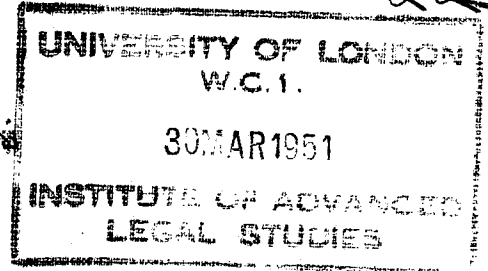


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16, 1950

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No. 1001



Supreme Court of Ceylon  
No. 445/1946.

District Court, Colombo  
No. 12109.

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

BETWEEN

1. CHANDRASEKERA HERAT MUDIYANSELAGE  
RAN MENIKA WIJEYWARDENE TENNEKON  
WALAUWA MAHATMEE,
2. DON HENRY WIJEYWARDENE TENNEKON  
BANDARA MAHATMAYA, both of Ratnapura.....*Plaintiffs-*  
*Respondents.*

AND

M. R. M. M. N. NADARAJAN CHETTIAR of 178, Sea  
Street in Colombo ..... *Defendant-Appellant.*

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RECORD  
OF PROCEEDINGS

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No.....

Supreme Court of Ceylon  
No. 445/1946.

District Court, Colombo  
No. 12109.

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

BETWEEN

1. CHANDRASEKERA HERAT MUDIYANSELAGE  
RAN MENIKA WIJEYWARDENE TENNEKOON  
WALAUWA MAHATMEE,
2. DON HENRY WIJEYWARDENE TENNEKOON  
BANDARA MAHATMAYA, both of Ratnapura.....*Plaintiffs-  
Respondents.*

AND

M. R. M. M. N. NADARAJAN CHETTIAR of 170, Sea  
Street, in Colombo.....*Defendant-Appellant.*

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RECORD OF PROCEEDINGS

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PART I.

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## PART I.

No. 1.

No. 1  
Journal  
Entries  
1-7-40  
to 1-8-48

## Journal Entries

IN THE DISTRICT COURT OF COLOMBO.

C. H. M. R. M. W. TENNEKOON WALAUWA MAHATMEE  
AND ANOTHER.....*Plaintiffs.*

No. 12109.

Amount : Rs. 37,226.80.

Nature : Money. *versus*

10 Procedure : Regular.

M. R. M. M. M. N. NADARAJAN CHETTIAR.....*Defendant.*

## JOURNAL

The 1st day of July, 1940.

Mr. T. F. Paulickpulle files appointment and plaint marked.  
Plaint accepted and summons ordered for 19-8-40.Initialed : R. F. D.,  
*District Judge.*4-7-40. Summons issued on defendant.  
Mr. T. F. Paulickpulle for plaintiff.20 19-8-40 Summons served on defendant.  
Personal.  
Proxy filed.  
Answer on 4-10.

Initialed : R. F. D.

4-10-40 Case called.  
Mr. S. Somasunderam for defendant.  
Answer filed.  
Trial 27 and 28-8-41.

Initialed : R. F. D.

30 28-2-41. Mr. S. Somasunderam files defendant's list of witnesses and  
documents.

8-3-41. Summons issued on 1 witness by defendant.

4-3-41. Mr. T. F. Paulickpulle files plaintiffs' list of documents.

No. 1  
Journal  
Entries  
1-7-40  
to 1-3-48  
—continued.

- 4-3-41. Mr. T. F. Paulickpulle files plaintiffs' list of witnesses.  
11-3-41. Summons issued on 8 witnesses by plaintiffs.  
19-3-41. The above case having been fixed for trial on the 27th and 28th March, 1941, and Mr. N. Nadarajah Counsel for the defendant being unable to appear on the 27-3-41 Mr. S. Somasunderam moves that the Court be pleased to commence the hearing on 28-3-41 instead of the 27th. Proctor for plaintiffs' consents. Yes, I can take up 17048/M first on 27-3.
- Initialled : R. F. D. 10
- 21-3-41. Summons issued on 3 witnesses by plaintiff.  
25-3-41. Proctor for defendant files defendant's additional list of witnesses.  
25-3-41. Summons issued on 1 witness by defendant.  
27-3-41. Case called.  
Mr. T. F. Paulickpulle for plaintiff.  
Mr. S. Somasunderam for defendant.  
Call case on 28-3-41.
- Initialled : R. F. D.,  
D. J. 20
- 28-3-41. Case called. Defendant's additional list of witnesses filed. *Vide* proceedings filed.  
Postponed for 16-7-41. Inform Proctors in 12500 that the case cannot be taken up on 16-7-41. Today's costs should be costs in the cause.
- Initialled : R. F. D.
- 19-6-41. Summons re-issued on 2 witnesses by defendant.  
Summons issued on 2 witnesses by defendant.  
1-7-41. Summons re-issued on 1 witness by plaintiffs.  
16-7-41. Case called. *Vide* post card from Secretary D. C. Ratnapura. <sup>30</sup>  
*Vide* proceedings filed.  
C. A. V. Call on 4-8-41 to see if judgment is ready.
- Initialled : R. F. D.
- 4-8-41. Case called.  
Judgment delivered and filed. Call this case after the appealable time has expired on 12-9-41 to fix the further trial date.
- Initialled : R. F. D.,  
D. J.
- 9-8-41. Proctor for defendant-appellant files petition of appeal against the judgment of this Court dated 4-8-41 and tenders <sup>40</sup> stamps to the value of Rs. 21 for certificate in appeal and Rs. 42 for the Supreme Court Judgment.

- 11-8-41. Petition of appeal of the defendant having been accepted, No. 1  
 Proctor for defendant moves to tender on 14-8-41 security Journal  
 for the costs of appeal in the sum of Rs. 250. Entries  
 He also moves to deposit a further sum to cover the expenses 1-7-40  
 of serving the notice of appeal. to 1-3-48  
 Proctor for plaintiffs' consent. —continued  
 Accept security.
- 11-8-41. Paying in voucher for Rs. 250 issued.
- 14-8-41. Security bond with Kachcheri receipt for Rs. 250 tendered
- 10 notice of appeal tendered served.
- 12-9-41. Case called.  
*Vide* order.  
 Appeal filed. No order.
- Initialled : R. F. D.
- 29-10-41. Notice of appeal served on the Proctor for respondent.  
 Appellant paid his fees in full for typewritten copies and  
 have not removed the copy.
- 8-7-42. Record returned from the Supreme Court.  
 Order of this Court dated 4-8-41 is affirmed and the appeal  
 is dismissed with costs.  
 20 *Vide* last sentence in D. C. Judgment.  
 Call case on 10-7.
- Initialled : R. F. D.
- 10-7-42. Case called.  
*Vide* (8-7-42).  
 Call case 17-7-42 to fix trial date.
- Initialled : R. F. D.
- 17-7-42. Case called.  
*Vide* entry above.  
 30 Trial on 3-11.  
 It is understood that the case will go on from day to day till  
 finished.
- Initialled : R. F. D.
- 23-10-42. Summons issued on 2 witnesses by plaintiff.
- 27-10-42. Summons issued on 3 witnesses by defendant.
- 3-11-42. Case called.  
 Mr. T. F. Paulickpiulle for plaintiff.  
 Mr. S. Somasunderam for defendant.  
 Adv. Mr. R. L. Pereira, K.C., with Adv. Mr. Obeysekera and  
 Adv. Mr. Vangeyzel for plaintiff.  
 40 Adv. Mr. Nadarajah, K.C., with Adv. Mr. Chelvanayagam for  
 defendant.  
 Refix 8-3-43 and 9th, 10th, 11th and 12th March.
- Initialled : R. F. D.



No. 1 Journal Entries 1-7-40 to 1-3-48 —continued.	18-2-43.	Summons issued on 1 witness for defendant.		
	24-2-43.	Summons issued on 3 witnesses by plaintiff.		
	27-2-43.	Summons issued on 1 witness by plaintiff.		
	2-3-43.	Summons issued on 1 witness by defendant.		
	8-3-43.	Case called. Mr. T. F. Paulickpulle for plaintiff. Mr. S. Somasunderam for defendant. Postponed for tomorrow.	Initialled : R. F. D., D. J.	10
	9-3-43.	Case called. <i>Vide</i> proceedings filed. Case postponed for tomorrow.	Initialled : R. F. D., D. J.	
	10-3-43.	Case called. <i>Vide</i> proceedings filed. Case postponed for tomorrow.	Initialled : R. F. D., D. J.	
	11-3-43.	Case called. <i>Vide</i> proceedings filed. C. A. V.	Initialled : R. F. D., D. J.	20
	11-3-43.	Proctor for plaintiff files list of documents tendered by the plaintiff marked P 1 to P 19. . File—check stamp duty.	Initialled : R. F. D.	
	11-3-43.	Proctor for defendant files list of documents tendered by the defendant marked D 1 to D 3. File—check stamp duty.		
7-4-43.	Inform Proctors that judgment will be delivered on 9-4-43.	Initialled : R. F. D.		
9-4-43.	Case called. Judgment delivered and filed. I direct that an accounting between the parties be held on the lines indicated in this judgment. The question of costs will be dealt with when final decree is entered. Call case on 20-4-43.	Sgd. : R. F. DIAS.	40	

- 16-4-43. Proctor for defendant files petition of appeal against the judgment of this Court dated the 9th April, 1943, and tenders stamps to the value of Rs. 63 for S. C. judgment and certificate in appeal. No. 1  
Journal  
Entries  
1-7-40  
to 1-3-48  
—continued.  
Accept.
- 16-4-43. Petition of appeal by the defendant having been received by the Court, Proctor for defendant moves to tender security on the 21st April, 1943—the sum of Rs. 250 by depositing to the credit of the case and hypothecating the same as security for costs which may be incurred by the plaintiffs in appeal. He shall also tender on the said date sufficient stamps for serving notice of appeal on the plaintiffs and a sufficient sum of money to cover the expenses of type-written briefs.  
10  
Proctors for plaintiffs received notice. Call 21-4.
- 20-4-43. Case called.  
Mr. T. F. Paulickpulle for plaintiff.  
Mr. S. Somasunderam for defendant.  
*Vide* (9-4-43).  
20  
An accounting.  
Call case tomorrow.  
Initialled : R. F. D.
- 21-4-43. Case called.  
*Vide* (16-4-43 and 20-4-43).  
*Vide* proceedings and order filed.  
I think the case should be postponed until the Supreme Court finally decides the manner in which the accounting should take place.  
I allow defendant's application to stay proceedings but I  
80  
direct each side to bear its costs of today.  
Security.  
*Vide* motion (16-4-43).  
I am informed that Rs. 250 is the correct amount. Accept.  
Initialled : W. S.  
28-4.
- 21-4-43. Security bond with Kachcheri receipt for Rs. 250 and notice of appeal tendered.  
Accept security bond.  
Affix Kachcheri receipt.  
40  
Issue notice of appeal for 25-6-43.  
Initialled : W. S.  
D. J.
- 28-4-43. Notice of appeal issued returnable 25-6-43.  
25-6-43. No return to notice of appeal.  
Await and re-issue if necessary for 23-7.  
Initialled : R. F. D.

