7-45 Adv. Gratiaen with Messrs. D. W. Fernando and Jayawickrema  
instructed by Messrs. Fernando and Fernando for the plaintiffs.

No. 9  
 Proceedings  
 to fix date of  
 Trial.  
 —continued

Adv. Nadarajah with Messrs. Choksy and Jayasundera instructed by  
 Mr. John Wilson for the defendant.

Trial postponed for 4th and 14th December.

Witnesses warned.

Sgd. M. A. SAMARAKOON,  
*A. D. J.*

4-12-45 Adv. Gratiaen with Adv. D. W. Fernando for plaintiff.

Adv. Nadarajah, K.C. with Adv. G. C. Thambyah for defendant.

Mr. Gratiaen applies for a postponement on the ground that his client  
 is absent and produces a medical certificate. 10

Of consent trial postponed for 15th and 16th July.

It is agreed that the previous order for costs in favour of the plaintiff  
 be waived.

Sgd. W. SANSONI,  
*A. D. J.*

26-3-47 *Vide* motion for another date of trial filed by Mr. Wilson, Proctor for  
 defendant.

Adv. Mr. D. W. Fernando instructed by Messrs. Fernando and  
 Fernando for the plaintiff submits that if a date in August could be  
 found for the trial of this case and if the defendants prepay the day's 20  
 costs of 1st April which have already been incurred by plaintiffs he  
 will consent to a date in August.

Under the special circumstances I have no objection to the applica-  
 tion of Mr. Wilson as it is not being objected to by the other side if  
 the defendant is prepared to pay the day's costs of the plaintiff.

I refix this matter for trial on the 4th and 5th August. Defendant  
 will prepay to the plaintiff his costs of the trial date which will be  
 agreed on by Messrs. Wilson and L. S. Fernando.

It is also understood that 4th and 5th August will be the final dates  
 of trial and no further postponements will be granted on the applica- 30  
 tion of the defendant.

Sgd. S. S. J. GOONESEKERA,  
*A. D. J.*

4-8-47 Adv. Mr. E. F. N. Gratiaen, K.C., with Adv. Mr. D. W. Fernando instructed by Messrs. Fernando and Fernando for the plaintiffs. No. 9  
Proceedings  
to fix date of  
Trial.

Adv. Mr. Choksy K.C., with Adv. Mr. Crossette Thambyah, Adv. Mr. E. G. Wickremanayake, Adv. Mr. U. A. Jayasundera and Adv. Mr. C. Renganathan instructed by Mr. John Wilson for the defendant. —continued

Mr. Choksy submits that in addition to the issues which will arise on the pleadings he wishes to frame a further issue as to whether the order in special case 116 of this Court of 18th June, 1896 is void in as much as it had been obtained by fraud.

10 Mr. Gratiaen wants to have notice of what the fraud is. Mr. Gratiaen submits that if this issue is to be allowed particulars as to what this fraud was will have to be furnished by the defendant by way of an amendment to her answer.

Mr. Croksy agrees to do so.

This case will have to go off. Let the defendant file an amended answer on the 17th September, 1947 finally. Thereafter the plaintiff will be given an opportunity if necessary to file an amended replication if so advised.

20 It is also agreed that as this case is going off to-day because of this additional issue that the defendant wants to raise the defendant will pay the plaintiffs their taxed costs of today and tomorrow.

I refix the trial for 4th and 8th December finally.

Sgd. S. S. J. GOONESEKERA,  
A. D. J.

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**No. 10**

**Defendant's Evidence**

No. 10  
Defendant's  
Evidence.  
H. F. Billi-  
moris—  
Examination.

No. 2680/L.

28th April 1948

Adv. CHOKSY K.C., with Adv. JAYASOORIYA, instructed by Mr. RANGANATHAN for the Defendant.

30 Adv. FERNANDO for the Plaintiffs.

It is agreed of consent that issues are to be framed.

No. 10  
Defendant's  
Evidence  
H. F. Billi-  
moria—  
Examination.  
—continued

Adv. Choksy calls :

H. F. BILLIMORIA, Affirmed

I am an Associate of the Royal Institute of British Architects. I am the Deputy Chief Architect in the Public Works Department. I have been in Government Service for about 17 years. Before that I was in private practice. I am the partner of the firm of Billimoria and Silva, Architects. My partner at that time was Mr. J. F. de Silva and the name of Billimoria and Silva was set up in 1923-24 and I was actively engaged in the business of consulting architects. Our business chiefly consisted of the supervision of buildings, plans, and designing of buildings. Our firm did a large amount of 10 work in Colombo and have considerable practical experience in buildings in Colombo. I know Mr. R. L. Pereira for very many years. The tender was in connection with the erection of two bungalows at Green Path. I was entrusted with that work as architects and in the course of business we called in tenders from contractors for erecting these two bungalows. They were residential bungalows. It was an upstairs building with buildings for outhouses etc. Various estimates were received and we selected the tender of contractor Mr. Peter Fernando. This tender was the last at the figure of about Rs. 36,000/- or Rs. 37,000/- for two buildings. The estimates were roughly for putting up of the main bungalow and also the ground floor 20 exclusive of drainage, electricity, lights etc. Roof tiling was included in the contract but not floor tiling nor drainage. The electrical fittings was also not included in that estimate. That was about the middle of 1935. I was supervising the work till February 1936 when I rejoined Government Service. I severed my connection with Billimoria & Silva a few months after that. In fact the tender was the last tender. The contractor had financial difficulties and we had lot of trouble in going on with the construction of the bungalows. Mr. Pereira had to finance his architects. After I joined Government Service Mr. Silva continued the firm of Billimoria and Silva. The buildings were completed 4 or 5 months after I rejoined Government Service. It was 30 in July or August 1935. I had been to the bungalows very often. Bath fittings, electrical fittings, tiles are all of an exceptionally superior type. They were not equipped with the ordinary type of drainage or electrical fittings. In addition there has been also a good deal of plating, brass fittings etc. The two bungalows are more or less of identical plan except for a little difference in the outhouses. In addition there were also a large number of grills which were not included in the contract. The grilling was done by somebody else other than the contractor.

The drainage work was carried out by Mr. M. I. Mohamed and the electrical fittings were done by Allens & Co. At about the time of the 40 construction of these two bungalows in June 1935 - August 1936 the cost of buildings in Colombo was very much higher than in normal times. At that time the average rate for constructing a two storeyed bungalow was about Rs. 7/50 per square foot. Firstly the area of the ground floor is obtained which is multiplied by Rs. 7/50 per square ft. and thus the approximate cost

of the bungalow is arrived at, and provided the upstairs covers the same area. I produce prints of these two bungalows prepared by me marked D1. The two storeyed portion cost Rs. 23,367/- and the single storeyed portion cost Rs. 3,399/-. Both the bungalows cost about Rs. 27,261/58 which includes drainage of the very ordinary type. The tiling of both rooms is estimated at Rs. 1250/- above and beyond the estimated figure. Electrical fans that is 4 fans at Rs. 500/-. Electrical fittings, extras for the same including fittings cost Rs. 300/- over and above the ordinary fittings. Special bath room fittings cost Rs. 1250/-. All were coloured bath rooms including bidet seats. The total cost of one bungalow at that time would be Rs. 35,300/- for the two bungalows it would cost Rs. 70,600/-. That probably represents the approximate cost of those two bungalows with the fittings etc. which are there. About the middle of 1945 when prices of buildings, labour and other items were very much higher than they were the cost of construction would be  $2\frac{1}{2}$  times higher than the normal cost. I am leaving Ceylon on leave about the middle of June before the trial date towards the end of June. I won't be here after the 15th of June.

No. 10  
Defendant's  
Evidence  
H. F. Billi-  
moria—  
Examination.  
—continued

*Cross-Examined.*

I was a partner of Billimoria and Silva at the time. We got instructions from all three of them Mr., Mrs. and Miss R. L. Pereira. I have discussed the question of payment with Mr. R. L. Pereira. I have no copy of the plan. The bungalow was to be constructed according to the plan for a certain amount. The installation of drainage as far as I remember. I am not quite sure of the installation of electrical lights. Additional expenditure incurred by Mr. Pereira was included in that contract. The installation of electrical fittings was undertaken by Allens & Co. and drainage by Mr. M. I. Mohamed. Shown P 1 This was written by my partner J. C. F. de Silva, after I joined the department. The item setting out a sum of Rs. 2,443/- is shown. Mr. Pereira spent a sum of Rs. 2,434/92 over and above the contract amount. Contract amount being 37,534/- with the extras. The body of this letter P 1 refers to a full statement of accounts showing the extra expenditure of Rs. 2,443/- marked P 1.

H. F. Billi-  
moria—  
Cross-Exami-  
nation.

Q.—One of the items in the annexure at page 2 is an item of Rs. 216/22 paid to a company for grills ?

A.—That amount has been debited to the amount given in the contract.

Q.—Another item is a sum of Rs. 8/- paid to Martinus Perera for oxidising ? Shown. Another item which has been debited against him is an item of Rs. 1,500/- paid to M. I. Mohamed for drainage and a sum of Rs. 850/- paid to Allensons for electrical lighting. All these payments which testify as the evidence in chief have all been debited to the contractor's account ?

A.—Yes,

No. 10  
Defendent's  
Evidence  
H. F. Billi-  
moria—  
Cross-Exami-  
nation.  
—continued

Q.—And the sum of Rs. 2,434/92 additional expenditure incurred by Mr. R. L. Pereira after payment ?

A.—It should be so from that letter. I would like to go through all the accounts twice before I can affirm to it.

Q.—Do you know what it cost Mr. R. L. Pereira for the buildings ?

A.—At a consultation with Mr. R. L. Pereira I said that it will cost about Rs. 57,000/-. After that contract was over he spent 1 or 2 thousand more.

Q.—Were you requested to make an estimate of what it would cost ?

A.—Yes.

10

The two storeyed portion is about 3115 sq. ft. and the single storey is about 1000 odd ft.

Q.—Do you know that Mr. R. L. Pereira has a compensation claim for this building ?

A.—I do not know.

Q.—If you were asked to estimate the approximate cost of constructing the buildings would you not first inquire as the figures ?

A.—Usually the figure is arrived at before the building is constructed.

This Rs. 70,000/- I have estimated is what would have been a reasonable figure for a bungalow at that time.

20

H. F. Billi-  
moria—  
Re-Exami-  
nation.

*Re-Examined.*

Q.—When you left the firm, they were left with Mr. Silva ?

A.—When I left the firm Mr. Silva carried on the business, then when he left the firm the business passed on to Martinus & Co. Mr. Silva is now dead.

*Sgd. V. S. JAYAWICKREMA  
A. D. J.*

Further hearing is postponed as the trial has been fixed for the 29th June 1948.

*Sgd. V. S. JAYAWICKREMA  
A. D. J.*

30

24th June, 1948.

Adv. Mr. Hayley, K. C., with Adv. Mr. D. W. Fernando, instructed by M/s. Fernando and Fernando, for the Plaintiffs.

Adv. Mr. Choksy, K. C., with Adv. Mr. U. A. Jayasundera and Adv. Mr. C. Renganathan, instructed by Mr. John Wilson for the defendant.

Mr. Hayley suggests:

1. Do the conditions in deed 2110 attach to the property conveyed by deed 1398 ?
2. On the death of Jane Fernando did plaintiffs become entitled to the land in Schedule three of the plaint ?
3. Are the premises in Schedule Four of the plaint part of the premises in Schedule three ?
4. Is the defendant in wrongful possession of the premises described in Schedule 4 of the plaint ?
5. To what damages, if any, are the plaintiffs entitled ?

Mr. Choksy objects to issue 2. He says it is far too wide. He suggests:

- 6a. Did the title to premises described in the third Schedule to the plaint vest in Jane Fernando by virtue of Deed No. 2180 of 30-6-1900 ?
- 6b. If not, can plaintiffs have or maintain this action ?
- 7a. Was deed 2110 of 4th October 1883 validly accepted ?
- 7b. If not, was the said deed of no force or avail ?
- 8a. Was the application in Special Proceedings No. 116 of the District Court of Colombo, an application within the scope of the Entail and Settlement Ordinance ?
- 8b. If not, did the Court have jurisdiction to entertain the same.
9. If issues 8a and 8b are answered in the negative do the provisions of section 8 of the Entail and Settlement Ordinance apply to the conveyance effected by Deed 1398 of 23.6.1896 ?

No. 11  
Issues  
Framed.  
24-6-48  
—continued

10. Was the said order in Special Proceedings 116 of 18th June 1896 made—

(a) Upon application by the wrong party ?

(b) Without jurisdiction ?

11. If issues 10a and or 10b are answered in the affirmative was the said order null and avoid ?

12. Was the said order of 18th June 1896 final and conclusive as to the terms and conditions attaching to the conveyance effected by the said Deed No. 1398 ?

13. Can plaintiffs seek to attach to the said Deed 1398 any other terms 10 and or conditions not embodied therein without a rectification of the said order and or the said Deed No. 1398 ?

14. Will the *fidei commissum* contained in Deed No. 2110 attach to the conveyance effected by deed 1398 in as much as deed 1398 was earlier in point of time to deed 1399 and contains terms and conditions which are opposed to the terms and conditions contained in Deed 2110 ?

15a. Did petitioners in special case 116 make the representation set out in paragraph 16a of the further amended answer marked 45a ?

b. Were the said representations

(1) false to the knowledge of the petitioners ?

20

(2) made fraudulently ?

(3) made with the fraudulent object set out in paragraph 16 of the answer marked 45a ?

16. If issues 15a and either b(1) or b(2) or b(3) are answered in the affirmative was the said order obtained by fraud and if so is the said order null and void ?

17. Was the immediate predecessor in title of the defendant a *bona fide* purchaser for value without notice of the alleged *fidei commissum* ?

18. Is defendant entitled to the property and premises in the Fourth Schedule to the plaint free of any *fidei commissum*

30

(a) If issue 17 is answered in the affirmative ?

(b) On the chain of title set out in the answer ?



(c) By prescriptive possession ?

No. 11  
Issues  
Framed.  
24-6-48  
—continued

19a. Did defendant effect improvements on the premises in the Fourth Schedule to the plaint ?

19b. What is the value of the said improvements ?

20. Is defendant entitled to (a) compensation for improvements and if so in what sum ? (b) a *jus retentionis*

Mr. Hayley objects to issue 7a.

Mr. Choksy amends it to

7a. Was the gift on Deed 2110 of 4th October 1883 validly accepted?

10 Mr. Hayley suggests:

14a. Did Deed 1398 contain terms and conditions opposed to the Deed 2110 ?

Mr. Hayley objects to issue 17 on the ground that it is irrelevant. He says the *bona fides* of the defendant's immediate predecessor is not a matter for consideration now.

Mr. Choksy says that issue 17 should be read with issue 18a.

### ORDER

I allow this issue 17 to stand. It is to be read with issue 18a.

Mr. Hayley suggests :

20 21. Was the defendant in *bona fide* possession of the property at the date of the alleged improvements.

In regard to issue 19b Mr. Hayley says the issue should be

What was the cost of the said improvements ?

The issue is amended accordingly. Mr. Hayley suggests a further issue:

22. Was the gift in Deed 2110 ratified and confirmed by the donees or on their behalf ?

## ORDER

No. 11  
Issues  
Framed.  
24-6-48  
—continued

I allow issue 2 also. It seems to follow an affirmative answer to issue 1. Trial on all the issues raised by both sides except issue 17a and 19b on which the trial will be on their amended form.

*Sgd.* V. S. JAYAWICKREMA,  
A. D. J.

No. 12  
Plaintiffs'  
Evidence

## No. 12.

## Plaintiffs' Evidence

Mr. Hayley calls evidence and states that he reserves the right to call evidence in rebuttal on the issues concerning improvements and prescription. 10

L. P. Abeyawardena  
Examination

LLEWELLYN P. ABEYAWARDENE.—Affirmed.

I am the 3rd plaintiff.

(In regard to issue 3 Mr. Choksy says the defendants admit that the premises in Schedule 4 of the plaint are part of the premises in Schedule 3 of the plaint.)

I am the son of Mrs. Jane Abeyawardene who was Jane Fernando, the daughter of M. Siman Fernando and his wife Maria. My mother Jane had a sister Cecilia. By deed 2110 of 4.10.1883 which I produce marked P 1 B, Siman Fernando and his wife Maria gifted the lots 4 and 5 Maradana called "The Priory" to their two daughters Cecilia and Jane subject to the conditions in 20 the deed.

(P 1 B is a certified copy).

The third acceptor was John Cooray. John Cooray was the brother-in-law of my mother. He married my mother's sister. Her name was Isabella. Mr. Cooray is now dead. In June 1896 an application was made in the District Court case No. 116 and I produce as P 2 certified copy of the motion, petition, affidavit and order. Order was made on 18.6.1896. I produce as P 3 certified copy of a deed 1399 dated 23.6.1886 by which the interests of Cecilia and Jane in "The Priory" were conveyed back to their father Siman. On the same day by deed 1398 copy of which is marked P 4 Siman Fernando and Maria 30 Perera conveyed the property in the Schedule to that deed to Cecilia and Jane subject to the terms of the deed. The land in the whole Schedule were conveyed to Cecilia and Jane. That was the property known as Siriniwasa. That is the land described in Schedule to the plaint. I produce certified copy of deed 1401 of 23.6.1896 P 5 by which Cecilia conveyed her half share to Siman Fernando the father. I also produce deed 2180 of 30.6.1900 a certified copy

which is marked P 6 which constitutes a partition between Siman Fernando and my mother Jane by which Jane was allotted property in Schedule 3 of the plaint to wit Sirinivasa. My mother died on 6.5.1933. She left three children myself and the other two are the other two plaintiffs. Some years ago we brought an action against the persons in possession of Sirinivasa. That was an action against Mr. Tyrrell and another, District Court Case No. 404. That land Sirinivasa was a portion of this land.

No. 12  
Plaintiffs'  
Evidence  
L. P. Abey-  
wardene  
Examination.  
—continued

Q.—That land was a part of Schedule.....?

(Mr. Choksy objects to evidence in regard to any other case on the 10 ground that it is irrelevant. It is not necessary to lead this evidence.

Mr. Hayley says he is putting these questions to identify the documents and the land. It has also a bearing on the question of compensation for improvements.

Mr. Choksy says in regard to compensation for improvements he can lead evidence in rebuttal and at that stage he can lead this evidence.

### ORDER

I uphold this objection. I do not think it is necessary for this witness to identify the deeds that were discussed in case 39 N L R at page 505. In that judgment there are passages from the various documents and the application 20 of the law to those passages have been discussed,

Sgd. V. S. JAYAWICKREMA,  
A. D. J.

Defendant has been in possession of the property from about 1925 as far as I am aware. The defendant has at no time paid me the rents and profits from this property. She has been in wrongful possession since my mother's death. I ask for a declaration of title and for damages to the extent of Rs. 7,500/-. The value of the property in my plaint is put down as Rs. 50,000/-. Rs. 7,500/- is for 3 years that is at Rs. 250/- a year. This property is 2 acres in extent. That is the property which I claim now. It is about half an acre. 30 It is bounded by Edinburgh Crescent on one side, Green Path on the other and is in the middle of what is known as the Cinnamon Gardens, Colombo. It is a residential district in Colombo.

**Cross-examined by Mr. Choksy.**

Q.—How do you arrive at the valuation of Rs. 50,000/- for the portion in dispute ?

A.—No. answer.

L. P. Abey-  
wardene  
Cross-Exami-  
nation

No. 12  
Plaintiffs'  
Evidence  
L. P. Abeyawardene  
Cross Examination.  
—continued

I know the value of land in that area. I have heard of other sales. Sales have been taking place and I know the price. The valuation I place is based on a valuation report by a professional valuer. I know about values of land in that area but I was guided by the report.

Q.—You yourself cannot give to Court particulars of sales in this area at or about the time you filed the plaint ?

A.—No.

Q.—Or at any time ?

A.—I cannot remember now.

Q.—Could you tell the Court whether there was any sale of any land in 10 that area at or about the time you filed this plaint ?

A.—I cannot remember.

Q.—You really have stated in your plaint and in your evidence that the value of this land is Rs. 50,000/- on the basis of the valuation report which you have obtained ?

A.—Yes.

Q.—Will you tell the Court how you arrive at the damages Rs. 2,500/- a year which you are claiming from the defendant ?

A.—I believe that is at 5 per cent of the value of the land.

Q.—You believed from whom ?

20

A.—That is also from my valuator.

Q.—That is with buildings on it ?

A.—No, without buildings.

Q.—Are you able to tell the Court whether 5 per cent. is a fair percentage of the rental for bare land in that area ?

A.—Yes. Somebody makes an investment of Rs. 50,000/- and he would expect at least 5 per cent. on it.

Q.—Therefore you say that damages in respect of this bare land should also be 5 per cent. of the capital value ?

A.—Yes.

30

Q.—Can you give the Court for instance any case where anyone has paid as much as 5 per cent. capital value as rent for bare land in Cinnamon Gardens ?

No. 12  
Plaintiffs'  
Evidence

A.—I cannot say.

Q.—Was there any produce obtained from this land ?

L. P. Abeyawardene  
Cross-Examination.  
—continued

A.—No, not to my knowledge.

Q.—It was yielding no income whatever as a land ?

A.—Not as a bare land but from the houses which were on the land there was an income.

Q.—From the land itself there was no return before the houses were  
10 put up ?

A.—Not to my knowledge.

Q.—You said that the defendant had been in possession from 1925 ?

A.—I made a mistake I was thinking of Mr. R. L. Pereira.

Q.—Could you tell the Court from when the defendant was in possession ?

A.—Some time later.

Q.—You cannot say when ?

A.—I cannot remember.

Q.—Therefore you are not able to say from when defendant in this case has been in possession of the land in the fourth schedule ?

A.—I know it is after 1925, there is a deed to that effect. I cannot  
20 remember.

Q.—You cannot say apart from the deed the date from which defendant was possessing ?

A.—That is so.

Q.—Have you got the death certificate of your mother ?

A.—I can produce it in the afternoon.

Q.—Have you obtained a death certificate ?

No. 12  
 Plaintiffs'  
 Evidence  
 L. P. Abey-  
 wardene  
 Cross-Exami-  
 nation.  
 —continued

A.—I have applied for one. It is coming in the afternoon. I cannot produce it at this moment.

Q.—You referred to case No. 404 of this Court filed against Mr. Tyrell and Thaine ?

A.—Yes.

Q.—Ultimately as a result of a compromise you and the co-plaintiffs withdrew the action ?

A.—We did not withdraw the action.

Q.—The action was filed by you and certain others ?

A.—Yes.

10

We lost in the District Court. We appealed to the Supreme Court and got judgment in our favour in the Supreme Court. The defendant appealed to the Privy Council.

Q.—And there was a compromise ?

A.—There was no compromise. The appeal was withdrawn by them.

Q.—As a result of a compromise ?

A.—Not as a result of a compromise. It was withdrawn by them.

The Municipality is in occupation of the land now. The land was sold by us to the Colombo Municipality after that case. I and my brothers sold the land.

20

Q.—Mr. R. L. Pereira purchased the property of which schedule 4 of the plaint forms a part at a public auction ?

A.—I do not know.

Q.—Were you not present at the sale ?

A.—No.

Q.—One of your brothers ?

A.—I do not know.

Q.—Were the other two plaintiffs present at the sale ?

A.—No.

Q.—Either you or one of your co-plaintiffs was a private secretary of the late Mr. W. A. de Silva ?

A.—No.

Q.—W. A. de Silva lives at Sravasti ?

A.—Yes.

Q.—Close by ?

A.—Some distance away.

Q.—On the same street ?

10 A.—Yes.

Q.—You and your brothers were staying at Sravasti ?

A.—No.

For a short period one of my brothers was staying there. That is second plaintiff, G. P. Abeyawardena. That was after 1935.

Q.—Sravasti is about two doors next to the Public Library premises ?

A.—About three doors next.

Q.—The public library premises are next to the land Anandagiri premises ?

A.—Yes.

20 Q.—At the public sale did you or your co-plaintiffs issue any warning to prospective purchasers with regard to title ?

A.—I was not aware of the sale. I was a school boy.

Q.—As far as you know no notices were published ?

A.—Not to my knowledge.

**Re-Examined.**

I produce as P 6a copy of the decree in the Privy Council case No. 404. That was in February, 1939.

Sgd. V. S. JAYAWICKREMA  
A. D. J.

No. 12  
Plaintiffs'  
Evidence  
L. P. Abeyawardene  
Cross-Examination.  
—continued

L. P. Abeyawardene Re-Examination

No. 12  
Plaintiffs'  
Evidence  
—continued  
Miss Cissy  
Cooray  
Examination

MISS CISSY COORAY—Affirmed, Colombo.

I am a daughter of the late Mr. John Cooray. I am familiar with his signature. Shown the original PIB. I identify the signature of John Cooray my father.

XXD—Nil.

Sgd. V. S. JAYAWICKREMA,  
A. D. J.  
Court adjourned for lunch.

H. M. Guna-  
sekere  
Examination

H. M. GUNASEKERA—Affirmed, Auctioneer, Colombo.

I am an auctioneer and broker. I have had 35 years experience. I have carried out auction sales of lands in Colombo. I have carried out auction sales 10 of lands in Cinnamon Gardens. From my experience as an auctioneer I can say the value of lands. I know the land in dispute. I have never been to the land. I know the land. I know the land on which the two houses stand. I am not an expert.

Q.—What would you value.....?

(Mr. Choksy objects to the evidence. The witness says he is not an expert.)

(To Court: I have not been to the land at the plaintiffs' request. I know the land because I have been in Colombo for the last 65 years.)

I know the land at the corner of Greenpath and Edinburgh Crescent. I 20 know the land adjoining Mr. R. L. Pereira's. There are two bungalows. I should think they would be worth about Rs. 100,000/- an acre. I have sold in Cinnamon Gardens at Rs. 100,000/- an acre.

Q.—What return would an investor in Colombo property expect.

A.—They expect to get 2 1/2 per cent or 3 per cent. Before the war people expected about 5 or 6 per cent.

H. M. Guna-  
sekere  
Cross-Exami-  
nation.

**Cross-examined by Mr. Choksy.**

Q.—Today people are content to get even 2 1/2 per cent return on their investments?

A.—Yes.



Q.—That is on house property ?

A.—Yes.

Q.—In areas like Cinnamon Gardens or Colpetty ?

A.—Yes.

Q.—In fact the better residential areas the percentages of income is less than in the congested areas—for example in Pettah and such places the rents are higher ?

A.—Rents are higher and there is an appreciation as the years go on.

Q.—They should be satisfied with one or 1 1/2 per cent return ?

10 A.—When people have too much money they will buy property which cannot be stolen or when they cannot invest in the Bank ?

Q.—In 1925 there was a rubber boom ?

A.—I cannot say.

I remember the time rubber was Rs. 10/- a lb. I cannot say anything about rubber because I had nothing to do with rubber.

Q.—Between 1925 and 1928 there was a rubber boom ?

A.—I cannot say.

Q.—When there is a rubber boom there is plenty of money available ?

A.—When produce sells well there is more money in the country.

20 Q.—At such times people have to be content with a small per cent. return ?

A.—Yes.

Q.—Bare land in Cinnamon Gardens or Colpetty area will have no rentable value ?

A.—That is right.

Q.—Or practically negligible ?

A.—That is right.

No. 12  
Plaintiffs'  
Evidence  
H. M. Guna-  
sekera.  
Cross-Exami-  
nation.  
—continued

Q.—From land such as this land there is no return from such a land ?  
You cannot get any return because there are some flower trees or shade trees.  
There were no coconut trees on the land.

A.—The income from this bare land would have been nil.

Q.—Would you have been prepared to pay as rent for this bare land even Rs. 100/- a year ?

A.—If a man proposes to build and get a return he will pay.

Q.—What rent would you be prepared to pay for this land of half acre if it was bare land and you were to take it as bare land on rent ?

A.—I will not take it for anything because it is bare land. If I had an idea to build I would buy the bare land.

Q.—But if you were taking bare land on rent you will not be prepared to pay anything for it ?

A.—I would not touch it.

Q.—You have not been to the houses which were built on this land at all ?

A.—No.

Q.—You casually have seen them when passing along Greenpath ?

A.—Yes.

Sometimes I go that way by car or by rickshaw.

20

Q.—You did not pay any particular attention to these bungalows ?

A.—I looked at them because I knew they were Mr. R. L. Pereira's and the man who used to fit the electrical things used to come to my place to cash cheques and sometimes buy things.

I do not know of what they were built or what they cost.

Q.—In 1943 was there plenty of money in Ceylon and people were prepared to pay fancy prices for properties ?

A.—Yes.

Q.—People were prepared to pay high prices for house properties and estates. A.—Yes.

30

Q.—You must have been concerned in transactions with properties changing hands at high prices ?

No. 12  
Plaintiffs'  
Evidence

A.—I used to sell by auction but I did not have private transactions.

H. M. Guna-  
sekera  
Cross-Exami-  
nation.

Q.—Even at those auctions lands fetched good prices ?

—continued

A.—Specially in Cinnamon Gardens. I got a statement somewhere here.

Q.—All I want is your recollection that there was plenty of money in the Island and properties were sold at high prices ?

A.—Yes.

Q.—With the result that the percentage return dropped ?

10 A.—Naturally.

**Re-Examined**

H. M. Guna-  
sekera  
Re-Exami-  
nation.

When people buy bare land in Cinnamon Gardens they buy for the purpose of building of course and getting a return.

Sgd. V. S. JAYAWICKREMA,  
A. D. J.

Mr. Hayley closes his case reading in evidence P 1 B to P 6 A reserving to himself the right to call evidence in rebuttal.

Sgd. V. S. JAYAWICKREMA,  
A. D. J.

20

**No. 13.**

**Defendant's Evidence.**

No. 13  
Defendant's  
Evidence

MR. CHOKSY calls :

R. L. PEREIRA—Affirmed. Advocate, Supreme Court and King's Counsel.

R. L. Pereira  
Examination

I have been an Advocate 43 years. This is my 44th year at the Bar. Defendant is my daughter. She is out of the Island at the moment. I am her attorney. At one time I was the owner of the premises in dispute in this case, namely, the land in the fourth schedule to the plaint as part of a larger land. Shown Deed No. 3129 dated 30-11-1905 D2. By that deed Jane with the 30 approval of her husband and mother sold to Siman Fernando her father. I am

No. 13  
Defendant's  
Evidence  
R. L. Pereira  
Examination  
—continued

emphasising that because Cecilia's deeds which were produced were without consent. She sold for Rs. 75,000/-. Siman Fernando by deed 4218 of the 6th December, 1907 D3 sold to James Fernando Sri Chandrasekera for Rs. 175,000/- the whole block bounded by Flower Road, Green Path, Edinburgh Crescent and land belonging to the predecessors of Mr. L. B. Fernando. James Fernando died on the 7th March, 1911 leaving a Last Will 4480 of 8th April, 1909, D4, codicil 4648 of 10th March, 1910 D5 both of which were proved in testamentary case No. 3927. The probate is produced marked D6. By his will and codicil among other properties he left this property in trust — the trustees being the Government Agent, W.P. and the Colonial Secretary those days. By deed 10 1382 of 12-7-1924 D7, the executors transferred to the trustees Mr. Clementi and Mr. Thaine. Thereafter the trustees of the Sri Chandrasekera Fund advertised Anandagiri and 1 acre 1 rood 1 perch. They called for tenders. My tender was the highest and was accepted. That was for Rs. 86,500/- including stamps and other charges. That was conveyed to me by deed 290 of 20th December, 1924 D8. That conveyed Anandagiri premises of the total extent 1 acre 1 rood and 1 perch. There was also a transfer in my favour of another portion of land out of the main corpus by deed 318 of 28-3-1925. That was lot 42 of the plan attached and it was put up for sale by public auction after due advertisement. I produce the conditions of sale D9 which gives the 20 various bidders. It is No. 1462 dated 28-1-1925. I paid Rs. 40,000/- for that block and it was conveyed to me by deed 318 of 28-3-1925, D10. I also purchased another extent for Rs. 500/- by deed 419 of 19-1-26, D11. I bought a small extent of some two perches to straighten out the boundary. On these deeds I purchased Anandagiri and also the land in dispute in the fourth schedule to the plaint. At that time there was no building in the land described in the fourth schedule to the plaint. Under deed 318 I bought a bare land. There was one gonthebili tree. The others were all flower trees. I opened up a gate from Edinburgh Crescent. I never got a nut off it. The land lay idle till I contemplated gifting a portion of the land to the east of 30 Anandagiri to my daughter which I did by deed 340 of 20-4-1935 subject to the conditions set out in that deed. For the purpose of stamp duty it was valued at Rs. 29,625/-. M. P. Dissanayake one of the executors of James Fernando pointed out one of these gentlemen as the son of Danister Perera who was one of my friends at the Royal College.

Q.—At the sale did anybody assert any claim or title to any portion of any of the lands which you purchased on D8 to D11 ?

(Mr. Hayley objects to this question on the ground that there is no question of estoppel.

I allow the question.)

40

A.—Nobody at the time drew my attention to the fact that there was any claim,

Q.—When you purchased Anandagiri on what did you find the title based ?

A.—On an order of Court made in the Special Proceedings 116.

(Mr. Choksy marks the motion, the petition and affidavit of the special proceedings separately D13, D14 and D15 and the order of the Court D16.)

I also produce proxy given by the petitioners in the special case 116, D17. I say the petitioners concealed from the Court their real object. Their real object is proved by four deeds executed on the same day. Their real object was to give a half of Sirinivasa plus the grounds with the house to Jane and the whole of the Priory back again to Cecilia. That is proved by the execution of the four deeds on the self same date. Three of those deeds have been produced. But one deed has not been produced. That is produced by me D18 deed No. 1400 of 28-6-1896, by which Siman Fernando, conveyed to Cecilia the whole of the Priory. I also produce deed 1398 which is already marked P4, D19 whereby Sirinivasa was conveyed to Jane and Cecilia. That deed was executed while deed 2110 was extant. By deed 1399 Jane and Cecilia conveyed the interests in "The Priory" back to Siman. I mark that deed D20. There was also executed on the same date deed 1401 D21 by which Cecilia after she got "The Priory" conveyed to the father her half share of Sirinivasa. The original deed 2110 forbade the sale by the donees of the property on any account. Deeds 1401 and 1400 could not have any conditions because they purport to be sales. 1399 was that it should be reconveyed to the donees free of conditions. 1400 I am not certain about but 1401 purported to be a sale by Cecilia to Siman of half share of Sirinivasa for Rs. 45,000/-. The same condition appears in 1400 as in 1398. That is to say she shall not sell except with the consent of her parents. On D12 I gifted to my daughter with the object of providing her with funds to put up houses. I gave her on the 23-5-1935 by cheque G 827713 on the Imperial Bank for Rs. 20,000/- D22. The counterfoil D22 says "Carmen birthday gift for building two houses part capital". Carmen is the name of my daughter. On the 23rd September 1935 G 827735 for Rs. 16,500/- is marked D23. It reads balance to contractor for two houses. The contract was for Rs. 36,500/- and was with Peter Fernando. The contract was entered into about the latter part of May or beginning of June. I have not got a copy of the contract. The contract had been entered into on one side by me and on the other the contractor. My daughter wisely anticipated that she would have trouble with the contractor and so I entered into the contract. Mr. Moonesinghe gave me a recommendation and a warning. The contract must have been before 25th June because the first cheque issued was on that date to Billimoria & Silva. That is marked D24. I have been summoned to produce the counterfoils of my daughter. The amount of that cheque is Rs. 547/50. They were the architects and they had to get a percentage under the contract. The contract must have been entered into before the date of that cheque. On the 3rd July 1935 is the first cheque to Peter Fernando the contractor. That is for Rs. 1409/55, D25. That cheque was also issued by my daughter. Peter Fernando's tender was the lowest tender for the contract to

No. 13  
Defendant's  
Evidence  
R. L. Pereira  
Examination  
—continued

No. 13  
Defendant's  
Evidence

R. L. Pereira  
Examination  
—continued

build. It was for Rs. 36,500/-. The second cheque for Rs. 16,500/- completes the payment to the contractor. It says "balance to contractor."

On the 18-3-36 I issued a cheque for Rs. 3,500/-. The cheque was on the National Bank No. 307511 for Rs. 3,500/-. That has been given to my daughter. That was an additional payment made to her. That is D26. The next cheque counterfoil was for Rs. 4,000/- on the 28-3-36. I have got the entry "Rs. 44,000/- to date for new houses". The number is FH. 307576 D27. The next cheque is dated 20-5-36 for Rs. 6,000/-. The entry on it is to date Rs. 52,000/- for building new houses. That is also on the National Bank FH. 307725, D28. The next cheque is dated 19-6-36 is FH. 307530 dated 19-6-36 also in favour of my daughter for Rs. 2,000/-. It is marked D29. The next cheque was on the 4-6-36 FH. 307541 D30 for Rs. 5,197/67. That was a date I looked through the accounts and found that so much was due to settle the accounts. The total on the counterfoil is Rs. 57,197/57. I have issued another cheque on the 17-2-1940.

The floor of the house facing Edinburgh Crescent sank. I had to incur expenditure on that account. By cheque No 71563 of the Bank of Ceylon D31 I incurred an expenditure of Rs. 311/12. In 1943 my daughter was married and she contemplated living in the house facing Edinburgh Crescent. I had to put in pelmets—protecting metal things to windows. The front house was let to the German Consul. Thieves got in through the open window. My daughter got metal grills, pulleys, blinds etc. put in. On the 11-2-43 I paid Rs. 1,847/58 for these fittings. That was by cheque dated 11-6-43 D32—cheque No. B. 025027. Mr. Billimoria joined Government Service in 1936, and Mr. Fritz Silva had to carry on with the work. I refrained from paying him certain monies because the contractor had written to me he was going to sue me and I refrained from paying the Architect Rs. 500/- that was due to him. Fritsz Silva died of galloping consumption. I paid him Rs. 500/- in cash and three days later he died poor man. That brings the grand total to Rs. 59,856/37. In the answer I have not given all these particulars because my daughter was not here. Mr. Billimoria has given a rough figure. He stated that the buildings must have cost Rs. 70,000/— That is how the figure Rs. 70,000/- came into the answer. These are payments by cheque and the other sum is the Rs. 500/- per cash which I can remember. I have already produced and marked two counterfoils D24 and D25 of my daughter. I got Mr. Wilson to make a copy of the extract from the counterfoils. I have my daughter's bank pass book showing that everyone of these cheques has been duly credited to her account in her pass book D33. I have not brought my bank pass book. I have had a statement compiled giving the number of the cheque, the date of the cheque the amount of the cheque and the name of the payee. That is a list of the cheques issued by my daughter in connection with these two buildings which are in dispute. It is marked D34. I have also receipts for some of the bigger items and also receipts from Peter Fernando. The first two cheques referred to in the list D34 are the cheques the counterfoils of which have been marked D24 and D25. I have in court six books of cheque counterfoils. Particulars have been extracted from those books and D34 compiled. D35 to D40 are the

six books of counterfoils. The contract was for Rs. 36,500/-. I have paid to my daughter Rs. 59,856/57. The contract did not include a number of items. Flooring tiles were outside the contract; baths. There were six baths in the two houses. In four of them the fittings were imported from Europe and America. The other two fittings were supplied by Fradds. The wash basin, tooth brush racks, baths, bidets were imported from Europe or America and the usual towel rails etc. Some tiles were bought from Hoare & Co. Mr. Fradd supplied the floors and sunken baths and the whole ground floor tiling and upstairs tiling. Two sunken baths. For the other two baths the material was produced by Fradds.

10 Also the necessary fittings in these two bath rooms and the tiling ground floor and upstairs floor were supplied by Fradds. His was the biggest single item Rs. 5,000/- odd. He was paid by two cheques Rs. 3,163/50 and Rs. 2,940/59. These were issued in favour of the Colombo Tile Works. The document was signed by L. C. W. Fradd. The bath room fittings were special. The ground floor and upstairs floor tiling were outside the contract of Peter Fernando. The drainage pipe laying was outside the contract. Pipes and various other joints and connections were outside the contract. They were done by M. I. Mohamed Allanson & Co. did the electrical fittings. My daughter made direct payments to M. I. Mohamed and Allanson & Co. for the drainage and electrical fittings

20 etc. Some of the lights were bought from various shops Brown and other places. They were special fittings purchased by my daughter for these two houses. Those were fittings into two bungalows. The two bungalows are not fitted with drainage and electrical fittings of the ordinary type. They were built to be attractive. The most modern fittings were put in to make it more attractive and get a better rent. I cannot say what was in the contract and what was not. The contractor was worrying me wanting part of the payment. Mr. Silva made a rough estimate of what was due to him and what was paid. It showed that Rs. 200/- odd extra had been spent over and above by Peter Fernando. Rs. 59,856/37 is the cost of buildings including the items that were outside the

30 contract as well. I have given the figure showing the actual cost of the improvements. The point that I am making is that the value either today or at the date of the action is considerably more than I said. I imported most of these things. If I paid the middle man's profit it would have cost me much more. There was considerable trouble between Peter Fernando and myself. My daughter and my wife spent day after day supervising the work and a great deal of money was saved which would have been paid to somebody else for supervising the building. One of the tenders by well known contractor was for Rs. 68,000/-. At the date of the action the properties would have been worth

40 considerably more. I have with me many files to show relative to the putting up of these buildings. Many of the receipts for the payments made in respect of buildings are here but if I knew that there was going to be a case all the receipts would have been meticulously kept. The cheque books also would not have been eaten by white ants. These are the two houses built by my daughter in Colombo. I have not built any buildings in Colombo. I have one estate bungalow at Puwakpitiya and another at Kurunegala. They were built long before.

No. 13  
Defendant's  
Evidence  
—continued

R. L. Pereira  
Cross-Exami-  
nation.

*Cross-Examined.*

In case 404 I was retained as counsel. Mr. Hayley drafted the answer and left the Island, and I came into the case. I appeared in July, 1936 as Counsel. Building operations began in June. I had an amended answer filed. I was retained in the case after Mr. Hayley left the Island.

*Q.*—Can you accept the date 6-7-36 as the date on which you first appeared?

*A.*—I cannot remember the date but if the record shows that I appeared on that date I will not contradict that.

D34 shows all payments made by my daughter paid out of her 10 bank account. Shown D22. That was a payment to my daughter of Rs. 20,000/-. Rs. 16,500/- was also paid to her. She made every payment. My wife made a few cash payments. D25 was the first cheque to Peter Fernando. That was my daughter's cheque. Everyone of the cheques in the statement D34 was drawn by my daughter. D22 and D23 are payments by me to my daughter. D24 was a payment to Billimoria and de Silva of Rs. 500/- odd. That came out of the monies I provided her with. That would come out of the Rs. 40,000/- I gave her not in addition. The cheques shown in D34 have been issued on funds provided by me. I gave her Rs. 57,397/67. The cheque D25 was a cheque to Peter Fernando for Rs. 1409/55. That was out of the Rs. 40,000/-. D25 20 payment of Rs. 1409/55 is a payment by defendant out of the money not in addition to my money. D26 is a payment by me to my daughter. That payment made the Rs. 40,000/-. The next D27 was for Rs. 4,000/- payment to her. All my cheques were to my daughter. D30 was also a payment to my daughter. The figure Rs. 57,917/67 is the total up to that date of cheques drawn in her favour. Those were all given for the purposes of this building. None of this went for furniture apart from the sums which I gave in 1943 when she wanted to go into occupation.

*Q.*—When you were giving the last one or two cheques in February 1940 and June 1943 by that time you knew that the title was in dispute? 30

*A.*—I was quite confident that having paid hard cash Rs. 40,000/- for the block she is in possession of that my possession as against these plaintiffs was perfectly sound and I still think so.

*Q.*—As regards Sirinivasa title you appreciated the fact that it might have repureussions?

*A.*—Siman Fernando applied, James Fernando was guardian *ad litem*. There was the order of Court made on it. I saw the order of Court and bought this particular block and so far as I was concerned I paid hard cash. What actually passed between father and son I am not in a position to prove. What passed from Siman Fernando to Jane I am not in a position to prove. But they 40



were all applicants to that case and fixed with knowledge of that case I was a rank outsider. I bought from the Sri Chandrasekera Trust Fund. I tendered when they published notices in the press calling for tenders. I sent in a tender and was declared the highest bidder and I bought the property from them.

No. 13  
Defendant's  
Evidence  
R. L. Pereira  
Cross-Exami-  
nation.  
—continued

Q.—The case 404 was an action by them on the same title ?

A.—Yes.

That was after I bought. This particular block and more I bought in March 1945.

Q.—When you saw the pleadings in the case *Abeyawardena vs. Tyrrell* you appreciated the fact that they were attacking the same title that you had bought ?

A. I have got points which were not available to James Fernando. He could not very well accuse himself of practising a fraud on the Court of not divulging their true intention. I thought it was my duty to finish the building once I started. I did not know about this case till I was retained. By this time the two buildings were practically complete. I had nothing to do with the drafting of the answer. It was only when Dr. Hayley left the Island that I came into the case.

Q.—When you saw the answer you knew they were attacking the same title that was conveyed to you ?

A.—Yes.

Q.—The last payment you noted down D32 was a sum of Rs. 1,847/58 on fittings ?

A.—Yes.

They are fittings.

Q.—Those were bought after the institution of this case ?

A.—Yes.

Q.—Can you tell me what happened to the building first ?

A.—My daughter got married in 1943.

30 The buildings were let unfurnished. At that time I think the rent was Rs. 275/- each. Municipal taxes were paid by my daughter from September 1936. From that time onwards my daughter received the rents. She wanted to go and live there after she got married but she never went into occupation. Her

No. 13  
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nation.  
—continued

husband persuaded her to go and make her home in London. She gave notice to the tenant and got him out and the house was vacant for three months. Instead of going in she went out. I think the rent is something like Rs. 325/-. There is some variation in the out houses otherwise the two houses are almost similar.

*Sgd.* V S. JAYAWICKREMA,  
*Additional District Judge.*

Case postponed for 29th June 1948.

29th June, 1948.

Appearances as before.

10

R. L. PEREIRA.—Affirmed.

(Mr. Choksy moves to put in two documents to the witness before he is further cross-examined.

Mr. Hayley has no objection.

I produce marked D41 the minute of consent of Cecilia and Jane dated 16-6-1896 filed in special pleadings No. 116 in the application made by Siman Fernando and Maria Perera in the case.

I produce marked D42 the minute signed by James Fernando dated 16-6-1896 in the same application.

Similarly a minute signed by Jane Fernando on the same date in the same case with reference to the same application D43).

**Cross-Examined.**—(Continued)

Q.—Your daughter had she any income in her own right at the time the houses were built ?

A.—Not at that time. Sorry, I had bought in her name and my son's name a coconut estate in Kurunegala and she was getting at that time between Rs. 5,000/- and Rs. 10,000/- a year.

Q.—All the cheques you gave her she was not appropriating for her own use ?

A.—No. She had her own income from the coconut estate. That is from 30 1929. These houses were begun to be built in June, 1935.

Q. There are a few names in the document D34— can you tell why Messrs Lee Hedges were paid a sum of Rs. 420/- dated 9th December, 1935 ?

No. 13  
Defendant's  
Evidence  
R. L. Pereira  
Cross-Exami-  
nation.  
—continued

A.—I cannot tell exactly. They supplied all the roofing tiles and also certain teak.

Q.—You are aware that payment to them was for material for the houses ?

A.—Oh, Yes.

Q.—You paid E. B. Creasy for what ?

A.—Mainly for cement.

Q.—You made this list ?

10 A.—That was made by my daughter and son-in-law. They made it when the case was instituted. I have the book which is in her own writing and my son-in-law's writing.

Q.—When you bought you examined title ?

A.—I did not when I tendered for Anandagiri. When I got the deeds I found what the title was. I merely put in a tender for Anandagiri. Exclusive of stamps I paid Rs. 86,500/- on 7th December. My tender was accepted. I issued a cheque for the ten per cent on that day and for the balance Rs. 77,500/- I issued another cheque on the 20th December. The stamp fees came to Rs. 1,384/-. I also paid commission also as a matter of fact.

20 **(To Court :**

Q.—At that time you did not examine the title of Anandagiri ?

A.—No.)

Q.—Did you examine the title before you got the transfer ?

A.—No. I only saw the deeds when the deeds came to me.

Q.—Did you have to make a deposit with the tender ?

A.—I do not think so, because I find 10 per cent paid by me on the 7th December, 1924.

Q.—After which you had to get title ?

A.—Yes.

No. 13  
Defendant's  
Evidence  
R. L. Pereira  
Cross-Exami-  
nation.  
—continued

Then I got the bundle of deeds. That was after I paid.

Q.—Did you not think it necessary to examine the title before you took the transfer ?

A.—I presumed it was good. I knew this was Siman Fernando's property and Chief Justice Burnside occupied it in his day. I thought the title was good. The transfer on 23-3-1935 included this block as well. I bought that on 3-2-25. The sale was on the 3rd February and the transfer on 3rd March.

Q.—At that time did you examine the title ? You merely assumed it was alright as the other one was ?