- No. 1  
Journal  
Entries  
1-7-40  
to 1-3-48  
—continued.
- 23-7-43. No return to notice of appeal.  
Call for it for 30-7. Initialled : R. F. D.
- 30-7-43. No return to notice of appeal.  
Office to call for it for 27-8. Initialled : R. F. D.
- 26-8-43. *Vide* letter from Fiscal, C. P., filed.
- 27-8-43. *Vide* (26-8-43) Fiscal states that no report was received.  
Proctors for appellant to supply copy of notice of appeal  
for service and copy of petition of appeal for 10-9. 10  
Initialled : R. F. D.
- 10-9-43. Notice of appeal served on Proctors for plaintiff.  
Forward record to Supreme Court. Initialled : R. F. D.
- 4-10-43. Application for two typewritten copies of the record by  
Proctor for appellant. Voucher for Rs. 50 already issued  
and Kachcheri receipt for Rs. 50 filed.
- 4-10-43. Application for typewritten copy of the record by Proctor  
for respondent. Voucher for Rs. 25 already issued and  
Kachcheri receipt for Rs. 25 filed. 20
- 4-10-43. *Vide* memo. from the appeal branch stating that additional  
fees are due in respect of the typewritten copies as follows :  
Proctor for appellant ... Rs. 175.00  
Proctor for respondent ... Rs. 87.50  
Call for item. Initialled : R. F. D.
- Call for paying-in voucher for Rs. 175 and Rs. 87.50.  
Kachcheri receipt for Rs. 175 tendered by Mr. S. Somasunderam  
Kachcheri receipt filed for Rs. 87.50 tendered by Mr. T.  
Paulickpulle. 30
- 8-2-44. Record forwarded to the Supreme Court with two sets of briefs  
for Judges and Supreme Court judgment bearing cancelled  
stamps to the value of Rs. 42.
- 4-8-44. Record received from the Supreme Court with Supreme Court  
Order in appeal. The decree of this Court is affirmed and  
the appeal is dismissed. It is further ordered that the  
defendant-appellant do pay to the plaintiff-respondents their  
taxed costs of the appeal.
- 11-10-44. As the defendant's appeal has been dismissed, Proctor for  
plaintiffs moves to fix a date for the further hearing of this 40  
action. Proctor for defendant received notice.  
Call on 20-10 with notice to the parties. Initialled : R. F. D.
- 20-10-44. Mr. T. F. Paulickpulle for plaintiff.  
Mr. S. Somasunderam for defendant.  
Case called. *Vide* (11-10-44).  
Trial 16-5.

- 28-11-44. The Commissioner of Income Tax—*vide* his No. Q. 33/395 of 23-11-44 calls for the record to verify certain information and to return same within two weeks.  
Send and open sub-file and bring up 13-12.
- No. 1  
Journal  
Entries  
1-7-40  
to 1-3-48  
—*continued.*
- Initialled : R. F. D.
- 16-5-45. Case called.  
*Vide* proceedings (16-5-45) filed.  
Defendant undertakes to file a statement setting out the amounts due in accordance with the judgment of the Supreme Court on 22-6. On this statement being filed, within two weeks of that plaintiff will file a statement showing any items challenged.
- Initialled : W. S.  
D. J.
- 22-6-45. Mr. T. F. Paulickpulle for plaintiff.  
Mr. S. Somasunderam for defendant.  
Statement of amounts due—*Vide* 16-5-45.  
Stand out 29-6.
- 29-6-45. Mr. S. Somasunderam for defendant.  
Statement of amounts due—*Vide* 16-5-45 and 22-6-45.  
Filed.  
Called 13-7.
- Initialled : W. S.  
D. J.
- 13-7-45 Mr. T. F. Paulickpulle for plaintiff.  
Mr. S. Somasunderam for defendant.  
Case called. *Vide* 16-5-45 and 29-6-45.  
Statement of accounts filed.  
Inquiry 12-9.
- Initialled : W. S.
- 5-9-45. As counsel for defendant is unable to appear on 12-9-45 owing to his having to appear in an outstation Court, the defendant's agent moves that Court be pleased to refix the inquiry for another date suitable to Court.  
Proctor for plaintiff consents.  
Inquiry refixed for 6-12.
- Initialled : R. F. D.
- 6-12-45. Inquiry.  
Mr. T. F. Paulickpulle for plaintiff.  
Mr. S. Somasunderam for defendant.  
*Vide* proceedings (6-12-45) filed.  
Objections on 25-1-46.
- 25-1-46. Mr. T. F. Paulickpulle for plaintiff.  
Mr. S. Somasunderam for defendant.  
Objections filed.  
Inquiry 20-3.
- 26-1-46. Deficiency Rs. 13.20 called for from T. F. Paulickpulle, Proctor, by 15-2.

No. 1  
Journal  
Entries  
1-7-40  
to 1-3-48  
—continued.

- 7-2-46. Stamps for Rs. 13.20 tendered and affixed to journal and cancelled.
- 18-3-46. With the consent of Proctor for plaintiff the 1st and 2nd plaintiffs move to revoke the proxy granted to him.  
File.  
Initialled : W. S.  
D. J.
- 18-3-46. Proctor E. S. R. Coomarasamy files his appointment as Proctor for plaintiff together with the revocation of Proxy granted by plaintiffs to Mr. T. F. Paulickpulle the original Proctor for plaintiff in this case and moves that same be filed of record.  
File.  
Initialled : W. S.  
D. J.
- 20-3-46. Inquiry.  
Case called.  
Mr. Wikramanayake for plaintiffs.  
Mr. Chelvanayagam for defendant.  
C. A. V. 20
- 21-3-46. Notice parties that judgment will be delivered on 25-3-46:  
Initialled : W. S.  
D. J.
- 25-3-46. Judgment delivered in open Court.  
I accept the statements A and B tendered by the plaintiff as correct by showing what is due to the plaintiffs. As the question of costs was reserved to be dealt with at this stage I make order that the plaintiffs who were successful at every stage of this action are entitled to the costs of this action of this inquiry. The plaintiffs will also be entitled to legal interest from date of decree till payment in full.  
Initialled : W. S.  
D. J.
- 26-3-46. Proctor for defendant-appellant files petition of appeal against the order of Court dated 25-3-46 and tenders stamps to the value of Rs. 21 to the certificate in appeal and Rs. 42 to the Supreme Court judgment. Stamps affixed to the blank forms and cancelled.  
Accept.  
Initialled : W. S. 40  
D. J.
- 26-3-46. Petition of appeal having been received Proctor for defendant moves to tender security on 5-4-46 in the sum of Rs. 250 by depositing the same to the credit of this case and hypothecating the same as security for any costs which may be incurred by the plaintiffs in appeal. He will also tender on

the said date sufficient stamps for serving notice of the appeal on the plaintiffs and a sufficient sum of money to cover the expenses of typewritten briefs.

No. 1  
Journal  
Entries  
1-7-40  
to 1-3-48  
—continued.

Proctor for plaintiff received notice.

1. Stamp notice,
2. Issue paying-in voucher,
3. Call on 5-4.

1. Stamps Rs. 6.60 supplied and affixed to notice and cancelled.
- 10 26-3-46. Proctor for appellant files application for typewritten copies and moves for a paying-in voucher for Rs. 50.
- 26-3-46. Paying-in voucher for Rs. 250 issued.  
Paying-in voucher for Rs. 50 issued.  
Decree entered.
- 5-4-46. Case called *vide* (26-3-46) security.  
Mr. E. R. S. R. Coomarasamy for plaintiff.  
Mr. S. Somasunderam for defendant.  
Security accepted.
- 20 5-4-46. Mr. S. Somasunderam, Proctor, for defendant-appellant files bond and Kachcheri receipt for Rs. 50 and Kachcheri receipt for Rs. 250 together with notice of appeal duly stamped.
1. File.
  2. Issue notice for 31-5.
- 8-4-46. Notice of appeal issued.
- 17-5-46. Proctor for respondents tenders application for typewritten copies and moves for a paying-in voucher for Rs. 25.  
Issue.
- Initialed: W. S.  
D. J.
- 30 Paying-in voucher for Rs. 25 issued.
- 31-5-46. Notice of appeal served.  
Forward record to Supreme Court.
- Initialed: W. S.  
D. J.
- 17-10-46. Record forwarded to Supreme Court.
- 20-11-46. Two typewritten copies posted to Mr. S. Somasunderam, Proctor.
- 25-11-46. Two typewritten copies handed over to Proctor for respondent.
- 40 1-3-48. The Registrar, Supreme Court, returns record with Supreme Court Decree.  
Appeal dismissed with costs.

Plaint of the Plaintiffs.

IN THE DISTRICT COURT OF COLOMBO.

1. CHANDRASEKERE HERAT MUDIYANSELAGE  
 RAN MENIKA WIJEYWARDENE TENNEKOON  
 WALAUWE MAHATMEE, and
2. DON HENRY WIJEYWARDENE TENNEKOON  
 BANDARA MAHATMAYA, both of Ratnapura..... *Plaintiffs.*

No. 12109.

*vs.*

M. R. M. M. M. N. NADARAJAN CHETTIAR of No. 178, 10  
 Sea Street, Colombo ..... *Defendant.*

On this 1st day of July, 1940.

The plaintiff of the plaintiffs abovenamed appearing by T. F. Paulickpulle their Proctor states as follows :—

1. The 1st plaintiff is the wife of the 2nd plaintiff.
2. The defendant resides and carries on the business of a money lender at premises No. 178, Sea Street, Colombo, within the local limits of the jurisdiction of this Court and the cause of action hereinafter set out arose at Colombo aforesaid.
3. In July, 1936, the plaintiffs being indebted to sundry creditors<sup>20</sup> and judgment-creditors executed in the defendant's favour Mortgage Bond No. 1624 dated July 11, 1936, attested by A. M. Fuard, Notary Public, whereby the plaintiffs undertook and bound themselves to pay to the defendant the sum of Rs. 46,000 with interest thereon at the rate of 12% per annum.
4. As collateral security for the repayment of the said sum the plaintiffs at the request of the defendant by deed of lease No. 1625 dated July 11, 1936, and attested by the said A. M. Fuard, Notary Public, purported to lease to the defendant the Estate and premises described in the Schedule to the said deed for a period of 33 months commencing from 1st August,<sup>30</sup> 1936, and the plaintiffs gave the defendant the right to receive from the Rubber Controller all coupons to be issued in respect of the said estate and premises for the said period of 33 months. On the said date an agreement was entered into between the plaintiffs and the defendant whereby it was provided (*inter alia*) that the defendant should sell the said coupons at the ruling market price within two months from the date of issue of the coupons and after paying the usual brokerage and other charges out of the net proceeds should pay himself a commission of 6 cents on every pound of Rubber Coupons so sold and credit to the account of

the plaintiffs the balance proceeds towards the liquidation of the moneys due in respect of the said Bond No. 1624.

5. In February, 1938, the plaintiffs were in acute financial distress (particularly with reference to the repayment of a sum of Rs. 19,000 claimed as being due to him under a Mortgage Bond No. 423 dated 24th July, 1936, attested by B. Jas. St. V. Perera, Notary Public, by one Joseph Nazareth Gomes) and were obliged to procure from the defendant the loan of a further sum of money.

6. The defendant agreed to give the said loan to the plaintiffs if the plaintiffs executed in the defendant's favour a Mortgage Bond whereby the premises hereinafter referred to were mortgaged and gave as collateral security for the repayment of the sum specified in the said bond a lease of the premises to be mortgaged for a period of 5 years and gave the defendant the right to receive all coupons in respect of the said premises on terms similar to those referred to in paragraph 4 hereof.

7. The plaintiffs were compelled to agree to the said terms and the plaintiffs at the request of the defendant executed in the defendant's favour a mortgage bond No. 4664 dated 19th February, 1938, attested by S. Somiasunderam, Notary Public, for a sum of Rs. 52,000 mortgaging the plaintiffs' rubber properties ; and (a deed of lease dated 19th February, 1938, whereby) as a collateral security for the repayment of the said sum the plaintiffs by deed of lease No. 4666 dated 19th February, 1938, purported to lease to the defendant the estates and premises described in the schedule to the said bond for a period of 5 years commencing from 19th February, 1938, and the plaintiffs gave the defendant the right to receive from the Rubber Controller all coupons to be issued in respect of the said estates and premises for the said period of 5 years. On the said date an agreement was entered into between the plaintiffs and the defendant whereby it was provided, *inter alia*, that the defendant should sell the said coupons at the ruling market price within two months from the respective dates of the issue of the coupons from time to time through any of the following firms of brokers, namely, Messrs. Somerville & Co., Messrs. Keell & Waldock, Messrs. E. John & Co., and Messrs. Bartleet & Co., at the risk of the plaintiffs and after paying the usual brokerage and other charges out of the proceeds of such sales should pay himself a sum of 6 cents on every pound of rubber coupons sold and that the defendant should credit the plaintiffs with the balance amount towards the liquidation of the moneys due under the said Bond No. 4664.

8. In arriving at the said sum of Rs. 52,000 the defendant included :

40 (a) a sum of Rs. 1,000 deducted as " deposit interest " referred to in the said instrument ;

(b) a sum of Rs. 9,158.65 retained for payment to the Ceylon State Mortgage Bank as provided in the said instrument ;

(c) a sum of Rs. 7,002.47 deducted as balance amount due by the plaintiffs to the defendant on the Bond No. 1624 dated 11th July, 1936, attested by A. M. Fuard, Notary Public.



No. 2  
Plaint  
of the  
Plaintiffs  
1-7-40  
—continued.

(d) Rs. 19,000 retained by the defendant at the request of the plaintiffs to be paid for the discharge of Bond No. 423 dated 24th July, 1936, attested by B. Jas. St. V. Perera, Notary Public, and the balance sum of Rs. 15,838.88 was paid to the plaintiffs.

9. The said sum of Rs. 9,158.65 was payable to the said State Mortgage Bank in six instalments of—

Rs. 1,586.54	payable on	18th June, 1938	
„ 1,562.49	„	18th Dec., 1938	
„ 1,538.47	„	18th June, 1939	10
„ 1,514.42	„	18th Dec., 1939	
„ 1,490.39	„	18th June, 1940	
„ 1,466.34	„	18th Dec., 1940	

Rs. 9,158.65

The defendant paid four instalments amounting to Rs. 6,201.92 and did not pay the balance two instalments of Rs. 1,490.39 and Rs. 1,466.34 due on 18th June, 1940, and 18th December, 1940, respectively.

10. (a) At the date of the execution of the said Bond No. 4,664 the capital and interest due to the defendant under the said Bond No. 1624 from its execution up to the 19th February, 1938, amounted to Rs. 51,044.42<sup>20</sup> and the defendant had paid himself the sum of Rs. 55,113.65 being the net proceeds received by the sale of the said coupons which include the sum of Rs. 11,993.34 claimed as commission as aforesaid, the sum of Rs. 5,044.42 as interest at 12 per cent. per annum and there was no balance sum due to the defendant on the said Bond No. 1624.

(b) The sum of Rs. 4,069.23, the difference between the said two sums, is money belonging to the plaintiffs and the said sum due to the defendant and the defendant has wrongfully retained the said sum.

11. The defendant being in a position to dominate the plaintiffs wrongfully retained the said sum of Rs. 7,002.47 (referred to in paras. 8 (c), 30 for the purpose of discharging the Bond No. 1624.

12. In or about the month of February, 1940, the plaintiffs negotiated with a third party for a loan of Rs. 60,000 to be secured by a mortgage of one of the estates and allotments of land covered by the said Mortgage Bond No. 4664 in order to pay off the defendant.

13. The defendant wrongfully claimed that a sum of Rs. 28,202.35 was due to him on the said Bond No. 4664 and refused to discharge the said Bonds Nos. 1624 and 4664 unless the said sum of Rs. 28,202.35 was paid to him.

14. (a) Under the said Bond No. 4664 the defendant has received<sup>40</sup> between the date of its execution, namely, 19th February, 1938, and the 22nd February, 1940, a sum of Rs. 55,100.41 the net proceeds received by the sale of 197,822 lbs. of rubber coupons which sum includes the sum of

Rs. 11,869.32 claimed as commission on the said 197,822 lbs. of coupons at 6 cents a pound and the sum of Rs. 5,104.89 as interest at 12 per cent. per annum.

No. 2  
Plaint  
of the  
Plaintiffs  
1-7-40

—continued.

(b) The total sum due to and recoverable by the defendant on the said date on the said sum of Rs. 52,000 with interest at 12 per cent. per annum as provided in the said bond for the aforesaid period amounted to Rs. 57,148.16.

(c) In order to obtain a discharge of the said bonds the plaintiffs had to comply with the said wrongful claim of the defendant.

10 (d) The said sum of Rs. 28,202.35 was obtained by the defendant through oppression exercised by the defendant or through an undue advantage taken by the defendant of the plaintiffs' situation.

15. (a) In the premises aforesaid the plaintiffs state that the transaction in respect of the said mortgage bonds Nos. 1624 and 4664 are harsh and unconscionable.

(b) The defendant was at all material times in a position to dominate the will of the plaintiffs and the defendant used the said position to obtain an unfair advantage over the plaintiffs at or about the said dates of 19th February, 1938, and 26th February, 1940, and the transactions  
20 in respect of the said Bonds Nos. 1624 and 4664 were induced by undue influence.

16. In the premises aforesaid the plaintiffs are entitled to a re-opening of the said transactions and an accounting as between the defendant and themselves of the amounts properly due to the defendant under the said bonds Nos. 1624 and 4664.

17. The plaintiffs state :

(a) that under the said bond No. 1624 the defendant has been paid in excess of the amount properly recoverable under the said bond the sum of Rs. 4,069.23 and the sum of Rs. 7,002.47 aggregating Rs. 11,071.70.

30 (b) that under the said bond No. 4664 the defendant has been paid in excess of the amount properly recoverable under the said Bond the sum of Rs. 26,154.60.

18. Alternatively a sum of Rs. 7,002.47 was not due or owing from the plaintiffs to the defendant on the said bond No. 1624 and the said sum of Rs. 7,002.47 was obtained by the defendant through oppression exercised through the defendant or through an unfair advantage taken by the defendant of the plaintiffs' situation and the defendant holds the said sum for the use of the plaintiffs and is liable to return the same to  
40 the plaintiffs.

Wherefore the plaintiffs pray :

(a) That the Court may be pleased to re-open the transaction between the plaintiffs and the defendant since 11th July, 1936, and take an account of the sums Rs.46,000 and Rs. 52,000 re-open the account if any between the plaintiffs and the defendant.

No. 2  
Plaint  
of the  
Plaintiffs  
1-7-40  
—continued.

(b) Order the defendant to pay to the plaintiffs the sums of—

Rs. 4,069.23	mentioned in para	10 (b)
„ 7,002.47	„	11
Rs. 26,154.60	„	17 (b)
<hr/>		
Rs. 37,226.30		

or the sum found by the Court after the taking of the said account to be due to the plaintiffs.

(c) Alternatively—

for judgment for the said sum of Rs. 7,002.47 ;

(d) For costs ;

10

(e) And for such other and further relief as this Court shall deem meet.

Sgd. T. F. PAULICKPULLE,  
*Proctor for Plaintiffs.*

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No. 3.

Answer of the Defendant.

No. 3  
Answer  
of the  
Defendant  
4-10-40

IN THE DISTRICT COURT OF COLOMBO

1. CHANDRASEKERA HERAT MUDIYANSELAGE  
RAN MENIKA WIJEYWARDENE TENNEKOON  
WALAUWE MAHATMEE, and 20
2. DON HENRY WIJEYWARDENA TENNEKOON  
BANDARA MAHATMAYA, both of Ratnapura.....*Plaintiffs.*

No. 12109 (M)

*vs.*

M. R. M. M. N. NADARAJAN CHETTIAR of 178,  
Sea Street in Colombo .....*Defendant.*

On this 4th day of October, 1940.

The answer of the defendant abovenamed appearing by Sabapathy Somasundaram his Proctor states as follows :—

1. The defendant admits the allegations contained in paragraph 1 of the plaint. 30

2. Answering to paragraph 2 of the plaint the defendant admits that he resides at No. 178, Sea Street, Colombo, within the jurisdiction of this Court.

3. Answering to paragraph 3 of the plaint the defendant states that he is not aware of the indebtedness of the plaintiffs, but admits that the plaintiffs granted Mortgage Bond No. 1624 dated 11th July, 1936, in his favour to secure a sum of Rs. 46,000.

No. 3  
Answer  
of the  
Defendant  
4-10-40  
—continued.

4. Answering to paragraph 4 of the plaint, the defendant states that plaintiffs granted Indenture of Lease No. 1625 of 11th July, 1936, and such of the terms of the said Indenture of Lease as are correctly set out in the said paragraphs are admitted.

5. The defendant states that he is not aware of the allegations contained in paragraph 5 of the plaint and puts the plaintiffs to the strict proof thereof.

6. Answering to paragraph 6 of the plaint the defendant states that plaintiffs requested him to lend moneys to them on their giving a mortgage and lease and persuaded him to accept the terms.

7. Answering paragraph 7 of the plaint the defendant denies that the plaintiffs were compelled to agree to the terms. Further answering the defendant admits the execution of Bond No. 4664 of 19th February, 1938, and Indenture of Lease No. 4666 of 19th February, 1938, and terms and conditions contained therein.

20 8. The defendant admits the allegations contained in paragraphs 8 and 9 of the plaint.

9. The defendant denies the allegations contained in paragraphs 10 (a) and (b) of the plaint.

10. The defendant denies the allegations contained in paragraph 11 of the plaint.

11. The defendant is not aware of the allegations contained in paragraph 12 of the plaint.

12. Answering to paragraph 13 of the plaint the defendant denies that he wrongfully claimed Rs. 28,202.35 or that he wrongfully refused to discharge the Bond referred to therein.

13. The defendant denies the allegations contained in paragraphs 14 (a), (b), (c) and (d) of the plaint.

14. The defendant denies the allegations contained in paragraph 15 (a) and (b) of the plaint.

15. The defendant denies the allegations contained in paragraphs 16, 17 (a) and (b) and 18 of the plaint.

16. Further answering the defendant states that the plaintiffs having made payments without any protest and/or with full knowledge of the facts cannot maintain this action.

40 17. The transactions contained in the Indentures of Lease and moneys paid or recovered under the arrangements therein contained cannot form the subject-matter of any relief under the provisions of Chapter 67 of the Legislative Enactments.

No. 3  
Answer  
of the  
Defendant  
4-10-40  
—continued.

18. The plaintiffs having paid the sums due to the defendant and having induced him to surrender his rights under the Indenture of Lease by such payments is now estopped in law from having the transactions re-opened.