A.—I had seen that the title of Anandagiri was based on an order of 10 Court from my deeds before I bought this place.

Q.—You read the order of Court ?

A.—The order of Court was that on Sirinivasa being conveyed to Jane and Cecilia subject to the condition that they shall not sell mortgage or otherwise alienate or lease the property for more than three years except with the consent of one or other of the donors they were authorised to transfer the Priory to Siman and Maria.

Q.—You saw of course that it was an application under Ordinance 11 of 1896 — you saw the connected papers ?

A.—I did not.

20

Q.—You did not interest yourself to see ?

A.—No.

Q.—Did you not see why the matter came into Court at all ?

A.—The order of the Court had been complied with in that the Deed was executed in favour of Jane and Cecilia and I did not worry my head about it. I saw that there was an order of Court that they could alienate subject to certain conditions and I saw she had alienated with the consent of her mother and husband.

Q.—Ordinarily transfers of land do not require an order of Court unless there was something exceptional ?

A.—I did not think it was my duty to canvass the order of Court.

30

Q.—In ordinary title the Court will not intervene ?

A.—It may be a partition decree.

I did not think it was a partition decree. I saw it was based on the order of Court.

Q.—Ordinarily you do not find orders in special cases unless for some reason—unless there was a trust or *fidei commissum*?

A.—Exchange of properties. They could go to Court for exchange of properties, for permission to sell properties.

Q.—Those will all come under Ordinance 11 of 1876?

A.—Yes.

10 Q.—Did you not take the trouble to see why they came to Court?

A.—I did not look beyond the order of Court.

Q.—Nor did you go through the affidavits on which the orders were obtained?

A.—I did not look to see whether the order of court was in terms of the application or not. Since you asked the question I looked through my fee book and I found I had received a fee on the 3-8-1936 in regard to *Abeyawardena vs. Tyrrell*. By 6-7-36 not a cent was paid to the workmen after 6-7-36. On that day 6-7-36 the case was not heard. The case was heard on 6-7-36. I will accept the date given in the certified copy. No building operation went on 20 after the 22-6-36. That was the last payment for workmen. All the payments made after that date were payments for bills rendered.

(The copy of proceedings in D.C. 404 of 6-7-36 is marked P 7.)

*Re-examination.*

My daughter did not have anything to do with the case 404. She was not in any way assisting me or instructing me or a witness for either side. I referred to the order made by the District Judge.

Q.—Did you consider it necessary to go through the entire proceedings to see whether the Court had jurisdiction or power to make that order?

30 A.—Once I saw that the order of Court had been complied with I concluded that everything was in order. Otherwise I would not have touched the thing.

Q.—What do you mean by saying that everything was in order?

No. 13  
 Defendant's  
 Evidence  
 R. L. Pereira  
 Re-Exami-  
 nation.  
 —continued

A.—There was the order of Court and in pursuance of that order the deed 2180 was executed then Jane and Siman divided up the land then Jane sold to Siman. The order of Court said that after the death it was to go to the heirs. By deed D2 and P7 of 30-6-1905 with her mother's and husband's consent she sold, so that the orders of the Court were carried out.

(*To Court:* I did not see 2110. My deeds began from the order of Court.)

Q.—You said just now that 1398 had a provision that it was to go to the donee's heirs after her death? The deed will speak for itself. My recollection is that if it was not sold by them it was to go to the heirs. I do not know whether it is actually there that is my recollection. It said they could transfer 10 with the consent of one or other of the donees Shown D19. My recollection is correct. It was to devolve on the lawful issue after their death. What I stated just now are the terms on which the Priory was conveyed. There was nothing about to whom it was to go.

(*To Court:* Before I bought this particular block I had read D19. That Deed contains the conditions on which the Priory had been given to Jane and Cecilia. At the time I purchased all I knew was that in pursuance of an order of Court the deed was executed and all I did was to see that the terms of the order of Court had been carried out and that there was nothing to avoid the terms of the order of Court. I did not know that the Priory had been given on other 20 conditions, as I did not scrutinise it so carefully. The Priory was given on certain conditions that was subject to a good *fidei commissum*. I knew that when I read the deed. I read this deed D19 before I purchased this particular block.)

Building operations began about June 1935. By July 1936 the building had been completed and the last payment for the workmen was made on the 22-6-36. It was only a small payment of Rs. 92/36. Weekly cheques had been drawn for the workmen. The workmen were paid on the 23rd May, then on 30th May, then again on 6th June, 13th June, the last payment to workmen was on the 22nd June. There are no other payments to workmen after this date. 30 The rest of the payments are to contractors and well known firms like Chettinand Corporation, to Architect Billimoria & Silva, Lee Hedges, E. B. Creasys, Municipality, Hunter & Co., Plates. These cheques were for materials and goods supplied which had already been incorporated in the building before the 22-6-36. I refer to the fact that cheques drawn by me in favour of my daughter had been credited in the pass book. The cheques drawn by my daughter in respect of these buildings have been debited in the pass book. Everyone of these cheques in D34 have been debited in the pass book. It is recorded that I have referred to pelmets, fittings, grills etc. as furniture. They were permanent fixtures. Those pulley blinds is thick varnished material and will last for years 40 and years. But the grills are metal.

Q.—Is the frame in which those blinds used fitted permanently to the window or the door frame?

A.—It is a fixture but they are not everlasting. They are in working order today.

They are part of the buildings as rented out. If I said Rs. 86,500/- including stamps and other charges it is a slip. What I meant to say was Rs. 86,500/- exclusive of stamps and other charges.

No. 13  
Defendant's  
Evidence  
R. L. Pereira  
Re-Examination.  
—continued

(Mr. Hayley says he accepts D34.)

Sgd. V. S. JAYAWICKREMA,  
A. D. J.

Mr. Choksy closes his case reading in evidence D1 to D43 and the 10 evidence of Mr. Billimoria recorded *de bene esse*.

Sgd. V. S. JAYAWICKREMA,  
A. D. J.

Mr. Hayley reads in evidence P7 and the death certificate of Jane P8.

Mr. Hayley is not calling any other evidence.

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#### No. 14

#### Addresses to Court

No. 14  
Addresses to  
Court.

Mr. Choksy says there are some errors in the evidence of Mr. Billimoria.

Mr. Choksy addresses Court :

1. The evidence of Mr. Billimoria at page 3, "additional expenditure incurred by Mr. Pereira was included in the contract" This should be "not included". This is apparent from the rest of the evidence.

2. Issues 7a and 7b Acceptance. The two brothers who purported to accept were minors at the time.

(Dr. Hayley states there is no evidence they were minors.)

3. Mr. Cooray who purported to accept was a brother-in-law. Special proceeding show the donees were minors even at the time of the said proceedings.

4. Brother-in-law is not competent to accept on behalf of the donees.

5. No evidence led by plaintiff to prove who the other two people were who purported to accept deeds as they are brothers but there is no evidence they 30 are. It is a statement of the donors on the deed.

6. This statement is not evidence. There is a specific issue and there should have been evidence to prove who the acceptors were.

7. If the donees were not minors then there is no acceptance by them. If they were majors no one else could have accepted on their behalf.

8. Plaintiffs have not led any evidence to show that donees on 2,110 were minors. In the absence of such proof no third party could accept.

9. If they were minors plaintiff should have proved they were minors and secondly that the other two who purported to accept were brothers.

10. No evidence of ratification and confirmation on issue 22.

(Mr. Choksy states : I may have to ask for permission of Court to address <sup>10</sup> the Court on this point once. Dr. Hayley shows this. No evidence led and no statement in the opening.)

11. *Bona fide* possession, compensation and *jus retentionis* Issues 17, 18, 19, 20, 21 and 19b.

12. These arise if the plaintiffs are found to have title.

13. Issue 17 has a bearing on the question of title. It is to be read with Issue 18a.

14. Issue 21. Defendant's predecessor had no notice of any adverse claim or a *fidei commissum*.

15. The land in the 3rd Schedule was put up for sale by auction. 20

16. Defendant's predecessor purchased on D 10 when he bid for and bought at the auction. Property in 4th Schedule included in the deeds.

17. Mr. R. L. Pereira was guided by the Order of Court and it had no reference to a *fidei commissum* in respect to the property Sirinivasa.

18. Buildings commenced in June, 1935. Death certificate P 8 shows Jane died in May, 1933. Rights of the *fidei commissum* vested in the plaintiffs then. No notice of any claim had then been given or made.

19. Journal Entries P 7 show that the plaintiffs commenced litigation based on Decd No. 2,110 in November, 1935 although not in respect of this *corpus* but on the same title. It is not likely that the plaintiffs jumped into <sup>30</sup> Court in November, 1935. They must have taken time to consider between June and November, 1935.

20. Issue 21. Law covers the defendant's *bona fides* :



Law presumes the *bona fides* of every possessor. 22 *New Law Reports*, 286. Burden of proof of *mala fide* possession is on the plaintiff—in that case the defendant admitted the plaintiff's title. 11 *New Law Reports* 272. Presumed knowledge of Mr. R. L. Pereira as Counsel in a case does not show *mala fide*—certainly not in the defendant particularly as at the time Mr. Pereira came into that other Case 404 title had passed to the defendant. No possession in Mr. Pereira then at the institution of that action. No *mala fide* possession in him.

No. 14  
Addresses to  
Court  
—continued

- 10 21. No evidence led to show defendant is a *mala fide* possessor.
22. *Balasingham's Laws of Ceylon*, Vol. III, Part I, pages 60 and 61.
23. Assuming even that there is *fidei commissum* the Supreme Court has held that a fiduciary can get compensation and claim a *jus retentionis* as against a *fidei commissarri* or successors from one—47 *New Law Reports* 361.
24. No proof of any fact or circumstance affecting the defendant with such knowledge or notice to prevent him from claiming compensation or a *jus retentionis*.
25. Evidence shows conclusively that improvements were effected by her though it was out of money given to her by her father Mr. R. L. Pereira.
- 20 26. Rs. 59,857.37—cost of improvements.
27. Mr. R. L. Pereira has claimed the sum of Rs. 70,000 claimed in the answer.
28. No difference resulted even though some of the expenditure was after the other Case 404 started.
29. Payments made later for materials that had gone into the improvements.
- 30 30. Repair to the floor was necessary. Cheque D 31.
31. Payment to the Architect, Mr. Fritz de Silva. No definite evidence when he was paid this sum.
32. Fittings—D 32. Enhances the rental value of the improvements. Plaintiffs cannot keep them on the principle of wrongful improvements. Today they would cost two or three times more than what was spent.
33. Today the houses as improvements would fetch two or three times the actual cost.

No. 14  
Addresses to  
Court  
—continued

34. *Claim by Plaintiffs to damages* (if they succeed on the matter of title). Issues 4 and 5. Claim grossly exaggerated. This works out at Rs. 208 per month for a piece of bare land.

35. Claim for damages is on the basis the defendant is in wrongful possession of the land—bare land. The plaintiffs cannot claim damages on the basis there is a building as on the land he built.

36. Claim is based on the interest on Rs. 50,000 at 5 per cent. per annum. Even if a building is put up at Rs. 59,000 the return would come down to about 2 per cent. per annum.

37. All above points raised on the assumption plaintiffs have title. The defendant does not admit plaintiffs have title.

38. Issues 6a and 6b. Basis of the decision is Deed No. 2,180 of 30-6-1900. P 6.

39. Up to paragraph 7 the plaintiffs deal with undivided shares. Paragraph 8 refers to the divided portion. Plaintiffs claim divided portion on this Deed No. 2,180 of 30-6-1900, P. 6.

40. If a valid title to the divided portion claim did not vest in Jane, then the plaintiffs would be out of Court. Defendant is not here to meet any claims to undivided shares in the event the Court holds the partition is bad.

41. Deed No. 2,180 is a deed of partition. Jane transfers her interests in the western portion to Siman and Siman has in the eastern portion to Jane. No consent has been given by her parents.

42. On Deed No. 1,398 it has been specifically provided that no transfer could be given without the consent of her parents. Provision in Deed No. 1,398 both parents must consent. 1905 deed signed by Maria see Deed No. 3,129. D 2, the fact that Siman was the trustee is not enough.

43. Even if there was a *fidei commissum* imposed by operation of law on Deed No. 1398, that does not detract from the other provisions of Deed No. 1,398.

44. Under the Entail Ordinance (Cap. 54) the Court is empowered to impose such terms it likes, section 4, they can be in addition to what happens under section 8. It is not conceded that section operated to subject the transfer in Deed No. 1,398 to the same conditions as in Deed No. 2,110.

45. All parties in 110 asked for this additional condition and Jane consented. This condition was made one of the conditions. They at any rate affect the rights of Jane to deal with her interest.

46. Neither Jane nor Siman was competent to partition the land for further reasons. He purported to act on the footing he acquired title on Deed

No. 1,401 of 23-6-1896 P 5 or D 21. It purports to be a transfer by Cecilia of the undivided half of the land in the Second Schedule.

No. 14  
Addresses to  
Court  
—continued

47. Deed No. 1,401 has not been executed with the consent of Siman or Maria ; Maria tried to remedy the defect retrospectively by giving Deed No. 3,129 of 30-11-1905, P 7 or D 2. Jane conveys on this deed the divided portion.

48. No proof that the consent had been given. Fact Siman was the transferor does not help the situation, 19 *New Law Reports* 287.

49. Even in 3,129 P 7 or D 2 there is no consent by Siman. Subsequent consent is of no avail, 24 *New Law Reports* 481.

10 50. In 3,129 Jane, her father, her mother and her husband.

51. Siman had no title whatever and the alleged partition 2,180 is of no avail.

52. It may be that there will be some resulting position if Deeds Nos. 1,801 and 3,129 and 2,180 are held to be bad but we are not concerned with them. 6a and 6b should be answered in the affirmative.

53. Issues 15a and 15b and 16. Petition word " exchange " not use.

54. Fraudulent because on the very day Siman gets an undivided half share from Cecilia of Sirinivasa.

20 55. Nothing to show that the sum of Rs. 45,000 was actually paid to Cecilia by Siman. No acknowledgement of what happened to this Rs. 45,000.

56. Series of deeds :

1st Deed No. 1,398 of 23-6-1896—Transfer of Sirinivasa by Siman to Cecilia and Jane.

2nd Deed No. 1,399 of 23-6-1896—Transfer of Priory to Siman.

3rd Deed No. 1,400 of 23-6-1896 D 18—Transfer of Priory to Cecilia by Siman.

4th Deed No. 1,401 of 24-6-1896—Transfer by Cecilia of the undivided share of Sirinivasa by Siman without consent of parents.

All this within five days of the Order of Court—18-6-1896.

30 57. Had there been a proper application in 116 the *fidei commissum* would have been attached by operation of law.

58. The transaction kept from Court was that Jane got half of Sirinivasa subject to certain conditions and Cecilia got the whole of Priory free.

59. Had the Court been aware of what was going to happen would it have made the order in the form it was made.

60. The petitioners knew that the Court had no power to allow what they actually did and resorted to a ruse and made an application to circumvent section 8 of the Entail Ordinance.

61. There is nothing to show that the attention of the Court was drawn to section 8.

62. The Court had been led into making an order it would not have made and which it could not have made had all the facts been shown to Court.

63. Issue 15 (a) and (b) and 16 should be answered in defendant's favour. 10

64. *Issues 8a, b, 9, 10, 11 and 12.* P 2, motion, petition, affidavit all together. D 13, D 14, D 15, D 16, D 17—separately.

65. D 17. Proxy does not mention any application for an exchange.

66. The application is not one contemplated by the Ordinance. Neither the petition nor the affidavit referred to an exchange.

67. D 13. Motion sets out the details in the petition.

68. D 42. A minor, Jane Fernando, consents to her brother James being appointed G. A. L. to consent to the application. D 43. Wrong parties have signed the wrong papers.

69. All this indicates the great hurry. 20

70. The application was to change the conditions under which the new property was to be held.

71. No jurisdiction. The fact that it is stated an application is being made under the Entail Ordinance, it may be one that could not have been made. This one could not have been made.

72. Case in 39 *N. L. R.* 505. There is an error. Page 508. See page 512. In exchange. Application in terms to exchange.

73. D 14. Petition. Paragraph 7. Word *change*.

74. Actual order first to convey Sirinivasa and then to convey Priory, although the order in the application was otherwise. 30

75. D 42 and D 43. No proper appointment of representative to the minors.

76. Plaintiffs who claim from the proceedings themselves are affected by all irregularities. The defendant's predecessor would not be so affected. He need not go beyond the order.

No. 14  
Addresses to  
Court  
—continued

77. Application was made to change the conditions. Had it been an exchange the application would have merely asked the properties be exchanged.

78. Section 8. Property taken in exchange. The Court could have imposed additional conditions, e.g., additional conditions to prevent the donees from selling their fiduciary interests too.

79. The Deed No. 1,398 did not state the property was to be subject to the *fidei commissum* in 2,110 or to section 8 of the Ordinance.

80. Issues *8a, b* and *c*, should all be answered in favour of the defendant.

81. Application by the wrong party. Unless one is made by the correct party no Court can entertain it or make any order on it. Section 4 of the Ordinance. Section 5 of the Ordinance.

82. Siman was not entitled to the rents and profits under the *fidei commissum*. 2,110 gives him a life interest but it is not under the *fidei commissum*. Sections 4 and 5 must be read together.

83. Suppose a usufruct had been created a short time earlier and the Deed No. 2,110 was executed in its terms, can the usufructory come forward and make an application under this section.

29th June, 1948.

Sgd. V. S. JAYEWICKREMA  
*Additional District Judge.*

Mr. Choksy has not finished.

Further hearing on 30th June, 1948 and 1st July, 1948.

Sgd. V. S. JAYEWICKREMA,  
*Additional District Judge.*

D.C. 2,680/L.

30th June, 1948.

Appearance as before.

Mr. Choksy addresses Court.

30 84. Issue 10*b*. Assuming the application was in order, the order itself was made without jurisdiction. This is an alternative position.

No. 14  
Addresses to  
Court  
—continued

85. Court had no jurisdiction to make an order contradictory of and contrary to the conditions and an order contrary to the Statute or opposed to the terms of section 8.

86. The order is a nullity, and that being so, section 8 could not operate and the *fidei commissum* stand and could not have attached to any deed purporting to have been executed in pursuance of the order.

87. The plaintiffs are bound by only such terms and conditions that are found in Deed No. 1,398. It has to be considered quite apart from section 8 and as between inter-parties and we must ignore any reference in that deed to an order of Court which is a nullity. 10

88. It is still possible to give the order of Court of 1896 a certain limited effect even though it is void as an order under the Ordinance. They need not have gone to Court but having gone the plaintiffs are bound by the Deed No. 1398.

89. Issue 12 should be answered in defendant's favour. Effect of section 8 cannot apply to this order.

90. Issue 13 is consequential on the answer to issue 12.

91. Decision in 39 *N. L. R.* 505 erroneous submission with due respect.

92. Section 8 does operate automatically and the *fidei commissum* does not attach automatically to Sirinivasa.

93. The plaintiff should have got that order rectified by adding words attaching to the *fidei commissum* to the Deed No. 1,398. 20

94. 39 *New Law Reports* 505—another distinction. Only ground urged on the question of jurisdiction was that the application was one for an exchange.

In this case the defendant goes further and states that the order was one without jurisdiction, not only because the application was said to be one for an exchange but also because the order authorising the transaction the effect of which was to nullify the condition that should have been imposed.

95. Jurisdiction can be used in two senses—limitation with regard to local, monetary, etc., or with regard to nature and with regard to the question whether a particular court had been authorised by law to make a particular order. 30

96. Jurisdiction explained in 39 *New Law Reports* 176.

97. Issue 13 should be answered in the negative.

98. 39 *New Law Reports* 505. Paragraph bottom of page 512.

99. Issue 14 to be taken with issue 14a. Perusal of the deed will show the difference.

No. 14  
Addresses to  
Court  
—continued

100. Terms in 1,398 different to those in 2,110.

101. Paragraph 7 of the plaint. D 25 undivided half share of the entire *corpus*. The transfer of the entire share and not the fiduciary interests.

102. Consequence is that the *fidei commissum* on 2,110 remains where it was namely Priory and has not been transferred to Sirinivasa.

103. *The Law of Fraud and Fraudulent Transfer in England* by Dhobi, pages 107, 40.

10 104. Issues 17 and 18a.

105. 17 and 18b and 18c.

106. Defendant is entitled to the property on deeds D 2 to D 12.

107. Defendant and his predecessor in title have been in the undisturbed and uninterrupted possession from date of D 2 at least.

30-11-1905.—That was a deed by James to Siman.

108. Issue 22. Acts of Rectification not set out by the plaintiff.

Dr. Hayley addresses Court :

1. *Prescription*.—*Fidei commissari* do not get title till the fiduciary died. Jane died in 1933. Action not prescribed till 6-5-1943.

20 2. This Court is bound by the decision in 39 *New Law Reports* 505 unless this Court can give a particular reason why it should not be followed.

3. 39 *New Law Reports* 505. Discussed at length and it would have gone to the Privy Council but that appeal was withdrawn.

4. All substantial matters put forward by Mr. Choksy put forward in 39 *New Law Reports*.

5. Proposition is a very simple one.

6. P 2. Application was for an exchange. Affidavit paragraph 5. "Give them in lieu and instead of". This is to exchange.

7. Section 8. Refers to the exchange and not to the order of Court.

No. 14  
Addresses to  
Court  
—continued

8. Acceptance of the Deed No. 2,110. Deed accepted by brothers and brother-in-law. The Deed No. 2,110, P 1*b* itself says, that the two were brothers. The deed itself proves this. Section 90 of the Evidence Ordinance.

9. Section 32 of the Evidence Ordinance (6). P 1*b* a deed made by persons who are dead.

10. Apart from that formal acceptance Jane took part in the partition Deed No. 2,180-P 6 and she sold the property by Deed No. 3,129-D 2.

11. 39 *New Law Reports* 505. Mr. Justice Maartensz's dictum on this point of acceptance.

12. Partition. Original beneficiaries—life interest Cecilia and Jane. 10 They were fiduciaries. A fiduciary can sell his life interest. On P 5 Cecilia transferred her half to Siman. He became the fiduciary. The two half share owners Siman and Jane partitioned by deed. They can enter into a partition. *Voet* 10-2-38.

Mr. Jayawardena's books on partition. 9 *N. L. R.* 251.

13. *Bona fides*. Compensation depends entirely on *bona fides*.

14. *Bona fides* can to some extent be a matter of presumption.

15. Roman-Dutch Law did not make any distinction between movables and immovables. Legislation of the present times has done so.

16. *Bona fides*. Walter Pereira on right to compensation. Belief is a 20 question of proof.

17. Defendant did not give evidence. We cannot say she believed her vendor had title.

18. Issue 17.

19. A person must be under the *bona fide* impression the land is his. *Bona fide*.

20. Mr. R. L. Pereira had a mass of documents with him to see that a *fidei commissum* was attached to the property. They refer to the Deed No. 2,110, the reference to an exchange—*Fidei commissum* is part of the title deed. The order of Court cannot be read without knowing the *fidei commissum*. 30

21. Trustees expressly declined to warrant and defend. Mr. Pereira bought from them without looking into the title.

22. A person who does not read the documents can even say he believed the vendor had title.



Further hearing on 1-7-48.

No. 14  
Addresses to  
Court  
—continued

Intld. J. H. V. S. JAYEWICKREMA,  
Additional District Judge.

1-7-48.

Same appearance as before.

Dr. Hayley continues his address :

23. *Bona fides* terminates with the institution of the action—when the answer is filed. Walter Pereira on Compensation, page 51—

(1) *Maasdorp* 183, 2nd edition.

10 (2) *Maasdorp* 54, 2nd edition.

24. Costs—damages—compensation.

25. Plaintiff has a claim for damages as in a *rei vindicatio* action only 3 years damages claimed. Rs. 7,500 for the 3 years at Rs. 2,500 for a year.

26. Bare land—no damages—suggestion by the defence. There is a fallacy in this argument.

27. Lands in building areas are bought to build. In such cases one has to see what a party could make. The plaintiffs ought to have had this land in 1933, when Jane died.

28. Plaintiffs could have done several things—build if they had money and property. They could have sold it. They could have sold it and had Rs. 50,000. Lend the money and get the interest. Or they could let it for some purpose—petrol pump, light store—... .. institutions.

29. Assessment of the profits the plaintiffs have made. Rs. 50,000 could be lent at 5%. Rs. 2,500 per year.

30. Compensation for improvements :

Dr. Hayley accepts the figures given in document D 34. It does not cover the full amount stated by Mr. R. L. Pereira. D 34 covers the amount Rs. 56,299.36.

31. Two other expenses :

30 (a) February, 1940, Rs. 311.07 (D 31) to repair a floor—Repairs must come out of the profits.

(b) Rs. 1,847.50 paid 11-6-43 D 32 for pelmets and fittings, etc. They cannot come in. They are not fixtures. Again they were done after this action was instituted—filed on 5-3-43 (9-3-1943 plaint accepted).

32. Rents and profits :

*Bona fide* possessor has to declare all profits except those for the improvements itself.

. . . . pages 53-54.

1 *New Law Reports* 228 : Rules set out. Defence is liable for all conscious profits except those that come from the licences.<sup>10</sup> No prescription regarding the deductions. Mr. Pereira said rent was Rs. 275 per month from each house, i.e., Rs. 550 per month. Taxes and repairs to be taken off. 25% for taxes...

Total profit Rs. 6,600. Deduction Rs. 1,650. Nett annual value Rs. 4,950.

33. Some way of apportioning this amount between the building sites. Had they to pay fixing same today they would have had to pay Rs. 50,000 Rent on land plus building.

34. How much would the defendant get on Rs. 56,299.36. They should get 5% on that amount. To make it a round sum Rs. 57,000 can be taken as<sup>20</sup> the figures. If defendant gets 5% interest per annum. Then defendant is entitled to get Rs. 2,850 on their improvements. Deduct Rs. 2,850 and Rs. 4,950 nett values. Rs. 2,100 is left as being that portion of the net return and can be attributed to the owning of that valuable site in that locality.

35. Rs. 2,100 is the fruits of the land per annum. Rs. 2,100 a year should be deducted from their money Rs. 57,000.

36. Houses were completed by the end of 1936. If the years are taken from 1937 to 1948—the years of awarding compensation 11 years at Rs. 2,100 amount to Rs. 23,100. This must be deducted from Rs. 56,299.36. Compensation of Rs. 33,199.36.<sup>30</sup>

37. The plaintiffs are strictly entitled to their profits from 1933 time of Jane's death.

Dr. Hayley closes his address.

Mr. Choksy states at this stage that he cannot see under what issue this last contention was put forward.

Dr. Hayley states he has no point to make.

No. 14  
Addresses to  
Court

38. Matter not in issue, but it was agreed by Mr. Choksy—that is about the consent of Maria Perera to the conveyance by Jane. —continued

Mr. Fernando addresses on this point.

39. Conditions in 1398 imposed by Court—Cecilia and Jane could not sell without the consent of Siman and Maria.

40. It was not formulated at any stage why the issue 6 was raised. No pleading on which an issue on this consent could have been raised. Prior question of fact and the defence did not ask for a discussion from this fact.

10 41. Actual conditions in 1398. Prohibition is against a sale, mortgage or other alienation. The defence assumed an amicable partition to take a divided lot in lieu of an undivided share is an act coming within these leases, sales, mortgages or other alienations.

42. It is certainly not a sale or a mortgage. Does it then make alienation ?

43. It is true that each party purported to convey his or her undivided share of every portion of the divided lot given to the others but this is not the kind of alienation which is contemplated by the conditions.

44. The partition was with Siman.

20 45. 19 *N. L. R.* 287 and 13 *N. L. R.* 201 have no application at all. They are cases decided as a section of the Matrimonial Rights and Inheritance Ordinance. Then “prior written consent and not otherwise”.

46. Deed No. 3,129—contains a statement in the deed. Maria Perera confirms the previous sale.

47. This condition in 1,398 does not have the force of a rule of law as in the Matrimonial Rights and Inheritance Ordinance.

48. Jane and Cecilia had title and there was no legal bond to the transfer of that title.

30 49. Order of 116 is now challenged on a new ground, namely, by a wrong party. Mr. Choksy tried to read into section 5 of the Ordinance what is not in it. i.e., who is entitled to receive the profits under the *fidei commissum*. If his contention is correct during the life time of the donors no application under this Ordinance can be made.

Mr. Choksy in reply on the matter of compensation :

1. Apportionment of the rent for the property after the houses were built not foreshadowed in the issues or evidence.
2. Portion of the income cannot be earned out of the whole of the rents under the issue No. 20 (a).
3. Law says the improver is entitled to the cost of the improvements and the value of the improvements whichever is less.
4. Can the Court go into the questions of apportionment on this issue.
5. Not foreshadowed in the pleadings.
6. Had they raised any issues, counter-issues would have been raised ; 10 one of prescription could have been raised.....  
.....
7. The improver is entitled to keep the fruits of the improvements.
8. They cannot raise this under their issue of damages.
9. The plaintiffs are not entitled to deduct a single cent from the sum of Rs. 56,299.36 in this case in its present form in pleadings and issues.
10. Alleged Rs. 2,100 per year is claimed for 1937. No issue has been raised as regards the length of time during which the defendant was entitled to the fruits of the improvements.
11. Re Deed No. 1,398 and consent for Deed No. 2,180, the onus is 20 on the plaintiffs to show that all conditions on which they got title have been fulfilled.

Messrs. Fernando & Fernando tender plaintiffs' documents with a list.

The defendant's documents will be filed on 7-7-48, Mr. Wilson states.

Judgment on 29-7-48.

Sgd. J. H. V. S. JAYAWICKREMA,  
A. D. J.

## Judgment of the District Court

No. 15  
Judgment of  
the District  
Court.  
29 7 48

## JUDGMENT :

The plaintiffs ask for a declaration of title against the defendant to a divided portion of land called Sirinivasa, described in the Fourth Schedule to the plaint. This portion of land is admittedly a part of the land described in the Third Schedule to the plaint, the land in the Third Schedule is a divided portion of the land described in the Second Schedule to the plaint.

There is hardly any dispute with regard to the facts of this case. The case depends on the interpretation of certain documents and the effect of a Court order and of the acts of those who held the properties earlier.

Siman Fernando and his wife, Maria Perera, who were married in community of property, held the lands described in the First and the Second Schedules to the plaint. By Deed No. 2,110 of 4-10-1883 marked P 1B, they gifted to their daughters Cecilia and Jane two contiguous allotments of land, called in the deed lots 4 and 5 and described in the First Schedule to the plaint : these premises are sometimes called The Priory in these proceedings. The gift was subject to a life interest in the whole of the property in favour of Siman Fernando, and in the event of his wife surviving him subject to a life interest in her favour in half the property. It was also subject to a *fidei commissum* in favour of the lawful issue of the donees, and, if one of the donees died without issue, in favour of the issue of the surviving donee subject to the same conditions and restrictions.

The donees were minors, and the acceptance on their behalf is set out in the deed in the following terms :--

And these presents further witness that Mututantirige John Jacob Cooray also of Horetuduwa aforesaid doth hereby on behalf of the said Mututantirige Cecilia Fernando and Mututantirige Jane Fernando, who are minors jointly with Mututantirige Alfred Thomas Fernando and Mututantirige James Fernando brothers of the said minor donees accept the gift grant of the premises subject to the respective conditions aforesaid.

On 17-6-1896 the donors applied to the District Court of Colombo to have The Priory released from the *fidei commissum* and transferred to Siman Fernando and to be authorised and empowered to convey to the two donees the property described in Schedule 2 to the plaint in this action. In this connection they filed a petition and an affidavit entitled : " In the matter of an application under the Entail and Settlement Ordinance, 1876."

The two donees were made respondents to the petition, and, as Jane was still a minor, James Fernando her brother was also made a respondent for the purpose of having him appointed guardian *ad litem* of the minor respondent.

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The petitioners set out the terms of the Deed of Gift No. 2,110 in their petition and averred that they desired to make better provision for their unmarried daughters by giving them the several allotments of land (described in the Schedule to the petition) and all that house and buildings bearing assessment No. 8 called and known as Sirinivasa, situated at Edinburgh Crescent, Flower Road and Green Path, Cinnamon Gardens, “in lieu of and instead of the said premises called The Priory.”

The terms on which the gift was to be made are set out in the body and in the prayer of the petition.

The prayer is as follows :—

10

“Wherefore the petitioners pray under the provisions of the Ordinance No. 11 of 1876 that this Court may be pleased : (1) To authorise and empower the 1st respondent and the 3rd respondent as guardian *ad litem* of the 2nd respondent to convey and assign unto the 1st petitioner the said premises called and known as The Priory free from all conditions and restrictions and to authorise the 1st respondent and the 3rd respondent as guardian aforesaid to execute the necessary deed of conveyance in favour of the 1st petitioner absolutely and free from all conditions and restrictions.

“ (2) In consideration thereof to authorise and empower the peti- 20  
tioners to transfer and assign unto the 1st and 2nd respondents the said allotments of land and the said buildings called Sirinivasa (fully described in the said Schedule B) subject to the conditions that they shall not sell mortgage or otherwise alienate the same except with the consent of the petitioners or the survivor of them and subject to a life interest in favour of the 1st petitioner and a condition that after the 1st petitioner’s death the 2nd petitioner should be entitled to enjoy half the rents thereof.”

There is no provision in the prayer of the petition for a *fidei commissum* in favour of the issue of the donees, nor is there such a provision in the order of the Court which is as follows :—

30

“It is hereby adjudged and ordered that James Fernando of Horetuduwa be, and is hereby appointed guardian of Jane Fernando (2nd respondent) in this matter to represent in these proceedings.

“It is hereby further ordered and decreed that upon the petitioners transferring and assigning unto the 1st and 2nd respondents Cecilia Fernando and Jane Fernando the allotment of land (fully described in Schedule B to the said petition of the petitioner) situated at Edinburgh Crescent, Flower Road and Green Path, Colombo, and the buildings thereon called and known as Sirinivasa bearing assessment No. 8 subject to the conditions following, that is to say : that they, the 1st and 2nd 40  
respondents shall not sell mortgage or otherwise alienate the said premises

except with the consent of the petitioners or the survivor of them and that the 1st petitioner during his life-time be entitled to take, use, enjoy and appropriate to his own use the rents issues and profits of the said premises and that after his death and in the event of the 2nd petitioner surviving him she shall during her life time be entitled to take use enjoy and appropriate to her own use one just half of the said rents, issues and profits, the other half thereof being taken, used, enjoyed and appropriated by the 1st and 2nd respondents, that the said Cecilia Fernando and James Fernando as guardian of the said Jane Fernando, do and they are hereby authorised and empowered to, convey and assign unto the said Mututantirige Siman Fernando, the 1st petitioner, the aforesaid lands and premises called and known as The Priory (fully described in Schedule A in the said petition) absolutely and free from all conditions and restrictions contained in Deed No. 2,110 dated the 4th day of October, 1883 and that the said Cecilia Fernando and James Fernando as guardian as aforesaid do and they are hereby empowered and authorised to execute and deliver the necessary deed of conveyance of the said premises in favour of Mututantirige Siman Fernando absolutely and clear of all conditions and restrictions.”

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20 Siman Fernando and his wife Maria Perera by Deed No. 1,398 (P 4) dated 23rd June, 1896, conveyed Sirinivasa to Cecilia and Jane Fernando subject to the condition that they shall not sell, mortgage or otherwise alienate the premises except with the consent of Siman Fernando and Maria Perera or the survivor of them and subject to life interest in favour of Siman Fernando in the whole property and in half in favour of Maria Perera if she survived her husband. It is clear that these two persons executed this deed in pursuance of the order of the Court.

The deed (P 4) recites the terms on which The Priory was gifted to the donees by Deed No. 2,110 ; the terms of the order of the Court in Case No. 116 of the Court ; and the consideration for the.....is stated thus :

“ Now know Ye and these presents witness that the said Mututantirige Siman Fernando and Colombo Patabendige Maria Perera in consideration of the premises and in pursuance of the said order of Court do and each of them doth grant, convey, assign set over and assure unto the said Mututantirige Cecilia Fernando and Jane Fernando, their heirs, executors, administrators and assigns by way of gift . . . .”

40 On the same date by Deed No. 1,399 (P 3) Cecilia Fernando and James Fernando as guardian *ad litem* of Jane Fernando conveyed The Priory to Siman Fernando and Maria Perera absolutely “ freed and clear from all and every the restrictions and conditions contained in the said Deed of Gift No. 2,210 of the 4th October, 1883.”

The deed contains the same recitals as Deed No. 1,398 (P 4) with the addition of the recital that Deed No. 1,398 has been executed.

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The consideration for the conveyance is the Deed of conveyance No. 1,398.

The Deed No. 1,398 does not on the face of it contain any *fidei commissum* in favour of the issue of the grantees, and on the footing that the grantees acquired absolute title to Sirinivasa subject to the life interest reserved to the grantors and the prohibition against alienation without the consent of the grantors, Cecilia Fernando by Deed No. 1,401 also executed on the 23rd June, 1896 (P 5) sold her undivided moiety of Sirinivasa to Siman Fernando for a sum of Rs. 45,000.

By an Indenture No. 2,180 (P 6) dated 13th June, 1900, Siman Fernando and Jane Fernando effected a partition of the property by which the eastern portion of the property was conveyed to Jane Fernando by Siman Fernando and the western portion was conveyed by Jane to Siman. This deed P 6 recites a plan in which the eastern portion has been marked A, B and C, and the western portion D and E. This plan has not been produced. It is immaterial in view of the admission record just after the issues were framed. By Deed No. 3,129 of 30th November, 1905, Jane conveyed her divided portion of Sirinivasa to Siman Fernando with the consent of her husband, Danister Perera, she being married by that time, her mother Maria Perera, and Siman Fernando, the two donors on the Deed No. 2,110 of 1883 and grantors of the Deed No. 1,398 of 1896. It is to be observed that Siman Fernando the grantee on the Deed No. 3,129, D 2, himself consented to the grant to him.

By Deed No. 4,218 of the 6th December, 1907 (D 3) Siman Fernando conveyed the entirety of Sirinivasa premises to his son James Fernando.

James Fernando died on the 17th March, 1911. His Last Will D 4 and Codicil D 5 were proved in case No. 3,927 of this Court, and the executors transferred by Deed No. 1,382 of the 12th July, 1924, D 7, the Sirinivasa premises and the adjoining premises on the west called Anandagiri premises to the trustees appointed in the Will. The property conveyed to James Fernando on Deed No. 4,218, D 3, consists of the two divided portions dealt with on Deed No. 2,180, P 6. They apparently have been called Sirinivasa premises and Anandagiri premises in Deeds Nos. 4,218, D 3 and 1,382, D 7. The Trustees in the Will are the Colonial Secretary and the Government Agent of the Western Province and they are to give effect to the Trust called the Sri Chandra-sekera Trust created by the said Will.

During the trial Dr. Hayley for the plaintiffs cited the judgment of the Supreme Court in case reported in 39 *N. L. R.* 505, *Abeyewardena vs. Tyrrell*, as binding authority on certain matters of law argued in this case.

Up to the point mentioned in the one but the next paragraph above the facts of this case are identical with the facts of that case. The temptation was great to say in this case that the facts of this case up to that point were the same as those reported in that case reported in 39 *N. L. R.* 505 but such a procedure might not have formed a finding of fact in this case. The finding of facts recorded



in this judgment is practically in the same words and arranged in the same manner as in that case but I do not think it will cause any prejudice to anybody.

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In that case the same plaintiffs sued the two Trustees under the aforesaid Will D 4 for declaration of title to the premises called the Public Library premises. They are the Sirinivasa building and the portion of land to the south of the portion of land claimed in this case. That building, that portion of land and the portion of land in dispute in this case formed the premises called Sirinivasa premises described in Schedule 3 to this plaint. These plaintiffs succeeded in that case ; but that decision is not *res adjudicata* as against the defendant in this case. Its effect is what is shown in the case reported in 2 *N. L. R.* at page 262. This Court has to follow that judgment on matters of law that are the same as in that case.

The Trustees under the aforesaid Will caused the two premises Sirinivasa and Anandagiri to be surveyed and divided into five blocks. *Vide* Deeds Nos. 290, D 8, 318, D 10 and 419, D 11. They kept back the Sirinivasa building and certain extent of land. As I have stated above the subject matter of the case in 39 *N. L. R.* at page 505 is what they kept back. A portion of Anandagiri adjoining Green Path was sold to Mr. R. L. Pereira on Deed No. 290 of 20th December, 1924, D 8. The Trustees had called for tenders for the purchase of this property. Mr. Pereira's tender being the highest was accepted. Tenders had been called for by public advertisement. That property is part of the land allotted to Siman Fernando on Deed of Partition No. 2,180 of 1900, P 6. Next the property in dispute in this case except 2.02 perches was put up for sale by public auction and Mr. Pereira bought it on Deed No. 318 of 23rd March, 1925, D 10. To straighten out the southern boundary of this portion Mr. Pereira bought from the Trustees on Deed No. 419 of 19th January, 1926, D 11, 2.02 perches, which area apparently has come from what the Trustees kept back. This action is for the property purchased on Deeds Nos. 318, D 10 and 419, D 11. By Deed No. 340 of 20th April, 1935, D 12, Mr. Pereira gifted what he purchased on Deeds Nos. 318, D 10 and 419, D 11 to his daughter the defendant, subject to a *fidei commissum*, in favour of her legitimate issue and failing such in favour of her brother and his legitimate issue.

The defendant put up two two-storeyed houses on the property in dispute with money gifted to her by her father, Mr. Pereira for the purpose. The construction of the houses was begun about June, 1935, and they were completed before June, 1936. From the evidence one can gather that the site is in what is commonly called a very fashionable residential quarter, and the bungalows have been fitted with special types of drainage and fittings including electrical fittings. They have been built to be very attractive, the object being to get rents higher than for ordinary types of houses, two-storeyed or otherwise. In fact soon after they were completed they had been let out at Rs. 325 each per month.

The plaintiffs' case is that the premises in question are subject to the *fidei commissum* created by Deed No. 2,210 of 1883, P1B. Their mother Jane Fernando the second donee on the said deed died on the 6th May, 1933. *Vide* P8.

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The three plaintiffs are the only children of Jane. The defendant denies that the property in question is subject to the said *fidei commissum* and prays that the plaintiffs' action be dismissed, and in the alternative she asks for compensation for putting up the two houses which she says are a useful improvement to the property and also for a *jus retentionis* till such compensation is paid.

Twenty-two issues were raised by the two sides, and some of them divisions and sub-divisions. Some were amended. The case went to trial on all issues raised with issues 7a and 19b in the form as amended. The amendments appear on record.

It is quite clear that the Deed No. 2,210 of 1883, P 1B, created a *fidei commissum* in respect of the property gifted on that deed, to wit, Priory in favour of the lawful issues of the two donees and, if one of the donees died without lawful issue, in favour of the lawful issue of the other.

Some of the main contentions arising from the issues raised are : (a) that the Court had no power to alter or vary the conditions contained in the Deed of Gift No. 2,110. P 1B and that the order of the 18th June, 1896 was made without jurisdiction and was therefore a nullity ; (b) that there was not a valid acceptance of the Deed of Gift No. 2,110, P 1B, and that the *fidei commissum* it purported to create could not attach to the property conveyed by Deed No. 1,398, P 4.

I think it is convenient to deal with the question of the acceptance of the gift in the Deed No. 2,210 at this stage. If there is no valid acceptance all the other questions need not be answered. It is to be noted that there is no question raised in this case as to whether there has been a valid acceptance on behalf of the *fidei commissari*. The question has been settled by legal authority. Case in 47 N. L. R. at page 361. If Jane accepted the gift that acceptance is good as far as the *fidei commissarii* too are concerned.

The issues from which this contention arises are those numbered 7a (as amended) 7b and 22.

On the face of the deed of gift has been accepted by three persons on behalf of the two donees, who were minors at the time, a brother-in-law and two brothers. It has been argued that there is no evidence that these three persons bore the relationship to the donees which relationship is set out in the deed. The other documents in the case bear out what has been stated in this deed. The brother-in-law's daughter Miss Cissy Coorey gave evidence in this case and identified her father's signature on Deed No. 2,210. Cecilia executed Deed No. 1,401 after she became a major and transferred the property rightly or wrongly to Siman Fernando one of the donors on Deed No. 2,210. Jane transferred on Deed No. 3,129 of 1907 to which her husband had consented. Further there is the application to Court in case No. 116. These are sufficient to constitute a ratification of the acceptance by the brother-in-law and the brothers on behalf of the minors. On identical facts up to that point the Supreme Court has held in case mentioned above that there was ratification.

I answer issues 7a as amended and 7b and 22 in the plaintiffs' favour.

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The contentions arising from issues 1, 8a, 8b, 9, 10a, the first part of 11 with respect to issue 10a, 12, 13, are the ones set out at the bottom of page 510 of the case in 39 N. L. R. 505, other than the one about acceptance. These points have been dealt with in that case, and the facts in this case are the same as in that case. The law applicable has been stated in that case. I answer these issues in the plaintiffs' favour.

As regards issue 10a the application in that case 116 has been made by the party in possession and who had the right to possess at the time it was made.  
10 Besides I do not think the section relied on by Mr. Choksy is exhaustive as to the persons who could make the application, or rather that it prevents a person who has an interest in the fiduciary donees or the *fidei commissarii* to come into being from making an application. The Court has to give notice to all parties concerned. Here all the parties concerned then in being were before Court. I hold that the order made in the case No. 116 on the application of the donors is good. I answer issue 10a and the first part of issue 11 in the plaintiffs' favour.

As regards issues 14 and 14A I hold that it does not matter in what form the Deed No. 1,398 is. On it property was given in exchange for The Priory that was released from the *fidei commissum* and by virtue of section 8 of the  
20 Ordinance the original *fidei commissum* becomes attached to the Deed No. 1,398. The fact that the deed conveying Priory was executed with the number next after the Deed No. 1,399 does not matter.

The answer to issue 15a is in the affirmative, in view of the averments in the affidavit filed by the petitioner in case No. 116 of this Court, D15. There is no evidence of any fraud committed by the two petitioners in that case. From the papers that have been produced from that case as evidence in this case it cannot be inferred that any fraud was committed. The series of Deeds Nos. 1,398, 1,399, 1,400 and 1,401 produced in this case do not lend any weight to the defendant's contention that there was fraud committed. The petitioners  
30 represented that it was beneficial to the donees to get Sirinivasa property in lieu of The Priory. It has not been shown that the donees lost by the exchange. Though it has been contended there was no exchange the result of the transaction in the case No. 116 is that there was in fact an exchange. Fraud or no fraud, section 8 of the Ordinance is there standing guard as it were to prevent any sort of sharp practice or underhand or secret dealing. Further it has been held in the 39 N. L. R. case at page 512 that whatever might have been the intentions of the petitioners and respondents the application was in terms an application to the court to authorise the grant of Sirinivasa in exchange of The Priory. The court allowed it and the properties were exchanged. Then section 8  
40 of the Ordinance took effect.

I answer issues 15b, (1), (2) and (3) in the negative. As regards issue 16 whether there was fraud or no fraud the order in 116 is good and valid.

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On issues 6a and 6b it has been contended that inasmuch as the Deed No. 1,398 contains the condition that if the donees, that is the fiduciaries, wished to sell they had to get the consent of the two donors or the survivor of them and therefore the Deed by Cecilia No. 1,401 to her father Siman, one of the donees, and the deed of partition Deed No. 2,180 executed by Siman and Jane did not convey title to Siman of Cecilia's half share and to Jane title to the divided portion respectively, because for neither deed was the consent given. Reliance is based on section 4 of the Ordinance. The condition in question is one that did not appear in Deed No. 2,110, the original gift deed. This condition has no effect by virtue of the same section. It is true that these are the words: "upon 10 such terms and subject to such conditions as the said court shall deem expedient." These words have to be considered along with the words that appear earlier, "consistent with a due regard for the interests of all parties entitled under such entail, *fidei commissum* or settlement." Fiduciaries are parties entitled to the property till the time comes for the property to pass. Under this Ordinance a court has no power to take away the dominium or the possession of the property from them till the time comes for the passing. If they begin to commit waste there are other remedies provided under other laws. The *fidei commissum* created in Deed No. 2,110 is a simple one under which the property was to pass on the death of the donees. Under our law if a fiduciary sells the *fidei commissum* 20 property the purchaser is entitled to hold it till the time for passing comes unless there is a condition that as soon as the fiduciary sells the *fidei commissarii* are to come into the property. This condition in Deed No. 1,398 is not one consistent with the interests of the fiduciaries, and therefore it has no effect.