19. The plaintiffs having secured moneys from the defendant and having secured the cancellation of the bond by payment without protest and the surrender of the lease, is now seeking to have a new contract favourable to him framed by this Court.

20. The defendant in giving the moneys was taking very grave risk of losing the entire sum. 10

21. The plaintiffs have instituted this action vexatiously to harass the defendant and obtain some pecuniary advantage.

Wherefore the defendant prays that plaintiffs' action be dismissed with costs and for such other and further relief as to this Court shall seem meet.

Sgd. S. SOMASUNDARAM,  
*Proctor for Defendant.*

No. 4  
Issues  
Framed  
28-3-41

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No. 4.

Issues Framed.

No. 12109

28-3-41. 20

Advocate R. L. PEREIRA, K.C., with Advocate J. E. M. OBEYE-SEKERA and Advocate VANGEYZEL for plaintiff.

Advocate NADARAJAH with Advocates CHELVANAYAGAM and EDUSSURIYA for the defendant.

Mr. Pereira in opening the case states that there is a clerical error in paragraph 14 (a) of the plaint in that the figure 8,104.89 should be 5,104.89.

I ask Mr. Nadarajah whether he has any objection to the amendment. Mr. Nadarajah does not object.

Counsel refers to the Money Lending Ordinance and says Court has power to act, Proviso S. 4. 30

According to the plaintiffs, the plaintiffs have overpaid to the defendant a sum of Rs. 37,226.30 made up as follows :—

Rs. 4,069.23 amount overpaid on Bond No. 1624. Rs. 7,002.47 due on the earlier bond. Counsel states on the second bond defendant insisted on getting credit for Rs. 28,232.35 and he was given a cheque for that but what was actually due was Rs. 23,197.87. He also retained two instalments payable on the bond Rs. 2,956.23. Total Rs. 26,154.60. Those three sums come to Rs. 37,226.30. That is calculated on the footing that he is not entitled to anything more than 12 per cent. on the

bond. According to the agreement plaintiff had agreed to give defendant 6 cents on each pound. The brokers sold and deducted their brokerage and defendant deducted 6 cents on each pound for doing nothing. He has deducted like that Rs. 1,193.34 on the first bond and Rs. 11,869.62 on the second bond. Those two sums counsel says are sums he is not entitled to retain.

No. 4  
Issues  
Framed  
28-3-41  
—continued.

Under the second lease he was to get coupons for 5 years. At a settlement after two years had run he insisted on deducting the six cents on each pound on the full amount of coupons for the unexpired period of 10 three years also.

Mr. Pereira suggests the following issues :—

- (1) Does the defendant carry on the business of a money lender ?
- (2) Were the plaintiffs in July, 1936, indebted to sundry creditors and judgment-debtors ?
- (3) Were the plaintiffs in February, 1938, in acute financial distress and were they obliged to obtain from the defendant a further loan ?
- (4) Is the transaction represented by the mortgage bond 1624 of 11-7-36 and the deed of lease 1625 of the same date and the agreement entered into on the same date as these two instruments a single money lending transaction ?
- (5) Is the transaction represented by mortgage bond 4664 of 19-2-38, deed of lease 4666 of the same date and agreement entered into on 21-2-38 a further single money lending transaction ?
- (6) What sum was due to the defendant on mortgage bond No. 1624 as at 19-2-38 ?
- (7) What sum had the defendant paid himself in liquidation of the amount due under the said mortgage bond ?
- (8) Is the sum of Rs. 4,069.23 referred to in paragraph 10 (b) of the plaint money belonging to plaintiffs ?
- (9) Did the defendant wrongfully retain Rs. 7,002.47 for the purpose of discharging mortgage bond 1624 ?
- (10) Did the plaintiffs in February, 1940, negotiate with a third party to raise Rs. 60,000 so as to pay off the defendant ?
- (11) Did the defendant wrongfully claim that Rs. 28,202.35 was due to him under mortgage bond 4664 as at 26-2-40 ?
- (12) Did the defendant wrongfully refuse to discharge the mortgage bonds 1624 and 4664 unless the aforesaid sum was paid ?
- (13) What sum was due to the defendant under mortgage bond 4664 as at the 26-2-40 ?
- (14) What sum did the defendant recover between 19-2-38 and 26-2-40 by the sale of rubber coupons ?

No. 4  
Issues  
Framed  
28-8-41  
—continued.

- (15) Are the transactions referred to in issues (4) and (5) harsh and unconscionable ?
- (16) Were the said transactions induced by the undue influence of the defendant ?
- (17) Are the plaintiffs entitled to a re-opening of the said transactions and to have an accounting taken between them and the defendant of the amounts properly due under the said transactions ?
- (18) Are the plaintiffs entitled to a decree in their favour ordering the defendant to pay them the sum of Rs. 4,069.23, Rs. 7,247 and Rs. 26,154.60 referred to in paras. 10 (b) 11 and 17 (b) of 10 the plaint or any of these sums or to any sum of money which may be found due to the plaintiff upon an accounting taken between them and the defendant ?

Mr. Nadarajah does not object to the issues as framed by Mr. Pereira.

Mr. Nadarajah asks whether it is admitted that no money is due by the plaintiff on any of these bonds on the date action was filed.

Mr. Pereira says the whole case for the plaintiffs is that the plaintiffs have overpaid the defendant.

Mr. Nadarajah suggests :

- (19) Can plaintiffs maintain this action to re-open the transactions<sup>20</sup> upon bonds Nos. 1624 of 11-7-36 and 4664 of 19-2-38 as no sums are claimed to be due to the defendant thereon at the date of action ?
- (20) If issue 15 is answered in the affirmative, what rate of interest was the defendant entitled to charge as being reasonable in all the circumstances of the case ?
- (21) (a) Did the plaintiffs make payments to the defendant without protest ?
- (b) Did the plaintiffs make the payments to the defendant with the full knowledge of the facts which he pleads in this action ? 30
- (22) If issues 21 (a) and/or 21 (b) is answered in favour of the defendant, can plaintiff maintain this action ?
- (23) Did the plaintiffs by making the payments to the defendant upon bonds 1624 and 4664 and in respect of the Indentures of Lease 1625 and 4666 induce the defendant to surrender his rights under the said Indentures ?
- (24) If so are the plaintiffs estopped from maintaining this action ?

Mr. Nadarajah says that the issues suggested by him all arise on the pleadings and issue 19 arises on the combined effect of paras. 16 to 20 of the answer. 40

Mr. Pereira objects to (19). Says it is not covered by the answer.

Mr. Nadarajah has no objection to altering his issue (24) to conform to para. (18) of the plaint, viz. :

If so are the plaintiffs estopped from having the transactions re-opened I think the best order to make is to allow issue (19) to stand. This case will not finish in one day so that plaintiffs are not really taken by surprise. But Mr. Pereira wants Mr. Nadarajah to say further what he means by issue (19). Mr. Nadarajah says he will do so. Mr. Nadarajah says he is going to found an argument that the application to re-open the transaction must be either in an action brought by the creditor to enforce a claim under the transaction or before the transaction is concluded and discharged while some liability is still subsisting. Once the whole transaction is complete and securities discharged submits plaintiff cannot come into Court seeking relief under that section.

No. 4  
Issues  
Framed  
28-3-41  
—continued.

(In answer to me Mr. Nadarajah says the bonds and leases are discharged.)

Mr. Nadarajah says there is no reported case where after a transaction was concluded the debtor successfully applied to re-open a transaction. This is not a case where transaction A gets merged into transaction B which gets merged into transaction C and E is subsisting. Here he submits that even transaction C is finished. Submits plaintiff is trying to put a limitation on the freedom of contract. Submits if issue (19) is answered in favour of the defence the whole case fails.

Mr. Pereira says this matter should have been specially pleaded.

I am inclined to take issue (19) up for argument first because it seems to go to the root of the case. But Mr. Pereira says he is not ready to meet it.

On the question of costs Mr. Nadarajah says he is prepared to argue his case fully and to allow the defence a date to reply. I think Mr. Nadarajah's suggestion is a good one. I take up issue (19) for decision. Mr. Nadarajah will address the Court and then I will give Mr. Pereira a date in which to consider his position. A full note of the argument will be taken.

Mr. Nadarajah : There are two transactions involved. Bond No. 1624 and bond No. 4664 and attendant documents. Plaintiffs' case further is that they had to pay certain sums of money for the discharge of those bonds. That they were oppressed by the defendant to make the payment and that they have overpaid and they ask to re-open both those transactions and to take an account between plaintiffs and defendant in regard to both and say what amount would be a fair return to the defendant in respect of the loans covered by these bonds. According to the plaintiffs they say they should get Rs. 37,226. Alternatively they ask for judgment for Rs. 7,002.47. Their third position is for such sum as may be found due by this Court after the accounts are taken to the plaintiffs. No suggestion at any point that any sum is outstanding from the plaintiffs to the defendant. Defence position is that all balance claims on the bonds and leases have been paid up, documents have been surrendered, bonds cancelled—no further claim.



No. 4  
Issues  
Framed  
28-3-41  
—continued.

Therefore the question arises whether this application can be made under S. 2 (1) of the Money Lending Ordinance, Chapter 67. The relevant sections are Section 2 (1) and (2). Submits this is not a proceeding taken by the defendant for the recovery of any money lent. He says this is not an action to enforce any agreement or security made or taken after this Ordinance for money lent. Those are conditions precedent for an application to Section 2 (1). Submits the whole of this section postulates the existing of a relationship of borrower and lender, debtor and creditor. That relationship must exist before an action can be filed to enforce the security. Section 2 (2) refers to a later stage of the proceedings. Sub-10 section (2) provides where a liability is existing which might lead to an action the debtor can come into Court. Submits therefore that if the situation is that proceedings cannot be taken the debtor cannot come into Court. Proceedings cannot be taken, by reason of the fact that no liability exists. Submits S. 2 (2) is an extension of the doctrine of *quia timet* action. Therefore where there is nothing to fear there can be no action. The common factor between both sub-sections is the existence of a certain relationship—the person seeking relief and the person against whom relief is sought. The relationship must be one of borrower and creditor.

Counsel emphasises the words “ other person liable ” in S. 2 (2). He 20 also emphasises the words borrower, surety, other person liable. Those words have one common element running right through them, namely, the existence of a liability. Submits the existence of a liability must be present before the debtor can seek relief.

Note the following words in sub-sections (a), (b), (c) of sub-section (1) :

Counsel proceeds to analyse Section 2 (1) (a), (b), (c). Court can re-open a transaction between the “ lender and the person sued ” submits this contemplates a creditor coming into Court suing a debtor. Debtor files answer. In such a case the Court can rip up the whole transaction and the Court creates a new obligation. That is a new obligation on the 30 contract sued on. Counsel does not say positively that in no case can the Court re-open. The Court can re-open previous transactions when previous transactions are closed and adjusted which have resulted in the creation of a new obligation. As for instance where there are several transactions merging one into the other the loan being alive can be sued on. But the Court has no jurisdiction in this case. In such an accounting the Court may even call upon the creditor to refund money. Submits that where a security is discharged there is no necessity for the application of this section. There is no new obligation which the Court can create.

Counsel now proceeds to sub-section (2). The position is identically 40 the same. Sub-section 2 does not enlarge the scope of the action. Sub-section (2) clearly applies to a case where the obligation is existing. That is not the position which exists in this case. All the bonds have been discharged, all the indentures have been cancelled.

Counsel refers to S. 3 where even where the Court can rip open the transaction because it exists owing to new contractual obligations there

is a limit to the period within which the re-opening can take place, *e.g.* renewal cheques. Note the proviso to S. 3. But S 3 is dependent on S. 2. Counsel also refers to S. 18 by way of analogy where creditors are protected from frivolous proceedings at the instance of borrowers. Under the Common law of Ceylon it is a fundamental principle that payment of money to a creditor including compound interest cannot be recovered back.

No. 4  
Issues  
Framed  
28-3-41  
—continued.

Cites 23 N. L. R. 342.  
Luncheon interval.

10

Signed R. F. DIAS,  
*District Judge.*

(Luncheon interval)

Mr. Nadarajah continues his address :

Submits there are three kinds of jurisdiction :—

- (1) jurisdiction of English Courts under the Common law ;
- (2) jurisdiction of equity ; and
- (3) jurisdiction by statute.

All Ceylon Courts come under the last jurisdiction—based on statute. That is not so in England. Counsel refers to Section 2 (5). Emphasis is on the word “existing”. Did any jurisdiction vest in Ceylon Courts prior to Chapter 67 by which Ceylon Courts come under this relief now claimed ? Submits Ceylon Courts have no such power.

Cites 2 Balasingham's Reports, page 174 (at page 176). Note distinction between law of equity drawn by the Judge. No Money Lending Ordinance at that date in Ceylon. Therefore Supreme Court could not get equitable relief. The missing jurisdiction was supplied by Chapter 67.

Cites 23 N. L. R. 342.

Where money has been paid to a creditor including anything with compound interest which according to the Roman Dutch Law is illegal and cannot be claimed—held could not be recovered back. Therefore S. 2 (5) of Chapter 67 does not create any new jurisdictions.

What was the old English law before the Money Lending Acts were passed ?

Cites Money Lending Acts by Collard, page 1.

Money Lending Act 63 and 64 Victoria (1900) Chapter 51 S. 1 (6).

English section is intelligible because there was equity jurisdiction. But when our Legislature faithfully copied the English Sub-section it is meaningless. Question of re-opening a closed transaction has arisen in England.

Cites Law Reports (1905) 1 Chapter D, page 260 (at p. 276) judgment of Court of Appeal).

The account re-opened must be relevant to the transaction in respect of which the action is brought.

No. 4  
Issues  
Framed  
28-3-41  
—continued.

Cites Bellows on Legal Principles and Practice. Bargains with Money Lenders 153.

The closed transaction must be relevant or connected with the existing transaction.

Cites Mulla on Usury Laws Act of India (1918), p. 8.

Note development of the Law pointed out on this page. Cites pages 7, 8 and 9. Note reference to the jurisdiction of the Court at page 9. Submits that is the same position under the Roman Dutch Law in Ceylon.

Note view of the Privy Council in 28 Allahabad 570 (at p. 575) on this question of jurisdiction. 10

Submits apart from jurisdiction created by the Money Lending Ordinance this Court has no other jurisdiction. That being so, an examination of these two sub-sections does not entitle the plaintiff to bring this action. In citing English cases one should remember that English Courts have residuary jurisdiction clearly exempted by their sub-section (6). No such residuary jurisdiction in Ceylon. Submits sections 2 (1) and (2) are not intended to resurrect transactions that have been closed. These sections are weapons of defence, not weapons of offence. Plaintiff is trying to make this an instrument of oppression after all the transactions have been terminated. Indian sections are different to our sections. The 20 Ceylon Ordinance follows the English Law.

Cites Mulla, p. 37 *re* re-opening previous transactions which have been closed. Right of Court when dealing with existing transaction is to go into previous matters though closed provided they are closed by agreement purporting to create new obligations. No transactions which have been closed can be re-opened unless they are relevant to or in some way connected with the transaction in respect of which the suit is brought. Counsel refers to page 38 as to the jurisdiction of the Court. That strongly supports the defence contention.

Looking at the question historically one is necessarily driven to the 30 conclusion that if not for Chapter 67 the Ceylon Courts would be powerless to act in a case like this.

Postponed for 16th July.

Inform Proctors in 12500 that that case cannot be taken up on the 16th July.

Mr. Pereira presses for his costs of today.

I think today's costs should be costs in the cause.

28-3-41.

(Sgd.) R. F. DIAS,  
*District Judge.*

Parties now agree that in any event the defendant should not get 40 any costs of today.

28-3-41.

(Sgd.) R. F. DIAS,  
*District Judge.*

D. C. 12109.

16th July, 1941.

No. 4  
Issues  
Framed  
28-3-41  
—continued.

Appearances as before.

Mr. Nadarajah addresses Court.

I ask Mr. Nadarajah to address me on the case reported in 36 N. L. R. 367 in which the same argument was urged before me at Kandy.

Submits only distinguishing feature which may be made between that case and this is that there was a decree. Submits the two cases cannot be distinguished in principle. Whole transaction is closed. Counsel refers to the last para on page 141 of the Legislative Enactments. Defendant does not argue that certain fundamental equitable principles do not apply to Ceylon. The word "equity" finds a place in section 2 (i) (b) of the M. L. O.

Mr. Pereira addresses the Court :

Plaintiff's action is not under section 2, sub-section (1) of the M. L. O. 36 N. L. R. is entirely based on the M. L. O. This plaint is filed under section 2, sub-section (2). 63 and 64 Victoria, Chapter 51. Counsel compares the English section with our section 2, sub-section (2). Submits sub-section should not be restrictably interpreted. Ceylon Courts are Courts of equity. 3 N. L. R. 59 at page 60. 20 N. L. R. 206 at 211, 20 cites page 213. 35 N. L. R. 257. Counsel also refers to section 3. Equitable considerations referred to. *Saunders vs. Newbolt* (1905) Chancery at p. 260. Submits this clinches the matter. Note the facts of this case. Action by money lender on a promissory note for £3,300 amount advanced was only £2,000. Payment by monthly instalments. First instalment of £275 had been paid. Money lent in October, 1900. Debtor died. Executor contested the action. Evidence proved that in July, 1903, £1,000 borrowed by deceased £400 charged as interest amount being repayable by 5 monthly instalments of £250. Whole amount in fact repaid in September, £1,400. Transaction closed. Nothing to do with second 30 transaction. Chancery Judge ordered both transactions to be ripped up. Argument that a closed transaction could not be touched. Held deceased was not a debtor in regard to the first transaction. No connection between the first and 2nd debt. Ist promissory note was closed. Cites at page 276. Court of Appeal held that sub-section applied to a case where the loan has been repaid. Section not limited to case where creditor has an unsatisfied cause of action or someone liable to be sued. The limitations are with regard to the Court. Assuming such a Court existed that Court can exercise the powers at the instance of the debtor. This power not fettered by the last words of the section beginning with "notwith- 40 standing". Meaning of word "liable" considered. Does not mean "liable in fact". To do so would be to exclude from the Court power given to Court under section 2 the power given under sub-section (1). Court of Chancery did not allow the fact of repayment to prevent the re-opening. The words at the end of the section mean that he can get relief when he is sued and before he is sued. Note the order made by the

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Court of Appeal. Case taken up to the House of Lords. (1906) Appeal case at page 461. House of Lords affirmed the Court of Appeal. Note the right reserved to the debtor to bring an action at page 277. Submits 23 N. L. R. 342 no applicability to the facts of this case. Case reported in Balasingham's Reports single Judge no appearance for respondent. Long prior to Money Lending Act. Submits 36 N. L. R. only concerned with section 2, sub-section (1).

Mr. Nadarajah in reply :

Equitable jurisdiction of this Court to do what is right and the equitable principles in Chancery are two different things. Plaintiff does not concede that this Court or the Supreme Court has power to administer all principles of equity as administered in Chancery. Only certain branches introduced, *e.g.* the doctrine of part performance has not been admitted into Ceylon. Whole law of equity has not been introduced into Ceylon that is the reason why certain statutes like the law of trusts provides that in cases of *casus omissii* the equity of Chancery should be administered no need to so provide if those doctrines were already in force. Section 100, Chapter 72 of the Trusts Ordinance. 35 N. L. R. 257 at p. 279. The equitable jurisdiction of Chancery has developed *re* Money Lenders, expectant heirs, etc. See Mullah at pages 7 and 8. It is this residuary power of the Court of Chancery that is kept alive by the Money Lending Act of England, Section 1, sub-section (6) of the Money Lending Act of 1900. That provision has been brought into our M. L. O. Indian Contract replaced by the Usury Acts of India. Therefore it is understandable when powers were reserved for the Indian Courts and English Courts because that power existed there.

Until 1918 position was set out in Wood Renton, J. in 2 Balasingham's at page 176. Wood Renton, C. J. allowed 60 per cent. interest. That was because the Supreme Court was powerless to interfere. If the Chancery jurisdiction existed in Ceylon this decision would never have been given. This is the point Court must keep in mind in approaching the reservation contained in section 2, sub-section (5). The emphasis is on the word existing. Wood Renton, J. says that there was no such Chancery jurisdiction existing *re* these laws. Then the question arises does Chapter 67 confer the whole Chancery equity jurisdiction and the Common Law jurisdiction under the 1900 Act of England. The only reference is section 2 (1) (b) and (3). Submits the word equity there does not mean the equity of the Chancery Division but merely the equitable considerations referred to in 2 (1) (b).

33 Indian Appeals 118 at page 127. This was before the Indian Money Lenders Act was passed.

It is from this point of view you must approach (1905) 1 Chancery page 260. Counsel now proceeds to distinguish that case. Saunders lent £1,000 to the deceased debtor promissory note was for £1,400 payable by

instalments. That promissory note was settled. Deceased debtor took new loan of £2,000 and granted a promissory note for £3,300. Admittedly no connection between the two promissory notes excepting that the parties were the same. One instalment of the 2nd loan paid debtor died. Creditor sued on the 2nd note less instalment paid. Executor resisted under M. L. Act. In the evidence earlier promissory note referred to. Chancery Judge held that both transactions should be re-opened. Appeal taken against both matters by the creditor. In appeal argument that where a transaction is paid and settled you could not get it re-opened.

10 Further argument that under no circumstances whatsoever could earlier transaction be re-opened which had been closed. Counsel refers to page 267—argument. Submits facts of that case different from this case series of money lending transactions and proceedings taken. Note the words used at pages 276 and 277 only applies to case where there is a transaction still subsisting between the parties. Submits that those words must not be taken out of their context from the facts of the case. Point there is that even if a previous transaction is closed if there is another dispute between the parties that can be looked into; that is not the case here. 23 N. L. R. 342 at 343 where the Roman jurists are cited if money is paid willingly it cannot be recovered. It is the Roman Dutch Law that applies and not the equitable jurisdiction of Chancery. Submits Chancery Division case helps defendant. Cites Mullah, page 37. Chancery Division case is *obiter dicta*. Submits the order of the Court of Appeal and the House of Lords gave the executor the right to bring another action “if so advised”. They did not hold that he had the right. No proof that such an action was brought by the executor. Furthermore if the power existed that was the Chancery jurisdiction which does not exist here. Note Mullah’s reference to how this case would be decided if brought in India. Verify if Indian Act is the same as our act.

30 (Mr. Pereira says that section 1, sub-section (2) finds no place in the Indian Act.)