If on the other hand it is a good condition then inasmuch as there is no provision made as to what was to follow if the donees sold without such consent, at most the donors can have only a right of pre-emption. If the property has been sold out they can come in and offer the price and call for a transfer from the purchaser. Here on Deed No. 1,401 the purchaser is one of the donors, Siman. The other donor by her endorsement on Deed No. 3,129, D 2, waived that right 30 in respect of the Deeds Nos. 1,401 and 2,180. The transfer of Siman on Deed No. 1,401 of Cecilia's half share is good till her death. Siman and Jane were co-owners at the time the Deed No. 2,180 was executed although they only had fiduciary interests. Fiduciaries can partition lands subject to the *fidei commissum* by private deed or by a Partition action. Here these two effected a deed of partition, to wit, 2,180. In this respect this deed is good and each became entitled to his or her divided portion, and the *fidei commissarii* became bound by the division.

Another point was that the Deed No. 2,180 was void because Jane was a minor at the time of the execution of the Deed No. 2,180. Now a minor's contract is 40 not void but voidable. Here Jane ratified it on becoming a major when she executed the Deed No. 3,129, D 2. It shows she was married at the time and her husband too joined in it and assented to the sale by her of the divided portion to Siman. That deed was good to pass the title to Siman till Jane's death.

I answer the issues 6a and 6b in the plaintiffs' favour.

Next I come to issues 17 and 18, (a), (b) and (c). Dr. Hayley objected to this issue 17 in the connection in which Mr. Choksy raised it. I over-ruled his objection. Mr. Choksy's contention is that where a person buys *bona fide* for value without knowledge of the *fidei commissum* he gets the property free from the *fidei commissum*. This may be a good proposition of law in the case of a trust but not in the case of a *fidei commissum*. The matter is concluded by the highest legal authority for this Island. See the judgment of the Privy Council in the case reported in 47 *N. L. R.* at page 171. The relevant passage is at page 175 towards the bottom. In that case one side contended that the deed  
 10 created a *fidei commissum* and the other it created only a trust that failed by the rule against perpetuities. In distinguishing a trust from a *fidei commissum* the Privy Council has held that Professor Lee in his introduction to Roman Law has set out correctly the differences, one of which is, "in the trust, the interest of the beneficiary, though described as an equitable ownership, is properly *jus neque in re neque in rem*, against the *bona fide* alienee of the legal estate it is paralysed and ineffectual; in the *fidei commissum* the *fidei commissary*, once his interests has vested, has a right which he can make good against all the world, a right which the fiduciary cannot destroy or burden by alienation or by charge."

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I answer issue 18 (a) and (b) in the plaintiffs' favour. In this connection  
 20 I may say that *bona fides* of the defendant and her father Mr. R. L. Pereira has a bearing in connection with the question of improvements and *jus retentionis*. When I answer issue 18 (a) in the plaintiffs' favour it does not mean that the defendant is not a *bona fide* possessor in respect of that question. I may also mention in this connection that Mr. Pereira stated in his evidence that he was told at the auction sale at which he bought this property one of the plaintiffs was present. This is very vague, and questions of estoppel have not been raised. Further as a fiduciary can sell and the sale is good till her death, I do not see any reason why a *fidei commissary* cannot buy that interest even at an auction sale. Even if he does bid I do not think he is estopped from asserting his title  
 30 under the *fidei commissum* when it vests in him. The case would be otherwise if he did so after the title vested. It is the law that protects him and not the facts. This point, however, has not been urged on proper material.

As regards issue 18 (c) the title vested in the plaintiffs on 6th May, 1933, the day on which Jane died. This action has been filed on 9th March, 1943. It has been held that the commencement of an action for the purpose of preventing prescription from running out is the filing of the plaint. The plaint in this case has been accepted and summons ordered on 9-3-1943. The action is thus not prescribed. I answer this issue in the plaintiffs' favour.

On the question of title now remain issues 2 and 3. Issue 2 has been ampli-  
 40 fied by Mr. Choksy in framing issues 6a and 6b. Issue 2 is also answered in the plaintiffs' favour. It was admitted that the premises in Schedule 4 to the plaint are part of these in Schedule 3 to the plaint. The Trustees, the vendors to Mr. R. L. Pereira, succeeded to the rights of Siman, the transferee from Jane, rights that came to an end on Jane's death. In their deeds to Mr. R. L. Pereira they have referred to some division. During their tenure they held both the

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divided portions mentioned in Deed No. 2,180, but they have not divided the land contrary to that partition though they appear to have divided it into five blocks. The portion in dispute in this case and the one in dispute in the case in 39 *N. L. R.* at page 505 are easily identifiable as the land in Schedule 3 to this plaint. The result then is that the plaintiffs are entitled to the land they claim, to wit, the one described in Schedule 4 to the plant.

The defendant in her answer set up an alternative claim to compensation and to a *jus retentionis*.

The question to be decided in this case is not whether Mr. Pereira was a *bona fide* possessor but whether the defendant is one. The point is covered by 10 authority. There are two recent judgments of the Supreme Court on the point, the one in 47 *N. L. R.* at page 361 and the one in *Ceylon Law Weekly* at page 68 in Volume 34, *Marceline Fernando and Others vs. Pedru Fernando and Others*. The defendant holds the property on a grant from Siman the purchaser from the fiduciary. A fiduciary and a purchaser from one have been held to be entitled to compensation for useful improvements and also to a *jus retentionis*. A successor of such a purchaser who has improved the land too must also be entitled even if that successor knew of the existence of the *fidei commissum* or thought there was a valid *fidei commissum*. Here knowledge of the existence of the *fidei* is attributed to Mr. R. L. Pereira and Mr. Pereira states in evidence 20 that in his opinion though he had read the Deed No. 2,110 before he purchased this particular lot he thought the order in case No. 116 was made without jurisdiction and therefore the *fidei commissum* did not attach to this property, Sirinivasa. He is a King's Counsel and has been in practice for 43 years. At the time he purchased this property in 1926 he was 21 years in practice. He can advise himself. I think he is entitled to the benefit of the diction in the case in 34 *Ceylon Law Weekly* at page 68, which diction appears at page 69. In this case the case in 47 *N. L. R.* at page 361 has been explained by Mr. Justice Jayatileke who decided the relevant point in the earlier case too. The evidence in this case is that Mr. Pereira appeared for the defendants in the 39 *N. L. R.* case 30 and succeeded in his contention in this Court. The fact he appeared for the defendants in that case somewhere about June, 1936, does not matter. Even if he had appeared for the plaintiffs in that case he would not have become a *mala fide* possessor. I hold that Mr. Pereira was a *bona fide* possessor when he held this property and that now the defendant is a *bona fide* possessor. It was not necessary for her to get into the box and say so. She gets a gift of property from a King's Counsel whose opinion is still and who believes still that there is no *fidei commissum* attached to this property. It can easily be inferred that she believed that she had title to the property.

It is quite clear that the defendant built two attractive houses in such a 40 way as to bring in a good return by way of rent.

I answer the issues 19a, 20a first part, 20b and 21 in the defendant's favour.

The next and final questions are what is the cost of the improvements and in what sum is the defendant entitled to compensation.

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According to Mr. Pereira's evidence the actual cost of the improvements is Rs. 59,857.37. This amount has been accepted by the plaintiffs but they object to some items included in this. Rs. 300 odd had been spent in 1943 in repairing the floor of the house that sank. It is contended that this was done after the filing of the plaint and therefore the defendant is not entitled to claim this sum. I think this was a necessary improvement to the property at the time it was done. Grills to windows had been fitted for protection at a time they became necessary. The next item objected to is the cost of pelmets fitted over doors and windows and blinds. It is a common experience that when a person builds an attractive house to be rented out or even for his own occupation he does not like nails to be driven in all over walls, door posts and windows frames. No objection has been taken to expenditure on the elaborate bath-room and electrical fittings used. A house can be built in so many ways. The more attractively it is built the greater will be the value of the house and garden on which it stands. With all these attractive fittings the pelmets and blinds and grills go. I hold the defendant is entitled to include the cost Rs. 1,800 odd of all these in the cost of the improvements.

I hold on issue 19b that the cost of the improvements is Rs. 59,857.37.

Now a *bona fide* possessor need not account to the rightful owner when he claims the land for profits he made from the property before the *litis contestatio* but he is liable for them as from that date. Still he is not liable to account for any profits he derived from any improvements he has effected on the land at all or at any time till he is compensated for the same. Here there is no question of any ornamental improvements. All are accepted by the plaintiffs as useful except the items referred to above and which I have held the defendant is entitled to charge to the cost. The *bona fide* improver is entitled to compel the rightful owner to take the useful and necessary improvements and pay him compensation and to hold the property till such is paid. But it is also the law, and it is indeed curious, that the *bona fide* improver has to deduct the amount of the profits he had from the property apart from the improvements themselves. 1 *N. L. R.* 228. There is no question of prescription about this. All profits so had during the time the *bona fide* possessor held the land have to be deducted from the cost of the improvements the rightful owner has to take over. This curious state of the law may be due to the fact that the rightful owner has to take over the useful improvements whether he likes them or not, if he wants the land, and to pay compensation ; it is a sort of compensation to him, or perhaps consolation.

What are the profits. The land in question was once part of entire Sirinivasa building and garden. It is not clear at what point of time the Anandagiri building came up. It seem probable that that building came up after the Deed No. 2,180. After that this bit of land formed part of the garden of the Sirinivasa building and garden. When the Trustees under the Last Will of James Fernando got into possession they separated it from Sirinivasa building and garden and sold to Mr. R. L. Pereira. Then he held it as part of the

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Anandagiri block, he had bought, till he gifted to his daughter the defendant. There were no profits at all from this particular block. Actual profits from this block of land are nil. Dr. Hayley's argument is that if there was no land the defendant could not have put up the buildings and get a gross rental of Rs. 650 per month and therefore she must pay something for the land and that would be the profits from the land. He calculates the profits at a certain percentage on the value of the land only. If the buildings had not been put up then defendant would not have had to pay anything on this percentage basis. For holding it she certainly could not have been called upon to pay five per centum per year on Rs. 57,500 the value of the land as assessed by the plaintiffs for this case. The plaintiffs would have had to prove the actual loss from the land itself. Had there been any fruit trees then they would have got the nett return from those trees ; or if there had been any other buildings then the loss of rent from them. But they could not have got this percentage of the capital value of the land. In this connection the judgment in the case in 47 *N. L. R.* 361 is relevant. There the Supreme Court assessed the cost of planting the bare bit of land with rubber at Rs. 250 per year and did not make the deduction urged by Dr. Hayley. The rightful owners the plaintiffs-respondents in that case were ordered to pay that sum as compensation for the improvements effected by the defendant-appellant's predecessor in title. 10

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I hold there were no profits from the land itself, and nothing has to be deducted from the cost of the improvements.

There is no evidence that the improvements as structures have gone down in value. The evidence tends to show that the improved value of the land with the two houses is far in excess of the actual cost of improvements.

I answer the second part of issue 20a as Rs. 59,857.37.

As for damages the plaintiffs are entitled to claim Rs. 487.50 per month from the date they pay the defendant the sum of Rs. 59,857.37 till they are restored to possession. Mr. Pereira said the houses have been rented at Rs. 325 per month each. A quarter of this is deducted for maintenance and taxes. This is in accordance with the case in 47 *N. L. R.* 361. 30

In the result I hold that the plaintiffs are entitled to the property described in Schedule Four to the plaint and the buildings thereon. The plaintiffs are to pay to the defendant Rs. 59,857.37 as compensation for the improvements. The defendant is entitled to hold the property till she is paid this sum. The plaintiffs are entitled to damages at Rs. 487.50 per month from the day they pay the compensation to the defendant till they are restored to possession.

As regards costs the plaintiffs' claim to the property was resisted by the defendant and her claim for compensation was equally resisted by the plaintiffs. They have filed a replication to the effect. The plaintiffs valued the land at Rs. 57,500. The defendant claimed Rs. 70,000 as compensation. She gets only Rs. 59,857.37. By claiming Rs. 70,000 the value of stamp duty in the case has 40



been enhanced. I think a just order as regards costs is to order each party to bear their or her costs but the defendant should pay to the plaintiffs the difference in the stamp duty and also costs of execution if the plaintiffs have to take out writ to get into possession.

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I enter decree accordingly.

*Sgd.* V. S. JAYAWICKREMA,  
*Additional District Judge.*

Pronounced in open Court in the presence of Mr. Wilson for defendant.

*Sgd.* V. S. JAYAWICKREMA,  
*A. D. J.*

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**No. 16**

**Decree of the District Court**

No. 16  
Decree of the  
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29-7-48

IN THE DISTRICT COURT OF COLOMBO

No. 2680/L

1. DANISTER P. ABEYAWARDENE
2. GEOFFERY P. ABEYAWARDENA
3. LLEWELLYN P. ABEYAWARDENA all of Colombo.....*Plaintiffs.*

*Vs*

MRS. CERMEN SYLVENE WEST *nee* PEREIRA of Anandagiri, Green  
20 Path, Colombo.....*Defendant.*

This matter coming on for final disposal before J. H. V. S. Jayawickrema, Esquire, Additional District Judge of Colombo on the 29th day of July 1948 being the day fixed for the hearing of this action in the presence of Doctor F. A. Hayley, K.C., with Mr. D. W. Fernando, Advocate instructed by Messrs Fernando and Fernando, Proctors on the part of the plaintiffs and Mr. N. K. Choksy K.C. with Messrs. U. A. Jayasundera and Advocate Mr. C. Renganathan Instructed by Mr. John Wilson, Proctor on the part of the defendant:

It is hereby ordered and decreed as follows:—

- (a) That the plaintiffs be and they are hereby declared entitled to the land and premises described in the Schedule "A" hereto and the buildings thereon which is a defined portion of the land and premises described in the Schedule "B" hereto and which is a defined portion of the land and premises described in the Schedule "C" hereto.
- (b) That the plaintiffs shall pay to the defendant Rs. 59,857/37 as compensation for Improvements effected by her in respect of the said land and premises described in the Schedule "A" 10 hereto and the buildings thereon.
- (c) That the defendant shall be entitled to hold and possess and enjoy the said land and premises described in the Schedule "A" hereto until such time she receives full payment of the said sum of Rs. 59,857/37 awarded as compensation as aforesaid.
- (d) That after such payment of compensation as aforesaid the defendant shall be ejected from the said land and premises described in the Schedule "A" hereto.
- (e) That the defendant shall pay to the plaintiffs damages at the 20 rate of Rs. 487/50 per month from the date of payment of such compensation as aforesaid to the defendant and possession of the same is delivered to the plaintiffs and lastly,
- (f) That the parties shall bear their own costs subject however, to the conditions that the defendant shall pay to the plaintiffs the difference in stamp duty incurred by reason of the alleged claim of the defendant for Rs. 70,000/- as compensation now reduced to Rs. 59,857/37 and also costs of execution if any.

**Schedule "A" referred to above**

30

A portion of land called Siriniwasa situated at Edinburgh Crescent Colombo within the Municipal Limits of the Colombo District and bounded on the north by Green Path on the East by Edinburgh Crescent on the south by Public Library premises and on the West by Anandagiri premises or Lots "D" and "E" in plan Rs. 581 dated 20th June 1910 made by Juan Silva, Surveyor and containing in extent about two roods and twenty five perches (Acres 0—Roods 2 Perches 25)

**Schedule "B" Referred to Above**

All that Eastern portion of the three contiguous allotments of lands and the buildings standing thereon called and known as Siriniwasa and situated at 40

Edinburgh Crescent Colombo (and marked A, B and C in the Plan thereof dated the 20th June 1900 made by J. de Silva, Surveyor and comprising (a) a portion of land described in Title Plan No. 74323 (b) the whole of the remaining portion of the land described in Title Plan No. 74534 and (c) a portion of the land described in Title Plan No. 64105 and bounded on the north by Green Path on the east by the road known as Edinburgh Crescent on the south by the boundary wall and on the west by the remaining portion allotted to M. Siman Fernando and containing in extent two acres and five perches according to the said Figure of the survey.

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### Schedule "C" Referred to Above

(a) All that allotment of land situated at Marandahn Cinnamon Gardens and bounded on the north-east by land said to belong to the Crown on the south-east by land described in Plan No. 64104 and on all other sides by land reserved for public purposes and containing in extent four acres one rood and eight perches according to the Government Title Plan No. 64105 dated 24th June 1865 and authenticated by W. R. Noad, Acting Surveyor General, excluding therefrom the following portions, to wit:

(1) A portion in extent two roods and twenty six perches and a half perch sold to Dr. W. P. Charsley (2) another portion containing in extent two roods and twenty seven perches sold to William Royan and (3) another portion in extent two roods and nine perches sold to Juanis de Silva.

(b) An allotment of land situated at Marandahan aforesaid and bounded on the north by land reserved for public purposes along the road and on the east by a road on the south by land purchased by N. Simon Fernando and on the west by land described in Plan No. 64105 and containing in extent one acre and seventeen perches according to the figure of survey and description thereof No. 74323 authenticated by A. B. Fyers, Surveyor General bearing date the 13th day of February 1869.

(c) An allotment of land situated at Marandahan aforesaid and bounded on the north by land described in Plan No. 74323 on the east by a road on the south by land said to belong to the Crown and on the West by land described in Plan No. 64105 containing in extent one acre two roods and twelve perches according to the Government Title Plan thereof No. 74534 dated the 6th day of March 1869 authenticated by the said A. B. Fyers, excluding therefrom a portion in extent two roods and thirty two perches sold to the said Juanis de Silva.

*Sgd. V. S. JAYAWICKREMA,*  
*Additional District Judge.*

The 29th day of July 1948.

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Petition of  
Appeal of the  
Defendant to  
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No. 17.

**Petition of Appeal of the Defendant to the Supreme Court.**

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

1. DANISTER P. ABEYAWARDENE
2. GEOFFREY P. ABEYAWARDENE
3. LLEWELLYN P. ABEYAWARDENE, all of Colombo.....*Plaintiffs.*

*Vs.*

MRS. CARMEN SYLVENE WEST (*nee* Pereira)  
of "Anandagiri" Green Path, Colombo.....*Defendant.*

MRS. CARMEN SYLVENE WEST (*nee* Pereira) 10  
of "Anandagiri" Green Path, Colombo .....*Defendant-Appellant.*

*Vs.*

1. DANISTER P. ABEYAWARDENE
2. GEOFFREY P. ABEYAWARDENE
3. LLEWELLYN P. ABEYAWARDENE,  
all of Colombo.....*Plaintiffs-Respondents*

On this second day of August, 1948.

To

The Honourable the Chief Justice and the other Judges of the Honourable the Supreme Court of the Island of Ceylon. 20

The petition of appeal of the defendant Appellant abovenamed appearing by John Wilson, her Proctor, states as follows :—

1. The plaintiffs respondents instituted this action against the defendant appellant for declaration of title to the land called "Sirinivasa" more fully described in the 4th Schedule to the plaint, for damages in Rs. 7,500/- and further damages at the rate of Rs. 2,500/- per annum from the 5th March, 1943, for the ejection of the defendant appellant from the said land and premises and for delivery of possession of the same to the plaintiffs-respondents.

2. The defendant-appellant in her answer *inter alia* denied the plaintiffs-respondents' title and further pleaded and claimed (a) that the defendant 30

appellant was absolutely entitled to the said premises. (b) that in the event of the Court holding that the said land and premises were subject to a *Fidei Com-* No. 17  
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*missum* created by Deed No. 2,110 dated 4th October, 1888 she was entitled to Rs. 70,000/- as compensation for improvements and to a *Jus retentionis* until she was paid the said sum. The plaintiffs-respondents in their replication denied *inter alia* the defendant-appellant's title or her claim to the sum of Rs. 70,000/- as compensation for improvements and to a *Jus retentionis*.

3. The case was tried on 24th June, 1948, 29th June, 1948, 30th June, 1948 and 1st July, 1948 on the following issues :

- 10 (i) Do the conditions in deed 2,110 attach to the property conveyed by deed 1398 ?
- (ii) On the death of Jane Fernando did plaintiffs become entitled to the land in Schedule 3 of the Plaint.
- (iii) Are the premises in Schedule 4 of the plaint part of the premises in Schedule 3 ?
- (iv) Is the defendant in wrongful possession of the premises described in Schedule 4 of the plaint ?
- (v) To what damages, if any, are the plaintiffs entitled ?
- 20 (vi. a) Did the title to the premises described in the third schedule to the plaint vest in Jane Fernando by virtue of deed 2180 of 30-6-1900 ?
- (b) If not, can plaintiffs have or maintain this action ?
- (vii. a) Was the gift on deed 2110 of 4th October, 1883 validly accepted ?
- (b) If not, was the said deed of no force or avail ?
- (viii a) Was the application in Special Proceedings No. 116 of the District Court of Colombo, an application within the scope of the Entail and Settlement Ordinance ?
- (b) If not, did the Court have jurisdiction to entertain the same?
- 30 (ix) If issues (8a) and (b) are answered in the negative do the provisions of section 8 of the Entail and Settlement Ordinance apply to the conveyance effected by deed 1398 of 23-6-1896 ?
- (x) Was the said Order in Special Proceedings 116 of 18th June, 1896 made

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- (a) Upon application by the wrong party ?
- (b) Without jurisdiction ?
- (xi) If issues 10a and 10b are answered in the affirmative was the said order null and void ?
- (xii) Was the said order of 18th June, 1896 final and conclusive as to the terms and conditions attaching to the conveyance effected by the said deed 1398 ?
- (xiii) Can plaintiffs seek to attach to the said deed 1398 any other terms and/or conditions not embodied therein without a rectification of the said order and/or the said deed 1398 ? 10
- (xiv) Will the *Fidei Commissum* contained in deed 2110 attach to the conveyance effected by deed 1398 in as much as deed 1398 was earlier in point of time to deed 1399 and contains terms and conditions which are opposed to the terms and conditions contained in deed 2110 ?
- (xiv. a) Did deed 1398 contain terms and conditions opposed to the deed 2110 ?
- (xv. a) Did Petitioners in Special case 116 make the representation set out in paragraph 16a of the further amended answer ?
- (b) Were the said representations 20
- (1) False to the knowledge of the petitioners.
- (2) Made fraudulently ?
- (3) Made with the fraudulent object set out in paragraph 16b of the answer ?
- (xvi) If issues 15a and either b (1) or b (2) or b (3) are answered in the affirmative was the said order obtained by fraud and if so is the said order null and void ?
- (xvii) Was the immediate predecessor in title of the defendant a *bona fide* purchaser for value without notice of the alleged *fidei commissum* ? 30
- (xviii) Is defendant entitled to the property and premises in the fourth schedule to the plaint free of any *fidei commissum* ?
- (a) If issue 17 is answered in the affirmative ?

(b) On the chain of title set out in the answer ?

(c) by prescriptive possession ?

(xix) (a) Did defendant effect improvements on the premises in the fourth schedule to the plaint ?

(b) What was the cost of the said improvements ?

(xx) Is defendant entitled to

(a) compensation for improvements and if so in what sum ?

(b) a *jus retentionis* ?

10 (xxi) Was the defendant in *bona fide* possession of the property at the date of the alleged improvements ?

(xxii) Was the gift in deed 2110 ratified and confirmed by the donees or on their behalf ?

4. The learned District Judge delivered judgment on the 29th July, 1948 in which he held and decreed :

(a) That the plaintiffs-respondents were entitled to the said land and premises

(b) That the defendant-appellant was entitled to a sum of Rs. 59,857/37 as compensation for improvements and to a *jus retentionis*, and

20 (c) That the plaintiffs-respondents were entitled to damages at Rs. 487/50 per mensem from the date of payment of the said compensation till restoration of possession to them.

5. Being dissatisfied with the said judgment the defendant-appellant begs to appeal therefrom to Your Lordships Court on the following among other grounds that might be urged by her Counsel at the hearing of the appeal.

(a) The said judgment is contrary to law and to the weight of evidence adduced at the trial.

30 (b) The learned District Judge was wrong in holding that the conditions in deed No. 2,110 attached to the property in question by virtue of the order on special proceedings No. 116 District Court, Colombo. The said order is null and void and is of no effect in law *inter alia* for the following reasons :—

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(i) The application made in the said proceedings was not an application for an exchange of property dealt with by deed No. 2,110 and was not within the scope of the Entail and Settlement Ordinance. The Court had therefore no jurisdiction to entertain the said application.

(ii) The Court had no power or jurisdiction to make the said order as it imposed on the property described in the second schedule to the plaint terms and conditions not contained in deed No. 2,110.

(iii) The said application was made by a wrong party.

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6. It is respectfully submitted that the case of *Abhyawardena vs. Tyrrell* reported in 39 New Law Reports at page 505 was wrongly decided.

7. If the said order No. 116 is held to be valid then the property described in the second schedule of the plaint became subject to the terms and conditions imposed by the said order and contained in deed No. 1398 executed in pursuance thereof, to wit, that Cecilia and Jane should not sell or mortgage or otherwise alienate the said premises except with the consent of Siman Fernando and Maria Perera or the survivor of them. Therefore deed 3129 dated 30th November, 1905, whereby Jane acting with the consent and concurrence of her husband and with the consent of the said Maria Perera (as required by the said order and by deed No. 1398) transferred the property described in the third schedule to the plaint is valid and conveyed absolute title free of the terms and conditions in deed No. 2110. 20

8. The said order did not authorise an "Exchange" of the property described in the first schedule of the plaint for the property described in the second schedule.

9. The said order in Special proceedings No. 116 was obtained by fraud practised upon the Court and is therefore null and void and the deeds executed in pursuance thereof are of no force or avail. It is respectfully submitted that the learned District Judge is wrong in holding that there is no evidence of fraud. The documentary evidence adduced in the case clearly showed that the parties to the application No. 116 misrepresented to or suppressed from Court the true purpose of the application, and that the application was made and the said order was obtained in pursuance of a fraudulent pre-planned scheme. Therefore, issues 15 (a) and 15 (b) and 16 should have been answered in the affirmative. 30

10. The respondents have failed to prove that the gift upon deed No. 2110 was validly accepted. In the absence of valid acceptance the said deed is void.



11. It has been proved that the appellant's immediate predecessor in title bought the premises in question *bona fide* for valuable consideration without knowledge or notice of the alleged *Fidei Commissum* and thereby acquired absolute title to the said premises.

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12. (a) The *Fidei Commissum* created by deed No. 2110 could not attach to the conveyance effected by deed 1398 in as much as deed No. 1398 was earlier in point of time to deed No. 1399 and contained terms and conditions which were opposed to the terms and conditions of the said deed No. 2110.

10 (b) Issue 6 should have been answered in the negative. The burden was on the plaintiffs to prove that the requisite consent had been obtained for the execution of deed No. 2180.

13. The appellant respectfully submits that she is entitled to the premises in question on the chain of title set out in the answer by prescriptive possession and by reason of the fact that her immediate predecessor in title was a *bona fide* purchaser for value without notice or knowledge of the alleged *Fidei Commissum*.

14. The defendant-appellant should, in any event, have been awarded the costs of suit.

20 Wherefore the defendant-appellant prays :

- (a) the judgment and decree of the learned District Judge dated the 29th July, 1948 be set aside.
- (b) the plaintiffs-respondents' action be dismissed.
- (c) that the defendant-appellant be awarded the costs of the District Court and of appeal
- (d) for such other and further relief in the premises though not herein specially prayed for as to the Court shall seem meet.

Sgd. JOHN WILSON,  
Proctor for Defendant-appellant.

Judgment of the Supreme Court.

S. C. 572/L.

D. C. Colombo (F) 2680.

*West V. ABEYAWARDENA & others.*

*Present:* BASNAYAKE J. & GUNASEKARA J.

*Counsel:* N. K. CHOKSY, K. C., with Sir UKWATTE  
JAYASUNDERA, K. C., H. W. JAYAWARDENA AND  
G. T. SAMARAWICKREMA for.....Defendant-  
Appellant.

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N. E. WEERASOORIA, K. C., with VERNON  
WIJETUNGE for Plaintiffs-Respondents.

*Argued on:* 10th, 11th, 13th, 14th, 24th, and 25th, September 1951.

*Decided on:* 10th October, 1951.

*Basnayake J.*

This is an action for declaration of title to a portion of land in extent about 2 roods and 25 perches. The plaintiffs claim that they are entitled to the and as the heirs of one Mututantrige Jane Fernando. Their case is that one Siman Fernando was the original owner of the land. By deed No. 2110 of 4th October 1883 (hereinafter referred to as PIB), Siman and his wife Maria gifted 20 to their daughters Cecilia and Jane both of whom were minors at that date, one being 9 years and the other 6½ years, in equal undivided shares, an allotment of land in extent 3 acres 2 roods and 38.24 perches, known as "The Priory" The gift was subject to the following conditions:

- (a) That Siman during his lifetime be entitled to take the rents and profits of the premises.
- (b) That after his death his wife should be entitled so take one half of the rents and profits, the other half going to the donees.
- (c) That the donees shall not be entitled to sell, mortgage, lease, or otherwise alienate or encumber, the land for a term longer 30 than four years at a time.
- (d) That the rents and profits shall not be liable to be sold in execution for their debts.

- (e) That after the death of the donees the land shall devolve on their lawful issue, and that in the event of any one of the donees dying without lawful issue, her rights in the land should devolve on the surviving donee.

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The gift was accepted by one Jacob Cooray and two brothers of the donees, Alfred Thomas Fernando and James Fernando.

In 1896, 13 years afterwards, the donors Siman and Maria made an application under the Entail and Settlement Ordinance to which the donees were made respondents. Jane who was a minor aged 19½ years was represented by her brother James as guardian *ad litem*. In that application the donors sought the authority of Court to exchange “The Priory” for another property known as “Siriniwasa”. The relevant paragraphs of that application are as follows:

“.....move that under the provisions of the Ordinance No. 11 of 1876 this Court may be pleased to authorise and empower the first respondent Cecilia Fernando and the third respondent as guardian *ad litem* of the second respondent Jane Fernando to convey and assign unto the first petitioner the premises called and known as “The Priory” (described in Schedule A in the said petition) free from all conditions and restrictions and to order and decree accordingly

“In consideration thereof to authorise and empower the petitioners to transfer and assign unto the 1st and 2nd respondents the allotments of lands and the buildings thereon called “Siriniwasa” (fully described in Schedule B to the said petition) subject to the conditions that they shall not sell mortgage or otherwise alienate the same except with the consent of the petitioners or the survivor of them and to the further condition that the first petitioner shall during his lifetime be entitled to take use enjoy and appropriate to his own use the rents issues and profits of the said premises and after his death and in the event of the second petitioner surviving him she shall during her lifetime be entitled to take use enjoy and appropriate to her own use one just half of the said rents issues and profits the other half thereof being taken used enjoyed and appropriated by the 1st and 2nd respondents.”

That application was granted.

The order of Court was carried out by Deed No. 1399 of 23rd June 1896 (P3). The relevant portion of that deed reads as follows:

“.....Mututantrige Siman Fernando and Colombapatabendige Maria Perera to transfer and assign unto the said Mututan-

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trige Cecilia Fernando and Mututantrige Jane Fernando all those the said allotments of the land and buildings called and known as "Siriniwasa" subject to the condition that they shall not sell mortgage or otherwise alienate the same except with the consent of the said Mututantrige Siman Fernando and Colombapatabendige Maria Perera or the survivor of them and to the further condition that the said Mututantrige Siman Fernando shall during his lifetime be entitled to take use enjoy and appropriate to his own use the rents issues and profits of the said premises and that after his death and in the event of his wife the said Colombapatabendige Maria Perera surviving him she shall during her lifetime be entitled to take use and enjoy and appropriate to her own use one just half of the said rents issues and profits the other half being taken used enjoyed and appropriated by the said Mututantrige Cecilia Fernando and Mututantrige Jane Fernando."

On the very same day, by deed No. 1401, Cecilia transferred to Siman for a sum of Rs.45,000/- her "one undivided moiety" in "Siriniwasa". By deed No. 2180 of 30th June 1900 Jane and Siman who were now the co-owners of "Siriniwasa" effected a partition of the land by which Jane took lots A, B, C of the Eastern portion and Siman took lots D and E of the Western portion. By deed No. 3129 of 30th November 1905 Jane who was married at that date with the concurrence of her husband transferred to Siman her divided Eastern portion of "Siriniwasa" for Rs. 75,000/-. By deed No. 4218 of 6th December 1907 Siman transferred "Siriniwasa" and "Anandagiri" to his son James for Rs. 75,000/- subject to a mortgage of Rs. 100,000/-. By virtue of the last will of James "Siriniwasa" amongst other properties came to the trustees of the Sri Chandrasekera Trust. They conveyed the Northern portion of "Siriniwasa" in extent one acre, one rood and one-tenth of a perch to the defendant's predecessor in title Richard Lionel Pereira by deed No, 290 (P8) of 20th December 1924. By deed No. 340 of 20th April 1935 Richard Lionel Pereira gifted the land in question to Carmen Sylvene Pereira his daughter.

The learned District Judge has held that deed P1B created a *fidei commissum* in respect of "The Priory" and that by virtue of the proceedings under the Entail and Settlement Ordinance that *fidei commissum* attached to "Siriniwasa" and that Jane was not entitled to transfer her share of "Siriniwasa" to her father Siman and that therefore James obtained no title to the land by the conveyance of "Siriniwasa" to him by Siman. Therefore he held that the trustees of the Sri Chandrasekera Fund had no title, to convey to the defendant's predecessor in title, and that on the death of Jane in 1933 her share devolved on the plaintiffs. He also holds that the defendant is a *bona fide* possessor and is therefore entitled to compensation for improvements, which he assessed at Rs. 59,857/37. This appeal is from that decision.

Learned counsel for the appellant contends—

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- (a) that deed PIB did not bring into existence a *fidei commissum* because there was no acceptance on behalf of (1) the donees, and (2) the *fidei commissaries*.
- (b) that even if deed PIB brought into existence a *fidei commissum* that *fidei commissum* has been “destroyed” by the proceedings under the Entail and Settlement Ordinance, wherein the Court authorised a transfer of “Siriniwasa” without the burden of a *fidei commissum*.
- 10 (c) that the application under the Entail and Settlement Ordinance has not been made by the proper party and the order made on that application is null and void.
- (d) that in any case the defendant is a bona fide purchaser for value without notice of the *fidei commissum*.

On the question of compensation for improvement and *jus retentionis* there is no dispute. The appellant does not canvass the findings of the learned District Judge.

Now, on his first submission that a *fidei commissum* is not brought into existence by deed PIB, learned counsel for the appellant relies on the following  
20 paragraph of the deed:

“And these presents further witness that Mututantrige John Jacob Cooray also of Horetuduwa aforesaid doth hereby on behalf of the said Mututantrige Cecilia Fernando and Mututantrige Jane Fernando who are minors jointly with Mututantrige Alfred Thomas Fernando and Mututantrige James Fernando brothers of the said minor donees accept the gift and grant of the said premises subject to the respective conditions aforesaid.”

He contends that Jacob Cooray the brother-in-law of donees had no  
30 authority in law to accept the gift nor had their brothers any legal authority to do so. He goes further and says that even if the acceptance by the brother-in-law and the brothers is sufficient there is no acceptance at all on behalf of the *fidei commissaries*. Without such acceptance he submits that it is open to the donor and donee to revoke or alter the terms of the gift.

The question whether there was acceptance by the immediate donees, the fiduciaries, is only of academic interest as they have by their subsequent conduct ratified the acceptance of the gift on their behalf by their brother-in-law and brothers. The question that remains for decision is whether the acceptance of the fiduciaries amounts to acceptance in respect of the *fidei*  
40 *commissaries*.

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—continued

Now on this point the authorities are divided. In the case of *Carolus et al v. Alwis*, (1) Soertsz J. held that acceptance by the immediate donee is not sufficient acceptance on behalf of the *fidei commissaries*. He says that it is also well settled that in the case of *fidei commissary* donations there must be acceptance by the fiduciaries as well as by the *fidei commissarii* and, as a rule but for one or, perhaps two exceptions, the acceptance must be in the lifetime of the donor. He relies on Perezius from whom he has quoted at length.

In the case of *Wijetunge v. Rossie et al* (2), Wijeyewardene S. P. J. dissents from the view taken by Soertsz J. He takes the view that a donation is irrevocable even in the absence of an acceptance on behalf of children not yet *in esse*. 10

Pothier (3) in his treatise on Obligations sums up the views of the jurists on the question of acceptance of gifts. He poses the question thus.

“Hence arises another question, whether after giving you anything with the charge of restoring it to a third person in a certain time, or of giving him some other thing, I can release you from the charge without the intervention of such person, who was no party to the act, and who has not accepted the liberality which I exercised in his favour ?”

Wijeyewardene J. has preferred the view of those jurists who hold the opinion that a *fidei commissary* donation though not accepted by the *fidei commissaries* cannot be revoked by the mutual consent of the donor and the fiduciaries.

I find myself unable to accept the view of those jurists. The other school of thought appeals to me and as its view seems to be more in keeping with the underlying principles of our law of donations. Their view is thus explained by Pothier (3):

“The reason upon which they ground their opinion is, that, the third person not having intervened in the donation, the engagement which the donatory contracts in his favour is contracted by a concurrence of intention in the donor and donatory only; and consequently may be dissolved by an opposite consent of the same parties, according to the principle that *nihil tam naturale est, quaeque eodem modo dissolvi quo colligata sunt*.

The right acquired to the third person is then according to these authors, not irrevocable, because being formed by the sole consent of the donor and donatory without the intervention of the third person it is subject to be destroyed by the destruction of this consent, produced by an opposite consent of the same parties.

It will be useful to consider what Van Leeuwen (4) has to say on the same topic.

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—continued

10 “A gift is perfected as soon as the donor has expressed his intention whether in writing or verbally, even by bare agreement, and for this reason a gift at the present day gives rise to an action. But at one time it did not arise except by stipulation and by delivery. But this was changed by Justinian. With this limitation, however, that it is not considered perfected before acceptance on the part of the donee has followed, contrary to Anton. Fab., and Joann. del Costillo Soto Major, who were of opinion that it was enacted by Justinian, that by a mere gift apart from acceptance even a person ignorant of his rights may acquire, to prove which they adduce, *cum in arbitrio verb. hoc facere quod instituit*. For though the Emperor enacted there that a gift should be perfected without stipulation and delivery by a simple and bare declaration of intention, still this must be understood of such a bare intention as after acceptance and acknowledgment can give rise to an obligation and action. Since, otherwise, no one is bound to himself so as to have to persist in his bare intention, by which he is bound to the other only after consent and acceptance by the latter; and when this has not followed, the donor is perfectly free to change his bare intention.”

20

The views of Burge (5) on this point are stated thus:

30 “It has been considered by some Jurists, that it was competent to the public notary to accept the donation for the *fidei commissary*, but this opinion has been controverted, and is opposed to the rule of law, *alteri stipulari nemo potest* and such a mode of acceptance was admitted only when the *fidei commissary* had subsequently ratified it. Unless, therefore the *fidei commissary* had, by himself or another accepted the donation, it was in many cases, subject to revocation by the donor”.

Burge goes on thereafter to state the cases in which the donor is not free to revoke his gift.

40 Learned counsel for the respondent laid great emphasis on the point that acceptance on behalf of the *fidei commissaries* was not necessary in the case of a “*fidei commissum in favorem familiae*”. He submitted that in this instance the *fidei commissum* was “*in favorem familiae*”. He relied strongly on the case of *Ex parte Orlandini & two others* (6). In that case De Villiers J. P. adopted the view of Perezius in preference to those of Grotius and other jurists cited by Pothier. De Villiers J.P. founds his decision on an argument of Perezius the force of which, with the greatest respect to that eminent jurist, I am unable to see. He says:

“Now it seems to me that the argument of Perezius is unanswerable, for, if acceptance by minors and unborn persons were necessary to lend binding force to a *fidei commissum in favorem familiae*, it would follow that such a *fidei commissum* could not, in practice, be constituted by act *inter vivos*”.

“Now, what is a *fidei commissum in favorem familiae*”? Voet (7) says: “A *fidei commissum* can also be left to the family; and Justinian has laid down that in such a case under the term family are included not only parents and children and all relatives, but also the son-in-law and daughter-in-law to supply the place of those who have died, where the marriage has been dissolved by the death of son or daughter. But Sande points out at some length that by civil law adopted children, *alumni* and freed men were included under the term *familia* when there is any question of some *fidei commissum* being left to the family and in that connection he puts the question whether women or their issue are included in the family. In section 12 he has collected the authorities who have laid down at greater length what is included under ‘family’, genus, *stirps*, *linea*, *parentela*, *domus*, *cippus*, and the like. Now there is also a bequest to the family when the testator forbids the alienation of a thing out of the family or directs that it should not go out of his line of descent or out of his ‘blood’.”

20

From the foregoing it would appear that a *fidei commissum* such as that created by deed PIB is not a *fidei commissum in favorem familiae*, for if it is a gift to the immediate donees with a prohibition against alienation and after their death to their children who are left free to deal or dispose of the property in any manner they like. This is the kind of *fidei commissum* is known as *unicum*. It is binding on only one person. He who follows first after the burdened heir or legatee can with impunity transfer the prohibited property to a stranger. (8)

Of the Roman Dutch Law commentators only Sande discusses at length the nature and effect of a *fidei commissum in favorem familiae*. His authority is so high that even Voet quotes him when discussing the question. I shall therefore take the liberty of citing more than one passage from his treatise on Restraints.

Sande (9) states:

“But the *fidei commissum* is simplex and pure; if the tastator has himself bequeathed the property to the family, as if he says in clear terms, “I leave my landed property to the family.” This form of words, added by a prohibition upon alienation, has this effect, that the prohibited persons cannot change the order of succession, which the law interprets as being laid down by the testator and therefore he cannot pass by a nearer and leave the property to a more remote member of the family.”



“This is so except where it can be gathered from the words of the will itself that the intention of the testator was otherwise; for example, if wishing to provide for the preservation of his family, he says “I will, or I order, that the landed property be retained, remain, and be left in the family”. For from these words would be induced a real, multiplex, and perpetual *fidei commissum*, which would last as long as anyone of the family survived.”

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10-10-51  
—continued

10 “Thus when a thing is prohibited from alienation outside the family or from going out of the name of the deceased, if this thing is alienated contrary to the will of the testator, a right of action is given to those who are members of the family and the name of the deceased”. *Nomen* and *familia* are taken as synonymous. In the case of *fidei commissum* in favour of a family the donor or testator must use the expression “family” or words to that effect in order to indicate his clear intention to benefit his family.

20 It is clear to my mind from what has been said above that PIB does not create a *fidei commissum* in *favorem familiae*. As the *fidei commissum* is not one in favour of the family and the gift has not been accepted by or on behalf of the *fidei commissaries* it is revocable by the mutual consent of the donor and donee.

30 Now, in the instant case, what Siman and the two children Cecilia and Jane did was to revoke the deed of gift of “The Priory” and receive in exchange another gift of “Siriniwasa” subject to a new condition, namely, not to alienate the land without the consent of the donor or his wife should she survive him. In that view of the matter the proceedings under the Entail and Settlement Ordinance were not necessary, but perhaps it was thought that the safer course would be to obtain the permission of Court under that Ordinance. The fact that action was taken under that Ordinance on the footing that there was a valid *fidei commissum* which could not be revoked does not alter the true nature of the gift and its revocability. The Entail and Settlement Ordinance provides the machinery for carrying out what under the Roman-Dutch Law was permitted with the authority of the Courts.

Voet (10) observes:

40 “In addition to this, the Commentators have mostly held that the remaining assets which can be kept without deterioration may be exchanged by the fiduciary for other assets which are better and more useful, especially if it does not seem to be probable that the *fidei-commissary* has any affection for the goods belonging to the inheritance since the person in whose favour the prohibition against alienation was constituted would appear not to be deprived of any advantages,

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the Supreme  
Court.  
10-10-51  
—continued

nor does an exchange of goods by which the fidei-commissary heir is not prejudiced, but is benefited, appear to be contrary to the testator's desire. For though one is forbidden to alienate goods belonging to the Church or included in a dowry, yet one is allowed by law to exchange even these for others which are more useful. Hence the fiduciary is not to be prevented from acquiring servitudes for the benefit of the *fidei commissary* property, or from liberating it from servitudes which have been imposed on it..... Moreover, the alienation of houses which are held subject to 10 a fideicommissum, and are falling in from age, is permitted with us on an order of Court, subject to the proviso that the money obtained therefrom should be expended in the purchase of other property or some other kind of investment, and that what is so acquired should take the place of what has been alienated, and become fidei-commissary property."

It would appear therefore that under the common law it is the fiduciary who is qualified to make the application for sale of *fidei commissary* property, and not any one else. That seems reasonable for what interest can the donors have in the property once they have given it away. It is the fiduciaries who 20 should decide what is in their interests. The Ordinance contains no indication that it meant to alter the common law by authorising persons other than the fiduciary to make applications for sale or exchange of fidei-commissary property.

Section 5 enacts as follows: "Any person entitled to the possession or to the receipt of the rents and profits of any movable property now or which may hereafter become subject to such entail, *fidei commissum*, or settlement as aforesaid, or of any share thereof, may apply to the District Court by petition in a summary way to exercise the powers conferred by this Ordinance."

The question is whether the donor on deed PIB who had a life interest comes within the ambit of the section. Is he "a person entitled to the posses- 30 sion or to the receipt of the rents and profits of the land"? In a sense he is such a person as he was in physical possession of the land and by virtue of the life interest reserved for himself he was entitled to the rents and profits. But is that the interest and possession contemplated in the section or is it the possession and interest of the fiduciary. Having regard to the Common law on the subject and to the fact that the Ordinance is not designed to alter that law I am of opinion that a donor who has created a *fidei commissum* reserving a life interest is not entitled to make an application under the section. The rule of construction of statutes—sometimes called the golden rule—is, that the words of the statute must *prima facie* be given their ordinary meaning. But 40 that rule has its exceptions. One of those exceptions is that where the plain words fail to achieve the manifest purpose of the enactment the ordinary meaning must yield to what is the real meaning of the words according to the intent and purpose of the legislature. In this view of the enactment there was no proper application before the Court and the order passed thereon was not an

order under the enactment Hence the order and the action taken thereon do not attract the consequences prescribed in the statute.

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the Supreme  
Court.

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—continued

One of the consequences is that provided in section 8 that any property taken in exchange for any property exchanged under the Ordinance shall become subject to the same entail, or *fidei commissum* as the property for which it was given in exchange was subject to at the time of the exchange.

While on this point I wish to say that I hold the view that where a proper application and order thereon is made under section 5 and an exchange is effected in consequence the property taken in exchange becomes the subject to *fidei commissum* by operation of section 8 without more and the parties effecting the exchange cannot escape that consequence by executing the deeds in such a way as to avoid a *fidei commissum* in respect of the land taken in exchange.

For the above reasons the appellant is entitled to succeed as there is no *fidei commissum* binding on "Siriniwasa," which has been gifted subject to one condition, and the donees have not committed a breach of that condition. The original donor therefore obtained the entire rights of "Siriniwasa" from his two daughters Cecilia and Jane and rightly alienated it to his son who gifted it to the trustees from whom the present defendant derives her title.

In my view therefore this appeal should be allowed with costs both here and below.

Sgd. HEMA BASNAYAKE.  
*Puisne Justice.*

1. 45 N. L. R. 156
2. 47 N. L. R. 361
3. Pothier—A Treatise on the Law of Obligations or Contracts, Vol. I, Evans' translation pp. 43—44.
4. Censura Forensis, Part I, Book IV, Chapter 12, paragraph 16, Barber's translation, p. 90
- 30 5. Colonial and Foreign Laws, Vol. 2, p. 149.
6. South African Law Reports, 1931, O. F. S. P. D. p. 141
7. Book XXXVI, Title I, Section 27.
8. Sande, Webber's translation, p. 211 et seq.
9. Treatise on Restraints, Webber's translation, p. 214 etc.

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the Supreme  
Court.  
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10. Book XXXVI, Title I, Sec. 63, Macgregor's translation,  
( S. C.572/L—D. C. (F) Colombo 2680 )

*Gunasekara J.*

I agree that deed No. 2110 of 4th October 1885 (P1B) did not create a *fidei commissum*, for the reasons that there has been no acceptance on behalf of the fidei-commissaries and that it was not the intention of the donor to create a *fidei commissum* in favour of a family. I therefore concur in the order proposed by my brother.

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

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No. 19  
Decree of the  
Supreme  
Court.  
10-10-51

**No. 19**

**Decree of the Supreme Court**

GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN  
NORTHERN IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS  
KING, DEFENDER OF THE FAITH.

D. C. (F) 572-L  
1949

IN THE SUPREME COURT OF ISLAND OF CEYLON

1. DANISTER P. ABEYAWARDENE

2. GEOFFREY P. ABEYAWARDENE

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3. LLEWELLYN P. ABEYAWARDENE

all of Colombo.....*Plaintiff- Respondents*  
*against*

MRS. CARMEN SYLVENE WEST (*nee* Pereira) of "Anandagiri", Green  
Path, Colombo.....*Defendant-Appellant*

Action No. 2680/L

District Court of Colombo

This cause coming on for hearing and determination on the 10th, 11th, 13th, 14th, 24th and 25th September and 10th October, 1951 and on this day, upon an appeal preferred by the Defendant-Appellant before the Hon. 30

Mr. H. H. Basnayake, κ. c., Puisne Justice and the Hon. Mr. E. H. T. Gunasekara, Puisne Justice of this Court, in the presence of Counsel for the Appellant and Respondents.

No. 19  
Decree of the  
Supreme  
Court.  
10-10-51  
—continued

It is considered and adjudged that this appeal be and the same is hereby allowed with costs both here and below.

Witness the Hon. Sir Alan Edward Percival Rose, Kt., K. C. Chief Justice, at Colombo, the 16th day of October in the year of our Lord One thousand Nine hundred and Fifty one and of Our Reign the Fifteenth.

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

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No. 20

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

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

No. 20  
Application  
for Condi-  
tional Leave  
to Appeal to  
the Privy  
Council.  
23-10-51

No. 2680/L District  
Court Colombo.  
No. 572/L (Final) of  
1949 Supreme  
Court.

20

In the matter of an application for Condi-  
tional leave to appeal under the provisions  
of the Appeals (*Privy Council*) Ordinance  
Chapter 85 Legislative Enactmennts

1. DANISTER P. ABEYWARDENE of Colombo.
2. GEOFFREY P. ABEYWARDENE of Colombo.
3. LLEWELLYN P. ABEYWARDENE of Colombo,  
now of Dehiwela ..... *Plaintiffs.*

*Vs.*

MRS. CARMEN SYLVENE WEST (*nee* Pereira)  
of Anandagiri, Green Path, Colombo..... *Defendant.*  
*Between*

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1. DANISTER P. ABEYWARDENE of Colombo.
2. GEOFFREY P. ABEYWARDENE of Colombo.

No. 20  
Application  
for Condi-  
tional Leave  
to Appeal to  
the Privy  
Council.  
23-10-51  
—continued

3. LLEWELLYN P. ABEYWARDENE of Colombo,  
now of Dehiwela.....*Plaintiffs-Respondents-Appellants.*

*Vs.*

MRS. CARMEN SYLVENE WEST (*nee* Pereira)  
of Anandagiri Green Path,  
Colombo.....*Defendant-Appellant-Respondent.*

To :-

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

On this 23rd day of October 1951.

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The humble Petition of (1) Danister P. Abeywardene (2) Geoffrey P. Abeywardene and (3) Llewellyn P. Abeywardene the Plaintiffs-Respondents-Appellants abovenamed appearing by Llewellyn Solomon Fernando and George Christopher Edwin Peiris, Proctors of the Supreme Court practising in partnership under the name, style and firm of Fernando and Fernando showeth as follows :—

1. That feeling aggrieved by the judgment and decree of this Honourable Court pronounced on the 10th day of October 1951 the Plaintiffs-Respondents-Appellants are desirous of appealing therefrom to His Majesty the King in Council. 20
2. That the said judgment is a final judgment and the matter in dispute on the appeal amounts to or is of the value of Rupees Five Thousand and upwards.
3. Notice of our intended application for leave to appeal was served on the Respondent abovenamed in terms of the Rules under the Appeals (*Privy Council*) Ordinance Chapter 85 by
  - (a) issue through the Registry of the Court of the said notice to be affixed to the land and
  - (b) delivery to the Registry aforesaid of notice to be sent by registered post to Mr. R. L. Pereira, K. C. and to the 30  
Defendant-Appellant-Respondent's Proctor, Mr. John Wilson

and these were in accordance with the Order of Your Lordships Court made on the 18th day of October 1951 on an application on that behalf by them bearing No. 534.

Wherefore the Appellants pray for conditional leave to appeal against the said judgment and decree of this Court dated the 10th day of October 1951 to His Majesty the King in Council.

No. 20  
Application  
for Condi-  
tional Leave  
to Appeal to  
the Privy  
Council.  
23-10-51  
—continued

*Sgd.* FERNANDO & FERNANDO

*Proctors for* (1) *Danister P. Abeywardene* (2) *Geoffrey P. Abeywardene* (3) *Llewellyn P. Abeywardene the Plaintiffs-Respondents-Appellants.*

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**No. 21**

**Decree granting Conditional Leave to appeal to the Privy Council.**

No. 21  
Decree gran-  
ting Condi-  
tional Leave  
to Appeal to  
the Privy  
Council.  
13-11-51

GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS KING,  
DEFENDER OF THE FAITH.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

- 1. DANISTER P. ABEYWARDENE
- 2. GEOFFREY P. ABEYWARDENE
- 3. LLEWELLYN P. ABEYWARDENE all of Colombo... *Plaintiffs-Appellants*  
*against*

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MRS. CARMEN SYLVENE WEST *nee* PEREIRA of "Anandagiri" Green Path, Colombo..... *Defendant-Respondent*

Action No. 2680/L (S. C. 572)

District Court of Colombo

In the matter of an application dated 23rd October, 1951, for Conditional Leave to Appeal to His Majesty the King in Council, by the Plaintiffs-Appellants abovenamed, against the decree dated 10th October, 1951.

This matter coming on for hearing and determination on the 13th day of November, 1951 before the Hon. Sir Alan Edward Percival Rose, Kt., K.C., Chief Justice and the Hon. Mr. V.L. St. C. Swan, Puisne Justice of this Court, in the presence of Counsel for the Petitioners and Respondent

It is considered and adjudged that this application be and the same is hereby allowed upon the condition that the applicants do within one month from this date:—

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No. 21  
Decree granting Conditional Leave to Appeal to the Privy Council.  
13-11-51  
—continued

1. Deposit with the Registrar of the Supreme Court a sum of Rs. 3000/- and hypothecate the same by Bond or such other security as the Court in terms of Section 7(1) of the Appellate Procedure (Privy Council) Order shall on application made after due notice to the other side approve.

2. Deposit in terms of provisions of section 8 (a) of the Appellate Procedure (Privy Council) Order with the Registrar a sum of Rs. 300/- in respect of fees mentioned in Section 4 (b) and (c) of Ordinance No. 31 of 1909 (Chapter 85).

Provided that the applicants may apply in writing to the said Registrar stating whether they intend to print the record or any part thereof in Ceylon, for an estimate of such amounts and fees and thereafter deposit the estimated sum with the said Registrar.

Witness the Hon. Sir Alan Edward Percival Rose, Kt., K. C., Chief Justice, at Colombo, the 20th day of November, in the year of our Lord One thousand Nine hundred and Fifty one and of Our Reign the Fifteenth.

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

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**No. 22**

No. 22  
Application for Final Leave to Appeal to the Privy Council  
14-12-51

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

IN THE SUPREME COURT OF THE ISLAND OF CEYLON. 20

1. DANISTER P. ABEYAWARDENE of Colombo
2. GEOFFREY P. ABEYAWARDENE of Colombo
3. LLEWELLYN P. ABRYAWARDENE of Colombo

now of Dehiwela.....*Plaintiffs-Appellants*

No. S. C. 527 (Final)

D. C. Colombo No. 2680/L.

*Vs.*

MRS. CARMEN SYLVENE WEST *nee* PEREIRA of "Anandagiri" Green Path, Colombo.....*Defendant-Respondent*

To the Honourable the Chief Justice and the Justices of the Supreme Court. 30  
On this 14th day of December, 1951.



The humble petition of the appellants abovenamed appearing by Llewellyn Solomon Fernando and George Christopher Edwin Peiris, Proctors of the Supreme Court practising in partnership under the name style and firm of Fernando and Fernando sheweth as follows :-

No. 22  
Application  
for Final  
Leave to  
Appeal to the  
Privy Council  
14-12-51

—continued

1. That the appellants on the 13th day of November 1951 obtained conditional leave from this Honourable Court to appeal to His Majesty the King in Council against the judgment of this Court pronounced on the 10th day of October 1951.

2. That the appellants have in compliance with the conditions on which such leave was granted

(a) deposited with the Registrar of the Supreme Court a sum of Rs. 3000/- on the 8th day of December 1951 in cash and hypothecated the same by bond.

(b) deposited a sum of Rs. 300/- in respect of the amount and fees mentioned in Section 4 (b) and (c) of Ordinances 31 of 1909 and 19 of 1918 Chapter 85 Legislative Enactments of Ceylon.

WHEREFORE THE PLAINTIFFS-APPELLANTS PRAY that they be granted final leave to appeal against the said judgment of this Court dated the 10th day of October 1951 to His Majesty the King in Council and for such other and further relief in the premises as to Your Lordships' Court may seem meet.

*Sgd. FERNANDO & FERNANDO,  
Proctors for Plaintiffs-Appellants*

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**No. 23**

**Decree granting Final Leave to appeal to the Privy Council**

GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN IRELAND  
AND THE BRITISH DOMINIONS BEYOND THE SEAS KING,  
DEFENDER OF THE FAITH,

No. 23  
Decree granting Final  
Leave to  
Appeal to the  
Privy Council  
16-1-52

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

1. DANISTER P. ABEYWARDENE
2. GEOFFREY P. ABEYWARDENE
3. LLEWELLYN P. ABEYWARDENE

all of Colombo..... *Plaintiffs-Appellants*

*Against*

No. 23  
Decree granting Final  
Leave to  
Appeal to the  
Privy Council  
16-1-52  
—continued

MRS. CARMEN SYLVENE WEST (*nee* Pereira)  
of "Anandagiri" Green Path, Colombo. *Defendant-Respondent.*

Action No. 2680/L (s. c. 572)

District Court of Colombo

In the matter of an application by the Plaintiffs-Appellants abovenamed dated 14th December 1951, for Final Leave to Appeal to His Majesty the King in Council against the decree of this Court dated 10th October, 1951.

This matter coming on for hearing and determination on the 16th day 10 of January, 1952 before the Hon. Mr. E. F. N. Gratiaen, K. C., Puisne Justice and Hon. Mr. M. F. S. Pulle, K. C. Puisne Justice of this Court, in the presence of Counsel for the applicants and Respondent.

The Applicants having complied with the conditions imposed on them by the order of this Court dated the 13th November, 1951, granting Conditional Leave to Appeal.

It is considered and adjudged that the Applicants' application for Final Leave to Appeal to His Majesty the King in Council be and the same is hereby allowed.

Witness the Hon. Sir Alan Edward Percival Rose, Kt., K.C., Chief 20 Justice, at Colombo, the 21st day of January in the year of our Lord One thousand Nine hundred and Fifty Two and of Our Reign the Sixteenth.

*Sgd.* W. G. WOURTERSZ,  
*Deputy Registrar, S. C.*

**PART II****EXHIBITS****P 1B****Deed No. 2,110****Deed of Gift No. 2,110**

Exhibits  
 P 1B.  
 Deed  
 No. 2110  
 4-10-1883

Know all men by these Presents that we, Mututantrige Siman Fernando and Colombapatabendige Maria Perera, husband and wife residing at Horetuduwa in Panadura being desirous of making some provision for our children and in consideration of the love and affection we bear to our daughters Mututantrige  
 10 Cecilia Fernando and Mututantrige Jane Fernando and for divers other good causes and considerations us hereunto moving do hereby give grant, assign, set over and assure by way of gift subject to the conditions hereinafter stated, unto the said Mututantrige Cecilia Fernando and Muturantrige Jane Fernando (hereinafter called the donees) the following property, to wit :

All those two contiguous allotments of land now forming one property with the buildings thereon situated in Maradahn Ward No. 8 of the Municipality of Colombo whereof lot No. 4 described in Title Plan No. 47,260 ; is bounded on the north-east by Vauxhall Road, on the east by the property belonging to the estate of the late Mr. and Mrs. C. A. Lorenz, on the south by a road named Union  
 20 Place, on the west by land claimed by Segu Lebbe Kasy Lebbe, on the north-west by land claimed by Segu Lebbe Ahamado Lebbe Markar, and contains in extent three acres two roods and twelve perches (3A. 2R. 12P.) and lot No. 5 described in Deed No. 612 dated the 16th day of August, One thousand eight hundred and fifty-eight and Survey Plan No. 923 ; is bounded on the north-east by Vauxhall Road, on the south-east and south-west by land described in Plan No. 47,260, and on the north-west by land claimed by Segu Lebbe Ahamado Lebbe Marikar and contains in extent twenty-six and twenty-four one hundredths perches (0A. 0R. 26.24P.) according to the figure of survey thereof dated December, One  
 30 Surveyor, which said premises have been held and possessed by me the said Mututantrige Siman Fernando under and by virtue of the hereunto annexed Deed of Conveyance No. 1,569, dated the 13th day of December, 1871, and attested by Mr. F. C. Loos of Colombo, Notary Public, which said premises are of the value of Rs. 15,000.

To have and to hold the said premises with the easements, rights and appurtenances thereunto belonging or used or enjoyed therewith or known as part and parcel thereof unto them the said Mututantrige Cecilia Fernando and Mututantrige Jane Fernando, their heirs, executors and administrators in equal undivided shares forever subject however to the conditions following that is to say that the  
 40 said Mututantrige Siman Fernando shall during his life time be entitled to take use and appropriate to his own use the issues, rents and profits of the said premises

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and that after his death and in the event of his wife Colomba Patabendige Maria Perera surviving him she shall during her life time be entitled to take use and appropriate to her own use a just half of the said issues, rents and profits the other half being taken used and appropriated by the donees to wit, the said Mututantrige Cecilia Fernando and Mututantrige Jane Fernando and subject also to the conditions that the said donee Mututantrige Cecilia Fernando and Mututantrige Jane Fernando shall not nor shall either of them be entitled to sell, mortgage, lease for a longer term than four years at a time or otherwise alienate or encumber the said premises nor shall the same or the rents and profits thereof be liable to be sold in execution for their debts or for the debts of any or either 10 of them and the said premises shall after their death devolve on their lawful issues respectively and in the event of anyone of the said donees dying without lawful issue her share right and interest in the said premises shall devolve on and revert to the surviving donee subject however to the conditions and restrictions aforesaid.

And these presents further witness that Mututantrige John Jacob Cooray also of Horetuduwa aforesaid doth hereby on behalf of the said Mututantrige Cecilia Fernando and Mututantrige Jane Fernando, who are minors jointly with Mututantrige Alfred Thomas Fernando and Mututantrige James Fernando, brothers of the said minor donees accept the gift and grant of the said premises 20 subject to the respective conditions aforesaid.

In witness whereof we the said Mututantrige Siman Fernando and Colomba Patabendige Maria Perera and we the said Mututantrige John Jacob Cooray, Mututantrige Alfred Thomas Fernando and Mututantrige James Fernando do set our respective hands to three of the same tenor as these presents at Horetuduwa aforesaid, this Fourth day of October, in the year One thousand eight hundred and eighty-three.

Signed, sealed and delivered in the presence of us :

Sgd. (Illegibly)  
 „ (In Sinhalese)  
 „ JOHN J. COORAY  
 „ A. J. FERNANDO  
 „ JAMES FERNANDO  
 „ N. M. FERNANDO  
 „ L. FERNANDO

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Sgd. C. DE A. GUNARATNE,  
 N. P.

I, Charles de Alwis Gunaratne of Gorakane, in Panadura, in the Island of Ceylon, Notary Public, by lawful authority duly admitted and practising in the District of Kalutara, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me to the said Mututantrige Siman 40 Fernando, Colombopatabendige Maria Perera, Mututantrige John Jacob Cooray,

Mututantrige Alfred Thomas Fernando, Mututantrige James Fernando therein <sup>Exhibits</sup>  
 named who are all known to me in the presence of Wannakuwattewaduge Manuel <sup>p. 1B</sup>  
 Fernando of Korawalwella in Moratuwa and Mututantrige Lowis Fernando of <sup>Deed</sup>  
 Horetuduwa aforesaid, the subscribing witnesses hereto, both of whom are known <sup>No. 2110</sup>  
 to me, the same was signed by the said Mututantrige Siman Fernando, Colombo-<sup>4-10-1883</sup>  
 patabendige Maria Perera, Mututantrige John Jacob Cooray, Mututantrige  
 Alfred Thomas Fernando and Mututantrige James Fernando and also by the  
 said witnesses in my presence and in the presence of one another all being present  
 together at the same time and the place at Horetuduwa aforesaid, this  
 10 Fourth day of October, in the year One thousand Eight-hundred and Eighty-  
 three. That six stamps amounting to Rupees Seventy-five (Rs. 75) and a stamp  
 for Re. 1 which were supplied by me have been affixed respectively to the dupli-  
 cate and original of this Deed. <sup>—continued</sup>

Attested on the 4th day of October, 1883.

Which I attest :

Sgd. C. D. A. GUNARATNE,  
*Notary Public.*

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**Proceedings in Special Case No. 116—D. C., Colombo**

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IN THE DISTRICT COURT OF COLOMBO

Special Case                      In the matter of an application under the provisions of  
 No. 116                              the Ordinance No. 11 of 1876.

1. MUTUTANTRIGE SIMAN FERNANDO, and
2. KOLAMBAPATABENDIGE MARIA PERERA, both of  
    Horetuduwa, Panadura ..... *Petitioners.*

And

1. CECILIA FERNANDO,
2. JANE FERNANDO, and
- 30 3. JAMES FERNANDO, all of Horetuduwa ..... *Respondents.*

I file my appointment as Proctor for Mututantrige Siman Fernando and  
 Kolombapatabendige Maria Perera, their petition and an affidavit from the said  
 Mututantrige Simon Fernando and the following documents, to wit :—

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- (1) Certified copy of Deed No. 2110 dated the fourth day of October, 1883 and attested by Charles de Alwis Gunaratne, Notary, marked Letter C.
- (2) Appraisement report of the two properties referred to in the petition marked respectively A and B.
- (3) Minute of Consent signed by the first and second respondents marked Letter D.
- (4) Minute of Consent signed by the second respondent consenting to the appointment of James Fernando as Guardian marked Letter E.
- (5) Minute of Consent marked Letter X. of James Fernando consenting to 10 his appointment as Guardian *ad litem* and move that under the provisions of the Ordinance No. 11 of 1876 this Court may be pleased to authorise and empower the first respondent Cecilia Fernando and the third respondent as Guardian *ad litem* of the second respondent Jane Fernando to convey and assign unto the first petitioner the premises called and known as "The Priory" (described in Schedule A in the said petition) free from all conditions and restrictions and to order and decree accordingly and to authorise and empower the first respondent Cecilia Fernando and the third respondent as guardian as aforesaid to execute the necessary Deed 20 of Conveyance in favour of the first petitioner absolutely and free from all conditions and restrictions.

2. In consideration thereof to authorise and empower the petitioners to transfer and assign unto the 1st and 2nd respondents the allotments of lands and the buildings thereon called "Sirinivasa" (fully described in Schedule B to the said petition) subject to the conditions that they shall not sell, mortgage or otherwise alienate the same except with the consent of the petitioners or the survivor of them and to the further condition that the first petitioner shall during his life time be entitled to take use enjoy and appropriate to his own use the rents issues and profits of the said premises and after his death and in the event 30 of the second petitioner surviving him she shall during her life time be entitled to take use enjoy and appropriate to her own use one just half of the said rents, issues and profits the other half thereof being taken used enjoyed and appropriated by the 1st and 2nd respondents.

3. That the third respondent James Fernando be appointed Guardian *ad litem* over the second respondent for the purpose of representing her in these proceedings and for all the purposes thereof and that he be authorised and empowered as such guardian to execute all necessary deeds, conveyances and documents.

4. That all such orders and directions may be made and given as may be necessary in reference to this application.

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Colombo, 16th June, 1896.

Sgd. ARTHUR ALWIS,  
Proctor for Petitioner.

In THE DISTRICT COURT OF COLOMBO

Special No. 116. In the matter of an application under the provisions of the Ordinance No. 11 of 1876.

- 1. MUTUTANTRIGE SIMAN FERNANDO, and
- 2. KOLOMBAPATABENDIGE MARIA PERERA of Horetuduwa, Panadura ..... *Petitioners.*

10

*Vs.*

- 1. CECILIA FERNANDO,
- 2. JANE FERNANDO, and
- 3. JAMES FERNANDO, all of Horetuduwa, Panadura ..... *Respondents.*

On this 16th day of June, 1896 :

The petition of the abovenamed petitioners appearing by Arthur Alwis, their Proctor, sheweth as follows :

- (1) The petitioners were married in community of property.
- (2) The petitioners by a Deed No. 2,110 dated the 4th day of October 1883, attested by Charles de Alwis Gunaratna, Notary Public gifted and granted unto their daughters Cecilia Fernando and Jane Fernando the abovenamed 1st and 2nd respondents. All those two contiguous allotments of land now forming one property with the buildings thereon called and known as " The Priory " in Union Place, Slave Island, Colombo (in the Schedule A hereunto annexed more fully described) subject to the condition that the 1st petitioner should during his life time be entitled to take use and appropriate to his own use the issues rents and profits of the said premises and that after his death and in the event of his said wife (the 2nd petitioner) surviving him she should during her life time be entitled to take use and appropriate to her own use a just half of the said rents the other half being taken and appropriated by the said donees and subject also to the condition that the said donees should not nor should either of them be entitled to sell mortgage lease for a longer term than four years at a time or otherwise alienate or

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encumber the said premises—and the same or the rents thereof should not be liable to be sold in execution for their debts and that after their death the said premises should devolve on their lawful issues respectively and in the event of anyone of the said donees dying without lawful issue her share in the said premises should devolve on the surviving donee subject however to the same conditions and restrictions.

- (3) The 1st respondent is 22 years of age and the 2nd respondent is 19½ years of age.
- (4) The entirety of the said premises called and known as “The Priory,”<sup>10</sup> gifted by the said donee No. 2,110 of the 4th day of October, 1883, is of the value of Rs. 45,000 and yields yearly rental of Rs. 2,160.
- (5) The petitioners apprehend that it is not desirable nor beneficial for the 1st and 2nd respondents to hold in common the aforesaid property called “The Priory,” and the petitioners being now in more affluent circumstances are anxious to make better provision for their unmarried daughters the 1st and 2nd respondents by giving to them the several allotments of land (described in the Schedule B hereto annexed) and all that house and buildings bearing No. 8 called and known as “Sirinivasa,” situated at Edinburgh<sup>20</sup> Crescent, Flower Road and Green Path, Cinnamon Gardens, Colombo, in lieu of and instead of the said premises called “The Priory.”
- (6) The said allotments of land and house and ground No. 8 at Edinburgh Crescent, Flower Road, Green Path are worth about Rs. 90,000 and yield at present a yearly income of Rs. 2,160. It could easily be rented for Rs. 4,000 a year.
- (7) Both the 1st and 2nd respondents consent to the proposed change.
- (8) The respective values of the said two properties are set out in the reports hereto annexed marked letters A and B made by Jansen & Co. of the Fort, Colombo, Licensed Auctioneers and Commission<sup>30</sup> Agents, who are competent and trust-worthy valuers of real properties in Colombo.
- (9) The petitioners propose to give the several allotments of land and buildings thereon described in the said Schedule B to the 1st and 2nd respondents on the condition that they shall not sell, mortgage or otherwise alienate the same without the consent of the petitioners and the survivor of them.
- (10) The 3rd respondent is a brother of the 1st and 2nd respondents and is a fit and competent person to be appointed guardian over the 2nd respondent to represent her in these proceedings. He has no<sup>40</sup>



interest adverse to that of the 2nd respondent and is willing to be appointed guardian over the 2nd respondent for the said purpose and has accordingly signed the minute of consent herewith filed marked letter X. Besides the respondents the petitioners do not know of any other person interested in the subject of this petition or in the persons sought to be affected by the order prayed for in this petition who is likely to entertain any objection thereto.

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Wherefore the petitioners pray under the provisions of the Ordinance No. 11 of 1876, that this Court may be pleased—

- 10 (1) To authorise and empower the 1st respondent and the 3rd respondent as guardian *ad litem* of the 2nd respondent to convey and assign unto the 1st petitioner the said premises called and known as “ The Priory,” free from all conditions and restrictions and to authorise and empower the said 1st respondent and the 3rd respondent as guardian as aforesaid to execute the necessary Deed of Conveyance in favour of the 1st petitioner absolutely and free from all conditions and restrictions.
- 20 (2) In consideration thereof to authorise and empower the petitioners to transfer and assign unto the 1st and 2nd respondents the said allotments of land and the said buildings called “ Siriniwasa ” (fully described in the said Schedule B) subject to the conditions that they shall not sell mortgage or otherwise alienate the same except with the consent of the petitioners or the survivor of them and subject to a life interest in favour of the 1st petitioner and a condition that after 1st petitioner’s death 2nd petitioner should be entitled to enjoy  $\frac{1}{2}$  of the rents thereof.
- 30 (3) That the 3rd respondent be appointed guardian *ad litem* over the 2nd respondent for the purpose of representing her in these proceedings and for all purposes thereof and for executing all necessary deeds and conveyances and documents.
4. That all such orders and directions may be given as may be necessary in reference to this application.
- (5) And for such other and further relief as to this Court shall seem meet.

Sgd. ARTHUR ALWIS,  
*Proctor for Petitioner.*

Sgd. (Illegibly)  
*Advocate.*

*Schedule A referred to in the foregoing Petition*

All those two contiguous allotments of land now forming one property with the buildings thereon situate at Maradana Ward No. 8 of the Municipality

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of Colombo, whereof lot No. 4 described in Title Plan No. 47,260 ; is bounded on the north-east by Vauxhall Road, on the east by the property belonging to the estate of the late Mr. and Mrs. C. A. Lorensz, on the south by a road named Union Place, on the west by lands claimed by Segu Lebbe Kasy Lebbe, and on the north-west by land claimed by Segu Lebbe Ahamado Lebbe Marikar ; and containing in extent Three acres Two roods and Twelve perches, and lot No. 5 described in Deed No. 612 dated the 16th day of August, 1858, and Survey Plan No. 923 ; is bounded on the north-east by Vauxhall Road, on the south-west and south-east by land described in Plan No. 47,260, and on the north-west by land claimed by Segu Lebbe Ahamado Lebbe Marikar ; and contains in extent 10 Twenty-six and 24/100 perches according to the figure of survey thereof dated December, 1871, and made by Charles Van Rooyen, Surveyor.

*Schedule B referred to in the foregoing Petition.*

1. All that allotment of land situate in the Maradana Ward, Cinnamon Gardens, Colombo ; bounded on the north-east by land said to belong to the Crown, on the south-east by land described in Plan No. 64,104 and all other sides by land reserved for public purposes ; containing in extent Four acres One rood and Eight perches according to the Government Title Plan No. 64,105, dated 24th June, 1865, authenticated by W. R. Noad, Acting Surveyor-General and held under deed dated 13th November, 1867, attested by F. J. de Saram, Notary 20 Public. Registered A 8/386 excluding however therefrom the following portions, to wit, in extent Two roods and Twenty-six and a half perches sold to Dr. W. P. Charsley ; another portion containing in extent Two roods and Twenty-seven and 50/100 perches sold to William Byan ; and another portion in extent two roods and nine perches sold to Juanis de Silva.

2. An allotment of land situate at the Cinnamon Gardens at Maradana in Ward No. 9 within the Municipality of Colombo ; bounded on the north by the land reserved for public purposes along the road, on the east by a road, on the south by land purchased by M. Siman Fernando, and on the west by land described in Plan No. 64,105 ; containing in extent One acre and Seventeen 30 perches according to the survey and description thereof No. 74,323, authenticated by A. B. Fyers, Surveyor-General, bearing date the 13th February, 1869.—Registered A. 12/33.

3. An allotment of land situated at Cinnamon Gardens, Maradana aforesaid ; and bounded on the north by the land described in Plan No. 74,323, on the east by a road, on the south by land said to belong to the Crown, and on the west by land described in Plan No. 64,105 ; containing in extent One acre Two roods and Twelve perches according to the Government Title Plan thereof No. 74,535 dated 6th March, 1869, authenticated by the said A. B. Fyers, Registered A. 12/358 excluding therefrom a portion ; in extent Two roods and 40 Thirty-two perches sold to the said Juanis de Silva.

Sgd. ARTHUR ALWIS,  
*Proctor for Petitioners.*

IN THE DISTRICT COURT OF COLOMBO

No. Special 116. In the matter of an application under the provisions of the Ordinance No. 11 of 1876.

- 1. MUTUTANTRIGE SIMAN FERNANDO and
- 2. COLOMBAPATABENDIGE MARIA PERERA, both of Horetuduwa, Panadura ..... *Petitioners.*

*Vs.*

- 1. CECILIA FERNANDO,
- 10 2. JANE FERNANDO, and
- 3. JAMES FERNANDO, all of Horetuduwa ..... *Respondents.*

The 17th June, 1896 :

Mr. Arthur Alwis files his appointment as Proctor for Mututantrige Siman Fernando and Colomba Patabendige Maria Perera, their petition and an affidavit from the said Mututantrige Siman Fernando and the following documents, to wit :—

- (1) Certified copy of Deed No. 2,110 dated the 4th day of October, 1883, attested by Charles de Alwis Gunaratne, the Notary, marked letter C.
- 20 (2) Appraisement reports of the two properties referred to in the petition marked respectively A and B.
- (3) Minute of Consent signed by the 1st and 2nd respondents marked letter D.
- (4) Minute of Consent signed by the second respondent consenting to the appointment of James Fernando as guardian marked letter E.
- 30 (5) Minute of Consent marked letter X of James Fernando consenting to his appointment as Guardian *ad litem* and moves that under the provisions of the Ordinance No. 11 of 1876, this Court may be pleased to authorise and empower the 1st respondent Cecilia Fernando and the 3rd respondent as Guardian *ad litem* of the 2nd respondent Jane Fernando to convey and assign unto the 1st petitioner the premises called and known as "The Priory," described in Schedule A to the said petition free from all conditions

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and restrictions and to order and decree accordingly and to authorise and empower the 1st respondent Cecilia Fernando and the 3rd respondent as guardian as aforesaid to execute the necessary Deed of Conveyance in favour of the first petitioner absolutely and free from all conditions and restrictions.

2. In consideration thereof to authorise and empower the petitioners to transfer and assign unto the 1st and 2nd respondents the allotments of land and the buildings thereon called "Siriniwasa" (fully described in Schedule B to the said petition) subject to the condition that they shall not sell, mortgage or otherwise alienate the same except with the consent of the petitioners or 10 the survivor of them and to the further condition that the 1st petitioner shall during his life time be entitled to take use enjoy and appropriate to his own use the rents, issues and profits of the said premises and that after his death and in the event of the 2nd petitioner surviving him she shall during her life time be entitled to take use and enjoy and appropriate to her own use one just half of the said rents, issues and profits the other half thereof being taken, used, enjoyed and appropriated by the 1st and 2nd respondents.

3. That the 3rd respondent James Fernando be appointed Guardian *ad litem* over the 2nd respondent for the purpose of representing her in these proceedings and for all the purposes thereof and that he be authorised and 20 empowered as such guardian to execute all necessary deeds, conveyances and documents.

4. That all such orders and directions may be made and given as may be necessary in reference to this application.

C. A. V.

Sgd. . . . .,  
*District Judge.*

18th June, 1896.

It is hereby adjudged and ordered that James Fernando of Horetuduwa be and he is hereby appointed guardian of Jane Fernando (the second respondent) 30 in this matter to represent her in these proceedings.

It is further ordered and decreed that upon the petitioners transferring and assigning unto the first and second respondents Cecilia Fernando and Jane Fernando the allotments of land (fully described in Schedule B to the said petition of the petitioner) situated at Edinburgh Crescent, Flower Road and Green Path, Colombo, and the buildings thereon called and known as "Siriniwasa" bearing assessment No. 8 subject to the conditions following, that is to say, viz., that they the 1st and 2nd respondents shall not sell, mortgage or otherwise alienate the said premises except with the consent of the petitioners or the survivor of them and that the first petitioner shall during his life time be entitled 40 to make, use, enjoy and appropriate to his own use the rents, issues and profits of the said premises and that after his death and in the event of the second

petitioner surviving him she shall during her life time be entitled to take, use, enjoy and appropriate to her own use one just half of the said rents, issues and profits the other half thereof being taken used, enjoyed and appropriated by the 1st and 2nd respondents that the said Cecilia Fernando and James Fernando as guardian of the said Jane Fernando, do and they are hereby authorised and empowered to convey and assign unto the said Mututantrige Siman Fernando, the 1st petitioner, the aforesaid lands and premises called and known as "The Priory" (fully described in Schedule A in the said petition) absolutely and free from all conditions and restrictions contained in Deed No. 2,110 dated the 4th day of October, 1883, and that the said Cecilia Fernando and James Fernando as guardian as aforesaid do and they are hereby empowered and authorised to execute and deliver the necessary Deed of Conveyance of the said premises in favour of the said Mututantrige Siman Fernando absolutely and free and clear of all conditions and restrictions.

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The 18th day of June, 1896. Sgd. D. W. BROWNE,  
D. J.

IN THE DISTRICT COURT OF COLOMBO

In the matter of an application under the provisions of the Ordinance No. 11 of 1876.

- 20 1. MUTTUTANTRIGE SIMAN FERNANDO, and  
2. COLOMBAPATABENDIGE MARIA PERERA of Horetuduwa,  
Panadura ..... *Petitioners.*

Vs.

1. CECILIA FERNANDO,  
2. JANE FERNANDO, and  
3. JAMES FERNANDO, all of Horetuduwa ..... *Respondents.*

I, Mututantrige Siman Fernando of Horetuduwa, in Panadura, the 1st petitioner abovenamed not being a Christian solemnly, sincerely and truly affirm aver and declare as follows :—

- 30 (1) I and the 2nd petitioner abovenamed Colombapatabendige Maria Perera were married in community of property.
- (2) I and the second petitioner by a Deed No. 2,110 dated the 4th day of October, 1883, and attested by Charles de Alwis Gunaratne, Notary Public, gifted and granted unto our daughters Cecilia Fernando and Jane Fernando, the 1st and 2nd respondents abovenamed all those two contiguous allotments of land now forming one property

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with the buildings thereon called and known as "The Priory," in Union Place, Salve Island, Colombo (in the Schedule A hereunto annexed more fully described) subject to the condition that I the 1st petitioner should during my life time be entitled to take, use and appropriate to my own use the issues, rents and profits of the said premises that after my death and in the event of my said wife (2nd petitioner) surviving me she should during her life time be entitled to take and appropriate to her own use a just half of the said rents the other half being taken and appropriated by the said donees and subject also to the condition that the said donees 10 should not nor should either of them be entitled to sell, mortgage, lease for a longer term than four years at a time or otherwise alienate or encumber the said premises and the same or the rents thereof should not be liable to be sold in execution for their debts and that after their death the said premises should devolve on their lawful issues respectively and in the event of anyone of the said donees dying without lawful issue her share in the said premises should devolve on the surviving donee subject however to the same conditions and restrictions.

- (3) The 1st respondent is 22 years of age and the 2nd respondent is 19½ 20 years of age.
- (4) The entirety of the said premises called and known as "The Priory," gifted by the said Deed No. 2,110 of the 4th day of October, 1883 is of the value of Rs. 45,000 and yields a yearly rental of Rs. 2,160.
- (5) Both I and the 2nd petitioner apprehend that it is not desirable or beneficial for the 1st and 2nd respondents to hold in common the aforesaid property called "The Priory," and I being in more affluent circumstances am anxious to make better provision for our unmarried daughters the 1st and 2nd respondents by giving them the entirety of the several allotments of land described in 30 the Schedule letter B hereto annexed and all that house and buildings standing on one portion thereof called and known as "Siriniwasa," situated at Edinburgh Crescent and Green Path, Cinnamon Gardens, Colombo, in lieu and instead of the said premises called "The Priory".
- (6) The said allotments of land and house and ground No. 8 at Edinburgh Crescent and Green Path are worth about Rs. 90,000 and yield at present a yearly rental of Rs. 2,160. It could easily be rented for Rs. 4,000 a year.
- (7) Both the 1st and 2nd respondents consent to the proposed change. 40
- (8) The respective values of the said two properties are set out in the reports hereto annexed maked A and B made by Messrs. Jansen &

Co., of the Fort, Colombo, Licensed Auctioneers and Commission Agents, who are competent and trustworthy valuers of real property in Colombo.

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(9) I propose to give the several allotments of land and the buildings thereon described in the said Schedule B to the 1st and 2nd respondents on condition that they shall not sell, mortgage or otherwise alienate the same without the consent of me and the 2nd petitioner or the survivor of us.

10 (10) The 3rd respondent the brother of the 1st and 2nd respondents is a fit and competent person to be appointed guardian over the 2nd respondent to represent her in these proceedings. He has no interest adverse to that of the 2nd respondent and is willing to be appointed guardian for the said purpose and has accordingly signed the Minute of Consent herewith filed marked letter X.

The foregoing affidavit was affirmed to at Colombo by )  
the affirmant abovenamed, Mututantrige Siman  
Fernando, in my presence, the contents thereof  
having been duly read over and truly interpreted  
to him in the Sinhalese language, his own language } Sgd. M. S. FERNANDO  
20 in my presence by the Interpreter of this Court  
and the said affirmant seemed perfectly to under-  
stand the said contents and wrote his signature in  
my presence, on this Sixteenth day of June, 1896. }

Sgd. (Illegibly)  
*Interpreter*

Sgd. D. W. BROWNE,  
*D. J.*

*Schedule A referred to in the foregoing Affidavit*

30 All those two contiguous allotments of land now forming one property with the buildings thereon situate at Maradana Ward No. 8 of the Municipality of Colombo, whereof lot No. 4 described in Title Plan No. 47,260 is bounded on the north-east by Vauxhall Road, on the east by the property belonging to the estate of the late Mr. and Mrs. C. A. Lorensz, on the south by a road name Union Place, on the west by land claimed by Segu Lebbe Kasy Lebbe, and on the north-west by land claimed by Segu Lebbe Ahamedo Lebbe Marikar ; and contains in extent Three acres Two roods and Twelve perches and lot No. 5, described in Deed No. 612 dated the 10th day of August, 1858, and Survey Plan No. 923 ; is bounded on the north-east by Vauxhall Road, on the south-east and south-west by land described in Plan No. 47,260, and on the north-west by land  
40 claimed by Segu Lebbe Ahamado Lebbe Marikar ; and contains in extent Twenty-six and 24/100 perches according to the figure and survey thereof dated December, 1871, and made by Mr. Charles Van Rooyen, Surveyor.

Exhibits

*Schedule B referred to in the foregoing Affidavit*

P 2.

Proceedings

in Special

Case No. 116

D.C. Colombo

1896

—continued

1. All that allotment of land situate in the Maradahn Ward, Cinnamon Gardens, Colombo; bounded on the north-east by land said to belong to the Crown, on the south-east by land described in Plan No. 64,104, and on all other sides by land reserved for public purposes; containing in extent Four acres One rood and Eight perches according to the Government Title Plan No. 64,105, dated 24th June, 1865, authenticated by W. R. Noad, Acting Surveyor-General and held under deed dated 13th November, 1867, attested by F. J. de Saram, Notary Public Registered A. 8/386 excluding however therefrom the following portions, to wit, a portion in extent Two roods and Twenty-six and a half perches sold to Mr. W. P. Charsley; another portion containing in extent Two roods and Twenty-seven and 50/100 perches sold to William Bryan and another portion in extent Two roods and Nine perches sold to Juanis de Silva.

2. An allotment of land situated at the Cinnamon Gardens at Maradana in Ward No. 9 within the Municipality of Colombo; bounded on the north by land reserved for public purposes along the road, on the east by a road, on the south by land purchased by M. Siman Fernando, and west by a land described in Plan No. 64,105; containing in extent One acre and Seventeen perches according to the Survey and description thereof No. 74,323 authenticated by A. B. Fyers Surveyor-General bearing date the 13th February, 1869. (Registered A. 12/33.)

3. An allotment of land situated at Cinnamon Gardens, Maradana aforesaid; bounded on the north by land described in Plan No. 74,323, on the east by a road, on the south by land said to belong to the Crown, and on the west by land described in Plan No. 64,105; containing in extent One acre Two roods and Twelve perches according to the Government Title Plan thereof No. 74,534 dated 6th March, 1869, authenticated by the said A. B. Fyers. (Registered A. 12/338,) excluding therefrom a portion in extent Two roods and Thirty-two perches sold to the said Juanis de Silva.

Sgd. M. S. FERNANDO

D 17.  
Appointment  
16-6-1896

D 17

30

**Appointment**

D 17

Know all men by these Presents that we, Mututantrige Siman Fernando and Colombapatabendige Maria Perera, both of Horetuduwa in Panadure, have nominated, constituted and appointed and do hereby nominate, constitute and appoint Arthur William Alwis, Proctor of the , to be our true and lawful Proctor and for and in our name and behalf before the District Court of Colombo to appear and this proxy to exhibit and by virtue hereof to apply to the said District Court under the provisions of Ordinance No. 11 of 1876, to authorise and empower Cecilia Fernando and Jane Fernando as Guardian *ad litem*



of Jane Fernando to convey and assign unto us all those the premises called and known as "The Priory" free from all conditions and restrictions and to authorise and empower the said Cecilia Fernando and the said James Fernando as guardian as aforesaid to execute the necessary deed of conveyance in favour of me the said M. Siman Fernando free from all conditions and restrictions and to authorise and empower us to transfer and assign unto us the said Cecilia Fernando and Jane Fernando the several allotments of land at Edinborough Crescent and Green Path, at Colombo, and the building thereon called "Siriniwasa," subject to the condition that they shall not sell, mortgage or otherwise alienate the same except  
 10 with the consent of us and the survivor of us except with the consent of us or the survivor of us and to apply for and obtain an order appointing James Fernando Curator *ad litem* over Jane Fernando for the purpose of representing her in connection with the said application and to file all petitions, applications, affidavits and papers for the said purpose and to make all motions necessary in the premises and to take all legal and do execute and perform all acts, deeds, matters and things which shall or may be necessary or expedient in the premises aforesaid and generally to represent us in the matter of our said application.

And to receive and take all moneys that may be deposited paid or recovered in this suit for and in respect of our claim and costs and without  
 20 notice to us to move for and obtain in his name any order or orders from the said Court for payment of any sum or sums of money that may be so deposited, paid or recovered therein and to give all necessary receipts, releases and discharges therefor and if need be to refer the said claim and all matters in respect of the action instituted by virtue of these proceedings to the award and decision of arbitrators and to name an arbitrator for that purpose and to sign any motion, application, submission or bond for the purpose of the arbitration and to appear before the arbitrators and to take all steps in respect of any award on such submission or reference as to the said Proctor shall seem necessary and generally  
 30 and otherwise to take all such lawful ways and means and to do and perform such acts matters and things as may be needful and necessary in and about the premises as our said Proctor or his substitute or substitutes may consider necessary towards procuring or carrying into execution and judgment or order or a definite sentence or final decree to be made and interposed herein and from any judgment order or decree interlocutory or final of the said Court to appeal and every bond or recognizance whatsoever necessary or needful in the course of proceedings for the prosecution of such appeal or for appearance or for the performance of any order or judgment of the said Court for and in our name and as our act and deed to sign and deliver and before the Supreme Court upon any  
 40 such appeal by virtue hereof for and in our behalf to appear and plead: and to appoint if necessary one or more substitute or substitutes or Advocate or Advocates and again at pleasure to revoke such appointment and appoint anew. And also if the said Proctor shall see cause the said action or suit to discontinue, compromise, settle or refer to arbitration and every such compromise, settlement or reference in our name and behalf to sign hereby promising to release all kinds of irregularities and to ratify, allow and confirm all and whatsoever the said Proctor or his substitute or substitutes or the said Advocate or Advocates shall do herein.

Exhibits  
 D 17.  
 Appointment.  
 16-6-1896  
 —continued

Exhibits  
D 17.  
Appointment  
16-6-1896  
—continued

In witness whereof we have hereunto set our hands at Colombo, this 16th day of June, 1896. The address of the said Proctor for service of process under the provisions of the Civil Procedure Code is his office at "St. James", Colpetty, Colombo.

Sgd. M. S. FERNANDO (in Sinhalese)

Witnesses :

1. Sgd. (Illegible)
2. „ (Illegible)

D 41.  
Minute of  
Consent in  
Special Case  
No. 116 D.C.  
Colombo.  
16-6-1896

D 41

**Minute of Consent in Special Case No. 116 D.C., Colombo**

10

D 41

IN THE DISTRICT COURT OF COLOMBO

Special No. 116. In the Matter of an Application under the Provisions of the Ordinance No. 11 of 1876.

1. MUTUTANTRIGE SIMAN FERNANDO, and
2. COLOMBAPATABENDIGE MARIA PERERA, both of  
Horetuduwa, Panadura ..... *Petitioners.*

*And*

1. CECILIA FERNANDO,
2. JANE FERNANDO, 20
3. JAMES FERNANDO, all of Horetuduwa ..... *Respondents.*

We the abovenamed 1st and 2nd respondents, namely, Cecilia Fernando and Jane Fernando, do hereby declare that the petition of Mututantrige Siman Fernando and Colombapatabendige Maria Perera in this matter has been duly read over and explained to us and as the proposed conveyances and assignments manifestly for our benefit we hereby, our consent to the ~~transfer~~ of the said petition being granted.

Dated at Colombo, this 16th day of June, 1896.

Sgd. CECILIA FERNANDO.

„ JANE FERNANDO. 30

Signed before me : Sgd. ARTHUR ALVIS,

**D 42**

**Minute of Consent in Special Case No. 116 D.C., Colombo**

D 42

IN THE DISTRICT COURT OF COLOMBO

Special 116. In the Matter of an Application under the provisions of the Ordinance No. 11 of 1876.

- 1. MUTUTANTRIGE SIMAN FERNANDO, and
- 2. COLOMBAPATABENDIGE MARIA PERERA, both of Horetuduwa, Panadura ..... *Petitioners.*

And

10

- 1. CECILIA FERNANDO,
- 2. JANE FERNANDO,
- 3. JAMES FERNANDO, all of Horetuduwa ..... *Respondents.*

I, Jane Fernando, the abovenamed 2nd respondent do hereby signify my consent to my brother James Fernando being appointed my guardian to represent me in these proceedings and to consent to the several prayers in the said petition being granted by the Court.

Dated at Colombo this 16th June, 1896.

Sgd. J. FERNANDO.

20

Signed before me :  
Sgd. ARTHUR ALVIS.

**D 43**

**Minute of Consent in Special Case No. 116 D.C., Colombo**

D 43

IN THE DISTRICT COURT OF COLOMBO

Special 116. In the Matter of an Application under the provisions of the Ordinance No. 11 of 1876.

- 1. MUTUTANTRIGE SIMAN FERNANDO, and

Exhibits

D 42.  
Minute of  
Consent in  
Special Case  
No. 116 D. C.  
Colombo  
16. 6. 1896.

D 43.  
Minute of  
Consent in  
Special Case  
No. 116 D. C.  
Colombo  
16. 6. 1896.

Exhibits  
D 43.  
Minute of  
Consent in  
Special Case  
No. 116 D. C.  
Colombo  
16-6-1896  
—continued

2. COLOMBAPATABENDIGE MARIA PERERA, both of  
Horetuduwa, Panadura ..... *Petitioners.*

And

- 1. CECILIA FERNANDO,
- 2. JANE FERNANDO,
- 3. JAMES FERNANDO, all of Horetuduwa ..... *Respondents.*

I, James Fernando of Horetuduwa, do hereby consent to be appointed guardian *ad litem* of the abovenamed Jane Fernando, the 2nd respondent in the above styled case.

Dated at Colombo, this 16th June, 1896.

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Sgd. JANE FERNANDO.

Signed before me :

Sgd. ARTHUR ALVIS.

P 3.  
Deed No.  
1,399  
23-6-1896

P 3

Deed No. 1,399

P 3

A 14/248

Application No. L 1188

Deed No. 1,399

To all to whom these Presents shall come :

Mututantrige Cecilia Fernando of Horetuduwa in Panadura, and Mutu-20  
tantrige James Fernando, also of Horetuduwa, as guardian of  
Mututantrige Jane Fernando

Send Greetings :

Whereas Mututantrige Siman Fernando was in community of property with his wife, Colombapatabendige Maria Perera, seized and possessed of all those two contiguous allotments of land (now forming one property) with the buildings thereon called and known as "The Priory", and hereinafter more fully described under and by virtue of a Deed No. 1,569, dated this thirteenth day of December, One thousand Eight hundred and Seventy-one and attested by Frederick Charles Loos of Colombo, Notary Public.

And whereas by a Deed of Gift No. 2,110 dated the fourth day of October, One thousand Eight hundred and Eighty-three and attested by Charles de Alwis Gunaratna of Gorakana, Notary Public, the said Mututantrige Siman Fernando and Colombapatabendige Maria Perera did grant and assign by way of gift unto two of their daughters, namely, the said Mututantrige Cecilia Fernando and Mututantrige Jane Fernando, the above mentioned allotments of land and premises the buildings thereon called and known as "The Priory", subject however to the conditions following that is to say, that the said Mututantrige Siman Fernando should during his life time be entitled to take, use and appropriate to his own use the issues, rents and profits of the said premises and after his death and in the event of his wife the said Colombapatabendige Maria Perera surviving him she should during her life time be entitled to take, use and appropriate to her own use a just half of the said issues rents and profits of the other half being taken, used and appropriated by the donee, to wit: the said Mututantrige Cecilia Fernando and Mututantrige Jane Fernando and subject also to the condition that the said Mututantrige Cecilia Fernando and Mututantrige Jane Fernando should not nor should either of them be entitled to sell, mortgage, lease for a longer term than four years at a time or otherwise alienate or encumber the said premises nor should the same or the issues, rents and profits thereof be liable to be sold in execution for their debts or for the debts of any or either of them and the said premises should after their death devolve on their lawful issues respectively and in the event of anyone of the said donees dying without lawful issue her share right and interest in the said premises should devolve on and revert to the surviving donee subject however to the conditions and restrictions aforesaid.