Submits even so under sub-section (2) it is the jurisdiction under sub-section (1) that is brought into existence. Note the concluding words of sub-section (1). That is the jurisdiction under sub-section (2).

Mr. Pereira refers me to Mullah, page 15 the portion in italics and page 39.

Call case 4th August to see if the judgment is ready.

(Sgd.) R. F. DIAS,  
*District Judge.*

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D. C. 12109/M.

**JUDGMENT**

Counsel on both sides readily agreed to the suggestion made by me that the important issue 19 should be decided first. Not only does the issue raise an important question of law, but if that issue is answered in a certain way plaintiffs' action will have to be dismissed. In that event the complicated trial foreshadowed by the pleadings would not be necessary. 10

For the purposes of this judgment I assume the facts to be as follows:—

- (1) the plaintiffs had been borrowing money from the defendants who are money lenders ;
- (2) certain complicated transactions appear to have taken place between them in regard to two bonds bearing Nos. 1624 and 4666 and their attendant documents ;
- (3) all these transactions have been completed and closed. The bonds have been discharged and the defendant money lenders have no further claim against the plaintiffs.

In this case the plaintiffs are asking that both these closed transactions 20 should be re-opened, and that the Court should proceed to take an account between them and the defendant. The plaintiffs, I am told, are placing their case in three different ways :

- (1) They contend that they should receive back Rs. 37,226 or alternatively
- (2) They should get Rs. 70,002.47 or alternatively
- (3) They ask the Court to give them such sum as may be found due to them after the accounting.

I have been informed that according to the plaintiffs' case nothing is now due from them to the defendants, that there is no possibility of any 30 other claim being made by the defendants against them, and that the bonds and the attendant documents have been cancelled, discharged and surrendered.

The plaintiffs are seeking relief under the Money Lending Ordinance, 1918 (C. 67, Vol. II., page 141).

Obviously, the plaintiffs cannot claim any relief under section 2 (1) for the simple reason that they are precluded from so doing by the language of the sub-section as interpreted by the decision of the Supreme Court in 36 N. L. R., 367. In that case it was held that the power given to a Court to re-open transactions under section 2 (1) cannot be exercised after 40 decree had been entered in the action. The ratio decidendi was that after decree it cannot be said that " proceedings are taken in any Court for the

recovery of money or the enforcement of any agreement or security in respect of money lent ” within the meaning of section 2 (1).

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Mr. R. L. Pereira, K.C., who appeared for the plaintiff has stated that he seeks to come in under section 2 (2) and not under section 2 (1). He submits that while sub-section (1) is a shield of defence against a claim made by the money lender, sub-section (2) may be used as a weapon of offence by the debtor against the money lender even where the transaction is closed. The question is whether he is right ?

Mr. Nadarajah who appeared for the defendant has raised issue 19  
10 as a bar to the plaintiffs’ action. He argues that sub-section (2) is an extension of the doctrine of the “ *quia timet* ” action. He submits that if the debtors have nothing to fear, there can be no *quia timet* action. He urges that the common factor between sub-section (1) and sub-section (2) is the existence of the relationship of creditor and debtor, or of the person seeking relief and the person who may seek relief on the one hand, and the debtor on the other. He lays stress on the words “ or other person liable ” in sub-section (2). He says that these words must be taken in conjunction with the words which precede it, viz.: “ the borrower or surety ”. He submits that where a transaction is closed there can be  
20 no borrower, surety or other person liable. He therefore contends that sub-section (2) refers only to a situation where the obligation is existent and where proceedings “ might be taken for the recovery of the money lent ” as indicated by the opening words of sub-section (2). He therefore argues that in the present case there being no proceedings which might be taken or which can be taken against these plaintiffs, the whole jurisdiction sought to be relied on by the plaintiffs in sub-section (2) falls to the ground. He also urges that section 3 can only apply where sub-section (2) applies ; so that if sub-section (2) does not apply or cannot apply, section 3 is equally ousted. These arguments command respect  
30 and had the matter been at large, I would have felt disposed to give effect to them.

Section 2 of our Money Lending Ordinance has been substantially taken over from the English Money Lenders’ Act of 1901 (63 and 64, Victoria, C. 51), sections 1 (1), (2), (3), (4) and (6). Our section 3 is not derived from the English Statute. In fact, I have not been able to discover from where the draughtsmen of our Ordinance got section 3. This is rather important because of the use of the words “ any other equitable consideration that the justice of the case may require ”. It is doubtful whether the word “ equitable ” referred to in section 3 was intended to  
40 mean the English principles of equity. It seems to me that the word has been used to mean “ fair ” or “ just ” as opposed to “ unfair ” and “ unjust ”, and is not evidence of an intention on the part of the Legislature to bring in the English law of equity on this point into Ceylon. It would appear that it was because the English principles of equity were insufficient to meet the situation that the English Parliament had to pass the Money Lenders’ Act.



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The Indian Law appears to have proceeded on different lines both to England and to Ceylon, see Mulla on the Usurious Loans Act, 1918, page 16 *et seq.* There appears to have been an Indian Act of 1855 which dealt with money lending; the Indian Contract Act of 1872 appears also to have dealt with it, and finally the Usurious Loans Act No. 10 of 1918 appears to have introduced section 1 (1) of the English Act into India but not sub-section (2). All these matters tend to complicate and not to elucidate a situation which is already complex.

Mr. R. L. Pereira takes his stand on the decision of *Saunders vs. Nebold* (1905) 1 Ch., 260, which gives the judgment of the Court of Appeal, 10 and (1906) Appeal Case, 461, which contains the judgment of the House of Lords in that case.

It will be necessary for me in some detail to analyse and comment on the facts and the ratio decidendi of the case.

The facts in *Saunders vs. Nebold* were as follows :—

One Alton on 6-7-03 borrowed a sum £1,000 with interest fixed at £400 from the plaintiffs who appear to have been Jewish money lenders. The whole £1,400 was repayable by five monthly instalments of £250 and a final instalment of £150. Alton paid the whole amount in September, 1903, and the transaction was entirely closed. 20

In September, 1903, Alton again applied to the plaintiffs for a further loan of £2,000, and he eventually gave to the plaintiffs a note for £3,300 and received in exchange a cheque for £2,000. Alton paid the first instalment but died thereafter.

The defendant Nebold as the administrator of Alton made to the plaintiffs a certain offer which they refused. The plaintiffs then brought an action against Nebold in the King's Bench Division. This action was transferred from the K. B. D. to the Chancery Division where Alton's estate was being administered by Nebold. The *action by the plaintiffs against defendant was solely on the £3,300 note and nothing was said about the earlier closed transaction.* Kekewich, J., in dealing with the subsequent loan made a certain order, after which some discussion arose as to the proper form the decree should take. In the course of that discussion *the defendant's Counsel asked that the £1,400 closed transaction "which had been disclosed by the evidence at the trial" should be included in the decree.* Ultimately, Kekewich, J., *expressed his opinion that under the Money Lending Act the Court was bound to direct an accounting of all the transactions between the money lender and the borrower, and accordingly held that the closed loan transaction regarding the £1,400 must be re-opened as well as that of the subsequent loan.* Pausing here, it will be seen that the facts in 40 *Saunders vs. Nebold* are very dissimilar from the facts of the present case. That was an action by the money lender against the borrower, and the borrower under sub-section (1) was claiming relief. When that application was made Kekewich, J., ruled that the closed transaction should also be taken into the accounting under sub-section (1).

Saunders appealed against Kekewich, J's. ruling and Vaughan Williams, L.J., made the following observations :—

“ We cannot accept the argument of Mr. Lawrence that under the provisions of section 1 (1), that the Court may in cases where proceedings are taken by the money lender for the recovery of money lent..... not only re-open that transaction, but also re-open *any account taken between the same parties in any matter however foreign to the transaction sued on. We think that the account re-opened must be relevant to the transaction in respect of which the action is brought.....*”

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10 So far the judgment of the Court of Appeal proceeds on sub-section (1), and that appears to be the ratio decidendi in the case, viz., where a money lender sues the debtor for money lent, it is open to the latter to rip open the whole transaction ; but in so doing the accounts re-opened must be relevant to the transaction in respect of which the action is brought.

Vaughan Williams, L.J., however proceeded to consider sub-section (2) which, if I may respectfully say so, does not appear to have really come into play in *Saunders vs. Nebold*. The learned Judge said : “ It is true that section 1 (2) provides that any Court in which proceedings *might be taken* by a money lender may, at the instance of the borrower or surety  
20 or other person liable exercise the like powers as may be exercised in an action by a money lender for the recovery of money lent (*i.e.* under sub-section (1) ) ; and in our judgment this sub-section (*i.e.* sub-section (2) ) *applies even to a case where the loan has been repaid*. This limitation is not a limitation to cases in which the money lender has an unsatisfied cause of action, or there is someone liable to be sued ; the limitation is only to a Court in which proceedings might be taken by a money lender for the recovery of the money lent. Given such a Court—*i.e.* given a Court having jurisdiction—that Court may exercise *at the instance of the borrower* the powers given by section 1 (1). Such powers clearly govern a power  
30 to order *repayment by the money lender* ”. The learned Judge also construed the word “ liable ” in sub-section 2. He said that the word cannot be read as meaning “ liable in fact ”. “ So to read it would be to exclude from the powers of the Court given under sub-section 2, the power which the Court clearly has under sub-section 1 to order repayment by a money lender ”.

It is important to note the nature of the order made by the Court of Appeal. The order was that Kekewich, J's. judgment should be amended by *striking out of it so much of it as refers to the closed loan of £1,400 which had been repaid*, but without prejudice to the defendant to bring a *separate*  
40 *action* to re-open that transaction *if he be so advised*. That clearly means that, in spite of the construction placed by the Court of Appeal on sub-section (2), that Court held that Kekewich, J., was wrong in bringing into the matter under sub-section (1) the closed transaction, because it was not relevant to the transaction in respect of which the action was brought. Nebold was given the right *if so advised* to bring a separate action under sub-section (2). Whether he brought such an action, and, if so, with

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what success we do not know. With great respect and submission I am of opinion that the observations made in regard to the construction of sub-section (2) are in the nature of *obiter dicta*, and do not form part of the ratio decidendi. The case went up to the House of Lords which affirmed the judgment of the Court of Appeal, but without dealing with the construction of sub-section (2). What the House of Lords decided is that the relief which the Money Lenders' Act extends to a borrower is not limited to cases in which before the Act a Court of Chancery would have given relief. The policy of the Act is to enable the Court to prevent oppression, leaving it to the discretion of the Court (that is the equitable consideration referred to in our section 3) to weigh each case upon its own merits, and to look behind a class of contracts which peculiarly lend themselves to an abuse of power.

While I am of opinion that the observations of the Court of Appeal with regard to the construction of sub-section (2) are strictly *obiter dicta*, nevertheless, they are the words of the English Court of Appeal and furnish a valuable guide for the construction of that sub-section. That construction follows from the meaning to be attached to the words in the section, and not from anything imported from outside the Statute. Lord Justice Vaughan Williams was of opinion that the words "might be taken" referred only to a Court in which proceedings might have been taken had the money lender sued for it, and that the words of the section were wide enough to cover even a case where the loan has been repaid, provided the Court in which the relief was sought is a Court in which the money lender could have brought the action. Furthermore it was held that the word "liable" could not be held to mean "liable in fact". Although I consider these observations are strictly *obiter* so far as the decision in *Saunders vs. Nebold* is concerned, they cannot be lightly brushed aside, and I feel bound to follow them. It may be that the results of such an interpretation may cause debtors who have paid and settled their debts to seek relief under sub-section (2), but with those results the Courts are not concerned.