And whereas the said Mututantrige Siman Fernando is in community of property with his wife, the said Colombapatabendige Maria Perera under and by virtue of deed dated the thirteenth day of November, 1867, and attested by Frederick John de Saram of Colombo, Notary Public, and two Government grants dated respectively the twenty-seventh day of October, 1869, and the ninth day of July, 1870, seized and possessed of or otherwise well and sufficiently entitled to all those three contiguous allotments of land (forming one property) and the building standing thereon called and known as "Sirinivasa", bearing assessment No. 8, situated at Edinburgh Crescent, Flower Road and Green Path, Cinnamon Gardens, Colombo.

And whereas it was considered not desirable nor beneficial for the said Mututantrige Cecilia Fernando and Mututantrige Jane Fernando to hold in common the said premises called and known as "The Priory", and the said Mututantrige Siman Fernando and Colombapatabendige Maria Perera were desirous of making better provisions for their said daughter and the said Mututantrige Siman Fernando and Colombapatabendige Maria Perera therefore applied to the District Court of Colombo in Special Case No. 116 under the provisions of the Ordinance No. 11 of 1876 (1) to authorise and empower the said Mututantrige Cecilia Fernando and the said Mututantrige James Fernando as guardian *ad litem* of the said Mututantrige Jane Fernando to convey and assign unto the said Mututantrige Siman Fernando all those the said premises called

Exhibits.

p 3.

Deed No.

1,399

23-6-1896

—continued

**Exhibits****P 3.****Deed No.****1,399****23-6-1896****—continued**

and known as "The Priory", absolutely freed from all conditions and restrictions and to authorise and empower the said Mututantrige Cecilia Fernando and the said Mututantrige James Fernando as guardian as aforesaid to execute the necessary deed of conveyance in favour of the said Mututantrige Siman Fernando absolutely and free from all conditions and restrictions ; and (2) in consideration thereof to authorise and empower the said Mututantrige Siman Fernando and Colombapatabendige Maria Perera to transfer and assign unto the said Mututantrige Cecilia Fernando and Mututantrige Jane Fernando all those the said allotments of the land and buildings called and known as "Sirinivasa," subject to the condition that they shall not sell, mortgage or otherwise alienate the same 10 except with the consent of the said Mututantrige Siman Fernando and Colombapatabendige Maria Perera or the survivor of them and to the further condition that the said Mututantrige Siman Fernando shall during his life time be entitled to take, use and enjoy and appropriate to his own use the rents, issues and profits of the said premises and that after his death and in the event of his wife the said Colombapatabendige Maria Perera surviving him she shall during her life time be entitled to take use and enjoy and appropriate to her own use one just half of the said rents, issues and profits the other half being taken used, enjoyed and appropriated by the said Mututantrige Cecilia Fernando and Mututantrige Jane Fernando. 20

And whereas the said District Court granted the petition of the said Mututantrige Siman Fernando and Colombapatabendige Maria Perera and by its order dated the eighteenth day of June, One thousand Eight hundred and Ninety-six (a copy whereof is hereto annexed) adjudged and ordered that the said Mututantrige James Fernando be and he was thereby appointed guardian of the said Mututantrige Jane Fernando and it was further thereby ordered and decreed that upon the said Mututantrige Siman Fernando and Colombapatabendige Maria Perera transferring and assigning unto the said Mututantrige Cecilia Fernando and Mututantrige Jane Fernando the allotments of land situated at Edinburgh Crescent, Flower Road and Green Path, Cinnamon Gardens, Colombo, and the 30 building thereon called and known as "Sirinivasa," bearing assessment No. 8 (subject to the conditions therein contained and hereinafter mentioned that the said Mututantrige Cecilia Fernando and the said Mututantrige James Fernando as guardian of the said Mututantrige Jane Fernando do and they were by the said order authorised and empowered to convey and assign unto the said Mututantrige Siman Fernando the aforesaid lands and premises called and known as "The Priory," absolutely and free from all conditions and restrictions contained in the said Deed No. 2,110 of the fourth day of October, One thousand Eight hundred and Eighty-three and that the said Mututantrige Cecilia Fernando and the said Mututantrige James Fernando as 40 guardian as aforesaid do and they were thereby empowered and authorised to execute the necessary deed of conveyance in favour of the said Mututantrige Siman Fernando of the said premises absolutely and free and clear from all conditions and restrictions.

And whereas the said Mututantrige Siman Fernando and Colombapatabendige Maria Perera have been in pursuance of the said order of Court by Deed

No. 1,398 bearing even date with but executed before these presents conveyed and assigned unto the said Mututantrige Cecilia Fernando and Mututantrige Jane Fernando the said allotments of land situated at Edinburgh Crescent, Flower Road at Green Path, Colombo, and the buildings thereon called and known as "Sirinivasa."

Exhibits  
P 3.  
Deed No.  
1,399  
23-6-1896  
—continued

Now Know Ye and these presents witness that the said Mututantrige Cecilia Fernando and Mututantrige James Fernando as guardian as aforesaid under and by virtue of and in pursuance of the said order of the said District Court of Colombo of the Eighteenth day of June, One thousand Eight hundred and Ninety-six and in exercise of the power and authority vested in them as aforesaid and enabling them in that behalf and in consideration of the hereinbefore recited conveyance by the said Mututantrige Siman Fernando and, Colombapatabendige Maria Perera, No. 1,398 of even date herewith do and each of them doth hereby convey assign set over and assure unto the said Mututantrige Siman Fernando, his heirs, executors, administrators and assigns, all those the following two allotments of land situated at Union Place, Slave Island within the Municipality of Colombo, to wit :

(1) All that lot No. 4 (marked letter A in the Government Title Plan No. 47,260 dated the 4th October, 1843) ; bounded on the north-east by Vauxhall Road, on the east by the property which belonged to the estate of the late Mr. and Mrs. C. A. Lorenz, on the south by a road named Union Place, on the west by land claimed by Segu Lebbe Kasy Lebbe, and on the north-west by land claimed by Segu Lebbe Ahamado Lebbe Marikar and contains in extent three acres two roods and twelve perches.

(2) All that allotment No. 5 situated at Slave Island aforesaid described in Survey Plan No. 923 dated the 5th June, 1844, made by William Franke, Surveyor, and Deed No. 612 dated the Sixteenth day of August, 1858, and attested by J. A. Maartensz, Notary Public ; bounded on the north-east by Vauxhall Road, on the south-east and south-west by land described in Plan No. 47,260, and on the north-west by land claimed by Segu Lebbe Ahamado Lebbe Marikar and contains in extent twenty and 24/100 square perches together with all rights, members easements, advantages and appurtenances whatsoever thereof or thereunto in any wise belonging or used or enjoyed therewith or reputed or known as part or parcel thereof or appurtenant thereto and all the estate, right, title, interest, claim and demand whatsoever of them the said Mututantrige Cecilia Fernando and Mututantrige Jane Fernando and of the said James Fernando as guardian as aforesaid in to upon or out of the said premises and every part thereof and all deeds and writings relating thereto.

To have and to hold the said premises with all their appurtenances (which are of the value of forty-five thousand rupees (Rs. 45,000) unto and to the use of him the said Mututantrige Siman Fernando, his heirs, executors, administrators and assigns for ever absolutely freed and clear from all and every restrictions and conditions contained in the said Deed of Gift No. 2,110 of the fourth day of October, One thousand Eight hundred and Eighty-three,

Exhibits  
 P 3.  
 Deed No.  
 1,399  
 23-6-1896  
 —continued

And the said Mututantrige Cecilia Fernando, Mututantrige James Fernando as guardian as aforesaid do and each of them doth hereby for herself, himself and their, her and his executors and administrators covenant and declare with and to the said Mututantrige Siman Fernando and his heirs, executors, administrators and assigns that the said premises hereby conveyed and assigned are free from all encumbrances whatsoever and they have not nor hath either of them at any time heretofore made done or committed or been party or privy to any act deed matter or thing whatsoever whereby the said premises hereby sold and assigned or any part thereof are is shall can or may be impeached or encumbered in title charge estate or otherwise howsoever and that they and each of 10 them and their and each of their aforewritten the said premises and every part thereof unto him the said Mututantrige Siman Fernando and his aforewritten against any person or persons whomsoever shall and will always warrant and defend.

And further that they and each of them and their and each of their aforewritten shall and will at the request cost and charges of the said Mututantrige Siman Fernando or his aforewritten make do and execute or cause to be made done and executed all such further and other acts, deeds, matters and things whatsoever which shall or may be found necessary or expedient for the better and more effectually assuring the said premises hereby granted and conveyed or any 20 part thereof unto him or his aforewritten as by him them or any of them shall or may be reasonably required.

In witness whereof the said Mututantrige Cecilia Fernando and the said Mututantrige James Fernando as guardian as aforesaid have hereunto and to two others of the same tenor and date set their hands at Colombo on this Twenty-third day of June, One thousand Eight hundred and Ninety-six.

Sgd. CECILIA FERNANDO,  
 ,, M. J. FERNANDO.

Witnesses :

Sgd. D. H. JAYANETTI.  
 ,, M. P. DISSANAYAKE.

30

Sgd. ARTHUR W. ALWIS,  
*Notary Public*

I, Arthur William Alwis of Colombo, in the Island of Ceylon, Notary Public by lawful authority duly admitted do hereby certify and attest that the foregoing instrument, having been duly read over and explained by me to the within named Mututantrige Cecilia Fernando and Mututantrige James Fernando in the presence of David Henry Jayanetti and Marthelis Perera Dissanayake, both of Colombo, the subscribing witnesses thereto all of whom are known to me the same was signed by the said Mututantrige Cecilia Fernando and Mutu- 40 tantrige James Fernando as guardian of Mututantrige Jane Fernando and also



by the said witnesses and by me the said Notary in the presence of one another all being present at the same time at Colombo aforesaid on this 23rd day of June, One thousand Eight hundred and Ninety-six.

Exhibits  
P 3.  
Deed No.  
1,399  
23-6-1896  
—continued

I further certify that stamps of the value of two hundred and twenty-five rupees and a stamp of one rupee (which were supplied by me) was affixed respectively to the counter part and original of this instrument.

Date of attestation : 23rd June, 1896.

Sgd. ARTHUR V. ALIWS,  
*Notary Public.*

10

**P 4**

**Deed No. 1,398**

**P 4**

P 4.  
Deed No.  
1,398  
23-6-1896

Previously } A 8/386, 12/33, 12/358  
Registered }

Application No. L 1188

No. 1,398

To All to Whom these Presents shall Come :

Mututantrige Siman Fernando of Horetuduwa in Panadura and his wife  
Colombapatabendige Maria Perera

20 Send Greetings :

Whereas the said Mututantrige Siman Fernando being in community of property with his wife the said Colombapatabendige Maria Perera seized and possessed of all those two contiguous allotments of land now forming one property with the buildings thereon called and known as "The Priory," did by a Deed No. 2,110 dated the 4th day of October, 1883, and attested by Charles de Alwis Gunaratne of Gorakana, Notary Public, grant and assign by way of gift unto two of their daughters, Mututantrige Cecilia Fernando and Mututantrige Jane Fernando the above mentioned allotments of land and premises and buildings thereon called and known as "The Priory," subject however to the conditions following, that is to say—that the said Mututantrige Siman Fernando should during his life time be entitled to take use and appropriate to his own use the issues, rents and profits of the said premises and that after his death and in the event of his wife the said Colombapatabendige Maria Perera surviving him she should during her life time be entitled to take, use and appropriate to her own use a just half of the said issues, rents and profits, the other half being taken

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Exhibits  
 P 4.  
 Deed No.  
 1,398  
 23-6-1896  
 —continued

used and appropriated by the donees, to wit., the said Mututantrige Cecilia Fernando and Mututantrige Jane Fernando and subject also to the condition that the said Mututantrige Cecilia Fernando and Mututantrige Jane Fernando should not nor should either of them be entitled to sell, mortgage, lease for a longer term than four years at a time or otherwise alienate or encumber the said premises nor should the same or the issues rents and profits thereof be liable to be sold in execution for their debts or for the debts of any or either of them and the said premises should after their death devolve on their lawful issues respectively and in the event of anyone of the said donees dying without lawful issues her share right and interest in the said premises should devolve on and 10 revert to the surviving donee subject however to the conditions and restrictions aforesaid.

And whereas the said Mututantrige Siman Fernando is in community of property with his wife the said Colombapatabendige Maria Perera under and by virtue of a deed dated the 13th day of November, 1867, and attested by Frederick John de Saram of Colombo, Notary Public, and two Government grants dated respectively the 27th day of October, 1869, and the 9th day of July, 1870, seized and possessed of or otherwise well and sufficiently entitled to all those three contiguous allotments of land forming one property and the buildings thereon called and known as "Sirinivasa," bearing assessment No. 8 situate at Edinburgh 20 Crescent, Flower Road and Green Path, Cinnamon Gardens in Colombo, and in the Schedule hereto fully described.

And whereas it was considered not desirable nor beneficial for the said Mututantrige Cecilia Fernando and Mututantrige Jane Fernando to hold in common the said premises called and known as "The Priory," and the said Mututantrige Siman Fernando and Colombapatabendige Maria Perera were desirous of making better provision for their said daughters and the said Mututantrige Siman Fernando and Colombapatabendige Maria Perera therefore applied to the District Court of Colombo in Special Case No. 116 under the provisions of the Ordinance No. 11 of 1876 (1) to authorise and empower the 30 said Mututantrige Cecilia Fernando and Mututantrige James Fernando as guardian *ad litem* of the said Mututantrige Jane Fernando to convey and assign unto the said Mututantrige Siman Fernando all those the aforesaid premises called and known as "The Priory" absolutely and free from all restrictions and conditions and to authorise and empower the said Mututantrige Cecilia Fernando and Mututantrige James Fernando as guardian as aforesaid to execute the necessary deed of conveyance in favour of the said Mututantrige Siman Fernando absolutely and free from all conditions and restrictions.

(2) In consideration thereof to authorise and empower the said Mututantrige Siman Fernando and Colombapatabendige Maria Perera to transfer 40 and assign unto them the said Mututantrige Cecilia Fernando and Mututantrige Jane Fernando all those the said allotments of land and the building called and known as "Sirinivasa," fully described in the said Schedule hereto subject to the conditions that they shall not sell mortgage or otherwise alienate the same except with the consent of the said Mututantrige Siman Fernando and Colomba-

patabendige Maria Perera or the survivor of them and to the further condition that the said Mututantrige Siman Fernando shall during his life time be entitled to take, use, enjoy and appropriate to his own use the rents, issues and profits of the said premises and that after his death and in the event of the said Colombapatabendige Maria Perera surviving him she shall during her life time be entitled to take, use, enjoy and appropriate to her own use one just half of the said rents, issues and profits the other half thereof being taken used enjoyed and appropriated by the said Mututantrige Cecilia Fernando and Mututantrige Jane Fernando.

Exhibits  
P 4.  
Deed No.  
1,398  
23-6-1896  
—continued

And whereas the said District Court granted the petition of the said Mututantrige Siman Fernando and Colombapatabendige Maria Perera and by its order dated the 18th day of June, 1896 (a copy whereof is hereto annexed) adjudged and ordered that the said Mututantrige James Fernando be and he was thereby appointed guardian of the said Mututantrige Jane Fernando and it was further thereby ordered and decreed that upon the said Mututantrige Siman Fernando and Colombapatabendige Maria Perera transferring and assigning unto the said Mututantrige Cecilia Fernando and Mututantrige Jane Fernando all those the said allotments of land situated at Edinburgh Crescent, Flower Road and Green Path, Colombo, and the buildings thereon called and known as "Sirinivasa," bearing assessment No. 8 subject to the condition in the said order and hereinafter mentioned that the said Mututantrige Cecilia Fernando and the said Mututantrige James Fernando as guardian of the said Mututantrige Jane Fernando do and they were thereby authorised and empowered to convey and assign unto the said Mututantrige Siman Fernando the said lands and premises called and known as "The Priory," absolutely and free and clear from all conditions and restrictions contained in the said Deed No. 2,110 of the 4th day of October, 1883.

Now know ye and these presents witness that the said Mututantrige Siman Fernando and Colombapatabendige Maria Perera in consideration of the premises and in pursuance of the said order of Court do and each of them doth hereby grant, convey, assign, set over and assure unto the said Mututantrige Cecilia Fernando and Mututantrige Jane Fernando, their heirs, executors, administrators and assigns by way of gift all those the said allotments of land situate at Edinburgh Crescent, Flower Road and Green Path in Cinnamon Gardens within the Municipality of Colombo and the buildings thereon called and known as "Sirinivasa," bearing assessment No. 8 and fully described in the said Schedule hereto together with all rights, members easements, advantages and appurtenances whatsoever thereof or thereunto in any wise belonging or used or enjoyed therewith or reputed or known as part and parcel thereof or appurtenant thereto and all the right, title, interest, claim and demand whatsoever of them the said Mututantrige Siman Fernando and Colombapatabendige Maria Perera in to, upon or out of the aforesaid premises and every part thereof.

To have and to hold the said premises with their appurtenances (which are of the value of Rs. 90,000 unto and to the use of them the said Mututantrige Cecilia Fernando, Mututantrige Jane Fernando, their heirs, executors, administrators and assigns for ever subject however to the conditions following : that

Exhibits  
 P 4.  
 Deed No.  
 1,398  
 23-6-1896  
 —continued

is to say, namely, that they the said Mututantrige Cecilia Fernando and Mututantrige Jane Fernando shall not sell, mortgage or otherwise alienate the said premises except with the consent of the said Mututantrige Siman Fernando and Colombapatabendige Maria Perera or the survivor of them and that the said Mututantrige Siman Fernando shall during his life time be entitled to take, use and enjoy and appropriate to his own use the rents, issues and profits of the said premises and that after his death and in the event of the said Colombapatabendige Maria Perera surviving him she shall during her life time be entitled to take, use and enjoy and appropriate to her own use one just half of the said rents, issues and profits the other half thereof being taken used enjoyed and appropriated by 10 the said Mututantrige Cecilia Fernando and Mututantrige Jane Fernando.

And the said Mututantrige Siman Fernando and Colombapatabendige Maria Perera do and each of them doth hereby for themselves, himself and herself and their, his and her heirs, executors and administrators covenant and declare with and to the said Mututantrige Cecilia Fernando and Mututantrige Jane Fernando and their heirs, executors, administrators and assigns that the said premises hereby conveyed and assigned are free from all encumbrances whatsoever and that they and each of them and their and each of their aforewritten the said premises and every part thereof unto them the said Mututantrige Cecilia Fernando and Mututantrige Jane Fernando and their aforewritten against 20 any person or persons whomsoever shall and will always warrant and defend and further that they the said Mututantrige Siman Fernando and Colombapatabendige Maria Perera and their aforewritten shall and will at all times hereafter upon the request and at the cost and charges of the said Mututantrige Cecilia Fernando and Mututantrige Jane Fernando or their aforewritten make, do and execute or cause to be made done and executed all such further and other acts, deeds, matters and things whatsoever which shall or may be found necessary or expedient for the better and more effectually assuring the said premises hereby granted and conveyed or any part thereof unto them or their aforewritten as by them or any of them shall or may be reasonably required. 30

In witness whereof the said Mututantrige Siman Fernando and Colombapatabendige Maria Perera have hereunto and to two others of the same tenor and date set their hands at Colombo on this 23rd day of June, One thousand Eight hundred and Ninety-six.

*Schedule above referred to :*

(1) All that allotment of land situate in Maradana, Cinnamon Gardens, Colombo ; bounded on the north-east by land said to belong to the Crown, on the south-east by land described in Plan No. 64,104, and on all other sides by land reserved for public purposes ; containing in extent four acres one rood and eight perches according to the Government Title Plan No. 64,105 dated 24th 40 June, 1865, authenticated by W. R. Noad, Acting Surveyor-General held under deed dated the 13th day of November, 1867, attested by F. J. de Saram, Notary Public, excluding however therefrom the following portions, to wit : (1) A portion in extent two roods and twenty-six and a half perches sold to Dr. W. P.

Charsley ; (2) another portion containing in extent two roods and twenty-seven perches sold to William Bryan ; and (3) another portion in extent two roods and nine perches sold to Juanis de Silva.

Exhibits  
P 4.  
Deed No.  
1,398  
23-6-1896  
—continued

(2) An allotment of land situate at the Cinnamon Gardens at Maradana in Ward No. 9 within the Municipality of Colombo ; bounded on the north by land reserved for public purposes along the road, on the east by a road, on the south by land purchased by M. Siman Fernando, and on the west by land described in Plan No. 64,105, containing in extent one acre and seventeen perches according to the figure of survey and description thereof No. 74,323 authenticated 10 by A. B. Fyers, Surveyor-General bearing date the 13th day of February, 1869.

(3) An allotment of land situated at Cinnamon Gardens aforesaid ; bounded on the north by land described in Plan No. 74,323, on the east by a road, on the south by land said to belong to the Crown, and on the west by land described in Plan No. 64,105, containing in extent one acre two roods and twelve perches according to the Government Title Plan thereof No. 74,534 dated the 6th day of March, 1869, authenticated by the said A. B. Fyers, excluding therefrom a portion in extent two roods and thirty-two perches sold to the said Juanis de Silva.

Sgd. (Illegibly)  
,, MARIA PERERA (in Sinhalese)

20

Witnesses :

1. Sgd. D. H. JAYANETTI,
2. ,, M. T. DISSANAYAKE.

Sgd. ARTHUR W. ALWIS,  
N. P.

I, Arthur William Alwis of Colombo, in the Island of Ceylon, Notary Public, by lawful authority duly admitted do hereby certify and attest that the foregoing Instrument having been duly read over and explained by me to the within named Mututantrige Siman Fernando and Colombapatabendige Maria 30 Perera in the presence of David Henry Jayanetti and Marthalis Perera Dissanayake, both of Colombo, the subscribing witnesses thereto all of whom are known to me, the same was signed by the said Mututantrige Siman Fernando and the said Colombapatabendige Maria Perera and also by the said witnesses and by me the said Notary in the presence of one another all being present at the same time at Colombo aforesaid, on this twenty-third day of June, One thousand Eight hundred and Ninety-six.

I further certify that stamps of the value of four hundred and fifty rupees and a stamp of one rupee (which were supplied by me) were affixed respectively to the counter part and original of this Instrument.

40

Sgd. ARTHUR W. ALWIS,  
Notary Public.

Date of Attestation : 23rd June, 1896.

Exhibits

P 5.  
Deed No.  
1,401  
23-6-1896

P 5

Deed No. 1,401

P 5

Previously }  
Registered } A 8/386, 12/33, 12/358

Application No. L 1188

No. 1,401

Know all men by these presents that I Mututantrige Cecilia Fernando of Horetuduwa in Panadura, for and in consideration of the sum of Rs. 45,000 lawful money of Ceylon well and truly paid to me by Mututantrige Siman Fernando also of Horetuduwa aforesaid (the receipt whereof I do hereby expressly admit and acknowledge) do hereby grant, convey, assign, set over and assure unto the said Mututantrige Siman Fernando, his heirs, executors, administrators and assigns all my one undivided moiety of and in those the allotments of land, messuages, tenements and hereditaments (forming one property) situated at Edinburgh Crescent, Flower Road and Green Path, Cinnamon Gardens within the Municipality of Colombo and the buildings thereon called and known as "Sirinivasa," bearing assessment No. 8 and fully described and comprised in the Schedule hereto annexed together with all rights, members, easements, advantages and appurtenances whatsoever thereof or thereunto in anywise belonging or used or enjoyed therewith or reputed or known as part and parcel thereof or appurtenant thereto and all the right, title, claim and demand whatsoever of me the said Mututantrige Cecilia Fernando into, upon or out of the said premises and every part thereof and all the rights, privileges and advantages to which I am now entitled or to which I shall or may at any time hereafter become entitled by virtue of the Deed No. 1,398 of the 23rd day of June, 1896 or by any other right whatsoever and together with all title deeds and writings relating thereto which said premises have been held and possessed by me under and by virtue of the said Deed No. 1,398 of the 23rd day of June, 1896, attested by Arthur William Alwis of Colombo, Notary Public. 30

To have and to hold the said premises with their appurtenances unto and to the use of him the said Mututantrige Siman Fernando, his heirs, executors, administrators and assigns for ever.

And I the said Mututantrige Cecilia Fernando do hereby for myself, my heirs, executors, administrators, covenant and declare with and to the said Mututantrige Siman Fernando and his heirs, executors, administrators and assigns that the said premises hereby conveyed and assigned are free from all encumbrances whatsoever and that I and my aforewritten the said premises and every part thereof unto him the said Mututantrige Siman Fernando and his aforewritten against any person or persons whomsoever shall and will always warrant and defend and further that I the said Mututantrige Cecilia Fernando and my afore-

written shall and will at all times hereafter upon the request and at the cost and charges of the said Mututantrige Siman Fernando or his aforewritten make, do and execute cause to be made done and executed all such further and other acts, deeds, matters and things whatsoever which shall or may be found necessary or expedient for the better and more effectually assuring the said premises hereby conveyed and assigned or any part thereof unto him and his aforewritten as by him or them or any of them shall or may be reasonably required.

Exhibits  
P 5.  
Deed No.  
1,401  
23-6-1896  
—continued

In witness whereof I the said Mututantrige Cecilia Fernando have hereunto and to two others of the same tenor and date set my hand at Colombo, on 10 this twenty-third day of June, One thousand Eight hundred and Ninety-six.

*The Schedule above referred to :*

All that allotment of land situate in the Maradana, Cinnamon Gardens, Colombo ; bounded on the north-east by land said to belong to the Crown, on the south-east by land described in Plan No. 64,104 and on all other sides by land reserved for public purposes ; containing in extent four acres one rood and eight perches according to the Government Title Plan No. 64,105 dated the 24th June, 1865, authenticated by W. R. Noad, Acting Surveyor-General excluding however therefrom the following portions, to wit : (1) A portion in extent two roods and twenty-six and a half perches sold to Dr. W. P. Chorksy ; (2) another portion 20 containing in extent two roods and twenty-seven perches sold to William Bryan ; and (3) another portion in extent two roods and nine perches sold to Juanis de Silva.

2. An allotment of land situate at the Cinnamon Gardens at Maradana in Ward No. 9 within the Municipality of Colombo ; bounded on the north by land reserved for public purposes along the road, on the east by a road, on the south by land purchased by Mututantrige Siman Fernando, and on the west by land described in Plan No. 64,105 ; containing in extent one acre and seventeen perches according to the figure of survey and description thereof No. 74,323 authenticated by A. B. Fyers, Surveyor-General bearing date the 13th day of 30 February, 1869.

3. An allotment of land situated at Cinnamon Gardens aforesaid ; bounded on the north by land described in Plan No. 74,323, on the east by a road, and on the south by land said to belong to the Crown, and on the west by land described in Plan No. 64,105 ; containing in extent one acre two roods and twelve perches according to the Government Title Plan No. 74,534, dated the 6th day of March, 1869, authenticated by the said A. B. Fyers, excluding therefrom a portion in extent two roods and thirty-two perches sold to the said Juanis de Silva.

Sgd. CECILIA FERNANDO.

Witnesses :

- 40 1. Sgd. D. H. JAYANETTI.  
2. „ M. P. DISSANAYAKE.

Sgd. ARTHUR W. ALWIS,  
N. P.

Exhibits  
 P 5.  
 Deed No.  
 1,401  
 23-6-1896  
 —continued

I, Arthur William Alwis of Colombo, in the Island of Ceylon, Notary Public, by lawful authority duly admitted do hereby certify and attest that the foregoing Instrument having been duly read over and explained by me to the within named Mututantrige Cecilia Fernando, in the presence of David Henry Jayanetti and Marthelis Perera Dissanayake, both of Colombo, the subscribing witnesses thereto all of whom are known to me the same was signed by the said Mututantrige Cecilia Fernando and by the said witnesses and by me the said Notary in the presence of one another all being present at the same time at Colombo aforesaid, on this twenty-third day of June, One thousand Eight hundred and Ninety-six.

10

I further certify that stamps of the value of two hundred and twenty-five rupees and a stamp of one rupee (which were supplied by me) were fixed respectively to the counter part and original of this Instrument.

Sgd. ARTHUR W. ALWIS,  
*Notary Public.*

Date of Attestation : 23rd June, 1896.

D 18.  
 Deed No.  
 1,400  
 23-6-1896

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**D 18**

**Deed No. 1,400**

**D 18**

A. 14/248

Appl. No. L 862. 20

**No. 1,400**

Know all men by these presents that I, Mututantrige Siman Fernando of Horetuduwa in Panadura, in consideration of the love and affection which I have and bear unto my daughter Mututantrige Cecilia Fernando and for divers other good causes and considerations me hereunto specially moving do hereby freely and voluntarily give, grant, convey, assign, set over and assure unto the said Mututantrige Cecilia Fernando, her heirs, executors, administrators and assigns as a gift absolute and irrevocable all those two contiguous allotments of land (now forming one property) with the buildings thereon called and known as "The Priory" at Union Place, Slave Island, within the Municipality of Colombo, 30 to wit : all that lot No. 4 (marked Lr. A in the Government Plan No. 260, dated 4th October, 1843) ; bounded on the north-east by Vauxhall Road, on the east by the property which belonged to the estate of the late Mr. and Mrs. C. A. Lorensz, on the south by a road named Union Place, on the west by land claimed by Segu Lebbe Kasy Lebbe, and on the north-west by land claimed by Segu Lebbe Ahamadu Lebb Marikar ; containing in extent three acres two roods and twelve perches.



(2) All that allotment No. 5, situated at Slave Island, described in Survey Plan No. 923, dated the 5th June, 1844, made by William Franke, Surveyor and Deed No. 612 dated 16th day of August, 1858, and attested by J. A. Martensz, Notary Public ; bounded on the north-east by Vauxhall Road, on the south-east and south by land described in Plan No. 47,260, and on the north-west by land claimed by Segu Lebbe Ahamadu Lebbe Marikar ; and containing in extent twenty-six perches and twenty-four one-hundredth of a perch together with all rights, members, easements, advantages and appurtenances whatsoever thereof or thereunto in any wise belonging or used or enjoyed therewith or reputed or  
 10 known as part or parcel thereof or appurtenance thereto and all right, title, interest, claim and demand whatsoever of me the said Mututantrige Siman Fernando in, to, upon or out of the said premises and every part thereof and together with all title deeds, vouchers and other writings relating thereto which said premises have been held and possessed by me under and by virtue of Deed  
 20 No. 1,399, dated 23rd day of June, 1896, attested by Arthur William Alwis of Colombo, Notary Public.

Exhibits

D 18.

Deed No.

1,400

23-6-1896

—continued

To have and to hold the said premises with their appurtenances (which are of the value of Rupees Forty-five thousand) unto the said Mututantrige Cecilia Fernando subject however to the conditions following, that is to say—  
 20 that the said Mututantrige Siman Fernando shall during my life time be entitled to take and enjoy and appropriate to my own use the rents, issues and profits of the said premises and that after my death and in the event of my wife Colombapatabendige Maria Perera surviving me she shall during her life time be entitled to take, use and enjoy and appropriate to her own use a just half of the said rents, profits and issues the other half being taken, used and appropriated by the said Mututantrige Cecilia Fernando and subject also to the condition that the said Mututantrige Cecilia Fernando shall not be entitled to sell, mortgage otherwise alienate or encumber the said premises without the consent  
 30 of me the said Mututantrige Siman Fernando and after my death the said Colombapatabendige Maria Perera and that in the event of the said Mututantrige Cecilia Fernando dying without leaving any issue then and in such case the said premises shall revert to me and in case I should be then dead then the said same premises shall go to and devolve on my heirs.

And I the said Mututantrige Siman Fernando do hereby for myself, my heirs, executors and administrators covenant and declare to and with the said Mututantrige Cecilia Fernando and her heirs, executors, administrators and assigns that the said premises hereby conveyed and assigned are free from all encumbrances whatsoever and that I and my aforewritten the said premises and every part thereof unto her the said Mututantrige Cecilia Fernando and her  
 40 aforewritten against any person or persons whomsoever shall and will warrant and defend.

And these presents further witness that the said Mututantrige Cecilia Fernando doth hereby thankfully accept the foregoing gift subject to the above mentioned several conditions.

Exhibits  
 D 18.  
 Deed No.  
 1,400  
 23-6-1896  
 —continued

In witness whereof I, the said Mututantrige Siman Fernando and the said Mututantrige Cecilia Fernando do hereunto and to two others of the same tenor and date set my and her hands at Colombo, on this 23rd June, 1896.

Sgd. (Illegibly)  
 ,, CECILIA FERNANDO.

Witnesses :

1. Sgd. D. H. JAYANETTI.
2. ,, M. P. DISSANAYAKE.

Sgd. ARTHUR ALWIS,  
 N. P.

10

I, Arthur William Alwis of Colombo, in the Island of Ceylon, Notary Public, by lawful authority duly admitted do hereby certify and attest that the foregoing instrument having been duly read over and explained by me to the within named Mututantrige Siman Fernando and Mututantrige Cecilia Fernando in the presence of David Henry Jayanetti and Marthelis Perera Dissanayake, both of Colombo, the subscribing witnesses thereto all of whom are known to me the same was signed by the said Mututantrige Siman Fernando and Mututantrige Cecilia Fernando and also by the said witnesses and by me the said Notary in the presence of one another all being present at the same time at Colombo aforesaid on this twenty-third day of June, One thousand Eight hundred and Ninety-six.

I further certify that stamps of the value of two hundred and twenty-five rupees and a stamp of one rupee (which were supplied by me) were affixed respectively to the counterpart and original of this Instrument.

Sgd. ARTHUR ALWIS,  
 Notary Public.

Date of Attestation : 23rd June, 1896.

(Seal)

P 6.  
 Deed No.  
 2,180  
 30-6-1900

P 6

Deed No. 2,180

30

P 6

Previously } A 8/386, 12/33  
 Registered } 12/388

Application No. L 354

No. 2,180

This Indenture made this thirtieth day of June, One thousand and Nine hundred between Mututantrige Siman Fernando of Horetuduwa in Panadura of

the one part and Mututantrige Jane Fernando also of Horetuduwa aforesaid of Exhibits  
the other part :

Whereas by a Deed No. 1,398 dated the 23rd day of June, 1896, and attested by Arthur William Alwis of Colombo, Notary Public, the said Mututantrige Siman Fernando and his wife Colombapatabendige Maria Perera did transfer and assign unto the said Mututantrige Jane Fernando and Mututantrige Cecilia Fernando, all those three contiguous allotments of land and the buildings then standing thereon called and known as "Sirinivasa," bearing assessment No. 8, situated at Edinburgh Crescent, Flower Road and Green Path, Cinnamon Gardens in Colombo, and in the Schedule to the said deed and hereto fully described subject to the condition that they the said Mututantrige Jane Fernando and Mututantrige Cecilia Fernando should not sell, mortgage or otherwise alienate the same except with the consent of the said Mututantrige Siman Fernando and Colombapatabendige Maria Perera or the survivor of them and subject also to the further condition that the said Mututantrige Siman Fernando shall during his life time be entitled to take, use, enjoy and appropriate to his own use the rents, issues and profits of the said premises and that after his death and in the event of the said Colombapatabendige Maria Perera surviving him she shall during her life time be entitled to take, use, enjoy and appropriate to her own use one just half of the said rents, issues and profits and the other half thereof being taken, used, enjoyed and appropriated by the said Mututantrige Jane Fernando and Mututantrige Cecilia Fernando.

P 6.  
Deed No.  
2,180  
30-6-1900  
—continued

And whereas by a Deed No. 1,401 dated the 23rd day of June, 1896 and attested by the said Arthur William Alwis the said Mututantrige Cecilia Fernando did grant, convey, assign set over and assure unto the said Mututantrige Siman Fernando all her one undivided moiety of and in the aforesaid allotments of land, tenements and hereditaments situated at Edinburgh Crescent, Flower Road and Green Path, Cinnamon Gardens, within the Municipality of Colombo, with the aforesaid buildings thereon called and known as "Sirinivasa."

And whereas the said Mututantrige Siman Fernando and the said Mututantrige Jane Fernando have agreed that partition should be made between them of the aforesaid three contiguous allotments of land and hereditaments and have accordingly had the same surveyed and divided into two portions and have agreed that the eastern portion (marked A. B. C in the plan thereof) and the buildings thereon and hereinafter fully described shall be taken by and allotted to the said Mututantrige Jane Fernando in severalty in lieu of her undivided moiety of the entirety of the said lands and hereditaments hereinbefore and in the said Schedule fully described and that the Western portion (marked D. E in the plan thereof) and the buildings thereon and also hereinafter fully described shall be taken by and allotted to the said Mututantrige Siman Fernando in severalty in lieu of his undivided moiety of such entirety as aforesaid and that the roadway marked XX should be common to both lots. And whereas the said parties are desirous of completing the said partition and that the premises allotted to them respectively shall be conveyed and assured in manner hereinafter appearing.

## Exhibits

P 6.  
Deed No.  
2,180  
30-6-1900  
—continued

Now this Indenture witnesseth that for effectuating the said partition and in consideration of the premises the said Mututantrige Siman Fernando doth hereby so far as relates to his share, right, title and interest therein grant, assign, convey, set over and assure unto the said Mututantrige Jane Fernando, her heirs, executors, administrators and assigns all that the eastern portion of the aforesaid three contiguous allotments of land and the buildings standing thereon called and known as "Sirinivasa," bearing assessment No. 8, situate at Edinburgh Crescent (and marked A. B. C in the plan thereof dated the 20th day of June, 1900, made by Juan de Silva, Surveyor, and comprising : (a) a portion of the land described in Title Plan No. 74,323 ; (b) the whole of the remaining portion of the land described in Title Plan No. 74,534 ; and (c) a portion of the land described in Title Plan No. 64,105 ;) bounded on the north by Green Path, on the east by the road known as Edinburgh Crescent, on the south by the boundary wall, and on the west by the remaining portion allotted to Mututantrige Siman Fernando ; containing in extent two acres and five perches according to the said figure of survey thereof dated the 20th day of June, 1900, and made by Juan de Silva, Surveyor, together with all the rights, members, easements and appurtenances thereunto belonging or enjoyed therewith and all the estate, right, title, interest, claim and demand whatsoever of him the said Mututantrige Siman Fernando into, upon or out of the said land hereditaments and premises and every part thereof.

To have and to hold the said premises with their appurtenances unto the said Mututantrige Jane Fernando, her heirs, executors, administrators and assigns for ever including the full and free right of way over the road way fifteen feet wide from the high road to the said divided portion the site and course of which said roadway is marked XX in the said plan subject nevertheless to all and singular the conditions provisoes and restrictions set forth and contained in the said Deed No. 1,398 of the 23rd day of June, 1896.

And the said Mututantrige Siman Fernando doth hereby for himself, his heirs, executors and administrators covenant with the said Mututantrige Jane Fernando and her aforewritten that the said premises are free from encumbrances and that he shall and will always warrant and defend the same unto her against any person whomsoever and further that he the said Mututantrige Siman Fernando and his aforewritten shall and will at all times hereafter at the request cost and charges of the said Mututantrige Jane Fernando or her aforewritten made do and execute all such further and other acts, deeds, matters and things conveyances and assurances for the better and more perfectly and absolutely conveying and assuring the said divided portion of land and the buildings thereon hereby allotted or intended so to be unto the said Mututantrige Jane Fernando and her aforewritten as by her them or any of them shall or may be reasonably required.

And this Indenture further witnesseth that the said Mututantrige Jane Fernando doth hereby accept the said divided specific portion in severalty in lieu of her undivided moiety of the aforesaid lands subject nevertheless to the several conditions and restrictions set forth and contained in the said in part

recited Deed No. 1,398 of the 23rd day of June, One thousand Eight hundred and Ninety-six. Exhibits

P 6.  
Deed No.  
2,180  
30-6-1900  
—continued

And this Indenture further witnesseth that for carrying into full effect the said partition and in consideration of the premises the said Mututantrige Jane Fernando doth hereby grant, convey, assign, set over and assure unto the said Mututantrige Siman Fernando, his heirs, executors, administrators and assigns all that the western portion of the aforesaid three contiguous allotments of land and the buildings thereon marked D and E in the plan thereof dated the 20th day of June, 1900, made by the said Juan de Silva and comprising (d) portion 10 of the land described in the said Title Plan No. 64,105 and (e) portion of the land described in the said Title Plan No. 74,323 ; bounded on the north by Green Path, on the east by the remaining portion allotted to the said Mututantrige Jane Fernando, on the south by the boundary wall, and on the west by Flower Road ; containing in extent two acres one rood and fifteen perches together with all rights, members, easements and appurtenances thereto belonging or enjoyed therewith and all the estate, right, title, interest, claim and demand whatsoever of her the said Mututantrige Jane Fernando in, to upon or out of the said lands and hereditaments and every part thereof and also all rights, privileges, advantages, claims and demands whatsoever to which she the said Mututantrige Jane 20 Fernando shall or may at any time hereafter become entitled under or by virtue of the said Deed No. 1,398 of the 23rd day of June, 1896 or otherwise howsoever.

To have and to hold the said premises with their appurtenances unto the said Mututantrige Siman Fernando, his heirs, executors, administrators and assigns for ever including the full and free right of way over the roadway, fifteen feet wide from the high road to the said divided portion the site and course of which said roadway is marked XX in the said plan. And the said Mututantrige Jane Fernando doth hereby for herself, her heirs, executors and administrators covenant with the said Mututantrige Siman Fernando and his aforewritten that the said premises are free from all encumbrances and that she shall and will 30 always warrant and defend the same unto him the said Mututantrige Siman Fernando and his aforewritten against any person whomsoever and further that she and her aforewritten shall and will from time to time and at all times hereafter at the request and cost and charges of the said Mututantrige Siman Fernando or his aforewritten make do and execute all such further and other acts, deeds, matters and things, conveyances and assurances for the better and more perfectly and absolutely conveying and assuring the said divided portion of land and the buildings thereon hereby allotted or intended so to be unto the said Mututantrige Siman Fernando or his aforewritten as by him, them or any of them shall or may be reasonably required.

40 In witness whereof the said parties have hereunto and two others of the same tenor and date set their hands at Colombo on the day and year first above-written.

*Schedule above referred to :*

All that allotment of land situate in the Maradana, Cinnamon Gardens,

## Exhibits

P 6

Deed No.

2,180

30-6-1900

—continued

Colombo ; bounded on the north-east by land said to belong to the Crown, on the south-east by land described in plan No. 64,104, and on all other sides by land reserved for public purposes ; containing in extent four acres one rood and eight perches according to the Government Title Plan No. 64,105 dated the 24th day of June, 1865, authenticated by W. R. Noad, Acting Surveyor-General excluding however therefrom the following portion, to wit :

(1) A portion in extent two roods and twenty-six and a half perches and sold to Dr. W. P. Charlesley ; (2) another portion containing in extent two roods and twenty-seven perches sold to William Bryan ; and (3) another portion in extent two roods and nine perches sold to Juanis de Silva. 10

(ii) An allotment of land situate at the Cinnamon Gardens, at Maradana, in Ward No. 9 within the Municipality of Colombo ; bounded on the north by land reserved for public purposes along the road, on the east by a road, on the south by land purchased by Mututantrige Siman Fernando, and on the west by land described in Plan No. 64,105 ; containing in extent one acre and seventeen perches according to the figure of survey and description thereof No. 74,323, authenticated by A. B. Fyers, Surveyor-General bearing date the 13th day of February, 1869.

(iii) An allotment of land situated at Cinnamon Gardens aforesaid ; bounded on the north by land described in Plan No. 74,323, on the east by a 20 road, on the south by land said to belong to the Crown, and on the west by land described in Plan No. 64,105 ; containing in extent one acre two roods and twelve perches according to the Government Title Plan thereof No. 74,534 dated the sixth day of March, 1869, authenticated by the said A. B. Fyers, excluding therefrom a portion in extent two roods and thirty-two perches sold to the said Juanis de Silva.

Sgd. M. S. FERNANDO.

„ JANE FERNANDO.

Witnesses :

1. D. H. JAYANETTI. 30

2. M. J. FERNANDO.

Sgd. ARTHUR ALWIS,  
N. P.

I, Arthur William Alwis of Colombo, in the Island of Ceylon, Notary Public, by lawful authority duly admitted, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me to the within named Mututantrige Siman Fernando and Mututantrige Jane Fernando, in the presence of David Henry Jayanetti and Mututantrige James Fernando, both of Colombo, the subscribing witnesses thereto all of whom are known to me the same was signed by the said Mututantrige Siman Fernando and Mututantrige 40 Jane Fernando and also by the said witnesses and by me the said Notary in the

presence of one another all being present at the same time at Colombo aforesaid, on this thirtieth day of June, One thousand and Nine hundred.

Date of Attestation : 30th June, 1900.

Sgd. ARTHUR ALWIS,  
*Notary Public.*

Exhibits  
P 6.  
Deed No.  
2,180  
30-6-1900  
— continued

**D 2**

**Deed No. 3,129**

D 2.  
Deed No.  
3,129  
30-11-1905

D 2

A 8/386, 12/33-358

Registered in A 69/150.

10

Colombo, 11-12-1905.

Sgd. J. DHARMAKIRTI,  
*Registrar.*

Deed No. 3,129

This Indenture made this 30th day of November, One thousand Nine hundred and Five between Mututantrige Jane Fernando, wife of Edward Denister Perera Abeyawardena of Galle and the said Edward Denister Perera Abeyawardena of the first part, Mututantrige Siman Fernando of Horetuduwa of the second part and Colombapatabendige Maria Perera also of Horetuduwa, the wife of the said Mututantrige Siman Fernando of the third part :

20 Whereas the said Jane Fernando or Perera Abeyawardena is under and by virtue of a Deed No. 1,398 dated the 23rd day of June, 1896, and a Deed No. 2,180, dated the 30th day of June, 1900, both attested by Arthur William Alwis of Colombo, Notary Public, the lawful and absolute owner and seized and possessed of or otherwise well and sufficiently entitled to all that allotment of land forming the eastern portion of all those allotments of land described in Title Plan No. 64,105 less the portions sold to Dr. W. P. Charsley William Byran and Juanis de Silva (Nos. 74,323 and 74,534 with the buildings thereon called and known as "Sirinivasa") bearing assessment No. 8, situated at Edinburgh Crescent within the Municipality of Colombo Western Province. and hereinafter  
30 more particularly described :

And whereas the said Jane Fernando, Perera Abeyawardena has with the consent and concurrence of her husband the said Edward Denister Perera Abeyawardena and the said Colombapatabendige Maria Perera agree with the said Mututantrige Siman Fernando for the sale to him of the said land hereditaments and premises at or for the price or sum of rupees seventy-five thousand.

Exhibits  
 D 2.  
 Deed No.  
 3,129  
 30-11-1905  
 —continued

Now this Indenture witnesseth that the said Jane Fernando or Perera Abeyawardena with the consent and concurrence of the said Edward Denister Perera Abeyawardena and Colombapatabendige Maria Perera parties hereto doth in pursuance of the said agreement and in consideration of the said sum of rupees seventy-five thousand of lawful money of Ceylon well and truly paid to her by the said Mututantrige Siman Fernando (the receipt whereof the said Jane Fernando or Perera Abeyawardena doth hereby expressly admit and acknowledge) doth hereby grant, assign, sell, convey, transfer, set over and assure unto the said Mututantrige Siman Fernando, his heirs, executors and administrators and assigns all that the divided eastern portion of the aforesaid three contiguous allotments of land described in the said Title Plans Nos. 64,105, 74,323 and 74,534 above referred to and all the buildings standing thereon called and known as "Sirinivasa," bearing assessment No. 8, situated at Edinburgh Crescent aforesaid and marked A, B, C and coloured pink in the plan thereof No. 581 dated the 20th day of June, 1900, made by Juan de Silva, Surveyor; and comprising (a) a portion of the land described in the said Title Plan No. 74,323; (b) the whole of the remaining portion of land described in Title Plan No. 74,534; and (c) a portion of the land described in Title Plan No. 64,105; bounded on the north by Green Path, on the east by a road called Edinburgh Crescent, on the south by the boundary wall, and on the west by the remaining portion allotted to and belonging to the said Mututantrige Siman Fernando, containing in extent two acres and five perches according to the said figure of survey thereof dated the 20th day of June, 1900, together with the right of way over the roadway fifteen feet wide from the high road to the said portion and marked XX in the said plan and together with all outhouses, edifices, buildings, paths, rights, liberties, privileges, easements, servitudes and advantages to the said premises belonging or held, occupied or enjoyed therewith as part, parcel or member of the same or any part thereof and all the estate, right, title, interest, property, claim and demand whatsoever or howsoever of the said Jane Fernando or Perera Abeyawardena in, to, upon or out of the said premises together with all deeds, writings and muniments of title whatsoever relating to or in any wise concerning the same.

To have and to hold the said hereditaments and premises with their appurtenances unto the said Mututantrige Siman Fernando, his heirs, executors, administrators and assigns for ever together with and including the full and free right of way over the roadway fifteen feet wide from the high road to the said portion—the site and course of which said roadway is marked XX in the said plan.

And the said Jane Fernando or Perera Abeyawardena doth hereby for herself, her heirs, executors and administrators covenant with the said Mututantrige Siman Fernando and his aforewritten that the said premises are free from all encumbrances and that she and her aforewritten shall and will always warrant and defend the same and every part thereof unto the said Mututantrige Siman Fernando and his aforewritten against any and every person or persons whomsoever and moreover that she and her aforewritten shall and will from time to time and at all times hereafter upon the request and at the cost of the



said Mututantrige Siman Fernando and his aforewritten make do execute and perfect or cause or procure to be made, done, executed and perfected all such further and other acts, deeds and assurances for further better more perfectly and satisfactorily granting confirming, conveying and assuring the said premises and every part thereof unto the said Mututantrige Siman Fernando and his aforewritten for ever according to the true intent and meaning of these presents as by him, them or any of them shall be reasonably required or be tendered to be so made done and executed.

Exhibits  
D 2.  
Deed No.  
3,129  
30-11-1905  
—continued

And this Indenture further witnesseth that the said Colombapatabendige Maria Perera doth hereby signify and declare her full and unqualified consent to the said sale and conveyance hereby effected and also to the one previously effected with her similar consent and carried out by the Deed No. 1,401 of the 23rd day of June, 1896, attested by the said Arthur William Alwis.

In witness whereof the said Jane Fernando or Perera Abeyawardena, Edward Denister Perera Abeyawardena, Mututantrige Siman Fernando and Colombapatabendige Maria Perera have set their hands to these presents and to two others of the same tenor and date at the places and on the days and dates set opposite to their respective signatures.

Signed by M. Jane Fernando or Perera } Sgd. JANE PERERA  
20 Abeyawardena, Edward Denister } „ E. D. PERERA.  
Perera Abeyawardena and M. } „ S. FERNANDO,  
Siman Fernando at Colombo, on this } „ MARIA PERERA (in Sinhalese)  
30th day of November, 1905.

Sgd. A. C. ABEYEWARDENE,  
„ R. F. DE SARAM,  
„ ARTHUR ALWIS,  
N. P.

Signed by Colombapatabendige Maria Perera, at Colombo, this first day of December, 1905.

30 Sgd. J. FERNANDO,  
„ S. A. SAMARAWICKREMA.

ARTHUR ALWIS,  
N. P.

I, Arthur William Alwis of Colombo, in the Island of Ceylon, Notary Public, by lawful authority duly admitted do hereby certify and attest that the foregoing Instrument having been duly read over and explained by me to the within-named Mututantrige Jane Fernando or Perera Abeyawardena, Edward Denister Perera Abeyawardena, and Mututantrige Siman Fernando, in the presence of Messrs. Arthur Charles Abeyewardene and Richard Francis de Saram, both of Colombo aforesaid the subscribing witnesses thereto. all of whom are known to

Exhibits  
 D 2  
 Deed No.  
 3,129  
 30-11-1905  
 —continued

me the same was signed by the said Mututantrige Jane Fernando or Perera Abeyawardena as "Jane Perera", Edward Denister Perera Abeyawardena as "E. D. Perera", and Mututantrige Siman Fernando as "S. Fernando", and also by the said witnesses and by me the said Notary in the presence of one another all being present at the same time at Colombo aforesaid, on this thirtieth day of November, One thousand Nine hundred and Five.

I further certify and attest that the consideration was not paid and that stamps of the value of Rs. 375 and Re. 1 were affixed to the Duplicate and Original thereof respectively which stamps were supplied by R. F. de Saram and Alwis of Colombo. I also certify that before the said Instrument was so read over and explained in the Original in line 7 page 2 sheet 2 the words "the said" were inserted in the Duplicate in line 20 page 3 sheet 1 the letter "g" was deleted.

Date of Attestation : 30th November, 1905.

Sgd. ARTHUR ALWIS,  
*Notary Public.*

(Seal)

I, Arthur William Alwis of Colombo, in the Island of Ceylon, Notary Public, by lawful authority duly admitted do hereby certify and attest that the foregoing Instrument having been duly read over and explained by me to the within-named Colombapatabendige Maria Perera, in the presence of Mututantrige James Fernando and Simon Abraham Samarawickreme, both of Colombo, the subscribing witnesses thereto all of whom are known to me the same was signed by the said Colombapatabendige Maria Perera as "Maria Perera" (in Sinhalese characters) and also by the said witnesses and by me the said Notary in the presence of one another all being present at the same time at Colombo aforesaid, on this 1st day of December, 1905.

Date of Attestation : 1st December, 1905.

Sgd. ARTHUR ALWIS,  
*Notary Public.*

D 3.  
 Deed No.  
 4,218  
 6-12-1907

**D 3**

**Deed No. 4,218**

30

A 69/149 and 150

Registered A 91/70 and 71  
 Colombo, 9th December, 1907.

Sgd. J. DHARMAKIRTI,  
*Registrar.*

No. 4,218

This Indenture made this sixth day of December, One thousand Nine hundred and seven between Mututantrige Siman Fernando, Sri Chandrasekere of

Horetuduwa, Panadura, in the Island of Ceylon and of Vauxhall Street, Slave Island, Colombo, in the said Island, Mudaliyar (hereinafter sometimes called the said Siman Fernando) of the one part and Mututantrige James Fernando of Hyde Park Corner, Slave Island aforesaid (hereinafter sometimes called the said James Fernando) of the other part.

Exhibits  
D 3.  
Deed No-  
4,218  
6-12-1907  
—continued

Whereas the said Siman Fernando is the lawful and absolute owner and seized and possessed of or otherwise well and sufficiently entitled to : (1) all that and those the land, buildings and premises called and known as "Sirinivasa" situated at Edinburgh Crescent in Cinnamon Gardens in Ward No. 9 within the Municipality of Colombo, in the District of Colombo, Western Province and bearing Municipal assessment No. 8 ; and (2) all that and those the land, buildings and premises called and known as "Anandagiri," situated at Flower Road and Green Path, in Cinnamon Gardens aforesaid and bearing Municipal assessment No. 8A, Edinburgh Crescent and in the Schedule hereto more particularly described.

And whereas the said lands, buildings and premises are now subject to a mortgage thereon for Rupees One hundred thousand and interest created by a Bond bearing No. 4,140, dated the 9th day of September, 1907, attested by Richard Francis de Saram of Colombo aforesaid Notary Public.

And whereas the said Siman Fernando has agreed with the said James Fernando for the sale to him of the said lands, buildings and premises at or for the price or sum of Rupees One hundred and seventy-five thousand but on the understanding that the said James Fernando should pay to the said Siman Fernando only a sum of Rupees Seventy-five thousand out of the purchase money and take a conveyance of the said lands buildings and premises subject to the said mortgage the amount whereof is equivalent to the remainder of the purchase money.

Now this Indenture witnesseth that the said Mututantrige Siman Fernando Sri Chandrasekera in consideration of the premises and of the said sum of Rupees Seventy-five thousand of lawful money of Ceylon well and truly paid to him by the said Mututantrige James Fernando (the receipt whereof the said Siman Fernando doth hereby expressly admit and acknowledge) and in further consideration of the covenants hereinafter on the part of the said James Fernando contained for the payment by him of the said sum of Rupees One hundred thousand (being the balance of the purchase money) and all interest due thereon from the first day of January, 1908, upon and in respect of the said bond or obligation No. 4,140 of the 9th day of September, 1907, doth hereby grant, sell, assign, convey, transfer, set over and assure unto the said Mututantrige James Fernando, his heirs, executors, administrators and assigns the following premises, to wit :—

(1) All that and those the land, buildings and premises called and known as "Sirinivasa," situated at Edinburgh Crescent, in Cinnamon Gardens, in Ward No. 9, within the Municipality of Colombo, in the District of Colombo, Western Province and bearing Municipal assessment No. 8, and

## Exhibits

D 3.  
Deed No.  
4,218  
6-12-1907  
—continued

(2) All that and those the land, buildings and premises called and known as "Anandagiri," situated at Flower Road and Green Path, in Cinnamon Gardens aforesaid and bearing Municipal assessment No. 8A, Edinburgh Crescent and in the Schedule hereto more particularly described together with all and singular the rights, privileges, easements, servitudes, advantages and appurtenances whatsoever to the said lands, buildings and premises respectively belonging or in any wise appertaining or usually held or enjoyed therewith or reputed to belong or be appurtenant thereto respectively and all the estate, right, title, interest, property, benefit, possession, claim and demand whatsoever or howsoever of him the said Siman Fernando in, to, out of or upon the same premises 10 respectively.

To have and to hold the said land, buildings and premises hereby conveyed and assigned or expressed or intended so to be with all and singular the rights, members and appurtenances thereunto respectively belonging unto and to the use of the said Mututantrige James Fernando, his heirs, executors, administrators and assign for ever subject nevertheless to the aforesaid mortgage of the 9th day of September, 1907. And the said Siman Fernando doth hereby for himself his heirs, executors and administrators covenant with the said James Fernando and his aforewritten that save as aforesaid the said premises are free from all encumbrances and that he and his aforewritten shall and will always warrant 20 and defend the title to the said premises and every part thereof unto him and his aforewritten against any and every person or persons whomsoever save and except upon or by reason of the aforesaid mortgage and moreover that the said Siman Fernando and his aforewritten shall and will from time to time and at all times hereafter upon the request and at the cost and charges of the said James Fernando or his aforewritten make, do execute and perfect or cause or procure to be made done, executed and perfected all such further and other acts, deeds, conveyances and assurances for further better more perfectly or satisfactorily granting, conveying and assuring the said premises and every part or portion thereof unto the said James Fernando and his aforewritten for ever according to 30 the true intent and meaning of these presents as by him, them or any of them shall or may be reasonably required or be tendered to be made, done and executed. And the said James Fernando doth hereby for himself, his heirs, executors and administrators covenant with the said Siman Fernando and his aforewritten that the said James Fernando shall and will duly pay and satisfy the said sum of Rupees One hundred thousand due and owing under and in respect of the said bond or obligation of the ninth day of September, 1907, and also all interest due thereon from the first day of January, 1908, according to the covenants and conditions therein contained and shall and will at all times here- 40 after keep indemnified the said Siman Fernando and his aforewritten and his and their estate and effects from and against all actions suits claims and demands whatsoever under or for or on account or in respect of the same or in any wise relating thereto.

In witness whereof the said Siman Fernando and James Fernando have here unto and two others of the same tenor and date set their hands at Colombo, this 6th day of December, 1907.

*Schedule above referred to :*

Exhibits

D 3.  
Deed No.  
4,218  
6-12-1907

FIRST

All that and those the land, buildings and premises called and known as "Sirinivasa," situated at Edinburgh Crescent, in the Cinnamon Gardens in Ward No. 9, within the Municipality of Colombo, in the District of Colombo, Western Province, in the Island of Ceylon, and bearing Municipal assessment No. 8 ; bounded on the north by Green Path, on the east by the road called Edinburgh Crescent, on the south by the boundary wall , and on the west by the premises now known as " Anandagiri," belonging to Mututantrige Siman Fernando Sri Chandrasekera ; containing in extent two acres and five perches according to the figure of survey thereof dated the 20th day of June, 1900, made by Juan de Silva.

—continued

SECOND

All that and those the land, buildings and premises called and known as " Anandagiri," situated at Flower Road and Green Path, in the Cinnamon Gardens, in Ward No. 9, within the Municipality of Colombo, in the District of Colombo, Western Province, in the Island of Ceylon, and bearing Municipal assessment No. 8, Edinburgh Crescent ; bounded on the north by Green Path, on the east by the premises now known as " Sirinivasa," on the south by the boundary wall, and on the west by the Flower Road ; containing in extent two acres and one rood and fifteen perches according to the figure of survey thereof dated the 20th day of June, 1900, made by the said Juan de Silva. Surveyor.

Sgd. S. FERNANDO.  
,, J. FERNANDO.

Witnesses :

Sgd. V. C. PERERA.  
,, J. E. DIAS.  
,, R. F. DE SARAM,  
N. P.

I, Richard Francis de Saram of Colombo, 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 to the within named Mututantrige Siman Fernando Sri Chandrasekera Mudaliyar, and read over by the within-named Mututantrige James Fernando in the presence of Varahenage Cornelis Perera and John Eugene Dias, both of Colombo aforesaid the subscribing witnesses thereto, all of whom are known to me the same was signed by the said Mututantrige Siman Fernando Sri Chandrasekera as " S. Fernando " and Mututantrige James Fernando as " J. Fernando " and also by the said witnesses in my presence and in the presence of one another all being present at the same time at Colombo aforesaid, this sixth day of December, One thousand Nine hundred and Seven.

I do further certify and attest that the duplicate of this Instrument bears ten stamps of the value of Rs. 875 and the original a stamp of one rupee, which

**Exhibits****D 3.**

Deed No.

4,218

6-12-1907

—continued

stamps were supplied by me and that before the said Instrument was read over and explained as aforesaid in the duplicate in line 3 page 2 in line 19 and 21 page 3 and in line 3 page 4 sheet 1 the word "buildings" was inserted the words "in Cinnamon Gardens aforesaid" were interpolated and the same words were deleted and the word "lands" was inserted respectively.

I also certify that out of the sum of Rupees Seventy-five thousand therein named a sum of Rs. 4,000 was paid by two cheques of Rs. 2,000 each drawn by me on the 26th and 29th ultimo respectively in favour of the vendor on the Bank of Madras, Colombo, a sum of Rupees Sixteen thousand was paid this day also by a cheque drawn by me in his favour on the Bank of Madras and the balance 10 thereof, to wit: Rupees Fifty five thousand was acknowledged to have been previously received by the vendor from time to time from the vendee.

Which I attest :

Sgd. R. F. DE SARAM,  
*Notary Public.*

Date of attestation : 6th December, 1907.

(Seal)

D 4.  
Last Will and  
Testament  
No. 4480 of  
M. J. F. Sri  
Chandrase-  
kera  
8-4-1909

**D 4**

**Last Will and Testament No. 4,480 of M. J. F. Sri Chandrasekera**

D 4

20

No. 4,480

This is the Last Will and Testament of me Mututantrige James Fernando Sri Chandrasekera of "Sirinivasa" Walauwa, Horetuduwa, Moratuwa, and of the "Aviary," Park Street, Colombo, in the Island of Ceylon.

I hereby revoke all Wills, Codicils and other writings or dispositions of a Testamentary nature heretofore made or executed by me and declare this to be my Last Will and Testament.

I hereby appoint my dear wife Annie Clara Rosaline Fernando, my brother-in-law Hettikandage Joseph Francis Fernando of "Frankfort House," Moratuwa aforesaid, and my cousin Mahawaduge Marthelis Perera Dissanayake 30 of Colombo aforesaid to be the Executors and Trustees of this my Will and declare that the expression "My Trustees" used throughout this my Will shall (where the context permits) include the Trustees or Trustee for the time being hereof whether original or substituted.

I bequeath (a) all my household furniture, plate, plated articles, linen, china, books, pictures, statutory and works of art and horses and carriages to

my said wife ; and (b) the following pecuniary legacies : (1) To my said wife the sum of Rupees two thousand five hundred ; and (2) to my said cousin Mahawaduge Marthelis Perera Dissanayake, the sum of Five thousand rupees as and by way of bonus to him in consideration of the valuable services rendered to me by him in carrying on my business provided he be in my service at the time of my decease but not otherwise and provided also that the payment of this legacy shall not preclude him from claiming from my estate any wages or salary which may be due to him or any commission which he may be entitled to by law under this my Will. I give devise and bequeath all the real and immovable and  
 10 the rest of my personal and movable property estate and effects of whatsoever kind and whatsoever situate whether in possession, expectancy, reversion, remainder or otherwise to which I shall be entitled at the time of my decease unto my Trustees upon trust to sell, call in and convert into money all or any of my real or immovable and leasehold estates situated beyond the limits of the Municipality of Colombo together or in parcel either by public auction or private contract as to my said Trustees shall seem fit with power to make any special conditions as to title or evidence of title or otherwise and with power to buy in the premises at any public sale or to rescind either as on terms or gratuitously any contract and to resell without being answerable for any consequent loss and  
 20 to convey and assign the premises respectively so sold to the purchaser or purchasers thereof and to convert and get in all the rest of my personal estate and after payment thereof of my just debts, funeral and testamentary expenses and the legacies herein before mentioned to invest the residue of the monies to arise from such sale and conversion in the names of my Trustees in or upon freehold or other real or immovable securities in the said Island of Ceylon with liberty for my Trustees to vary and transport the investment or investments from time to time for any other investment or investments of the description aforesaid. And I further declare that if the proceeds realised by such sale and conversion as aforesaid be insufficient to pay in full my debts and the said  
 30 respective legacies of Rupees Two thousand five hundred and Rupees Five thousand then my Trustees shall be at liberty to sell and dispose of in the manner herein before directed one or more of my property or properties situated within the Municipal limits of Colombo for the purpose aforesaid. And upon further trust to pay to my said wife during her widowhood from and out of the annual interest and income of such investments (if any) and of the rents, issues and profits of my immovable properties in Colombo or such of my immovable properties situate beyond the Municipal limits of Colombo remaining unsold an annuity of Rupees Six thousand clear of all deductions to be considered as accruing from day to day but to be payable by equal monthly payments or instalments of  
 40 Rupees Five hundred the first of such payments to be made at the end of one month next after my decease. And subject to the trust aforesaid I direct my Trustees to stand possessed of my said Trust estate and the annual income to become due for the same for my child if only one or all my children if more than one to be absolutely vested in a son or sons at the age of thirty years or marriage and in a daughter or daughters at that age or marriage in the following shares or proportions, viz., the sons taking twice as much as a daughter and as to the share or shares original or accruing of a son or sons dying under that age and of a daughter or daughters dying under that age without having been married in

Exhibits  
 D 4.  
 Last Will and  
 Testament  
 No. 4480 of  
 M. J. F. Sri  
 Chandrase-  
 kera  
 8-4-1909  
 --continued

## Exhibits

D 4.  
Last Will and  
Testament  
No. 4480 of  
M. J. F. Sri  
Chandrase-  
kera  
8-4-1909  
—continued

trust for the other or others of my children in the shares and proportions aforesaid conformably to the proceeding trust with power to my Trustees to apply the whole or any part of the income and any part not exceeding one moiety of each child's original and accruing share not absolutely vested for his or her benefit by way of maintenance education and advancement in life and bringing up in a manner suitable to their station in life or otherwise and the unemployed income of each such share shall be accumulated and the accumulations be deemed an accretion to the same share. Provided always and I hereby declare that if any son or daughter of mine shall die in my life time and any child or children of such a son or daughter shall be living at my decease then the share of my said trust, 10 estate to which the son or each son so dying would if living at my decease and if then of the age of 30 years or to which the daughter or each daughter so dying would if living at my decease have been entitled under the trust aforesaid shall be held by my Trustees upon such terms and subject to such provisions in favour of the child or children of such son or daughter respectively as the same would have been held if as regards a son so dying such son were a son and had died immediately after my decease or as regards a daughter so dying such daughter had died immediately after my decease. But in case no child or other issue of mine shall acquire an absolutely vested interest in my said trust estate by virtue of this my Will then I direct that my Trustees shall stand possessed of the said 20 trust estate in trust to pay a sum of Rupees Fifty thousand (Rs. 50,000) by conversion of property if necessary to the said Mahawaduge Marthelis Perera Dissanayake and Colombapatabendige Daniel Perera of Horetuduwa aforesaid upon trust to deposit the said sum of Rupees Fifty thousand (Rs. 50,000) in the Loan Board or in the Ceylon Savings Bank as the said Mahawaduge Marthelis Perera Dissanayake and Colombapatabendige Daniel Perera may think fit without being responsible for any loss occasioned thereby and to apply the income from time to time arising therefrom for the upkeep and maintenance of the Buddhist Temple called "Gangarame Vihare," at Horetuduwa aforesaid, and for the observance of all the rite and ceremonies connected therewith. And 30 upon further trust to pay to my wife so long as she shall continue my widow all the annual interest, income, rents and profits of the remainder of my said trust estate and after her death or second marriage such remainder of my trust estate shall go to and devolve on the Honourable the Colonial Secretary for the time being of the said Island of Ceylon, and the Honourable the Government Agent for the Western Province also for the time being in the said Island to be held by them and their respective successors in such offices as aforesaid and to form a fund to be called Sri Chandrasekera Fund and to be applied in the manner and upon the trust following, that is to say upon trust : (1) To invest all the monies that shall be realised by the sale and conversion of the remainder of the said 40 trust estate so entrusted to them in the Loan Board or in the Ceylon Savings Bank or as a Fixed Deposit in any of the Banks in Ceylon as the said Colonial Secretary and Government Agent for the Western Province may think fit with power from time to time in their discretion to vary such investments and to invest the same in like securities or on the mortgage of real or immovable securities in Ceylon or otherwise in such manner as they shall deem most advantageous. (2) To apply the interest revenue and income from time to time arising from every such investment—(a) in giving relief to the sufferers from



famine, earthquake, flood and other similar disasters and catastrophies ; (b) in erecting and maintaining and supporting hospitals, memorials and other charitable institutions as to them may seem fit and proper ; (c) in building, repairing and renewing Buddhist Temples and Buddhist places or worship ; (d) in founding libraries, scholarships, encouraging students of literature, opening and endowing schools and educational institutions and in diffusing useful knowledge and generally for all charitable purposes. But shall not in any way directly or indirectly extend any aid for the building, repairing, renewing or maintaining of any religious places of worship other than Buddhist. And I further declare and

10 direct that in the event of the said Colonial Secretary and Government Agent, Western Province, for the time being in Ceylon or their successors in office or either of them declining or being in any wise unwilling or unable to act as or undertake the duties of a Trustee or Trustees of the said " Sri Chandrasekera Fund " as aforesaid it shall be lawful for my Trustees to appoint in writing such other member or members of the Honourable the Executive Council of the said Island of Ceylon as shall be willing to accept and act in the said Trust called " Sri Chandrasekera Fund " or if none be so willing or unable such other fit and proper person as my Trustees shall find willing to be appointed and shall in their discretion select to be appointed to fill such appointment in writing provided

20 always that all or any trustees appointed and acting for the time being under the said " Sri Chandrasekera Fund " shall be respectively chargeable only for such monies and securities as they shall actually receive notwithstanding their signing any receipt for the sake of conformity and shall respectively be answerable and responsible only for their own respective acts receipts, omissions, neglects and defaults and not for those of each other nor for any banker, broker or other person with whom or into whose hands any trust money or securities shall be deposited or come nor for the deficiency in value of any investment nor for any other loss unless the same shall happen through their own wilful default respectively. And I hereby declare that my Trustees shall have a discretionary power

30 to postpone for such period as to them shall seem expedient the sale of my real or immovable property or any part thereof and the conversion or getting in of any part of my personal estate but the unsold real or immovable property and outstanding personal estate shall be subject to the trusts hereinbefore contained concerning the monies, funds and securities aforesaid and the rents, issues, income and yearly profits thereof shall be deemed annual income for the purpose of such trust and such real estate shall be considered as personal estate to be transmissible as such I empower my Trustees to give receipts for all monies and effects to be paid or delivered to the said Trustees by virtue of my Will and declare that such receipts shall exonerate the persons taking the same from

40 liability to see to the application or disposition of the moneys or efforts therein mentioned I declare that if my Trustees the said Annie Clara Rosaline Fernando, Hettikandage Joseph Francis Fernando and Mahawaduge Marthelis Perera Dissanayake or any of them shall die in my life time or if they or any of them or any person or persons be appointed under this clause shall after my death die or be unwilling or incompetent or unfit to execute the trust of my Will or be absent from the Island or desire to retire from the office it shall be lawful for the competent trustee or trustees for the time being of this my Will if any whether retiring from the office of the trustee or not if none for the proving executors or

Exhibits  
D 4.  
Last Will and  
Testament  
No. 4480 of  
M. J. F. Sri  
Chandrasekera  
8-4-1909  
—continued

## Exhibits

D 4.  
Last Will and  
Testament  
No. 4480 of  
M. J. F. Sri  
Chandrase-  
kera  
8-4-1909  
—continued.

executor for the time being or the administrators or administrator for the time being of the last surviving trustees to substitute by any writing under his or their hand or hands any fit person or persons in whom alone or as the case may be jointly with the surviving or continuing trustees or trustee my trust estate shall vest or be properly vested and I exempt every trustee of this my Will from liability for losses without his or her own wilful default and authorise him or her to retain and allow to his or her co-trustees or trustee all expenses incidental to the trusteeship.

And I hereby appoint my wife the said Annie Clara Rosaline Fernando to be the guardian during her life and after her death the said Hettikandage 10 Joseph Francis Fernando to be the guardian of my children.

In witness whereof I the said Mututantrige James Fernando Sri Chandrasekera do set my hand to this my Last Will and Testament at Colombo aforesaid on the 8th day of April, 1909.

Signed, published and declared by the said Mututan-  
trige James Fernando Sri Chandrasekera the within  
named Testator as and for his Last Will and Testa-  
ment in the presence of us present at the same time  
who in his presence and at his request and in the  
presence of one another have hereunto subscribed  
our names as witnesses : (Sgd.) J. FERNANDO.

20

(Sgd.) W. F. H. DE SARAM,  
" V. C. PERERA,  
" R. F. DE SARAM,  
Notary Public.

I Richard Francis de Saram of Colombo, in the Island of Ceylon, Notary Public, do hereby certify and attest that the foregoing Last Will and Testament having been duly read over by the within named Mututantrige James Fernando Sri Chandrasekera in the presence of William Frederick Henry de Saram and Varahenage Cornelis Perera, both of Colombo aforesaid, the subscribing witnesses 30 thereto all of whom are known to me the same was signed by the said Mututantrige James Fernando Sri Chandrasekera by his signature " J. Fernando " and also by the said witnesses in my presence and in the presence of one another all being present at the same time at Colombo aforesaid on this eighth day of April, One thousand Nine hundred and Nine. I further certify that before the said Will was so read over and signed the following alterations were made, viz. : In lines 16 and 17 of page 3 of the first sheet the word " Five " was written on erasure and the words " Rupees " was inserted respectively in lines 12 and 24 of page 2 of the second sheet, the word " the " was deleted and the word " conversion " was written on erasure respectively and in lines 14 and 15 of page 2 of the third sheet the letters " an " and " d " were corrected and written on erasure.

Which I attest :

Sgd. R. F. DE SARAM,  
Notary Public.

Date of Attestation : 8th April, 1909,

Codicil to the Last Will

Exhibits

D 5.  
Codicil to the  
Last Will  
10-3-1910

This is a Codicil to the Will of me Mututantrige James Fernando Sri Chandrasekera of “ Sirinivasa Walauwa,” Horetuduwa, Moratuwa, and of “ The Aviary,” Park Street, Colombo, in the Island of Ceylon, which Will bears the date 8th day of April, 1909, and attested by Richard Francis de Saram of  
10 Colombo aforesaid, Notary Public.

Whereas in and by the said Will I desired and directed that in the event of no child or other issues of mine acquiring an absolutely vested interest of my trust estate herein named, after payment of a sum of Fifty thousand rupees to certain person therein named for the purposes therein declared that the interest, income, rents and profits of the remainder of my trust estate should be paid to my wife Annie Clara Rosaline Fernando till her death or second marriage.

Now by this my Codicil I revoke my directions to pay to my wife the interest, income, rents and profits of the remainder of my trust estate as aforesaid and in lieu thereof I hereby direct my Trustees to pay her only an annuity of  
20 Rupees Six thousand during her widowhood in manner as in the said Will mentioned and in all other respects I hereby confirm my said Will.

In witness whereof I do set my hand to this my Codicil to my said Will at Colombo, this 10th day of March, 1910.

Signed, published and declared by the said Mututantrige James Fernando Sri Chandrasekera, the within named testator as and for his Codicil to his Will dated 8th April, 1909, in the presence of us present at the same time who in his presence and at his request and in the presence of one another hereunto  
30 subscribed our names as witnesses :

Sgd. FRED DE SARAM.  
,, V. C. PERERA.

Sgd. J. FERNANDO.

Sgd. R. F. DE SARAM.

I, Richard Francis de Saram of Colombo, in the Island of Ceylon, Notary Public, do hereby certify and attest that the foregoing Codicil having been duly read over by the within named Mututantrige James Fernando Sri Chandrasekera

Exhibits  
D 5.  
Codicil to the  
Last Will  
10-3-1910  
—continued

in the presence of Frederick John de Saram (who has signed as Fred de Saram) and Varahenage Cornelis Perera, both of Colombo aforesaid the subscribing witnesses thereto all of whom are known to me the same was signed by the said Mututantrige James Fernando Sri Chandrasekera (as "J. Fernando") and also by the said witnesses in my presence and in the presence of one another all being present at the same time at Colombo aforesaid, on this tenth day of March, One thousand Nine hundred and Ten.

Date of Attestation : 10th March, 1910.

Sgd. R. F. DE SARAM,  
Notary Public. 10

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D 6

**Probate in D.C., Colombo, Case No. 3,927**

D 6

**PROBATE :**

Value of Assets : Rs. 810,184

Stamp Duty : Rs. 12,153

**IN THE DISTRICT COURT OF COLOMBO**

Testamentary  
Jurisdiction  
No. 3,927

In the Matter of the Last Will and Testament and Codicil thereto of Mututantrige James Fernando Sri Chandrasekera, deceased, of "Sirinivasa Walauwa," Horetuduwa and of "The Aviary," 20 Park Street, Colombo.

Be it known to all men that on the 29th day of June, 1911, the Last Will and Testament and Codicil thereto of the said Mututantrige James Fernando Sri Chandrasekera, deceased, copies of which are hereto annexed were exhibited, read, and proved before this Court and administration of all the property and estate, rights and credits of the deceased was and is hereby committed to— (1) Annie Clara Rosaline Fernando of "The Aviary," Colombo, presently of "Warrington," Braybrooke Place, Colombo ; (2) Hettiakandage Joseph Francis Fernando of "Frankfort House," Moratuwa, also presently of "Warrington," Braybrooke Place, Colombo ; and (3) Mahawaduge Marthelis Perera Dissanayake 30 of No. 5, Vauxhall Street, Colombo, the Executrix and Executors of the said Last Will and Testament named the said Annie Clara Rosaline Fernando, Hettiakandage Joseph Francis Fernando, and Mahawaduge Marthelis Perera Dissanayake being first respectively sworn and affirmed faithfully to execute the said Will and Codicil by paying the debts and legacies of the deceased Testator as far as the property will extend and the law will bind and also to exhibit into this Court a true full and perfect inventory of the said property on or before the

5th day of October, 1911, and to file a true and just account of their executorship on or before the 12th day of March, 1912.

Given under my hand and the Seal of the Court, this 3rd day of August 1911.

Sgd. H. A. LOOS,  
*District Judge.*

Exhibits  
D 6.  
Probate in  
D. C.  
Colombo  
Case No.  
3,927  
3-8-1911  
—continued

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D 7

**Deed No. 1,382**

D 7

No. 1,382

D 7.  
Deed No.  
1,382  
12-7-24

10

To All to whom these Presents shall Come :

Annie Clara Rosaline Fernando now Peiris, widow of the late Mututantrige James Fernando Sri Chandrasekera, now the wife of Dr. Walter Spencer Johannes Peris of Moratuwa and Mahawaduge Marthelis Perera Dissanayake of Vauxhall Street in Colombo, the surviving executors and trustees of the Last Will and Testament and Codicil thereto of the said Mututantrige James Fernando Sri Chandrasekera, late of Colombo, deceased—

Send Greetings :

20 Whereas the said Mututantrige James Fernando Sri Chandrasekera was seized and possessed of or otherwise well and sufficiently entitled to the several lands, buildings and premises in the first part of the Schedule hereto fully described under and by virtue of the sundry deeds and assurances in the said part of the Schedule mentioned :

30 And whereas the said Mututantrige James Fernando Sri Chandrasekera duly made and executed his Last Will and Testament dated the 8th day of April, One thousand Nine hundred and Nine whereby after appointing the said Annie Clara Rosaline Fernando now Peiris ; and (1) Hettiakandage Joseph Francis Fernando and the said Mahawaduge Marthelis Perera Dissanayake, the executors and trustees thereof and giving certain specific and pecuniary legacies therein mentioned he gave devised and bequeathed all his real and immovable and the rest of his personal and movable property estate and effects of whatsoever kind and whatsoever situate whether in possession expectancy reversion, remainder or otherwise to which he should be entitled at the time of his decease unto his trustees the said Annie Clara Rosaline Fernando now Peiris and Hettiakandage Joseph Francis Fernando and the said Mahawaduge Marthelis Perera Dissanayake

Exhibits

D 7.  
Deed No.  
1,382  
12-7-24

—continued

to be held by them after payment of his just debts, funeral and Testamentary expenses and subject to the payment of an annuity to his wife the said Annie Clara Rosaline Fernando now Peiris in trust for his children and grand-children as in the said Will provided.

And whereas in case no child or issue of the said Mututantrige James Fernando Sri Chandrasekera should acquire an absolutely vested interest in the said trust estate the said Mututantrige James Fernando Sri Chandrasekera directed that a sum of Rupees Fifty thousand be paid by the said Trustees to certain persons named in the said Will to be by such persons invested for the benefit of the Buddhist Temple called Gangarama Vihare at Horetuduwa and <sup>10</sup> that the remainder of the said trust estate be held by the said Trustees upon further trust to pay to his wife the said Annie Clara Rosaline Fernando now Peiris so long as she should continue his widow all the annual interests, income, rents and profits of the remainder of the said trust estate and that after her death or second marriage such remainder of the said trust estate should go and devolve on the Honourable the Colonial Secretary for the time being of the Island of Ceylon and the Honourable the Government Agent for the Western Province of the said Island for the time being to be held by them and their successors in such offices as aforesaid and to form a Fund called "The Sri Chandrasekera Fund," and to be applied in the manner and upon the trust in the said Last Will and <sup>20</sup> Testament declared concerning the same.

And whereas by his Codicil dated the 10th day of March, One thousand Nine hundred and Ten to his Last Will the said Mututantrige James Fernando Sri Chandrasekera directed the said Trustees to pay a certain annuity only in lieu of the remainder income as aforesaid to his wife during her widowhood or until her second marriage as therein mentioned and confirmed his said will in all other respects.

And whereas the said Mututantrige James Fernando Sri Chandrasekera departed this life at Colombo on or about the 17th day of March, 1911, without having altered or revoked the said Will or Codicil otherwise then as aforesaid. <sup>30</sup>

And whereas the said Last Will and Testament and Codicil were duly proved before the District Court of Colombo and Probate thereof was on the 3rd day of August, 1911, granted by the said Court to the said Annie Clara Rosaline Fernando now Peiris, Hettikandage Joseph Francis Fernando and Mahawaduge Marthelis Perera Dissanayake as executors thereof in the Testamentary Proceedings No. 3,927.

And whereas the said Annie Clara Rosaline Fernando now Peiris, Hettiakandage Joseph Francis Fernando and Mahawaduge Marthelis Perera Dissanayake, as executors as aforesaid did by Deed No. 345 dated the 20th and 30th days of September, 1914, and Deed No. 852 dated the 3rd day of September, <sup>40</sup> 1918, both attested by Fred de Saram of Colombo, Notary Public, assigned and conveyed unto themselves the said Annie Clara Roseline Fernando now Peiris, Hettiakandage Joseph Francis Fernando and Mahawaduge Marthelis Perera

Dissanayake as Trustees as aforesaid the several lands, buildings and premises in the said first part of the Schedule hereto fully described to be held by them as trustees as aforesaid upon the trusts and subject to the powers provision and declaration and for the users ends intents and purposes in the said Last Will and Testament and Codicil thereto expressed and contained.

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D 7  
Deed No.  
1,382  
12-7-24  
—continued

And whereas the said Mututantrige James Fernando Sri Chandrasekera was also seised and possessed of the property and premises in the Second part of the said Schedule hereto fully described under and by virtue of the deed in the said part of the said Schedule mentioned.

10 And whereas the said Annie Clara Roseline Fernando now Peiris, Hettiakandage Joseph Francis Fernando and Mahawaduge Marthelis Perera Dissanayake as Executors and as Trustees as aforesaid became seised and possessed of the several lands and premises fully described in the third part of the said Schedule under and by virtue of the several Crown grants and deeds in the said part of the said Schedule mentioned

And whereas the said Hettiakandage Joseph Francis Fernando having died on the 13th day of February, 1920, the said Annie Clara Rosaline Fernando now Peiris and Mahawaduge Marthelis Perera Dissanayake are now the sole surviving and continuing Executors and Trustees under the said Last Will and Testament  
20 and Codicil thereto as aforesaid.

And whereas Mututantrige James Covington Leslie Fernando Sri Chandrasekera, the only child of the said Mututantrige James Fernando Sri Chandrasekera having died on the 14th day of March, 1914, without having acquired an absolutely vested interest in the said trust estate certain doubts arose as to the interpretation of the said Will and the disposal of the said trust estate and the parties concerned therein entered into an agreement dated the 27th day of February, 1922, in terms of section 699 of the Civil Procedure Code.

And whereas in pursuance of the said agreement action No. 1,044 (Special) was instituted in the District Court of Colombo.

30 And whereas in the said action of consent a decree was on the 18th day of June, 1923, entered in terms of the Fourth part of the said Schedule and it was decreed (*inter alia*) that the said Annie Clara Rosaline Fernando now Peiris should receive in full and final discharge of all claim under the said Will and Codicil of the said Mututantrige James Fernando Sri Chandrasekera the sum of Rupees One hundred and Fifty thousand and that the added respondents in the said action should also receive in full satisfaction of their claims under the said Will and Codicil a like sum of Rupees One hundred and Fifty thousand due provision being made in the said decree in respect of the aforesaid sum of Rupees Fifty thousand devised by the said Will for the benefit of the said "Gangarama Vihara," and  
40 that the Trustees of the said Last Will and Testament and Codicil thereto of the said Mututantrige James Fernando Sri Chandrasekera namely, Annie Clara Rosaline Fernando now Peiris and Mahawaduge Marthelis Perera Dissanayake should

Exhibits  
 D 7  
 Deed No.  
 1,382  
 12.7.24  
 —continued

forthwith convey and assign *inter alia* all the immovable property belonging to the said trust estate to the Honourable Sir Graeme Thompson, Colonial Secretary of the said Island, and the Honourable Mr. John George Fraser, Government Agent for the Western Province of the said Island meaning thereby the Colonial Secretary and the Government Agent for the Western Province for the time being.

And whereas the said sum of Rupees Fifty thousand devised by the said Will for the benefit of the said “Gangarama Vihara” has been on the 15th day of April, One thousand Nine hundred and Twenty-four paid to the said Mahawaduge Marthelis Perera Dissanayake and to the Colombapatabendige Daniel Perera of Horetuduwa aforesaid as Trustees in the said Will named for and on behalf of the said “Gangarama Vihara.”<sup>10</sup>

Now know Ye and these Presents witness that the said Annie Clara Rosaline Fernando now Peiris and Mahawaduge Marthelis Perera Dissanayake as Executors and Trustees as aforesaid in consideration of the premises and in pursuance of the said decree of the District Court of Colombo made in its said action No. 1,044 (Special) and for the purpose of carrying out the terms on the part of the said Executors and Trustees in the said decree contained do and each of them doth hereby grant, assign and convey unto the Honourable Mr. Cecil Clementi, at present the Colonial Secretary of the Island of Ceylon and the Honourable Mr. Robert Neimann Thaine at present the Government Agent for the Western Province of the said Island and their respective successors in the said offices of the Colonial Secretary and Government Agent respectively and other the Trustees for the time being of the said Sri Chandrasekera Fund all those the said several lands, buildings and premises in the first part, second and third parts of the said Schedule hereto fully described together with all rights, privileges, easements, servitudes and appurtenances whatsoever to the said several lands buildings and premises belonging to or used or enjoyed therewith or reputed or known as part and parcel thereof respectively and all the estate rights, title, interest, property, claim and demand whatsoever of the said Mutu-<sup>30</sup> tantrige James Fernando Sri Chandrasekera, deceased, and of them the said Annie Clara Rosaline Fernando now Peris and Mahawaduge Marthelis Perera Dissanayake as Executors and Trustees as aforesaid of in or out of the same together with all deeds, documents and the other writings herewith held or relating thereto.

To have and to hold the said several lands, buildings and premises in the first, second and third parts of the said Schedule fully described together with all and singular the rights, members and appurtenances thereto respectively belonging unto the said the Honourable Mr. Cecil Clementi, Colonial Secretary of the said Island and the said the Honourable Mr. Robert Neimann Thaine,<sup>40</sup> Government Agent for the Western Province of the said Island and their respective successors in the said offices of the Colonial Secretary and the Government Agent respectively and other the Trustees for the time being of the said Sri Chandrasekera Fund upon the trusts and subject to the powers, provisions and declaration and for the users, ends, intents and purposes in and by the said Last



Will and Testament and Codicil thereto and the said Mututantrige James Fernando Sri Chandrasekera, deceased, expressed or contained in respect of the said Sri Chandrasekera Fund.

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D 7  
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—continued

And the said Annie Clara Rosaline Fernando now Peiris and Mahawaduge Marthelis Perera Dissanayake as Executors and Trustees as aforesaid do hereby covenant with the said the Honourable Mr. Cecil Clementi, Colonial Secretary of the said Island, and the Honourable Mr. Robert Niemann Thaine, Government Agent for the Western Province of the said Island, their respective successors in the said offices of Colonial Secretary and Government Agent for the Western Province of the said Island and other the Trustees for the time being of the said Sri Chandrasekera Fund that they have not at any time heretofore as such Executors or Trustees as aforesaid or otherwise made, done or committed or knowingly suffered or been party or privy to any act, deed, matter or thing whereby or by reason or means whereof the said several lands, buildings and premises hereby conveyed and assigned or any of them or any part thereof are is can shall or may be impeached, charged, affected or encumbered in title, charge, estate or otherwise howsoever.

In witness whereof the said Annie Clara Rosaline Fernando now Peiris and Mahawaduge Marthelis Perera Dissanayake as Executors and Trustees as aforesaid have set their hands to these presents and to two others of the same tenor and date at the places and on the days and dates hereinafter mentioned.

*Schedule above referred to :*

**FIRST PART**

1. (a) All that and those the land, buildings and premises called and known as "Sirinivasa," situated at Edinburgh Crescent, Cinnamon Gardens, in Ward 9 within the Municipality and District of Colombo, Western Province, and bearing Municipal Assessment No. 8 ; bounded on the north by Green Path, on the east by the road called Edinburgh Crescent, on the south by the boundary wall, and on the west by the premises now known as "Anandagiri," belonging to Mututantrige Siman Fernando Sri Chandrasekera ; containing in extent two acres and five perches according to the figure of survey thereof dated the 20th June, 1900, made by Juan de Silva, Surveyor.

(b) All that and those the land, buildings and premises called and known as "Anandagiri," situated at Flower Road and Green Path, in the Cinnamon Gardens, in Ward No. 9, within the said Municipality, Colombo, Western Province and bearing No. 8A, Edingburgh Crescent ; bounded on the north by Green Path, on the east by premises known as "Sirinivasa," on the south by the boundary wall, and on the west by Flower Road ; containing in extent two acres one rood and fifteen perches according to the figure of survey thereof dated the 20th day of June, 1900, made by the said Juan de Silva. Held and possessed under and by virtue of the Deed No. 4,218 dated the 6th day of December, 1907, attested by R. F. de Saram of Colombo, Notary Public, and 339 other lands.

<u>Exhibits</u>	×	×	×	×	×	×	×	×	×
D 7									
Deed No. 1,382	×	×	×	×	×	×	×	×	×
12-7-24									
<i>—continued</i>	×	×	×	×	×	×	×	×	×
	×	×	×	×	×	×	×	×	×

*FOURTH PART*

Decree

IN THE DISTRICT COURT OF COLOMBO

Special No. 1,044. In the Matter of the Application of the petitioner hereinafter named and in the matter of Section 699 of the Civil Procedure Code. 10

Between

ANNIE CLARA ROSALINE FERNANDO of Moratuwa, widow of Mututantrige James Fernando Sri Chandrasekera of Colombo, deceased ..... *Petitioner.*

*Vs.*

(1) The Honourable SIR GRAEME THOMPSON, the Colonial Secretary of Colombo, Ceylon and twelve others..... *Respondents and Added Respondents.*

This action coming on for disposal before L. M. Maartensz, Esquire, District Judge, on the 18th day of June, 1923, and the petitioner appearing by her Proctors, Messrs. Julius & Creasy, the 1st and 2nd respondents appearing by their Proctors, Messrs. De Vos & Gratiaen, the 3rd respondent appearing by his Proctors, Messrs. D. L. & F. de Saram, the 1st to 6th added respondents appearing by their Proctor, Mr. G. L. Cooray, and the 7th, 8th, 9th and 10th added respondents consenting in person, and upon reading the minute of consent dated 18th June, 1923, signed by all the parties and their Proctors and filed of record in this action. It is ordered and decreed of consent as follows :

1. The petitioner, Annie Clara Rosaline Fernando shall receive in full and final discharge of all claims under the Will and Codicil of the late Mututantrige James Fernando Sri Chandrasekera the sum of Rupees One hundred and Fifty thousand.

2. The added respondents shall receive in full and final discharge of all claims under the Will and Codicil of the late Mututantrige James Fernando Sri Chandrasekera the sum of Rupees One hundred and Fifty thousand in the

proportion of Rupees Twenty-five thousand each to the 1st, 2nd 3rd, 5th and 7th added respondents ; Rupees Six thousand Two hundred and fifty each to the 8th and 9th added respondents ; and Rupees Twelve thousand Five hundred to the 10th added respondent.

Exhibits  
D 7  
Deed No.  
1,382  
12-7-24  
—continued

3. The taxed costs of this case shall be paid to the several parties by the estate of the late Mututantrige James Fernando Sri Chandrasekera.

4. (1) The Trustees of the Will and Codicil of the late Mututantrige James Fernando Sri Chandrasekera, namely, the petitioner and the 3rd respondent, shall forthwith pay all monies belonging to the estate of the late Mututantrige James Fernando Sri Chandrasekera and convey and assign all the movable and immovable property belonging to the said estate (including all bonds and other securities held by them as such Trustees of the said estate) to the 1st and 2nd respondents.

4. (2) The 1st and 2nd respondents shall pay to the petitioner and the added respondents the several sums and the taxed costs mentioned above.

4. (3) The 1st and 2nd respondents shall pay to Messrs. D. L. & F. de Saram, the sum of Rupees Two thousand Four hundred and Seventy-five and Fifty cents being the amount due them for work done by them for petitioner and 3rd respondent in connection with the matters involved in this case prior to the filing of this case by Messrs. Julius & Creasy.

4. (4) The 1st and 2nd respondents shall pay to Messrs. D. L. & F. de Saram, all taxed costs due to them in respect of the Testamentary case, all other cases now pending in which they represent the petitioner and the 3rd respondent, and all other matters notarial and otherwise now in their hands.

5. The petitioner and the 3rd respondent shall hand over to Mr. A. Duncun, all books, papers, accounts and other documents relating to the Trust estate, and afford all information to him in regard to the carrying out of the Trust, the management of the Trust properties and the receipts and disbursements of Trust Funds, and Mr. Duncun shall report to the Attorney-General upon the true state of the accounts of the said Trust estate from the date of death of the deceased.

6. It is further ordered and decreed that when the above provisions have been carried out and the Attorney-General is satisfied that the accounts of the Trustees are in order and that they have handed over the correct balance in their hands to the 1st and 2nd respondents, the 1st and 2nd respondents shall grant a full and final discharge to the petitioner and the 3rd respondent in respect of all acts and things done by them as Trustee of the Will and Codicil of the late Mututantrige James Fernando Sri Chandrasekera and thereafter the 1st and 2nd respondents shall be at liberty to carry out the Trusts imposed on them by the Will and Codicil of the late Mututantrige James Fernando Sri Chandrasekera.

Exhibits  
 D 7  
 Deed No.  
 1,382  
 12-7-24  
 —continued

7. For the purpose of carrying out the terms of the above settlement Mr. Duncum, Chartered Accountant, is hereby appointed Commissioner at a fee payable out of the estate of the late Mututantrige James Fernando Sri Chandrasekera and shall make a report to this Court when the settlement is completed.

8. For the purpose of this settlement the same shall be deemed to come into force on the 1st of July, 1923.

9. The Court will give all necessary directions for the carrying out of this settlement.

10. Provided however that nothing herein contained is to affect the right of the 3rd respondent to claim the sum of Rupees Fifty thousand and interest if any directed by the said Will and Codicil to be paid to him and to C. Daniel Perera for the benefit of the "Gangarama Vihara," to be dealt with according to the directions contained in the said Will.