If my findings are correct, there is no need to proceed further and ascertain whether the plaintiffs, if they fail to come under s. 2 (2) can invoke some residuary jurisdiction which lies in the Court under s. 2 (5). As Mr. Advocate Nadaraja has addressed me on this point I shall deal with it. He points out that the Courts in England derive their jurisdiction from three sources: (a) the Common Law, (b) Equity, and (c) Statute. In Ceylon he urges that the jurisdiction of the Court is derived solely from Statute. He submits that until the Money Lending Ordinance was enacted there was never any jurisdiction in existence which empowered a Court to give relief in an unconscionable money-lending transaction. He has cited 2 Balasingham's Reports at p. 176 where Wood Renton, J. in 1906 prior to the enactment of the Money Lending Ordinance said: "It appears to me to be clear on these facts that the plaintiff..... is entitled to judgment..... I have nothing to do here with the question whether such bargains are harsh and unconscionable. There is no Money Lenders'

Ordinance in this Colony (*i.e.* in 1906), and the plaintiff is entitled, like every other citizen, to take his stand upon his legal rights". Had there been an "existing jurisdiction" within the meaning of s. 2 (5) vested in our Courts in 1906 Wood Renton, J. would have applied it to a case where an unconscionable rate of interest had been charged by a money lender. What is more, in 26 N. L. R. at p. 218 Bertram, C.J. said that the case reported in 2 Bal. 176 had "settled" the law until the Money Lending Ordinance was passed. Mr. Nadaraja further points out that in 23 N. L. R. 342 it was held that where a debtor paid money including compound  
 10 interest, that money could not be recovered under the R. D. L. Therefore he submits the only jurisdiction in regard to money-lending transactions is conferred by the Ordinance itself, and that there is no existing residuary jurisdiction vested in our Courts outside the Ordinance. I have already pointed out that if s. 2 cannot apply, it necessarily follows that s. 3 cannot apply either, because that section derives its force from the applicability of s. 2. The words "equitable considerations" in s. 3 do not appear to mean the English principles of equity, but "considerations which are fair or just". Mr. Nadarajah goes further and argues that although the Courts of Ceylon are Courts of Law and Equity, nevertheless, the whole  
 20 equitable jurisdiction of the Court of Chancery has not been introduced into this Island.

It is necessary, therefore, to consider this contention. On 23-9-1799 when the first British Proclamation in Ceylon was promulgated, s. 2 made it clear that the Roman Dutch Law was to continue subject to such alterations and deviations as may be made. Therefore at that date there was no "equity" jurisdiction vested in the Ceylon Courts. The Charter of Justice of 1801 by s. 39 enacted that the "Supreme Court of Judicature" which was created by that Charter, was to be a *Court of Equity* with full power to exercise the jurisdiction of the High Court of Chancery in Great  
 30 Britain"—see also s. 40 of the Charter of 1801. "The Supreme Court of Judicature" was a very different Court from "The Supreme Court for the Island of Ceylon" which came into existence under the Charter of 1833. The former Court so far as its civil jurisdiction was concerned was a Court of limited jurisdiction which mainly dealt with litigation between Europeans and persons resident in the Fort of Colombo. The Court which exercised jurisdiction over the local inhabitants who reside outside the Fort was the Provincial Court. The equitable jurisdiction of the Supreme Court of Judicature was considered in a case reported in Ram (1820-33) pages 120-121. It was held that s. 39 of the Charter of 1801 conferred a  
 40 jurisdiction on the Supreme Court of Judicature which was unknown to the Dutch Law, and introduced a novel system of redress to all inhabitants who were within the jurisdiction of the Supreme Court. It was further held that the Provincial Courts had no jurisdiction to entertain suits *in equity*, because it was wholly unknown to the Dutch Law. In Commissioner Cameron's Report upon which the Charter of 1833 is mainly based (see Ram (1820-33), page 349) he says with regard to s. 39 of the Charter of 1801 that "this provision was intended, no doubt, to confer an advantage upon Europeans in respect of *equitable* jurisdiction....., but in

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reality it imposed a disadvantage upon them, as opposed to natives in that respect, for *as no other Court in the Island has any equitable jurisdiction*, a European has no remedy against a native not residing out of Colombo; but all natives have a remedy *in equity* against all Europeans". The Charter of 1833 abolished all the old Charters, Letters Patent, and Order-in-Council. Therefore, the Charter of 1801 was repealed and with it were abolished the Supreme Court of Judicature as well as its equitable jurisdiction. Thereafter, there is no statute which expressly introduced the whole body of English Equity into Ceylon, although there are indications both in the Charter of 1833 as well as in the Courts Ordinance, that 10 certain equitable doctrines of the Court of Chancery were introduced—*cf. ss. 62, 67 (3) etc.* which refer to cestuique trusts, trustees, etc. Thereafter, there is a series of cases in which it has been held either that a particular equitable doctrine has or has not been introduced into Ceylon (see, for example), 3 N. L. R. 59; 13 N. L. R. 187; 1 C. W. R. page 45; 4 C. W. R. 306; 20 N. L. R. at p. 212 and p. 314; 23 N. L. R. at p. 284; 24 N. L. R. 203; 27 N. L. R. at p. 254; 35 N. L. R. 221; 282; 29 N. L. R. 342, etc. The case reported in 2 Balasingham 174 is particularly valuable as it shows that apart from the Money Lending Ordinance, the Courts of Ceylon had no pre-existing jurisdiction in regard to money-lending trans-20 actions. Therefore, if my view that this case falls under s. 2 (2) is held to be wrong, it follows that there is no residuary jurisdiction which give the Court power to entertain this action.

I answer issue 19 in the affirmative and hold that this Court has jurisdiction to try this action. The costs of these proceedings will be costs in the cause.

Call this case after the appealable time has expired on 19-9 to fix the further trial date.

(Sgd.) R. F. DIAS,

*District Judge.* 30

4-8-1941.

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No. 6.

**Petition of Appeal to the Supreme Court against the  
Order Dated 4-8-41.**

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

1. CHANDRASEKERA HERAT MUDIYANSELAGE  
RAN MENIKA WIJEYWARDENE TENNEKOON  
WALAUWA MAHATMEE and

No. 6  
Petition of  
Appeal to  
the Supreme  
Court  
against the  
Order  
Dated 4-8-41  
9-8-41

2. DON HENRY WIJEYWARDENE TENNEKOON  
BANDARA MAHATMAYA, both of Ratnapura ..... *Plaintiffs.*
- D. C. Colombo No. 12,109. *vs.*
- M. R. M. M. N. NADARAJA CHETTIAR of 178, Sea  
Street in Colombo ..... *Defendant.*
- M. R. M. M. N. NADARAJAN CHETTIAR of 178, Sea  
Street in Colombo ..... *Appellant.*

No. 6  
Petition of  
Appeal to  
the Supreme  
Court  
against the  
Order  
Dated 4-8-41  
9-8-41  
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*And*

1. CHANDRASEKERA HERAT MUDIYANSELAGE  
10 RAN MENIKA WIJEYWARDENE TENNEKOON  
WALAUWA MAHATMEE and
2. DON HENRY WIJEYWARDENE TENNEKOON  
BANDARA MAHATMAYA, both of Ratnapura ..... *Respondents.*

*To*

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

On this 9th day of August, 1941.

The Petition of Appeal of the defendant-appellant abovenamed  
20 appearing by Sabapathy Somasundaram his Proctor states as follows :—

1. The plaintiffs-respondents instituted this action against the  
defendant-appellant under the provisions of Chapter 67 of the Legislative  
Enactments of Ceylon.

2. After the framing of issues, the parties agreed to the trial of issue  
No. 19 as a preliminary issue of law which went to the root of the respon-  
dents' claim and the jurisdiction of the District Court. Issue No. 19  
ran as follows :—

30 “ Can plaintiffs maintain this action to re-open the transactions  
upon bonds Nos. 1624 of 11-7-36 and 4664 of 19-2-38 as no sums  
are claimed to be due to the defendant thereon at the date of action.”

3. After hearing arguments the trial Judge made order on the 4th  
day of August, 1941, against the appellant and held that the District  
Court had jurisdiction to entertain the claim of the respondents.

4. Feeling dissatisfied with the said order the appellant begs to  
appeal therefrom to Your Lordships' Court for the following among other  
reasons that will be urged by Counsel at the hearing of this appeal :

(a) The said order is contrary to law.

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(b) It is submitted that no action for an accounting under any provision of Chapter 67 of the Legislative Enactments of Ceylon can be instituted when the transactions have been closed, obligations discharged and securities cancelled.

(c) It was admitted in this case that the appellant had cancelled and discharged all the mortgage bonds and Indentures of Lease alleged to have been granted as further security and that he had no claim whatever now.

(d) The learned District Judge has misdirected himself on the question of Law. 10

(e) The words of the Section quoted by the trial Judge are clear and need no explanation.

Wherefore the defendant-appellant prays :—

- (1) that the said order of the 4th August, 1941, be set aside ;
- (2) that plaintiff's action be dismissed ;
- (3) for costs of this appeal and for costs in the lower Court ; and
- (4) for such other and further relief as to Your Lordships' Court shall seem meet.

Sgd. S. SOMASUNDERAM,  
*Proctor for Defendant-Appellant.* 20

No. 7  
Decree of  
the Supreme  
Court  
Affirming  
the Order of  
4-8-41  
29-6-42

### No. 7.

### Decree of the Supreme Court Affirming the Order of 4-8-41.

GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN,  
IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS, KING,  
DEFENDER OF THE FAITH, EMPEROR OF INDIA.

D. C. (Inty.) No. 100/1941.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

1. CHANDRASEKERA HERATH MUDIYANSELAGE  
RAN MENIKA WIJEYWARDENA TENNEKOON  
WALAUWA MAHATMEE and

2. DON HENRY WIJEYWARDENE TENNAKOON  
BANDARA MAHATMAYA, both of Ratnapura..... *Plaintiffs.*

*Respondents.*

*Against*

M. R. M. M. N. NADARAJAN CHETTIAR of 178, Sea  
Street in Colombo..... *Defendant-Appellant.*

No. 7  
Decree of  
the Supreme  
Court  
Affirming  
the Order of  
4-8-41  
29-6-42  
—continued.

Action No. 12109/M.

District Court of Colombo.

This cause coming on for hearing and determination on the 29th day of June, 1942, and on this day, upon an appeal preferred by the defendant before the Hon. Sir John Curtois Howard, Kt., K.C., Chief Justice ; the Hon. Mr. H. H. Hearne and the Hon. Mr. O. L. de Kretser, Puisne Justices of this Court, in the presence of Counsel for the appellant and the respondents.

It is considered and adjudged that the Order made in this action by the District Court of Colombo and dated the 4th day of August, 1941, be and the same is hereby affirmed and this appeal is dismissed.

And it is further ordered and decreed that the defendant-appellant do pay to the plaintiffs-respondents their taxed costs of this appeal.