Dated the 18th day of June, 1923.

Sgd. V. M. FERNANDO,  
*District Judge.*

Signed by the within-named Mahawaduge Marthelis Perera Dissanayake, at Colombo, this Ninth day of July, One thousand Nine hundred and Twenty-four in our presence. } Sgd. M. P. DISSANAYAKE.

20

Sgd. V. C. PERERA,  
 ,, G. A. PEIRIS,  
 ,, FRED DE SARAM,

*Notary Public.*

Signed by the within-named Annie Clara Rosaline Fernando now Peiris, at Colombo, this twelfth day of July, One thousand Nine hundred and Twenty-four in our presence. } Sgd. ANNIE F. SRI CHANDRASEKERA PEIRIS

Sgd. W. S. J. PEIRIS,  
 ,, V. C. PERERA,  
 ,, FRED DE SARAM,

30

*Notary Public.*

I, Frederick John de Saram of Colombo, 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 to the within-named Mahawaduge Marthelis Perera Dissanayake, in the presence of Varahenage Cornelis Perera of Demata-

goda, in Colombo, and Gallage Arnolis Peiris of Wellawatte in Colombo, the Exhibits  
subscribing witnesses thereto, all of whom are known to me, the same was signed D 7  
by the said Mahawaduge Marthelis Perera Dissanayake (who signed his name Deed No.  
as " M. P. Dissanayake ") and also by the said witnesses in my presence and also 1,382  
in the presence of one another, all being present at the same time at Colombo 12-7-24  
aforesaid, on this ninth day of July, One thousand Nine hundred and Twenty-  
four. —continued

I further certify that the duplicate of this Instrument bears six stamps  
of the aggregate value of Rs. 353 and the original a stamp of one rupee which  
10 stamps were supplied by D. L. & F. de Saram of Colombo aforesaid.

Which I attest :

Date of Attestation : 9th July, 1924.

Sgd. FRED DE SARAM,  
Notary Public.

I, Frederick John de Saram of Colombo, 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 to the within-named Annie Clara Rosaline  
Fernando now Peiris, in the presence of Doctor Walter Spencer Johannes Peiris  
of Moratuwa, and Varahenage Cornelis Perera of Dematagoda, Colombo, the  
20 subscribing witnesses thereto, all of whom are known to me the same was signed  
by the said Annie Clara Rosaline Fernando now Peiris (who signed her name  
as " Annie F. Sri Chandrasekera Peiris ") and also by the said witnesses in my  
presence and in the presence of one another, all being present at the same time  
at Colombo aforesaid, on this twelfth day of July, One thousand Nine hundred  
and Twenty-four.

Which I attest :

Date of Attestation : 12th July, 1924.

Sgd. FRED DE SARAM,  
Notary Public.

30

**D 8**  
**Deed No. 290**

D 8  
Deed No. 290  
6-1-25

Prior Registration : A 105/246.

Registered : A 165/279.

Sgd. ....  
6-1-25. Registrar.

D 8

No. 290

To all to whom these Presents shall Come :

The Honourable Mr. Cecil Clementi, Colonial Secretary of the Island of  
Ceylon, and the Honourable Mr. Robert Niemann Thaine, Govern-  
ment Agent for the Western Province of the said Island, Trustees of  
40 the Sri Chandrasekera Fund—

**Exhibits**      Send Greetings :

D 8  
Deed No. 290  
6-1-25  
—continued

Whereas Mututantrige James Fernando Sri Chandrasekera was seised and possessed of or otherwise well and sufficiently entitled to all that and those the lands, buildings and premises called and known as “ Sirinivasa ” and “ Ananda Giri,” situated at Edinburgh Crescent, Flower Road and Green Path, in the Cinnamon Gardens, Ward No. 9, within the Municipality and District of Colombo, Western Province, and in the Schedule hereto more fully described under and by virtue of the deed in the said Schedule mentioned.

And whereas the said Mututantrige James Fernando Sri Chandrasekera duly made and executed his Last Will and Testament dated the 8th day of April, 10 1909, whereby after appointing Annie Clara Rosaline Fernando now Peiris, and one Hettiakandage Joseph Francis Fernando and Mahawaduge Marthelis Perera Dissanayake, the Executors and Trustees thereof and giving certain specific and pecuniary legacies therein mentioned he gave devised and bequeathed all the real and immovable property, estate and effects of whatsoever kind and wheresoever situate whether in possession, expectancy, reversion, remainder or otherwise to which he should be entitled at the time of his decease unto his Trustees the said Annie Clara Rosaline Fernando now Peiris and Hettiakandage Joseph Francis Fernando and the said Mahawaduge Marthelis Perera Dissanayake to be held by them, after payment of his just debts, funeral and Testamentary expenses and 20 subject to the payment of an annuity to his wife the said Annie Clara Rosaline Fernando now Peiris in Trust for his children and grand-children.

And whereas in case no child or issue of the said Mututantrige James Fernando Sri Chandrasekera should acquire an absolutely vested interest in the said Trust estate the said Mututantrige James Fernando Sri Chandrasekera directed that a sum of Rupees Fifty thousand be paid by the said Trustees to certain persons named in the said Will to be by such persons vested for the benefit of the Buddhist Temple called “ Gangarama Vihare,” at Horetuduwa, and that the remainder of the said Trust estate be held by the said Trustees upon further trust to pay to his wife the said Annie Clara Rosaline Fernando now Peiris so 30 long as she should continue his widow all the annual interest, income, rents and profits of the remainder of the said Trust estate and that after her death or second marriage such remainder of the said Trust estate should go and devolve on the Honourable the Colonial Secretary for the time being of the said Island of Ceylon and the Honourable the Government Agent for the Western Province of the said Island for the time being to be held by them and their successors in such offices as aforesaid and to form a fund called “ The Sri Chandrasekera Fund,” and to be applied in the manner and upon the Trusts in the said Last Will and Testament declared concerning the same.

And whereas by his Codicil dated the tenth day of March, 1910, to his 40 said Last Will the said Mututantrige James Fernando Sri Chandrasekera directed the said Trustees to pay a certain annuity only in lieu of the remainder income as aforesaid to his wife during the widowhood or until her second marriage as therein mentioned and confirmed his said Will in all other respects.

And whereas the said Mututantrige James Fernando Sri Chandrasekera departed this life at Colombo on or about the 17th day of March, 1911, without having altered or revoked the said Will or Codicil otherwise than as aforesaid.

Exhibits  
D 8  
Deed No. 290  
6-1-25  
—continued

And whereas the said Last Will and Testament and Codicil were duly proved before the District Court of Colombo and Probate thereof was on the third day of August, 1911, granted by the said Court to the said Annie Clara Rosaline Fernando now Peiris, Hettiakandage Joseph Francis Fernando and Mahawaduge Marthelis Perera Dissanayake as Executors thereof in its Testametary Proceedings No. 3,927.

10 And whereas the said Annie Clara Rosaline Fernando now Peiris, Hettiakandage Joseph Francis Fernando and Mahawaduge Marthelis Perera Dissanayake as Executors as aforesaid did by Deed No. 345 dated the 28th and 30th days of September, 1914, attested by Fred de Saram of Colombo, Notary Public, assign and convey unto themselves the said Annie Clara Rosaline Fernando now Peiris, Hettiyakandage Joseph Francis Fernando and Mahawaduge Marthelis Perera Dissanayake as Trustee as aforesaid *inter alia* the said lands, buildings called and known as "Sirinivasa," and "Anandagiri," to be held by them as Trustees as aforesaid and subject to the powers, provisions and declarations and for the uses, ends, intents and purposes in the said Last Will and Testament  
20 and Codicil thereto expressed and contained.

And whereas the said Hettiakandage Joseph Francis Fernando having died on the 30th day of February, 1920, the said Annie Clara Rosaline Fernando now Peiris and Mahawaduge Marthelis Perera Dissanayake became the sole Executors and Trustees under the said Last Will and Testament and Codicil thereto as aforesaid.

And whereas Mututantrige James Covington Leslie Fernando Sri Chandrasekara, the only child of the said Mututantrige James Fernando Sri Chandrasekera having died on the 14th day of March, 1914, without having acquired an absolutely vested interest in the said Trust estate certain doubts arose as to the interpretation of the said Will and disposal of the said Trust estate and the parties concerned therein entered into an agreement dated the 22nd day of  
30 February, 1922, in terms of section 699 of the Civil Procedure Code.

And whereas in pursuance of the said agreement action No. 1,044 Special was instituted in the District Court of Colombo.

And whereas in the said action of consent a decree was on the 18th day of June, 1923, entered wherein it was decreed *inter alia* that after due provision being made in the said decree in respect of the aforesaid sum of Rupees Fifty thousand devised by the said Will for the benefit of the said "Gangarama Vihare," the Trustees of the said Last Will and Testament and Codicil thereto of  
40 the said Mututantrige James Fernando Sri Chandrasekera, namely, Annie Clara Rosaline Fernando now Peiris and Mahawaduge Marthelis Perera Dissanayake should forthwith convey and assign *inter alia* all the immovable property belong-

## Exhibits

D 8  
Deed No. 290  
6-1-25  
—continued

ing to the said Trust estate to the Honourable Sir Graeme Thomson, Colonial Secretary of the said Island and the Honourable Mr. John George Fraser, Government Agent of the Western Province of the said Island meaning thereby the Colonial Secretary and the Government Agent for the Western Province for the time being as Trustees of the Sri Chandrasekera Fund.

And whereas the said Annie Clara Rosaline Fernando now Peiris and Mahawaduge Marthelis Perera Dissanayake as surviving Executors and Trustees of the said Last Will and Testament and Codicil thereto of the said Mututantrige James Fernando Sri Chandrasekera did by Deed No. 1,382 dated respectively the 9th and 12th days of July, 1924, , attested by Fred de Saram of Colombo, 10 Notary Public, assign and convey unto the said the Honourable Mr. Cecil Clementi, Colonial Secretary of the said Island, and the said the Honourable Mr. Robert Niemann Thaine, Government Agent for the Western Province of the said Island as Trustees of the Sri Chandrasekera Fund *inter alia* the said land, buildings and premises called “ Sirinivasa ” and “ Anandagiri.”

And whereas the said the Honourable Mr. Cecil Clementi, Colonial Secretary of the said Island and the said the Honourable Mr. Robert Niemann Thaine, Government Agent of the Western Province of the said Island as Trustees as aforesaid have caused the said land, buildings and premises called and known as “ Sirinivasa ” and “ Anandagiri ” to be surveyed and divided into five separate 20 blocks.

And whereas the said the Honourable Mr. Cecil Clementi, Colonial Secretary of the said Island, and the Honourable Mr. Robert Niemann Thaine, Government Agent of the Western Province of the said Island as Trustees as aforesaid agreed with Richard Lionel Pereira for the absolute sale and conveyance to him of the northern block in extent one acre one rood and one-tenth of a perch from and out of the said premises described in the Schedule hereto which said block is hereinafter more fully described at or for the price or sum of Rupees Eighty-six thousand Five hundred.

Now know Ye and these presents witness that the said the Honourable 30 Mr. Cecil Clementi, Colonial Secretary of the said Island, and the said the Honourable Mr. Robert Niemann Thaine, Government Agent for the Western Province of the said Island as Trustees of the Sri Chandrasekera Fund in pursuance of the said agreement and in consideration of the said sum of Rupees Eighty-six thousand Five hundred lawful money of Ceylon well and truly paid to the said the Honourable Mr. Cecil Clementi, Colonial Secretary of the said Island and the said the Honourable Mr. Robert Niemann Thaine, Government Agent for the Western Province of the said Island as Trustees as aforesaid (the receipt whereof is hereby acknowledged) do hereby grant, bargain, sell, assign, convey, set over and assure unto the said Richard Lionel Pereira, his heirs, executors, 40 administrators and assigns all that the house and premises called and known as “ Anandagiri,” described as block 1 bearing assessment No. 1692/8A, Green Path, situated in Cinnamon Gardens, within the Municipality and District of Colombo, Western Province ; bounded on the north by Green Path, on the east by block



No. 4 of "Sirinivasa," in extent two roods thirty-five perches and 8/10th of a perch bearing assessment No. 1693/8, Edinburgh Crescent, on the south by block No. 2 of "Sirinivasa," in extent two roods thirty-two perches and 5/10th of a perch bearing assessment No. 1693/8, Edinburgh Crescent, and on the west by Flower Road ; containing in extent one acre one rood and one-tenth of a perch according to the figure of survey thereof No. 745 dated the 18th day of December, 1924, made by E. M. Anthonisz, Licensed Surveyor, which said block forms a defined and divided portion from and out of the land and premises in the Schedule hereto fully described and together with all rights, liberties, privileges, servitudes and appurtenances whatsoever to the said land and premises belonging or in anywise appertaining or accepted, reputed, deemed, taken, known, held, occupied or enjoyed as part and parcel thereof and all the estate, right, title, interest, property, benefit, claim and demand whatsoever or howsoever of the said the Honourable Mr. Cecil Clementi, Colonial Secretary of the said Island and the said the Honourable Mr. Robert Niemann Thaine, Government Agent for the Western Province of the said Island as Trustees as aforesaid of in, to, out of or upon the said land hereditaments and premises hereby assured or intended so to be and every part thereof and together with all deeds, evidences, writings and muniments of title whatsoever relating to or in anywise concerning the said premises.

To have and to hold the said land hereditaments and premises with their rights, members and appurtenances unto the said Richard Lionel Pereira, his heirs, executors, administrators and assigns for ever.

And the said the Honourable Mr. Cecil Clementi, Colonial Secretary of the said Island and the said the Honourable Mr. Robert Niemann Thaine, Government Agent for the Western Province of the said Island as Trustees as aforesaid do hereby covenant within the said Richard Lionel Pereira, his heirs, executors, administrators and assigns that they have not at any time heretofore as Trustees as aforesaid or otherwise made, done or committed or knowingly suffered or being party or privy to any act, deed, matter or thing whereby or by reason or means whereof the said land, buildings and premises hereby conveyed and assured to him or them or any of them or any part thereof are or may be impeached, charged, affected or encumbered in title, charge, estate or otherwise howsoever but they do not further or otherwise warrant the title to the said premises hereby conveyed.

In witness whereof the said Honourable Mr. Cecil Clementi, Colonial Secretary of the said Island and the said the Honourable Mr. Robert Niemann Thaine, Government Agent for the Western Province of the said Island as Trustees as aforesaid have set their hands to these presents and to two others of the same tenor at the places and on the dates set opposite to their respective signatures.

*The Schedule above referred to:*

All that and those the lands, buildings and premises called and known as "Sirinivasa" and "Anandagiri," situated at Edinburgh Crescent, Flower Road

Exhibits  
D 8  
Deed No. 290  
8-1-25  
—continued

Exhibits

D 8

Deed No. 290  
6-1-25

—continued

and Green Path, in the Cinnamon Gardens, Ward No. 9, within the Municipality and District of Colombo, Western Province, comprising the following allotments of lands, to wit :—

(a) All that and those the land, buildings and premises called and known as “ Sirinivasa,” situated at Edinburgh Crescent, in Cinnamon Gardens, in Ward No. 9, within the Municipality and District of Colombo, Western Province and bearing Municipal assessment No. 8 ; bounded on the north by Green Path, on the east by the road called Edinburgh Crescent, on the south by the boundary wall, and on the west by the premises now known as “ Anandagiri,” belonging to Mututantrige Siman Fernando Sri Chandrasekera ; containing in extent two acres and five perches according to the figure of survey thereof dated the 20th June, 1900, made by Juan de Silva, Surveyor. 10

(b) All that and those the land, buildings and premises called and known as “ Anandagiri,” situated at Flower Road and Green Path, in the Cinnamon Gardens, in Ward No. 9, within the said Municipality of Colombo, and bearing assessment No. 8A, Edinburgh Crescent ; bounded on the north by Green Path, on the east by premises known as “ Sirinivasa,” on the south by the boundary wall, and on the west by Flower Road ; containing in extent two acres one rood and fifteen perches according to the figure of survey thereof bearing the 20th day of June, 1900, made by the said Juan de Silva, held and possessed under and by virtue of the Deed No. 4,218 dated the 6th day of December, 1907, attested by R. F. de Saram of Colombo, Notary Public. 20

Signed by the within-named the Honourable }  
Mr. Robert Niemann Thaine, Government } Sgd. R. N. THAINE.  
Agent, at Colombo, on this twentieth day of } ,, C. CLEMENTI.  
December, One thousand Nine hundred and }  
Twenty-four in our presence. }

Sgd. A. DUNCUM.  
,, W. T. A. GENTLE.

Sgd. F. W. DE VOS, 30  
Notary Public.

Signed by the within-named the Honourable }  
Mr. Cecil Clementi, Colonial Secretary, at }  
Colombo, on this sixth day of January, One }  
thousand Nine hundred and Twenty-five in }  
our presence. }

Sgd. A. DUNCUM.  
,, W. T. A. GENTLE.

Sgd. F. W. DE VOS, 40  
Notary Public.

I, Frederick William de Vos of Colombo, in the Island of Ceylon, Notary Public, by lawful authority duly admitted do hereby certify and attest that the foregoing Instrument having been duly read over by the within-named Robert Niemann Thaine in my presence and in the presence of Arthur Duncum of Wellawatte, and William Todd Atkinson Gentle of Bullers Road, Colombo, who signed his name as W. T. A. Gentle, the subscribing witnesses thereto, all of whom are known to me the same was signed by the said Robert Niemann Thaine and also by the said witnesses and by me the said Notary in the presence of one another, all being present at the same time at Colombo aforesaid, on this twentieth day of December, One thousand Nine hundred and Twenty-four.

Exhibits

D 8

Deed No. 290

6-1-25

—continued

I further certify that fourteen stamps of the value of Rupees One thousand Three hundred and Eighty-three and a stamp of one rupee which were supplied by me were affixed respectively to the counterpart and original of this Instrument.

I also certify that out of the consideration within-named a sum of Rupees Eight thousand Six hundred and Fifty was acknowledged to have been received and the balance was paid by cheque drawn on the National Bank of India, Limited, by the vendee for Rupees Seventy-seven thousand Eight hundred and Fifty in favour of the Agent for the Trustees of the Sri Chandrasekera Fund and that before the said Instrument was so read over the following alterations were made :—In the original sheet 2 page 2 line 20 the letter “ c ” was interpolated between the letters “ e ” and “ r ” of the word “ Secretary.” On the same sheet page 3 line 13 the letters “ ac ” in the word “ accepted ” were linked over. And in the counterpart sheet 1 page 1 line 2 the letter “ c ” was inked over in the word “ Colonial.” On same sheet page 4 line 4 the letter “ rr ” in the word “ Corrington ” were deleted and the letter “ v ” substituted. In sheet 2 page 4 line 8 the words “ and Anandagiri ” were deleted.

Sgd. F. W. DE VOS,  
Notary Public.

Date of Attestation : 20th December, 1924.

30

(Seal)

I, Frederick William de Vos of Colombo, in the Island of Ceylon, Notary Public, by lawful authority duly admitted do hereby certify and attest that the foregoing Instrument having been duly read over by the within-named Cecil Clementi in my presence and in the presence of Arthur Duncum of Wellawatte, Colombo, and William Todd Atkinson Gentle of Bullers Road, Colombo, who signed his name as W. T. A. Gentle, the subscribing witnesses thereto, all of whom are known to me, the same was signed by the said Cecil Clementi and also by the said witnesses and by me the said Notary in the presence of one another all being present at the same time at Colombo aforesaid, on the sixth day of January, One thousand Nine hundred and Twenty-five.

Date of Attestation : 6th January, 1925.

Sgd. F. W. DE VOS,  
Notary Public.

40

Exhibits

—  
D 9  
Conditions of  
Sale  
28-1-25

D 9

**Conditions of Sale**

D 9

## Conditions of Sale

No. 1,462

Of the undermentioned property put up for sale by public auction this twenty-eighth day of January, 1925, by Messrs. A. Y. Daniel & Son, Licensed Auctioneers, Colombo, under instructions from the Trustees of Sri Chandrasekera Fund, to wit :

All that allotment of land marked lot No. 4 in the plan prepared by the 10 Surveyor-General (being a defined and divided portion of the premises called and known as "Sirinivasa," bearing assessment No. 8, Edinburgh Crescent), situate at Edinburgh Crescent and Green Path, within the Municipality and District of Colombo, Western Province ; bounded on the north by Green Path, on the east by Edinburgh Crescent, and the south by lot 5—a portion of the premises known as "Sirinivasa," and on the west by lots Nos. 1 and 2—parts of the premises known as "Anandagiri,"—containing in extent two roods thirty-five decimal eight perches.

1. The highest bidder shall be the Purchaser: and if any dispute or difficulty should arise the property shall be put up at the former bidding. 20

2. No person shall at any bidding advance less than Rs 250/-, and no bidding shall be retracted.

3. The Vendors by their agent shall have the right of bidding once for the property.

4. Immediately on the fall of the hammer the purchaser shall pay into the hands of the Auctioneers a deposit of 10%, in part payment of the purchase money, and shall, if required sign an agreement with two sufficient Securities for the payment of the remainder on or before the 28th day of February next and for the fulfilment of these Conditions.

5. On the payment of the remainder of the purchase money by the 30 Purchaser the Vendor shall execute a conveyance of the said property, such conveyance shall be prepared by and at the expense of, the Purchaser, who shall also, if he shall require same, pay the costs of certified copies of all prior deeds and writings relating to the premises aforesaid.

6. The Purchaser shall enter into possession of the property on payment of the full purchase money, but if from any cause whatever the com-

pletion of the payment of the purchase money shall be delayed beyond the 28th day of February next, the Vendor shall be entitled to interest at the rate of 9% per annum on the purchase amount or to re-sell the property at the risk of the Purchaser and his Sureties.

Exhibits  
—  
D 9  
Conditions  
of Sale  
28-1-25  
—continued

7. The Purchaser shall pay immediately after the sale the Auctioneer's commission of 1½%, the advertisement and other charges the Notary's fee for attesting these Conditions Rs. 105/- and Rs. 7/- the stamps for these Conditions.

8. If any unintentional error, mis-statement, or mistake shall have been made in the description of the property, the same shall not vitiate or annual the sale.

9. If from any unforeseen circumstances on the part of the Vendors he shall delay to perfect or complete the purchase beyond the time specified, such circumstances shall not annual the sale.

10. If the Purchaser with the consent of the Vendors enter into possession or receive the rents and profits of the said property before the purchase shall be completed, he shall from thenceforth pay to the Vendor interest on the unpaid purchase money at the rate of per cent per annum till the completion of purchase.

11. Should the purchaser fail or neglect to comply with these conditions, the money deposited and other expenses and charges paid shall thereupon become forfeited to the Vendor who shall be at full liberty to enforce the sale or with or without notice to the Purchaser or his Sureties re-sell the said premises at any time and place and in such manner as they shall think it, and if on such re-sale there shall be a deficiency the Purchaser neglecting to comply with these conditions shall make good forthwith to the Vendors such deficiency, and all expenses attending such re-sale; and further that such defaulting Purchaser shall not be entitled to any advantage which may result by such resale but the same shall accure to the Vendors.

30

## BIDDERS

	A. C. Dias	..	..	..	Rs. 20,000
	P. D. Siebel	..	..	..	21,000
	A. E. de Silva	..	..	..	22,000
	F. de Zoysa	..	..	..	23,000
	I. L. Ibrahim	..	..	..	24,000
	K. Rajaratnam	..	..	..	25,000
	A. E. de Silva	..	..	..	26,000
	K. Rajaratnam	..	..	..	27,000
	F. de Zoysa	..	..	..	28,000
40	K. Rajaratnam	..	..	..	29,000
	R. L. Pereira	..	..	..	30,000

Exhibits D 9 Conditions of Sale 28-1-25 —continued	K. Rajaratnam	..	..	..	..	31,000	
	R. L. Pereira	..	..	..	..	32,000	
	K. Rajaratnam	..	..	..	..	33,000	
	R. L. Pereira	..	..	..	..	33,500	
	K. Rajaratnam	..	..	..	..	34,000	
	A. Sellamuttu	..	..	..	..	35,000	
	K. Rajaratnam	..	..	..	..	36,000	
	F. de Zoysa	..	..	..	..	37,000	
	A. Sellamuttu	..	..	..	..	38,000	
	K. Rajaratnam	..	..	..	..	39,000	10
R. L. Pereira	..	..	..	..	40,000		

**Memorandum :**

We, the undersigned A. Y. Daniel & Son, Licensed Auctioneers, do hereby acknowledge that at the sale by auction of the property described in these Conditions of Sale, Richard Lionel Pereira of Colombo, as the highest bidder and was declared the purchaser of the said premises at the sum of Rs. 40,000 and that he paid into out hands the sum of Rs. 4,000 by way of deposit and in part payment of the purchase money, and do hereby agree and declare that the several conditions above set forth on the part of the vendors are and shall be considered as the terms and conditions of the said sale on their part and by them to be fulfilled 20 and observed accordingly.

As witness our hands this 28th day of January, 1925.

Sgd. A. Y. DANIEL,  
of A. Y. Daniel & Son.

Purchase amount	..	..	..	Rs. 40,000
10% Deposit	..	..	..	„ 4,000
				<hr/>
Balance due	..	..	..	Rs. 36,000

I, Richard Lionel Pereira of Colombo, do hereby acknowledge that I have this day purchased at public auction the said premises above described upon and subject to the conditions thereto subjoined at the sum of Rs. 40,000 and do 30 hereby agree to perform the said conditions on my part accordingly.

As witness my hand this 28th day of January, 1925.

Sgd. R. L. PEREIRA.

Witnesses :

1. (Illegible).
2. S. P. FERNANDO.

Sgd. FRED DE SARAM,  
N. P.

I, Frederick John de Saram of Colombo, in the Island of Ceylon, Notary Public, by lawful authority duly admitted do hereby certify and attest that the foregoing Conditions of Sale having been duly read over by Annesley Young Daniel, a Licensed Auctioneer of the within-named A. Y. Daniel & Son, and having been duly read over by the within-named Richard Lionel Pereira in my presence and in the presence of Mahawaduge Marthelis Perera Dissanayake of Vauxhall Street in Colombo, and Simon Perera Fernando of Moratuwa. the subscribing witnesses thereto, all of whom are known to me, the same was signed by the said Annesley Young Daniel and by the said Richard Lionel Pereira and also by the said witnesses (who signed their names respectively as "M. P. Dissanayake" and "S. P. Fernando") and by me the said Notary, in the presence of one another, all being present at the same time at Colombo aforesaid, on this twenty-eighth day of January, in the year One thousand Nine hundred and Twenty-five.

Exhibits  
D 9.  
Conditions  
of Sale  
28-1-25  
-continued

I do further certify that the original of this Instrument bears a stamp of the value of rupee one and the duplicate three stamps of the value of six rupees and that the stamps were supplied by D. L. & F. de Saram of Colombo aforesaid.

I further certify that before the said Conditions of Sale were so read over and signed the following alterations were made in all the copies thereof, viz. :—  
In page 3 in lines 18 to 23 all the words in print from the word "and" up to the word "entitled" were deleted and in line 24 of the same page the letter "s" in the word "hands" was deleted.

I further certify that no payment was made in my presence.

Which I attest :

Sgd. FRED DE SARAM,  
Notary Public.

Date of Attestation : 28th January, 1925.

**D 10**  
**Deed No. 318**

D 10.  
Deed No 318  
23-3-25

30 Portion of A 105/246

D 10

Registered : A 167/70  
Colombo, 24-3-1925

No. 318

Sgd. ....  
Registrar.

To all to whom these Presents shall Come :

The Honourable Mr. Cecil Clementi, Colonial Secretary of the Island of Ceylon, and the Honourable Mr. Robert Niemann Thaine, Government Agent for the Western Province of the said Island, Trustees of the Sri Chandrasekera Fund—

hibits      Send Greetings :

D 10.  
Deed No 318  
23-3-25  
—continued

Whereas Mututantrige James Fernando Sri Chandrasekera was seised and possessed of or otherwise well and sufficiently entitled to all that and those the land, buildings and premises called and known as "Sirinivasa" and "Anandagiri," situated at Edinburgh Crescent, Flower Road and Green Path in the Cinnamon Gardens, Ward No. 9, within the Municipality and District of Colombo, Western Province, and in the Schedule hereto more fully described under and by virtue of the deed in the said Schedule mentioned.

And whereas the said Mututantrige James Fernando Sri Chandrasekera duly made and executed his Last Will and Testament dated the eighth day of 10 April, One thousand Nine hundred and Nine, whereby after appointing Annie Clara Rosaline Fernando now Peiris and one Hettiakandage Joseph Francis Fernando and Mahawaduge Marthelis Perera Dissanayake, the Executors and Trustees thereof and giving certain specific and pecuniary legacies therein mentioned he gave devised and bequeathed all the real and immovable property, estate and effects of whatsoever kind and wheresoever situate whether in possession, expectancy, reversion, remainder or otherwise to which he should be entitled at the time of his decease unto his Trustees the said Annie Clara Rosaline Fernando now Peiris and Hettiakandage Joseph Francis Fernando and the said Mahawaduge Marthelis Perera Dissanayake to be held by them after payment 20 of his just debts, funeral and Testamentary expenses and subject to the payment of an annuity to his wife the said Annie Clara Rosaline Fernando now Peiris in Trust for his children and grand-children.

And whereas in case no child or issue of the said Mututantrige James Fernando Sri Chandrasekera should acquire an absolutely vested interest in the said Trust estate the said Mututantrige James Fernando Sri Chandrasekera directed that a sum of Rupees Fifty thousand be paid by the said Trustees to certain persons named in the said Will to be by such persons vested for the benefit of the Buddhist Temple called "Gangarama Vihare," at Horetuudwa, and that the remainder of the said Trust estate be held by the said Trustees upon 30 further trust to pay to his wife the said Annie Clara Rosaline Fernando now Peiris so long as she should continue his widow all the annual interest, income, rents and profits of the remainder of the said Trust estate and that after her death or second marriage such remainder of the said Trust estate should go and devolve on the Honourable the Colonial Secretary for the time being of the said Island of Ceylon, and the Honourable the Government Agent for the Western Province of the said Island for the time being to be held by them and their successors in such offices as aforesaid and to form a fund called The Sri Chandrasekera Fund and to be applied in the manner and upon the Trusts in the said Last Will and Testament declared concerning the same. 40

And whereas by his Codicil dated the tenth day of March, One thousand Nine hundred and Ten, to his said Last Will the said Mututantrige James Fernando Sri Chandrasekera directed the said Trustees to pay a certain annuity only in lieu of the remainder income as aforesaid to his wife during the widowhood



or until her second marriage as therein mentioned and confirmed his said Will in all other respects.

And whereas the said Mututantrige James Fernando Sri Chandrasekera departed this life at Colombo, on or about the 17th day of March, 1911, without having altered or revoked the said Will or Codicil otherwise than as aforesaid.

And whereas the said Last Will and Testament and Codicil were duly proved before the District Court of Colombo, and Probate thereof was on the third day of August, 1911, granted by the said Court to the said Annie Clara Rosaline Fernando now Peiris, Hettiakandage Joseph Francis Fernando and Mahawaduge Marthelis Perera Dissanayake as Executors thereof in its Testam-  
10 tamentary Proceedings No. 3,927.

And whereas the said Annie Clara Rosaline Fernando now Peiris, Hettiakandage Joseph Francis Fernando and Mahawaduge Marthelis Perera Dissanayake as Executors as aforesaid by Deed No. 345. dated the 28th and 30th days of September, 1914, attested by Fred de Saram of Colombo, Notary Public, assign and convey unto themselves the said Annie Clara Rosaline Fernando now Peiris, Hettiakandage Joseph Francis Fernando and Mahawaduge Marthelis Perera Dissanayake as Trustees as aforesaid *inter alia* the said lands, buildings and premises called and known as "Sirinivasa," and "Anandagiri," to be held  
20 by them as Trustees as aforesaid and subject to the powers, provisions and declarations and for the use, ends, intents and purposes in the said Last Will and Testament and Codicil thereto expressed and contained.

And whereas the said Hettiakandage Joseph Francis Fernando having died on the 13th day of February, 1920, the said Annie Clara Rosaline Fernando now Peiris and Mahawaduge Marthelis Perera Dissanayake became the sole Executors and Trustees under the said Last Will and Testament and Codicil thereto as aforesaid.

And whereas Mututantrige James Covington Leslie Fernando Sri Chandrasekera, the only child of the said Mututantrige James Fernando Sri Chandrasekera  
30 having died on the 14th day of March, 1914, without having acquired an absolutely vested interest in the said Trust estate certain doubts arose as to the interpretation of the said Will and disposal of the said Trust estate and the parties concerned therein entered into an agreement dated the 22nd day of February, 1922, in terms of Section 699 of the Civil Procedure Code.

And whereas in pursuance of the said Agreement Action No. 1,044 Special was instituted in the District Court of Colombo.

And whereas in the said action of consent a decree was on the 18th day of June, 1923, entered wherein it was decided *inter alia* that after due provision being made in the said decree in respect of the aforesaid sum of Rupees Fifty-  
40 thousand devised by the said Will for the benefit of the said "Gangarama Vihare" the Trustees of the said Last Will and Testament and Codicil thereto of the said

Exhibits  
D 10.  
Deed No 318  
23-3-25  
—continued

## Exhibits

D 10.  
Deed No 318  
23-3-25  
—continued

Mututantrige James Fernando Sri Chandrasekera, namely, Annie Clara Rosaline Fernando now Peiris and Mahawaduge Marthelis Perera Dissanayake should forthwith convey and assign *inter alia* all the immovable property belonging to the said Trust estate to the Honourable Sir Graeme Thomson, Colonial Secretary of the said Island and the Honourable Mr. John George Fraser, Government Agent of the Western Province for the time being as Trustees of the Sri Chandrasekera Fund.

And whereas the said Annie Clara Rosaline Fernando now Peiris and Mahawaduge Marthelis Perera Dissanayake as surviving Executors and Trustees of the said Last Will and Testament and Codicil thereto of the said Mututantrige 10 James Fernando Sri Chandrasekera did by Deed No. 1,382 dated respectively the 9th and 12th days of July, 1924, attested by Fred de Saram of Colombo, Notary Public, assign and convey unto the said the Honourable Mr. Cecil Clementi Colonial Secretary, of the said Island, and the said the Honourable Mr. Robert Niemann Thaine, Government Agent for the Western Province of the said Island, as Trustees of the Sri Chandrasekera Fund *inter alia* the said land, buildings and premises called “ Sirinivasa ” and “ Anandagiri.”

And whereas the said the Honourable Mr. Cecil Clementi, Colonial Secretary of the said Island, and the said the Honourable Mr. Robert Niemann Thaine, Government Agent of the Western Province, of the said Island as Trustees as 20 aforesaid have caused the said lands and buildings and premises called and known as “ Sirinivasa ” and “ Anandagiri ” to be surveyed and divided into five separate blocks as specified in the plan prepared by the Surveyor-General.

And whereas the said Honourable Mr. Cecil Clementi, Colonial Secretary of the said Island and the said Honourable Mr. Robert Niemann Thaine, Government Agent of the Western Province, of the said Island, caused the said divided blocks to be put up for sale by public auction by Annesley Young Daniel, Licensed Auctioneer, on the 28th day of January, 1925.

And whereas at the said sale Richard Lionel Pereira of Colombo, was declared the purchaser of all that allotment of land marked No. 4 in the said plan and 30 hereinafter more particularly described at or for the price or sum of Rupees Forty-thousand.

And whereas the said Richard Lionel Pereira has duly paid the full amount of the said purchase money and has otherwise complied with the Conditions of Sale and has thus become entitled to a conveyance of the said premises in his favour.

Now know Ye and these Presents witness that the said Honourable Mr. Cecil Clementi, Colonial Secretary of the said Island, and the said Honourable Mr. Robert Niemann Thaine, Government Agent for the Western Province of the said Island, as Trustees of the Sri Chandrasekera Fund in consideration of 40 the premises and of the said sum of Rupees Forty-thousand lawful money of Ceylon, well and truly paid to the said the Honourable Mr. Cecil Clementi,

Colonial Secretary of the said Island, and the Honourable Mr. Robert Niemann Thaine, Government Agent for the Western Province of the said Island as Trustees as aforesaid (the receipt whereof is hereby acknowledged) do hereby grant, bargain, sell, assign, convey, transfer, set over and assure unto the said Richard Lionel Pereira, his heirs, executors, administrators and assigns all that the said allotment of land marked No. 4 in the said plan prepared by the Surveyor-General (being a defined and divided portion of the premises called and known as "Sirinivasa," and "Anandagiri," bearing assessment Nos. 8 and 8A, Edinburgh Crescent, and in the Schedule hereto more fully described,) situated at Edinburgh Crescent and Green Path, within the Municipality and District of Colombo, Western Province; bounded on the north by Green Path, on the east by Edinburgh Crescent, on the south by lot No. 5, a portion of the premises known as "Sirinivasa," and on the west by lots Nos. 1 and 2—parts of the premises known as "Anandagiri"; containing in extent two roods thirty-five decimal eight perches together with all rights, liberties, privileges, easements, servitudes and appurtenances whatsoever to the said land and premises belonging or in any wise appertaining or held or used, occupied or enjoyed therewith or reputed or known as part and parcel thereof and all the estate, right, title, interest, property, possession, claim and demand whatsoever of them the said Honourable Mr. Cecil Clementi, Colonial Secretary of the said Island, and the said the Honourable Mr. Robert Niemann Thaine, Government Agent for the Western Province of the said Island, as Trustees as aforesaid of in, to, out of or upon the said land and premises hereby assured or intended as to be and every part thereof.

Exhibits  
D 10.  
Deed No 318  
23-3-25  
—continued

To have and to hold the said land and premises hereby assured or expressed or intended so to be with all and singular the appurtenances thereunto belonging unto the said Richard Lionel Pereira, his heirs, executors, administrators and assigns for ever.

And the said the Honourable Mr. Cecil Clementi, Colonial Secretary of the said Island, and the said the Honourable Mr. Robert Neimann Thaine, Government Agent for the Western Province of the said Island, as Trustees as aforesaid do hereby covenant with the said Richard Lionel Pereira, his heirs, executors, administrators and assigns that they have not at any time heretofore as Trustees as aforesaid or otherwise made, done or committed or knowingly suffered or been party or privy to any act, deed, matter or thing whereby or by reason or means whereof the said land and premises hereby conveyed and assured to him are is can shall or may be impeached, charged, affected or encumbered in title, charge, estate or otherwise howsoever but they do not further or otherwise warrant the title to the said premises hereby conveyed.

In witness whereof the said Honourable Mr. Cecil Clementi, Colonial Secretary of the said Island, and the said the Honourable Mr. Robert Neimann Thaine, Government Agent of the Western Province of the said Island, as Trustees as aforesaid have set their hands to these presents and to two others of the same tenor, and date at Colombo, on this 23rd day of March, 1925.

## Exhibits

D 10.  
Deed No. 318  
23-3-25  
—continued

*The Schedule above referred to :*

All that and those the lands, buildings and premises called and known as “Sirinivasa” and “Anandagiri” situated at Edinburgh Crescent, Flower Road and Green Path, in the Cinnamon Gardens, Ward No. 9, within the Municipality and District of Colombo, Western Province, comprising the following allotments of land, to wit :—

(a) All that and those the land, buildings and premises called and known as “Sirinivasa,” situated at Edinburgh Crescent, in Cinnamon Gardens, in Ward No. 9, within the Municipality and District of Colombo, Western Province and bearing Municipal assessment No. 8 ; bounded on the north by Green Path, 10 on the east by the road called Edinburgh Crescent, on the south by the boundary wall, and on the west by the premises now known as “Anandagiri,” belonging to Mututantrige Siman Fernando Sri Chandrasekera ; containing in extent two acres and five perches according to the figure of survey thereof dated the 20th June, 1900, made by Juan de Silva, Surveyor.

(b) All that and those the land, buildings and premises called and known as “Anandagiri,” situated at Flower Road and Green Path, in the Cinnamon Gardens, in Ward No. 9, within the said Municipality of Colombo, and bearing assessment No. 8A, Edinburgh Crescent ; bounded on the north by Green Path, on the east by premises known as “Sirinivasa,” on the south by the boundary 20 wall, and on the west by Flower Road ; containing in extent two acres one rood and fifteen perches according to the figure of survey thereof bearing date the 26th day of June, 1900, made by the said Juan de Silva, Surveyor. Held and possessed under and by virtue of the Deed No. 4,218 dated the 6th day of December, 1907, attested by R. F. de Saram, of Colombo, Notary Public.

Sgd. C. CLEMENTI,  
,, R. N. THAINE.

## Witnesses :

1. A. DUNCUM.
2. F. J. DE SARAM.

Sgd. F. W. DE VOS,  
N. P.

30

**No. 318**

I, Frederick William de Vos of Colombo, in the Island of Ceylon, Notary Public, by lawful authority duly admitted, do hereby certify and attest that the foregoing Instrument having been duly read over by the within-named the Honourable Mr. Cecil Clementi, Colonial Secretary of the Island of Ceylon, and the Honourable Mr. Robert Neimann Thaine, Government Agent, Western Province of the said Island, in my presence and in the presence of Arthur Duncum of Wellawatte, in Colombo, and Frederick John de Saram of Alexandera Place, 40 Cinnamon Gardens, in Colombo, the subscribing witnesses thereto, all of whom

are known to me the same was signed by the said the Honourable Mr. Cecil Clementi and the Honourable Mr. Robert Niemann Thaine, and also by the said witnesses (the latter of whom signed his name as "Fred de Saram" and by me the said Notary in the presence of one another all being present at the same time at Colombo aforesaid, on this twenty-third day of March. One thousand Nine hundred and Twenty-five.

Exhibits  
D 10.  
Deed No 318  
23-3-25  
—continued

I further certify that eleven stamps of the value of Rupees Six hundred and thirty-nine and a stamp of one rupee which were supplied by de Vos and de Saram of Colombo, were affixed respectively to the counterpart and original  
10 of this Instrument.

I also certify that before the said Instrument was so read over and signed the following alterations were made, viz. :—In the original sheet 1 page 2 line 9. the word "an" was deleted and in page 3 line 28 of the same sheet the letters "ts" in the word "intents" were inked over and in the counterpart sheet 1 page 1 line 23 the letter "e" in the word "whether" was deleted, in page 2 lines 4 and 14 the letter "ui" in the word "acquire" were typed over and the word "her" was interpolated between the words "after" and "death," in page 3 lines 16, 20 and 23 the word "intents" was interpolated between the words "ends" and "and," the word "Marthelis" was interpolated between the words  
20 "Mahawaduge" and "Perera" and the letter "v" in the word "Covington" was inked over respectively, and in sheet 2 page 1 lines 4 and 33 the words "several premises" were deleted and the words "divided blocks" were substituted, and the word and figure "and 8A" were interpolated between the figure "8" and the word "Edinburgh" respectively.

I also certify that out of the consideration within-named the Vendors as Trustees as aforesaid acknowledged in my presence the prior receipt of a sum of Rupees Four thousand and the balance Rupees Thirty-six thousand was paid this day in my presence by a cheque drawn by the purchaser on the National Bank of India, Limited, in favour of the Agent, Sri Chandrasekera Fund.

30 Date of Attestation : 23rd March, 1925.

Sgd. F. W. DE VOS,  
Notary Public.

(Seal)

**D 11**  
**Deed No. 419**  
D 11  
No. 419

D 11.  
Deed No. 419  
19-1-26

Registered : A 171/300

Colombo, 29-1-1925.

40 Portion of A 105/246.

Sgd. . . . .  
Registrar.

To all to whom these Presents shall Come :

The Honourable Mr. Edward Bruce Alexander, Colonial Secretary of the Island of Ceylon, and the Honourable Mr. Robert Niemann Thaine,

Exhibits

D 11.

Deed No. 419

19-1-26

—continued

Government Agent for the Western Province of the said Island,  
present Trustees of Sri Chandrasekera Fund—

Send Greetings :

Whereas Mututantrige James Fernando Sri Chandrasekera was seised and possessed of or otherwise well and sufficiently entitled to all that and those the land, buildings and premises called and known as "Sirinivasa," and "Anandagiri," situated at Edinburgh Crescent, Flower Road and Green Path, in the Cinnamon Gardens, in Ward No. 9, within the Municipality and District of Colombo, Western Province, and in the Schedule hereto more fully described.

And whereas the said Mututantrige James Fernando Sri Chandrasekera 10  
duly made and executed his Last Will and Testament dated the 8th April, 1909, whereby after appointing Annie Clara Rosaline Fernando now Peiris and one Hettiakandage Joseph Francis Fernando and Mahawaduge Marthelis Perera Dissanayake, the Executors and Trustees thereof and giving certain specific and pecuniary legacies therein mentioned he gave devised and bequeathed all the real and immovable property, estate and effects of whatsoever kind and wheresoever situate whether in possession, expectancy, reversion, remainder or otherwise to which he should be entitled at the time of his decease unto his Trustees the said Annie Clara Rosaline Fernando now Peiris and Hettiakandage Joseph Francis Fernando and the said Mahawaduge Marthelis Perera Dissanayake to 20  
be held by them after payment of his just debts, funeral and testamentary expenses and subject to the payment of an annuity to his wife the said Annie Clara Rosaline Fernando now Peiris in trust for his children and grand-children.

And whereas in case no child or issue of the said Mututantrige James Fernando Sri Chandrasekera should acquire an absolutely vested interest in the said Trust estate the said Mututantrige James Fernando Sri Chandrasekera directed that a sum of Rupees Fifty thousand be paid by the Trustees to certain persons named in the said Will to be by such persons invested for the benefit of the Buddhist Temple called "Gangarama Vihare," at Horetuduwa, and that the remainder of the said Trust estate be held by the Trustees upon further trust to 30  
pay to his wife the said Annie Clara Rosaline Fernando now Peiris so long as she should continue his widow all the annual interests, income, rents and profits of the remainder of the said Trust estate and that after her death or second marriage such remainder of the said Trust estate should go and devolve on the Honourable the Colonial Secretary of the said Island, and the Honourable the Government Agent, Western Province for the time being to be held by them and their successors in such offices as aforesaid and to form a Fund called "The Sri Chandrasekera Fund," and to be applied in the manner and upon the Trusts in the said Last Will declared concerning the same.

And whereas by his Codicil dated the 10th March, 1910, to his said Last 40  
Will the said Mututantrige James Fernando Sri Chandrasekera directed the said Trustees to pay a certain annuity only in lieu of the remainder income as aforesaid to his wife during her widowhood or until her second marriage as therein mentioned and confirmed his said Will in all other respects.

And whereas the said Mututantrige James Fernando Sri Chandrasekera departed this life at Colombo, on or about the 17th March, 1911, without having altered or revoked the said Will or Codicil otherwise than as aforesaid.

Exhibits  
D 11.  
Deed No. 419  
19-1-26  
—continued

And whereas the said Last Will and Testament and Codicil were duly proved before the District Court of Colombo and Probate thereof was on the 3rd day of August, 1911, granted by the said Court to the said Annie Clara Rosaline Fernando now Peiris, Hettiakandage Joseph Francis Fernando and Mahawaduge Marthelis Perera Dissanayake as Executors in its Testamentary Proceedings No. 3,927.

10 And whereas the said Annie Clara Rosaline Fernando now Peiris, Hettiakandage Joseph Francis Fernando and Mahawaduge Marthelis Perera Dissanayake as Executors as aforesaid did by Deed No. 345 dated the 28th and 30th days of September, 1914, attested by Fred de Saram of Colombo, Notary Public, assign and convey unto themselves *inter alia* the said lands, buildings and premises called and known as "Sirinivasa" and "Anandagiri," to be held by them as Trustees as aforesaid and subject to the powers, provisions and declarations and for the ends, intents and purposes in the said Last Will and Testament and Codicil thereto expressed and contained.

20 And whereas the said Hettiakandage Joseph Francis Fernando having died on the 13th February, 1920, the said Annie Clara Rosaline Fernando now Peiris and Mahawaduge Marthelis Perera Dissanayake became the sole Executors and Trustees under the said Last Will and Testament and Codicil thereto as aforesaid.

And whereas Mututantrige James Covington Leslie Fernando Sri Chandrasekera the only child of the said Mututantrige James Fernando Sri Chandrasekera having died on the 14th day of March, 1914, without having acquired an absolutely vested interest in the said Trust estate certain doubts arose as to the interpretation of the said Will and disposal of the said Trust estate and the parties concerned therein entered into an agreement dated the 27th day 30 of February, 1922, in terms of Section 699 of the Civil Procedure Code.

And whereas in pursuance of the said agreement Action No. 1,044 Special was instituted in the District Court of Colombo.

And whereas in the said action of consent a decree was on the 18th day of June, 1923, entered wherein it was decreed *inter alia* that after due provision being made in the said decree in respect of the aforesaid sum of Rupees Fifty thousand devised by the said Will for the benefit of the said "Gangarama Vihare," the Trustees of the said Last Will and Testament and Codicil thereto of the said Mututantrige James Fernando Sri Chandrasekera should forthwith convey and assign (*inter alia*) all the immovable property belonging to the said 40 Trust estate to the Honourable Sir Graeme Thomson, Colonial Secretary of the said Island, and the Honourable Mr. John George Fraser, Government Agent for the Western Province of the said Island (meaning thereby the Colonial

Exhibits

D 11.

Deed No. 419

19-1-26

—continued

Secretary and the Government Agent for the Western Province for the time being) as Trustees of Sri Chandrasekera Fund.

And whereas the said Annie Clara Rosaline Fernando now Peiris and Mahawaduge Marthelis Perera Dissanayake as surviving Executors and Trustees of the said Last Will and Testament and Codicil thereto did by Deed No. 1,382 dated the 9th and 12th days of July, 1924, attested by Fred de Saram of Colombo, Notary Public, assign and convey unto the Honourable Mr. Cecil Clementi, then Colonial Secretary of the said Island, and the said the Honourable Mr. Robert Niemann Thaine, Government Agent for the Western Province of the said Island as Trustees of Sri Chandrasekera Fund (*inter alia*) the said lands, buildings and 10 premises called "Sirinivasa," and "Anandagiri."

And whereas the said the Honourable Mr. Cecil Clementi, Colonial Secretary of the said Island, and the said Honourable Mr. Robert Niemann Thaine, Government Agent for the Western Province, as Trustees as aforesaid have caused the said lands, buildings and premises called and known as "Sirinivasa," and "Anandagiri," to be surveyed and divided into five separate blocks as specified in the plan prepared by the Surveyor-General.

And whereas the said the Honourable Mr. Edward Bruce Alexander, Colonial Secretary for the time being and the said Honourable Mr. Robert Neimann Thaine, Government Agent for the Western Province, for the time being 20 as Trustees of Sri Chandrasekera Fund have agreed with Richard Lionel Pereira of "Anandagiri," Flower Road in Colombo, to sell and convey to him a divided portion of the said lands and premises marked 2A in extent 2.02 perches according to a fresh plan made in October, 1925, by Mr. H. D. Smith, 2nd Grade Surveyor (hereinafter more fully described) at or for the price or sum of Rupees Five hundred.

Now know Ye and these presents witness that the said Honourable Mr. Edward Bruce Alexander, Colonial Secretary of the said Island, and the said the Honourable Mr. Robert Niemann Thaine, Government Agent for the Western Province, present Trustees of Sri Chandrasekera Fund in consideration of the 30 premises and of the said sum of Rupees Five hundred lawful money of Ceylon, well and truly paid to them by the said Richard Lionel Pereira (the receipt whereof is hereby acknowledged) do hereby grant bargain, sell, assign, convey, transfer, set over and assure unto the said Richard Lionel Pereira, his heirs, executors, administrators and assigns all that the said divided allotment of land marked 2A in the said plan (being a divided portion of the lands and premises described in the Schedule hereto) situated at Edinburgh Crescent, within the Municipality and District of Colombo, Western Province; and bounded on the north and east by premises called and known as "Anandagiri," bearing assessment No. 8A, claimed by Mr. R. L. Pereira, and on the south by lots Nos. 1 and 40 2 in the said plan being parts of premises called and known as "Sirinivasa," containing in extent two and two one-hundredth of a perch according to the aforesaid plan made by the said H. D. Smith. Together with all rights, liberties, privileges, easements, servitudes and appurtenances whatsoever to the said land



and premises belonging or reputed or known as part and parcel thereof and all the estate, right, title, interest, property, claim and demand whatsoever or howsoever of them the said Trustees of Sri Chandrasekera Fund in, to, out of or upon the said land and premises.

Exhibits  
D 11.  
Deed No 419  
19-1-26  
—continued

To have and to hold the said land and premises hereby assured or expressed or intended so to be with all and singular the appurtenances thereunto belonging unto the said Richard Lionel Pereira, his heirs, executors, administrators and assigns for ever.

And the said the Honourable Mr. Edward Bruce Alexander, Colonial Secretary of the said Island and the said the Honourable Mr. Robert Niemann Thaine, Government Agent for the Western Province of the said Island, as Trustees as aforesaid do hereby covenant with the said Richard Lionel Pereira, his heirs, executors, administrators and assigns that they have not at any time heretofore as Trustees as aforesaid or otherwise made, done or committed or knowingly suffered or been party or privy to any act, deed, matter or thing whereby or by reason or means whereof the said land and premises hereby conveyed and assured to him are is can shall or any be impeached, charged, affected or encumbered in title, charge, estate or otherwise howsoever but they do not further or otherwise warrant the title to the said premises hereby assured.

In witness whereof the said the Honourable Mr. Edward Bruce Alexander, Colonial Secretary of the said Island, and the said the Honourable Mr. Robert Neimann Thaine, Government Agent for the Western Province of the said Island as Trustees as aforesaid have set their hands to these presents and to two others of the same tenor and date at Colombo, on this 19th day of January, 1926.

*The Schedule above referred to :*

All that and those the lands, buildings and premises called and known as "Sirinivasa," and "Anandagiri," situated at Edinburgh Crescent, Flower Road and Green Path, in the Cinnamon Gardens, Ward No. 9, within the Municipality and District of Colombo, Western Province ; comprising the following allotments land, to wit :—(a) All that and those the land, buildings and premises called and known as "Sirinivasa," situated at Edinburgh Crescent, in Cinnamon Gardens, in Ward No. 9 within the Municipality and District of Colombo, Western Province and bearing Municipal assessment No. 8 ; bounded on the north by Green Path, on the east by the road called Edinburgh Crescent, on the south by the boundary wall, and on the west by the premises known as "Anandagiri," belonging to Mututantrige Siman Fernando Sri Chandrasekera ; containing in extent two acres and five perches according to the figure of survey thereof dated the 20th June, 1900, made by Juan de Silva, Surveyor.

(b) All that and those the lands, buildings and premises called and known as "Anandagiri," situated at Flower Road and Green Path, in the Cinnamon Gardens, in Ward No. 9, within the said Municipality of Colombo, and bearing assessment No. 8A, Edinburgh Crescent ; bounded on the north by Green Path,

Exhibits  
D 11.  
Deed No. 419  
19-1-26  
—continued

on the east by premises known as "Sirinivasa," on the south by the boundary wall, and on the west by Flower Road ; containing in extent two acres one rood and fifteen perches according to the figure of survey thereof bearing the 26th day of June, 1900, made by the said Juan de Silva.

Sgd. E. B. ALEXANDER.  
,, R. N. THAINE.

Witnesses :

Sgd. FRED DE SARAM.  
,, A. DUNCUM.

Sgd. F. W. DE VOS, 10  
*Notary Public.*

#### No. 419

I, Frederick William de Vos, of Colombo, in the Island of Ceylon, Notary Public, by lawful authority duly admitted, do hereby certify and attest that the foregoing Instrument having been duly read over by the within-named Edward Bruce Alexander and Robert Niemann Thaine, in my presence and in the presence of Fred de Saram and Arthur Duncum, both of Colombo, the subscribing witnesses thereto, all of whom are known to me the same was signed by the said Edward Bruce Alexander and Robert Niemann Thaine, and also by the said witnesses and by me the said Notary in the presence of one another all being present at the same 20  
time at Colombo aforesaid, on this nineteenth day of January, One thousand Nine hundred and Twenty-six.

I further certify that a stamp of the value of Rupees Ten and a stamp of one rupee which were supplied by De Vos and De Saram of Colombo, were affixed respectively to the counterpart and original of this Instrument.

I also certify that before the said Instrument was so read over and signed the following alterations were made, viz :—In the original sheet 1 page 3 line 27 the letters "ions" in the word "provisions" was inked over, in page 4 line 18 the word "was" was deleted and in the counterpart sheet 2 page 1 in line 11 the word "divided" was interpolated. 30

I also certify that the consideration within-named was paid by cheque drawn by the said Messrs. de Vos and de Saram on the National Bank of India, Ltd., Colombo, in favour of the Agents for the said Sri Chandrasekera Fund.

Sgd. F. W. DE VOS,  
*Notary Public.*

Date of Attestation : 19th January, 1926.

P 8

## Certificate of Death

P 8

CEYLON

## CERTIFICATE OF DEATH

Appl. No. 1,3934.  
No. 479.

Exhibits

P 8  
Certificate of  
Death  
6-5-33

*Western Province, Colombo District, Slave Island and  
Kollupitiya Division.*

- 10 1. Date & Place of Death .. Sixth May, 1933, Private General Hospital,  
Kynsey Road, Kollupitiya
2. Name in Full .. Mututantrige Jane Perera Abeywardana Sri  
Chandrasekera
3. Sex and Nationality .. Female—Sinhalese
4. Age .. Fifty-eight years
5. Rank and Profession .. —
6. Names of Parents .. Father : Simon Fernando Sri Chandrasekera  
Mother : Not known
7. Cause of Death and Place  
20 of Burial or Cremation .. Cancer of the Breast  
Dr. J. A. G. Mendis
8. Name & Residence of Infor-  
mant & in what capacity  
he gives Information .. Geoffrey Perera Abeyawardene, Sri Nivasa  
Estate, Waga  
Son Present at death
9. Signature of Informant .. Sgd. G. P. Abeywardena
10. When Registered .. Sixth May, 1933
11. Name of Registrar .. Sgd. A. S. P. Fernando

30 I, G. A. Jayawardhana, Assistant Registrar-General of Births, Marriages and Deaths, in the Island of Ceylon, do hereby certify that the foregoing is a true copy from the Duplicate Registers of Deaths of A. S. P. Fernando, Registrar of Slave Island and Kollupitiya 2A filed in this Office, and the same is granted on the application of Mr. G. P. Abeyawardene.

Registrar-General's Office,  
Colombo, June 24, 1948.

Sgd. G. A. JAYAWARDHANA,  
*Asst. Registrar-General.*

206

D 12

Deed No. 340

D 12

Prior Registration : A 165/2791, 167/70, 171/300  
Registered : A 229/181

No. 340

Colombo, 30-4-1935.

Sgd. ....  
*Registrar.*

Exhibits

D 12.  
Deed No. 340  
20-4-35

To all to whom these Presents shall Come :

10

I, Richard Lionel Pereira, King's Counsel of "Anandagiri," Edinburgh Crescent, Colombo—

Send Greeting :

Whereas under and by virtue of Deeds Nos. 290, 318 and 419, dated 20th December, 1924, 23rd March, 1925, and 19th January, 1926 respectively, all attested by F. W. de Vos of Colombo, Notary Public, I am entitled to the following three allotments of land, to wit :—

(1) All that the house and premises called and known as "Anandagiri," described as block I bearing assessment No. 1692/8A, Green Path, situated in Cinnamon Gardens, within the Municipality and District of Colombo, Western Province ; bounded on the north by Green Path, on the east by block No. 4 of "Sirinivasa," in extent two roods thirty-five perches and 8/10th of a perch bearing assessment No. 1693/8, Edinburgh Crescent, on the south by block No. 2 of "Sirinivasa," in extent two roods thirty-two perches and 5/10th of a perch bearing assessment No. 1693/8, Edinburgh Crescent, and on the west by Flower Road ; containing in extent one acre one rood and one-tenth of a perch according to the figure of survey thereof No. 745 dated the 18th day of December, 1924, made by E. M. Anthonisz, Licensed Surveyor and Registered under A 165/279.

(2) All that allotment of land marked lot No. 4 being a defined and divided portion of the premises called and known as "Sirinivasa," and "Anandagiri," bearing assessment Nos. 8 and 8A, situated at Edinburgh Crescent and Green Path aforesaid ; bounded on the north by the Green Path, on the east by Edinburgh Crescent, on the south by lot No. 5, a portion of premises known as "Sirinivasa," and on the west by lots Nos. 1 and 2 parts of premises known as "Anandagiri" ; containing in extent two roods thirty-five decimal eight perches and Registered under A 167/70.

(3) All that divided allotment of land marked 2A, situated at Edinburgh Crescent aforesaid ; and bounded on the north and east by premises called and known as " Anandagiri," bearing assessment No. 8A, claimed by Mr. R. L. Pereira, and on the south-west by lots Nos. 1 and 2 being parts of premises called and known as " Sirinivasa " ; containing in extent two and two-one hundredth of a perch and Registered under A 171/300, which aforesaid three allotments form part of the property fully described in the Schedule " A " hereto.

Exhibits  
D 12.  
Deed No. 340  
20-4-35  
—continued

And whereas the aforesaid three allotments form one property called and known as " Anandagiri," and I have caused a survey to be made of a defined  
10 portion thereof which said defined portion is an allotment of land marked " A " forming part of premises called " Anandagiri," bearing assessment No. 16, Edinburgh Crescent, in the Colpetty Ward, in Colombo, and fully described in the Schedule " B " hereto.

And whereas I am now desirous of donating by way of gift the said defined portion marked " A " and fully described in the Schedule " B " hereto to my daughter Carmen Sylvene Pereira of " Anandagiri," Edinburgh Crescent in Colombo, subject to the conditions hereinafter contained.

Now know Ye and these Presents witness that I in consideration of the love and affection which I have and bear unto my said daughter Carmen Sylvene  
20 Pereira and for divers other good causes and consideration me hereunto specially moving do hereby give, grant, assign, convey, set over and assure unto her the said Carmen Sylvene Pereira, her heirs, executors and administrators as a gift the said defined portion of land marked " A " depicted in plan No. 31 dated the 12th day of April, 1935, made by G. H. Ludovici, Special Licensed Surveyor and Leveller, and fully described in the Schedule " B " hereto hereinafter referred to as the said premises subject to the conditions hereinafter contained together with all rights, privileges, easements, servitudes and appurtenances whatsoever to the said premises belonging or used or enjoyed therewith or reputed or known as part and parcel thereof.

30 To have and to hold the said premises which is of the value of Rupees Twenty-nine thousand six hundred and twenty-five (Rs. 29,625) together with all the appurtenances thereof unto her the said Carmen Sylvene Pereira, her heirs, executors and administrators for ever subject to the following conditions, to wit :—

(1) That the said Carmen Sylvene Pereira shall not sell, mortgage or otherwise alienate the said premises but shall hold, possess and enjoy the rents, profits and income thereof during her life time and after her death the same shall devolve on her legitimate issue ; provided always that in the event of the said Carmen Sylvene Pereira dying without issue the said premises shall devolve on  
40 my son Richard Geoffrey Carlyle Pereira and his legitimate issue.

(2) That the said Carmen Sylvene Pereira shall not lease the said premises for a period more than two years at a time and she shall not before the expiration of the period of one lease grant give or execute any fresh lease affecting the said premises.

Exhibits

D 12.

Deed No. 340

20-4-35

—continued

And I do hereby for myself, my heirs, executors and administrators covenant with the said Carmen Sylvene Pereira, her heirs, executors and administrators that the said premises are free from all encumbrances and that I and my aforewritten shall and will always warrant and defend the title to the same unto her the said Carmen Sylvene Pereira and her aforewritten against all persons whomsoever and shall and will further whenever thereto required and at the cost and charges of her the said Carmen Sylvene Pereira and her aforewritten do sign, execute and deliver unto her and her aforewritten all such further and other acts, deeds and assurances as shall or may from time to time be requisite or expedient for more fully and effectually vesting in her and her aforewritten the 10 said premises hereby granted.

And I the said Carmen Sylvene Pereira do hereby thankfully accept the aforesaid gift subject to the conditions hereinbefore mentioned.

In witness whereof we the said Richard Lionel Pereira and Carmen Sylvene Pereira do hereunto and to two others of the same tenor and date as these presents set our respective hands at Colombo, on this 20th day of April, 1935.

*Schedule "A" referred to :*

All that and those the lands, buildings and premises called and known as "Sirinivasa" and "Anandagiri," situated at Edinburgh Crescent, Flower Road and Green Path, in the Cinnamon Gardens, Ward No. 9, within the Municipality 20 and District of Colombo, Western Province comprising the following allotments of land, to wit :—

(a) All that and those the land, buildings and premises called and known as "Sirinivasa," situated at Edinburgh Crescent, in Cinnamon Gardens, in Ward No. 9 within the Municipality and District of Colombo, Western Province, and bearing Municipal assessment No. 8 ; bounded on the north by Green Path, on the east by the road called Edinburgh Crescent, on the south by the boundary wall, and on the west by the premises now known as "Anandagiri," belonging to Mututantrige James Fernando Sri Chandrasekera ; containing in extent two acres and five perches according to the figure of survey thereof dated the 20th 30 day of June, 1900, made by Juan de Silva, Surveyor.

(b) All that and those the land, buildings and premises called and known as "Anandagiri," situated at Flower Road and Green Path, in the Cinnamon Gardens in Ward No. 9, within the Municipality of Colombo and bearing assessment No. 8A, Edinburgh Crescent ; bounded on the north by Green Path, on the east by premises known as "Sirinivasa," on the south by the boundary wall, and on the west by Flower Road ; containing in extent two acres one rood and fifteen perches according to the figure of survey thereof bearing the 26th day of June, 1900, made by the said Juan de Silva, Surveyor.

*Schedule "B" referred to :*

40

All that allotment of land marked "A" being part of the premises called "Anandagiri," bearing assessment No. 16, Edinburgh Crescent, in the Colpetty Ward within the Municipality and in the District of Colombo, Western Province :

and bounded on the north by Green Path, on the east by Edinburgh Crescent, on the south by premises No. 18 (Edinburgh Crescent), and on the west by part of the same premises ; and containing in extent two roods thirty-eight and a half perches as per figure of survey No. 31, dated the 12th day of April, 1935, made by G. H. Ludovici, Special Licensed Surveyor and Leveller.

Exhibits  
D 12.  
Deed No. 340  
20-4-35  
—continued

Sgd. R. L. PEREIRA.  
,, C. S. PEREIRA.

Witnesses :

- 10      1. Sgd. W. P. PEIRIS.  
       2.    ,, G. LEWIS APPU.

Sgd. G. A. CALDERA,  
       N. P.

I, George Alexander Caldera of Colombo, Notary Public, do hereby certify and attest that the foregoing Instrument having been duly read over by the within-named executants, Richard Lionel Pereira and Carmen Sylvene Pereira, who signed as " R. L. Pereira " and " C. S. Pereira " respectively, both of whom are known to me in the presence of the subscribing witnesses, Watutantrige Philippu Peiris of Peterson Lane, Wellawatte in Colombo, and Galangodage Lewis Appu of Edinburgh Crescent in Colombo, who signed as " W. P. Peiris " and " G. Lewis Appu " respectively, both of whom are also known to me, the same was signed by the said Richard Lionel Pereira and Carmen Sylvene Pereira and also by the said witnesses and by me the said Notary in the presence of one another, all being present at the same time at Colombo, on this 20th day of April, 1935.

I further certify and attest that in the original page 3 line 1, the letter " s " in the word " consideration " was overtyped and in the same page line 2 the word " assign " was overtyped, and in page 5 line 6 the letter " b " in the word " Edinburgh " was overtyped and in the duplicate page 2 line 35 the word " and " was interpolated, page 3 line 14 the word " and " was overtyped, page 4 line 6 the letter " u " in the word " required " was overtyped and in the same page line 21 the letter " A " was interpolated, page 5 line 1 the letter " b " in the word " Edinburgh " was overtyped, and in the same page line 31 the letter " d " in the word " dated " was overtyped before the foregoing Instrument was read over as aforesaid ; that the duplicate of this Instrument bears nine stamps of the value of Rs. 479 and the original a stamp of Re. 1.

Date of Attestation : 20th April, 1935.

Which I attest :

Sgd. GEO. A. CALDERA,  
       Notary Public.





See motions and order thereon.  
Trial : 7 September, instead of July 10.

Sgd. . . . ., *D. J.*

Exhibits  
P 7.  
Journal  
Entries in  
D. C.,  
Colombo,  
Case  
No. 404 L.  
12-2-36 to  
6-7-36  
—continued

Motion : page 255.

IN THE DISTRICT COURT OF COLOMBO

No. 404/L.

As the plaintiffs reside out of the jurisdiction of this Court and as they are not possessed of any property we move that the Court be pleased to order them 10 to give security in a sum of Rs. 3,000 for the payment of defendants' costs.

Sgd. D. L. & F. DE SARAM,  
*Proctors for Defendants.*  
Colombo, 3 July, 1936.

A copy of this motion has been sent to the plaintiffs' Proctor at Panadura, who has been informed that the motion will come on for disposal on Monday, the 6th July, 1936.

Sgd. D. L. & F. DE SARAM,  
*Proctors for Defendants.*

Call on 6-7-36. Before Mr. de Saram.

Sgd. . . . .  
3/7

20

This application is opposed.

× × × × × × × ×

Advocate Weerasooriya for plaintiffs states that the plaintiffs are now resident within the jurisdiction of this Court. On Mr. Weerasooriya's assurance, Advocate R. L. Pereira does not press this application.

6-7-36.

Sgd. W. S. DE S.

**P 1**

**Letter from Billimoria & de Silva to Peter Fernando**

**P 1**

P 1.  
Letter from  
Billimoria  
and de Silva  
to Peter  
Fernando  
21-8-36

30 BILLIMORIA & DE SILVA.

Colombo, 21st Aug., 1936.

PETER FERNANDO, ESQ.,  
5th Lane, Colpetty.

**New Bungalows for R. L. Pereira, Esq., K.C.**

Dear Sir,

With reference to my letters dated 12th and 19th March, addressed to you on the above subject I now forward herewith for your information a full state-

Exhibits

P 1.

Letter from  
Bilimoria  
and de Silva  
to Peter  
Fernando  
21-8-36  
—continued

ment of accounts showing the amount expended by Mr. R. L. Pereira on your account.

You will note that Mr. Pereira has exceeded the amount of contract, etc., by Rs. 2,434.92 which amount he is entitled to claim under Clause 25 of the agreement.

He is also entitled to compensation according to Clause 28 of your agreement for non-completion of the houses within the contract period. Allowing you an extension of an additional month, he is entitled to claim damages at Rs. 200 per month for six months amounting to Rs. 1,200.

Yours faithfully,

10

Sgd. DE SILVA,  
*Architect.*

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**P 1 A**

P 1A.  
Statement of  
Accounts  
Annexed to  
P 1.

**Statement of Accounts annexed to P 1.**
**Amounts Paid on Mr. Peter Fernando's Account.**

1935.

3rd July	To Peter Fernando by cheque for	Cert No. 1	1,409 55
16th do	do do do	Cert No. 2	1,929 76
2nd August	do do do	No. 3	3,195 44
17th do	do do do	No. 4	4,152 53 20
7th Sept.	do do do	No. 5	1,597 00
29th do	do do do	No. 6	1,464 98
15th Oct.	do do do	No. —	1,000 00
28th do	do do do	No. 7	1,000 00
15th Nov.	do (part payment)	No. 8	1,000 00
28th Nov.	do do do	balancee No, 8	259 30
20th Nov.	do do do	No. 9	349 94

(for Rs. 1,342.15 balance paid to suppliers)

		Exhibits
27th Nov.	E. B. Creasy Arch. letter 26.11.35 by cheque E. B. & Co., bill 21.11.35	153 75
	K. L. Perera, Arch. letter 26.11.35 by cheque K. L. P's bill 13.11.35	233 10
	Burma Teak Co. Arch. letter 26.11.35 by cheque B. T. Co.'s bill	185 36
2nd Dec.	Peter Fernando by cheque	250 00
3rd Dec.	K. L. Perera (for timber) by cheque K. L. P's bill 2.11.35	288 84
10 8th Dec.	K. L. Perera bill 3.12.35	233 00
	7th Dec. Peter Fernando by cheque	25 000
	9th Dec. Lee Hedges Arch. letter 26.11.35 by cheque L. H. bill 23.11.35	420 00
10th Dec.	Municipal Treasurer for water used by cheque	74 01
11th Dec.	K. L. Perera (for timber) Bill 6.12.35	233 00
12th Dec.	T. C. Peris (for lime)	98 56
13th Dec.	K. D. Emanis Singho (for timber) cheque	79 02
14th Dec.	Peter Fernando by cheque	250 00
16th Dec.	K. L. Perera bill 11.12.35	233 00
20 20th Dec.	do (on P. F's receipt)	233 00
21st Dec.	Peter Fernando	250 00
	3rd Jan. 36 do	300 00
	4th Jan. 36 do	433 93
	7th Jan. K. L. Perera bill 20.12.35	179 00
	9th Jan. A. M. Yoosoof (for hinges) by cheque	302 90
	17th Jan. Burma Teak (to logs) by cheque	142 16

Exhibits  
P 1A.  
Statement  
of Accounts  
annexed to  
P 1.  
—continued

Exhibits P 1A. Statement of Accounts annexed to P 1. —continued	17th Jan. E. B. Creasy (cement)		338 25
	17th Jan. Chettinand Corporation by cheque		103 00
	17th Jan. Peter Fernando by cheque		350 00
	24th Jan. do do		350 00
	27th Jan. A. M. Yoosoof (for hinges) by cheque		373 65
	27th Jan. Jinasena & Co. (for grill) do		216 22
	31st Jan. Lee Hedges do		366 05
	1st Feb. Peter Fernando do		350 00
	4th Feb. S. Marshall Perera (bricks) do		170 00
	7th Feb. Burma Teak (picture rail) do		33 00 10
	13th Feb. U. Thomas (lime) do		68 00
	14th Feb. Peter Fernando do		300 00
	17th Feb. P. L. Perera (metal) do		26 00
	18th Feb. D. Robias Appu (cabook) do		87 50
	21st Feb. A. Meerasai Lebbe (sand) do		38 00
	27th Feb. Mr. de Silva for wages (coolies) do		200 00
	17th March A. L. M. Abdul Latiff (hinges) do		120 44
	17th March A. M. Yoosoof do		92 50
	18th March Municipal Treasurer (water) do		54 83
	20th March U. Thomas (lime) do		43 50 20
	20th March William (private a/c) do		25 00
	21st March C. C. C. (Solignum) do		16 85
	21st March E. B. Creasy (cement) do		13 05
	21st March William Pedris do		15 28

	M. J. Perera (metal)	do	15 00	Exhibits
	T. M. Fernando (carpenter)	do	40 00	P 1 A. Statement of Accounts annexed to
	25th March Martinus Perera (oxidising)	do	340 43	P 1. —continued
	25th March Burma Teak (logs)	do	459 45	
	25th March T. M. Fernando (carpenter)	do	60 00	
	4th April do do	do	70 00	
	11th April William Pedris	do	28 30	
	11th April A. L. M. Abdul Latiff (hinges)	do	66 30	
	11th April William (P. V. Fernando)	do (private a/c)	55 00	
10	11th April T. M. Fernando (carpenter)	do	85 00	
	18th April do do	do	30 00	
	23rd April Burma Teak (cupboard timber)	do	366 47	
	23rd April C. C. C. (Solignum)	do	34 10	
	23rd April Lee Ledges (teak and paint)	do	282 90	
	23rd April W. Monis Fernando (Jak timber)	do	21 32	
	23rd April T. M. Fernando (carpenter)	do	50 00	
	4th May do do	do	50 00	
	5th May Municipal Treasurer (water)	do	52 13	
	19th May A. L. M. Abdul Latiff (hinges)		51 84	
20	21st May Plate's (again for cupboard)		24 00	
	21st May Lee Hedges		12 75	
	23rd May William Pedris		51 42	
	23rd May Burma Teak		298 97	
	23rd May Brown & Co. (locks etc.)		152 33	



Electric lighting paid to Allanson	850 00	Exhibits
Taken Carpenters wages on Peter Fernando's a/c	— —	P I A.
do Masons do do	— —	Statement
do H. M. Fonseka's wages	— —	of Accounts
		annexed to
		P I.
Tiling to bath room floors	454 50	—continued
Tiling to bath room walls at Rs. 65/- per sq.	900 00	
Spiral stair case as per B & Co's Bill 30.4.36	764 00	
Ground floor flooring (690 x 2)	1,380 00	
First do (351 x 2)	702 00	
10 Surface drains to roads 70 L. ft. at -/60 cts. per foot	42 00	
Steps (20 x 2)	40 00	
Drain on flat roof	15 00	
Cupboard in pantry	120 00	
Rendering to stair case	200 00	
Dado moulding (glazed) L. ft. at—per ft.	50 00	
First floor skirting (99 x 2)	198 00	
	<u>7,565 50</u>	

## SUMMARY

Total amount due to Peter Fernando. Contract amount	36,500 00
20 Amount due on extras sanctioned on 17th December 1935	682 00
Amount due on boundary wall	352 95
	<u>37,534 95</u>
Total amount spent on Peter Fernando's a/c	Total 31,500 42
(Amount paid on extras less for large hinges)	902 95
Amount paid for drainage, lighting, tiles etc. on Peter Fernando's a/c	7,565 50
	<u>Total Spent 39,968 87</u>
	<u>Total due 37,534 95</u>
Amount overpaid to on Peter Fernando's	2,434 92
30 Additional work done in new Bungalows at Green Path for R. L. Pereira Esqr., K. C.	
1. Extra work in outhouses (these are larger by about 60 sq. ft. in revised plans)	150 00
2. 6 Nos. Pillers at junction of walls in outhouses at Rs. 3/-	18 00
3. 5 Nos. Concrete grills in outhouses	15 00

Exhibits P 1 A. Statement of Accounts annexed to P 1.	4. Continuous concrete lintol on 1st floor lin. ft. 385—210=175 at -/50 cts.	87 50
	5. 5 ins. x 3 ins. wall plates instead of 4 ins. x 3 ins. lin. ft. 220 at -/05	11 00
	6. Extra H. Iron and Concrete hood	50 00
		331 50
	for second bungalow	331 50
	Cutting down trees in compound	20 00
		682 00

P 6 A.  
Order of  
Privy Council  
in D. C.  
Colombo,  
Case  
No. 404 L.  
2-2-39

P 6A

**Order of Privy Council in D.C. Colombo, Case No. 404 L.**

10

P 6A

AT THE COURT AT BUCKINGHAM PALACE

THE 2ND DAY OF FEBRUARY, 1939

*Present :*

THE KING'S MOST EXCELLENT MAJESTY  
LORD PRESIDENT.  
VISCOUNT CHILSTON.  
SECRETARY SIR THOMAS INSKIP.  
MR. SECRETARY COLVILLE.  
MR. CHANCELLOR OF THE DUCHY OF LANCASTER. 20  
MR. R. A. BUTLER.  
CAPTAIN CROOKSHANK.  
SIR REGINALD DORMAN-SMITH.

WHEREAS there was this day read at the Board a report from the Judicial Committee of the Privy Council dated the 17th day of January, 1939, in the words following, viz. :—

“ Whereas by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October, 1909, there was referred unto this Committee the matter of an appeal from the Supreme Court of the Island of Ceylon between the Honourable Maxwell MacLagan Wedderburn 30 and Ralph Marcus Meaburn Worsley, appellant and Danister P. Abeyawardena, Llewellyn P. Abeyawardena, Geoffrey P. Abeyawardena, respondents (Privy Council Appeal No. 70 of 1938) and likewise a humble petition of the appellants setting forth that the above appeal is pending



to Your Majesty in Council from a Judgment of the Supreme Court dated the 23rd February, 1938 : That the terms of settlement of the matter in dispute have been agreed between the parties the terms of which are embodied in a minute of settlement dated the 3rd December, 1938, and annexed in Schedule thereto : And humbly praying Your Majesty in Council to permit the appeal to be withdrawn on the terms of the minute of settlement.

Exhibits  
P 6 A.  
Order of  
Privy Council  
in D. C.  
Colombo,  
Case  
No. 404 L.  
2-2-39  
—continued

## SCHEDULE

10 “ Abeyawardena *et al* vs. Wedderburn *et al* Supreme Court, Colombo No. 205 of 1937 District Court, Colombo No. 404/L.

“ The plaintiffs and the defendants have settled this case. They jointly move that His Majesty the King in His Privy Council be graciously pleased to order that judgment be entered in accordance with the settlement the terms of which are as follows :

- “ 1. That the Decree of the Supreme Court of Ceylon declaring the plaintiffs entitled to the land and premises in dispute and directing that the defendants be ejected from the said land and premises and the plaintiffs be placed in possession thereof be affirmed.
- 20 “ 2. That the defendants should pay to the plaintiffs a sum of Rs. 5,000 in full satisfaction of their claim for damages and for costs incurred and to be incurred in all Courts.
- “ 3. That each party should bear his own costs incurred in connection with the application for leave to appeal to the Privy Council and in connection with the appeal to the Privy Council.

Colombo, 3rd December, 1938.

30 D. P. Abeyawardena—1st plaintiff.  
L. P. Abeyawardena—2nd plaintiff.  
G. P. Abeyawardena—3rd plaintiff.

Fernando & Fernando—Proctors for the plaintiffs in the District Court, Colombo Case No. 404/L.

D. L. & F. De Saram—Proctors for the defendants.

“ The Lords of the Committee in obedience to His late Majesty's said Order in Council have taken the appeal and humble petition into consideration and the Solicitors for the respondents having signified in writing their consent to the Prayer of the petition Their Lordships do this day agree humbly to report

Exhibits to Your Majesty as their opinion that leave ought to be granted to withdraw the appeal on the terms of the compromise contained in the Schedule to the petition."

P 6 A.  
Order of  
Privy Council  
in D. C.  
Colombo,  
Case  
No. 404 L.  
2-2-39  
—continued

His Majesty having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor or Officer Administering the Government of the Island of Ceylon and its dependencies for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly. 10

Sgd. RUPERT B. HOWORTH.

D 34.  
Statement of  
Cheques  
issued by the  
Defendant

**D 34**

**Statement of Cheques issued by the Defendant**

				Rs.
FD	395425	25. 6.35	Billimoria & de Silva	547.50
FD	395425	3. 7.35	For building (P. P. Fernando)	1409.55
FH	254501	10. 7.35	Supervisor of building	30.00
FH	254502	16. 7.35	P. Peter Fernando (2nd instalment)	1929.76
FH	254507	2. 8.35	- do -	3195.44
FH	254508	15. 8.35	Supervisor's salary	30.00 20
FH	254509	17. 8.35	P. Peter Fernando	4152.53
FH	254511	7. 9.35	- do -	1597.00
FH	254513	21. 9.35	Supervisor's salary	30.00
FH	254514	24. 9.35	P. Peter Fernando on a/c boundary wall	200.00
FH	254515	29. 9.35	P. Peter Fernando	1464.98
FH	254517	14.10.35	Supervisor's salary	30.00
FH	254518	15.10.35	P. Peter Fernando	1000.00
FH	254519	24.10.35	- do -	177.95
			a/c boundary wall	15,794.71

	FH	254520	28.10.35	P. Peter Fernando	1000.00	Exhibits
	FH	254521	8.11.35	P. Peter Fernando	1000.00	D 34.
	FH	254522	13.11.35	Account boundary wall	30.00	Statement of Cheques issued by the Defendant
	FH	254523	18.11.35	Edwin's pay Rs. 30 } Boundary wall Rs. 70 }	100.00	—continued
	FH	254524	20.11.35	P. Peter Fernando	259.30	
	FH	254525	23.11.35	Boundary wall	75.00	
	FH	254526	27.11.35	P. Peter Fernando	349.94	
	FH	254527	27.11.35	E. B. Creasy	153.75	
10	FH	254528	27.11.35	K. L. Perera & Co.	233.10	
	FH	254529	27.11.35	Burma Teak Trading Co.	185.36	
	FH	254530	2.12.35	P. Peter Fernando	250.00	
	FH	254531	3.12.35	K. L. Perera & Co.	228 84	
	FH	254533	6.12.35	- do -	233.00	
	FH	254534	7.12.35	P. Peter Fernando	250.00	
	FH	254536	7.12.35	Supervisor's and Labourers' salaries	47.50	
	FH	254537	9.12.35	Lee Hedges & Co. Ltd.	420.00	
	FH	254538	10.12.35	Municipal Treasurer (for water)	74.01	
	FH	254539	11.12.35	K. L. Perera & Co.	233.00	
20	FH	254540	12.12.35	T. C. Pieris	98.56	
	FH	254541	13.12.35	K. Emais Singho	79.02	
	FH	254542	14.12.35	P. Peter Fernando	250 00	
	FH	254543	16.12.35	K. L. Perera & Co.	233.00	
	FH	254544	17.12.35	Billimoria & de Silva	547.50	
	FH	254545	17.12.35	P. Peter Fernando	500.00	
					3 0.8 2	

Exhibits	FH	254547	20.12.35	K. L. Perera & Co.	233.00
D 34.					
Statement of	FH	254548	21.12.35	Supervisor's salary	30.00
Cheques					
issued by the	FH	254549	21.12.35	P. Peter Fernando	250.00
Defendant					
—continued					
	FH	254550	22.12.35	P. A. Don Aronolis	76.40
	FH	436152	3. 1.36	Chettinad Corpn. Ltd. (boundary wall)	365.78
	FH	436153	3. 1.36	P. Peter Fernando	300.00
	FH	436154	4. 1.36	- do -	433.93
	FH	436155	7. 1.36	K. L. Perera & Co.	179.00
	FH	436156	9. 1.36	A. M. Youssouff	302.90
	FH	436164	11. 1.36	M. I. Mohamed	803.00 10
	FH	436165	14. 1.36	F. J. Hills & Co. (lamps)	155.00
	FH	436166	14. 1.36	Allanson & Co. (lamps)	100.00
	FH	436167	15. 1.39	Allanson & Co. (lamps)	100.00
	FH	436168	16. 1.36	Garden labourer	17.50
	FH	436169	17. 1.36	Burma Teak Trading Co.	142.16
	FH	436170	17. 1.36	E. B. Creasy & Co. Ltd.	338.75
	FH	436172	17. 1.36	M. I. Mohamed	15.25
	FH	436173	17. 1.36	Chettinad Corporation Ltd.	103.00
	FH	436174	17. 1.36	P. Peter Fernando	350.00
	FH	436175	24. 1.36	P. Peter Fernando	350.00 20
	FH	436176	24. 1.36	Walkers Ltd. (lamps)	36.00
	FH	436178	24. 1.36	Walker & Greig (lamps)	58.50
	FH	436179	27. 1.36	A. M. Youssouff	375.65
	FH	436180	27. 1.36	Jinasena & Co.	216.22
					5,282.04

	FH	436181	27. 1.36	Allanson & Co.(electricity)	300.00	Exhibit D 34.
	FH	436182	29. 1.36	Dept. of Electrical Undertakings	168.00	Statement of Cheques issued by the Defendant
	FH	436183	31. 1.36	Lee Hedges & Co.	366.05	—continued
	FH	436184	1. 2.36	P. Peter Fernando	350.00	
	FH	436186	3. 2.36	Allanson & Co. (wiring)	300.00	
	FH	436187	4. 2.36	S. Marshal Perera	170.00	
	FH	436188	7. 2.36	Gas Company	30.00	
	FH	436189	7. 2.36	Burma Teak Trading Co.	33.00	
	FH	436190	7. 2.36	Municipal Treasurer	98.00	
10	FH	436191	8. 2.36	Allanson & Co.	200.00	
	FH	436192	8. 2.36	M. I. Mohamed	500.00	
	FH	436193	10. 2.36	P. A. Don Aronolis (gates)	50.00	
	FH	436194	11. 2.36	P & O Bank (bath fittings U.S.A.)	2720.28	
	FH	436196	13. 2.36	U. Thomas	68.00	
	FH	436197	14. 2.36	Allanson & Co.	300.00	
	FH	436198	14. 2.36	P. Peter Fernando	300.00	
	FH	436199	17. 2.36	Edwin's & Gardiner's salary	47.50	
	FH	436200	17. 2.36	P. K. Perera	26.00	
	FH	469201	18. 2.36	D. Robias Appu	87.50	
20	FH	469202	20. 2.36	Allanson & Co. (lamps)	100.00	
	FH	469203	21. 2.36	A. Meerasi Lebbe	38.50	
	FH	469204	21. 2.36	Carpenter	100.00	
	FH	469205	22. 2.36	Fernando's labourers by Mr. de Silva	200.00	
	FH	469206	5. 3.36	M. I. Mohamed	400.00	
					6,157.83	

Exhibits	FH	469207	13. 3.36	P. A. Don Aronolis (gates)	100.00
D 34.					
Statement of	FH	469208	13. 3.36	Labourer's pay	107.80
Cheques					
issued by the	FH	469209	14. 3.36	Allanson & Co.	166.59
Defendant					
—continued					
	FH	469210	15. 3.36	P. K. Perera	16.00
	FH	469211	17. 3.36	A. L. M. Abdul Latiff	120.44
	FH	469212	17. 3.36	A. M. Youssoff	92.50
	FH	469213	18. 3. 6	Edwin's & Gardiner's and road-maker's pay	77.50
	FH	469214	18. 3.36	Municipal Treasurer (water)	54.83
	FH	469215	19. 3.36	Allanson & Co.	92.00
	FH	469216	19. 3.36	Labourers' pay Rs. 100, lamps Rs. 51	151.00 10
	FH	469217	19. 3.36	P. Pedris Pulle	50.00
	FH	469218	20. 3.36	U. Thomas	43.50
	FH	469219	20. 3.36	William on Fernando's a/c	25.00
	FH	469220	21. 3.36	Colombo Commercial Co.	16.85
	FH	469221	21. 3.36	Fenton's (lamps)	41.25
	FH	469222	21. 3.36	Brown's (lamps)	196.60
	FH	469223	21. 3.36	E. B. Creasy	13.05
	FH	469224	21. 3.36	Allanson & Co.	75.00
	FH	469225	21. 3.36	Standard Electric Co. (lamps)	132.66
	FH	469226	21. 3.36	William Pedris & Co.	15.28 20
	FH	469227	21. 3.36	Labourers' pay	150.00
	FH	469228	21. 3.36	M. J. Perera	15.00
	FH	469229	21. 3.36	T. M. Fernando (carpenter)	40.00
	FH	469230	24. 3.36	Allanson & Co.	50.00

1844.35

	FH	469231	24. 3.36	A. Meera Saibo	13.50	Exhibits
	FH	469232	25. 3.36	Siemen Schuckertwerke (fans)	1184.10	D 34 Statement of Cheques issued by the Defendant
	FH	469233	25. 3.36	Martinus C. Perera	340.43	—continued
	FH	469234	25. 3.36	Browns (lightening conductors)	252.80	
	FH	469235	25. 3.36	Burma Teak Trading Co.	662.05	
	FH	469236	28. 3.36	T. M. Fernando (including Rs. 10/- cash)	70.00	
	FH	469237	28. 3.36	H. M. Fonseka	20.00	
	FH	469238	28. 3.36	Labourers' pay	125.00	
	FH	469239	28. 3.36	Roadmaker	42.00	
10	FH	469240	28. 3.36	Allanson & Co.	75.00	
	FH	469241	31. 3.36	Labourers' pay	100.00	
	FH	469242	2. 4.36	W. A. Beer (mirror)	30.00	
	FH	469243	4. 4.36	Labourers' pay	150.00	
	FH	469244	4. 4.36	H. M. Fonseka (window sills)	25.00	
	FH	469245	4. 4.36	T. M. Fernando	70.00	
	FH	469246	8. 4.36	V. A. Don Aronolis	50.00	
	FH	469247	9. 4.36	Labourers' pay	250.00	
	FH	469248	10. 4.36	Allanson & Co.	20.05	
	FH	469249	11. 4.36	William Pedris & Co.	28.30	
20	FH	469250	11. 4.36	A. L. M. Abdul Latiff	66.30	
	FH	846351	11. 4.36	P. V. Fernando (incl. Rs. 5/- cash)	60.00	
	FH	846352	11. 4.36	H. M. Fonseka (incl. Rs. 5/- cash)	45.00	
	FH	846353	11. 4.36	T. M. Fernando, and	85.10	
				Cash	15.00	
					3,707.63	

Exhibits					
	FH	846354	14. 4.36	Roadmaker	34.36
D 34					
Statement of	FH	846355	18. 4.36	Labourers' pay	200.00
Cheques					
issued by the	FH	846356	18. 4.36	H. M. Fonseka	25.00
Defendant					
—continued					
	FH	846357	18. 4.36	T. M. Fernando	30.00
	FH	846358	18. 4.36	Allanson & Co.	200.00
	FH	846360	23. 4.36	Burma Teak Trading Co.	366.40
	FH	846361	23. 4.36	Colombo Commercial Company	34.10
	FH	846362	23. 4.36	Lee Hedges & Co.	282.90
	FH	846363	23. 4.36	W. Monis Fernando	21.32
	FH	846364	23. 4.36	Labourers' pay	200.00 10
	FH	846365	26. 4.36	T. M. Fernando (incl. Rs. 20/- cash)	70.00
	FH	846366	27. 4.36	H. M. Fonseka (incl. Rs. 20/- cash)	40.00
	FH	846367	29. 4.36	P. K. Perera	68.50
	FH	846368	30. 4.36	W. Monis Fernando	27.15
	FH	846369	2. 5.36	Labourers' pay	200.00
	FH	846370	4. 5.36	T. M. Fernando	50.00
	FH	846371	5. 5.36	Municipal Treasurer	52.13
	FH	846372	5. 5.36	Hoare & Co. (tiles)	1000.00
	FH	846373	6. 5.36	P. A. Don Aronolis	62.50
	FH	846374	9. 5.36	Labourers' pay	200.00 20
	FH	846375	16. 5.36	— do —	75.00
	FH	846376	16. 5.36	M. I. M. Kahid Bros.	37.95
	FH	846379	18. 5.36	P. K. Perera	24.50
	FH	846380	19. 5.36	A. L. M. Abdul Latiff	51.84
					3353.65



	FH	846381	21. 5.36	Plate Ltd.	24.00	Exhibits
	FH	846383	21. 5.36	Lee Hedges	12.55	D 34 Statement of Cheques
	FH	846384	23. 5.36	William Pedris & Co.	51.42	issued by the Defendant —continued
	FH	846385	23. 5.36	Burma Teak Trading Co.	309.97	
	FH	846386	23. 5.36	Brown & Co.	924.56	
	FH	846387	23. 5.36	Hoare & Co.	791.53	
	FH	846388	23. 5.36	Labourers' pay	100.00	
	FH	846389	26. 3.36	Municipal Treasurer	60.00	
	FH	846390	28. 5.36	Fradd's Tile Works	3163.50	
10	FH	846392	30. 5.36	Labourers' pay	125.00	
	FH	846393	4. 6.36	P. K. Perera	18.00	
	FH	846394	6. 6.36	Labourers' pay	125.00	
	FH	846396	13. 6.36	- do -	125.00	
	FH	846397	13. 6.36	E. B. Creasy & o. Ltd.	107.70	
	FH	846398	13. 6.36	Walker & Greig	60.50	
	FH	846400	15. 6.36	Jinasena & Co. (staircase grills)	511.08	
	FH	877651	19. 6.36	Hunter & Co.	226.84	
	FH	877652	22. 6.36	Labourers' pay	92.26	
	FH	877653	24. 6.36	Colombo Commercial Co.	33.90	
20	FH	877654	24. 6.36	Fentons Ltd. (lamps)	19.50	
	FH	877655	5. 7.36	Allanson & Co.	26.00	
	FH	877657	7. 7.36	M. I. Mohamed (drainage)	862.50	
	FH	877659	14. 7.36	Plate Ltd.	16.00	
	FH	877660	14. 7.36	E. B. Creasy	19.20	
					78 05.01	

Exhibits	FH 877661	17. 7.36	Martinus C. Perera	174.93
D 34				
Statement of Cheques issued by the Defendant <i>—continued</i>	FH 877663	30. 7.36	Municipal Treasurer	50.00
	FH 877664	6. 8.36	Chettinad Corporation Ltd.	483.94
	FH 877665	6. 8.36	Colombo Tile Works	2940.59
	FH 877666	6. 8.36	Billimoria & de Silva	547.50
	FH 877667	6. 8.36	Hunter & Co.	48.90
	FH 877669	6. 8.36	Lee Hedges & Co. Ltd.	531.33
	FH 877670	15. 8.36	E. B. Creasy & Co. Ltd.	153.75
	FH 877671	15. 8.36	Municipal Treasurer	33.85
				4,964.79

56,538.33 ← 5

15,794.71  
 6,830.82  
 5,282.04  
 6,952.83  
 7,844.85  
 3,704.63  
 3,353.65  
 7,805.01  
 4,964.79  


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 56,538.33  
 1.2. 4,038.43.14

Supreme Court of Ceylon  
No. 572 (Final) of 1949.

District Court, Colombo  
No. 2680

*In Her Majesty's Privy Council on an Appeal from  
The Supreme Court of Ceylon*

~~BETWEEN~~

BETWEEN

LLEWELLYN PERERA ABEYAWARDENE (Plaintiff) - *Appellant*  
(Substituted in the place of Danister Perera Abeyawardene and  
Geoffrey Perera Abeyawardene both since deceased.

AND

MRS. CARMEN SYLVENE WEST (*nee* PEREIRA)  
of Anandagiri, Green Path,  
Colombo.....*Defendant—Respondent.*

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## RECORD OF PROCEEDINGS

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