Witness the Hon. Sir John Curtois Howard, Kt., K.C., Chief Justice, at Colombo, the 29th day of June, in the year of our Lord One thousand Nine hundred and Forty-two, and of our Reign the Sixth.

Sgd. C. STORK,  
*Deputy Registrar, S. C.*

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No. 8.

Plaintiff's Evidence.

No. 8  
Plaintiff's  
Evidence

D. C. 12109/M.

9th March, 1943.

ADVOCATE MR. NADARAJAH, K.C., with ADVOCATE MR. CHELVANAYAGAM for the defendant.

ADVOCATE MR. E. G. WICKRAMANAYAKE with ADVOCATE MR. F. C. W. VAN GEYZEL for the plaintiff.

Parties are agreed that I am now proceeding to consider whether the plaintiffs are entitled to an accounting, viz., issues 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 20, 21, 22, 23, 24 which Mr. Wickramanayake says are all caught up in issue 17.

Mr. Nadarajah does not agree. He says there are other issues.



No. 8  
Plaintiff's  
Evidence  
—continued.

I ask Counsel whether there is any issue which deals with the question of delay as regards its reaction on the accounting. Mr. Nadarajah says it is caught up in issue 17.

Mr. Wickramanayake does not agree. He says it is not pleaded nor is there any issue.

I point out to counsel that under the money lending sections there is no need for issues. The Court's duty is to take notice.

Mr. Wickramanayake opens his case and calls :

No. 8  
Tennekoon  
Mahatmaya  
—exami-  
nation

DON HENRY WIJSEKERA BANDARA TENNEKOON  
MAHATMAYA—Affirmed, 62, Landed Proprietor. 10

I am the husband of the first plaintiff. My wife is possessed of a considerable acreage of land.

(To Court : Are you Kandyan? Yes. I am a low-country man. My wife is a Kandyan. My wife is in Ratnapura. I got married in binna). She is the owner of Akamuna Estate. You and your wife have been borrowing monies for the development of this property? Yes.

You borrowed chiefly from Messrs. Keell & Waldock? Yes.

Keell & Waldock filed action in 1934? Yes.

You produce certified copies of the journal entries in that case 705 P1? Yes. 20

What was the claim? Rs. 57,000 odd.

Who is James Cooray? Not Cooray—it is Gray.

The journal entries show that applications were made to take out writ from time to time and objections were filed by you and enquiries were held and that on 31-7-35 commission was issued returnable on 30-7-36? Yes.

So that the sale of the property was to take place before that? Yes.

You took certain monies from the State Mortgage Bank? Yes.

You borrowed certain money from the State Mortgage Bank and paid Rs. 34,326.10 on 28-2-36? Yes. 30

Leaving a balance which had to be paid by the sale of the property? Yes.

In June did you set about to raise money to pay off this thing completely? Yes.

You were introduced to the defendant? Yes.

By a broker called Dissanayake? Yes.

What was the original suggestion that was made in regard to the lending of monies to you for the payment of this debt and certain other debts? I was to borrow the money necessary on payment of interest.

To Court : How much did you want? Rs. 50,000. 40

On the mortgage of this land? (This land and four other lands).

The lands that have been mortgaged on the bond? Yes.

Having had that discussion that you were to have the money on payment of interest was there an inspection of the land? Yes.

To Court: How much was the interest? There was no agreement in regard to interest at that date.

Who came along for inspection? The Chettiar, the Kanakapulle, Mr. Fuard and C. W. Dissanayake, the broker.

After the inspection did the Chettiar still stick to the terms or was there any variation? He was sticking to payment of interest on the loan.

10 Then what happened? He asked for the deeds. The deeds were given over to the Proctor.

What was going to be the security? The five lands to be mortgaged. The Proctor was Mr. Fuard? Yes.

What were the deeds that were going to be drafted? At the discussion the deed to be signed was the mortgage bond.

To Court: When you gave the deeds to the Proctor what was the document going to be drafted? A mortgage bond.

How was the money to be repaid? We had not decided as to how the money should be repaid.

20 Was there any agreement as to how the money was to be repaid? I was told when the title deeds were passed by the Proctor what interest would be recovered would be intimated to me.

What happened then after the deeds were handed to the Proctor? Title was passed, the Chetty was informed the title was satisfactory. Then the Chettiar said that he could not give money on interest he will give the money on a rebate.

What is meant by rebate? That I should pay 6 cents on a coupon pound.

The Chettiar was to get the rubber coupons? Yes.

30 And per pound of rubber coupon that was issued he was to have 6 cents? Yes.

The coupon assessment cards were available so that you would know how much coupons would be available for a year? Yes.

For how many years did he want coupons? 30 months.

Did you agree to that suggestion that there should be a lease for 30 months and a mortgage? Yes.

What happened then? Later Mr. Fuard told me something.

In consequence of what Fuard said what did you do? I agreed to his suggestions.

40 And ultimately bond No. 1624 of 11-7-36 P2, and lease bond 1626 P3 were executed? Yes.

No. 8  
Plaintiff's  
Evidence  
Tennekoon  
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—exami-  
nation  
—continued.

No. 8  
Plaintiff's  
Evidence  
Tennekoon  
Mahatmaya  
—exami-  
nation  
—continued.

An agreement of the same date P4 was also entered into whereby I authorised the Chettiar to take the rubber coupons.

You told the Court that the original period was 30 months and that it was subsequently altered to 33 months—you draw the attention of the Court to “three” in thirty-three of the agreement is inserted in manuscript and initialled? Yes.

You also draw attention to the fact that it was signed on the 11th July when the commission to sell was returnable on the 30-7-36? Yes.

Then certain monies were paid to you under this bond? Yes.

To Court: How much were you paid when you executed the documents? I was paid a balance of Rs. 200 odd).

You had to pay on the documents signed interest at 12 per cent.? Yes.

Plus rebate 6 cents? Yes.

And when the monies were paid was anything retained by them as interest in advance? Yes.

How much? Rs. 1,000 was retained by them.

You produce P5 the memo. showing how the monies were dealt with? Yes the balance paid to me was Rs. 286.32.

Three months were added to 30 to make 33—that was added when? 20 When I went to sign the deed.

How long had you to be waiting till the deeds were signed? What time did you and your wife go? We went at about 6 p.m.

There were discussions there? Yes.

What time were the deeds actually signed and you broke up? 11 p.m.

There was discussion about this alteration. He wanted to retain Rs. 1,000. The Chettiar wanted me to pay his Proctor.

That had also been paid? Yes.

When was the talk first raised about retaining Rs. 1,000? That was after the signatures were affixed. 30

Had there been any talk before? None whatsoever.

Mr. Fuard was whose Proctor? He was Nadarajah's Proctor.

Somasunderam? He was also taken by the Chettiar to see whether the Proctor had drafted the deed properly.

Both of them were the Chettiar's Proctors? Yes.

You had no proctor? No.

If the mortgage bond was drafted according to instructions I did not think I need have a proctor. I paid Mr. Fuard's fees and Mr. Somasunderam's fees.

The Chettiar's travelling expenses were deducted? No. 40

In February, 1938, you found yourself in other difficulties and you wanted money again? Yes.

There was a decree against you in case No. 5843 of the District Court of Colombo? Yes.

You produced the journal entries in that case P6? Yes.

The amount is Rs. 7,672? Yes.

There was a decree against you in favour of Mr. E. P. A. Fernando? Yes.

You produce the journal entries P7 in case No. 6202 the amount was Rs. 2,735.31 showing that on 23-7-37 writ had been taken out for the claim and costs? Yes. I borrowed 1 lac 50,000 to buy half the land. 10 Half of it was inherited and to buy the other half I borrowed.

You also produce the journal entries in 5827 P8 wherein decree was entered against you for Rs. 5,252.41 by the estate of the last will of G. A. Joslin Hamy, Ratnapura. All these decrees were there and you wanted a further sum of money in February, 1938? Yes.

How much did you want? I required over Rs. 50,000.

Did you try to get the money elsewhere? Yes.

Were you able to? Yes.

Did that go through? No. Because the Chettiar refused to discharge the lease. Although I had paid the amount due on the lease bond 20 as it had further time and as it was for 33 months he refused to release the lease.

You were not able to get from elsewhere and you had to borrow from the Chetty? The Chettiar said he would give any amount I required and would not allow me to go elsewhere.

This time you got Rs. 52,000 on bond 4464 on 19-2-38 P9? Yes.

Lease 4466 of the same date P10 and agreement P11? Yes.

That lease was for how many months? I can't remember.

At this date had the 33 months elapsed? No. There was still a balance period!

30 This five years was to run from what date? After the expiration of the 33 months.

But was any money kept back on account of the previous transaction? Yes.

How much? Rs. 7,002.47.

Rs. 9,185.65 payable to State Mortgage was what? Those were the instalments I had to pay to the State Mortgage Bank.

It was payable at this date or afterwards? Afterwards.

The coupon cards were with the Chettiar and he drew the coupons? Yes.

40 In January, 1940, you found you could get the money elsewhere cheaper? Yes.

Did you go to any proctor and get any letters sent? Yes.

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Plaintiff's  
Evidence  
Tennekoon  
Mahatmaya  
—exami-  
nation  
—continued.

Who was the proctor? I went to Proctor Mr. P. M. Seneviratne.

You wrote to Mr. Somasunderam calling for the title deeds and memo of defendant's claim? Yes.

(Mr. Wickremanayake calls for letter of 23rd January, 1940, from Mr. Seneviratne to the defendant.

Not produced. Copy put in marked P12.)

No reply was sent to that. On 31st January, 1940, a second letter was sent.

(Not produced. Copy put in P13.)

No reply was sent. The deeds were sent. On 26-2-40 a further letter P14 was sent asking for the memo of the claim.

(Handed by defendant's counsel to plaintiff's counsel.)

To that came the memo P15.

(Mr. Wickremanayake says his whole case is based on P15.)

The memo was received on 26th February.

On that very day you executed indentures 1579 P16 and 1580 P17 whereby you borrowed Rs. 60,000 from Mr. A. B. Gomes? Yes.

(Mr. Nadarajah says he was settled on the 9th March.)

You filed this action on the 1st July? Yes.

You say that the defendant is a professional money lender? Yes. 20

You produce marked P18 a certificate of the registration of his business name showing that his business is that of money lending? Yes.

You received a statement of account from the Chettiar? Yes.

You produce a statement of account sent by the Chettiar as an extract from the ledger P19? Yes.

That begins at 1936 and goes up to 1940? Yes.

You are asking the Court to re-open this transaction and take a fair accounting? Yes.

To Court: Do you know how much you should get from the Chettiar? I think about Rs. 30,000 or over (Rs. 30,000). 30

(I ask Mr. Wickremanayake what his accounting shows.

On the basis of his accounting he says he is claiming Rs. 37,226.30.)

No. 8  
Tennekoon  
Mahatmaya  
—cross-  
examination

*Cross-examined*: You said you had borrowed these monies to buy up rubber properties? That was when I first borrowed money from Messrs. Keell & Waldock.

How many acres did you buy? 140 acres odd.

Is that all you bought with all your borrowings? First I borrowed a lac of rupees and bought the half share which came to 140 odd acres. To plant that portion I borrowed Rs. 40,000.

In all you had borrowed Rs. 140,000? From the company. For the Rs. 140,000 which you borrowed from Keell & Waldock am I right in saying that the lenders were Keell & Waldock? Yes. 40

You bought 140 acres and planted them up? Yes.

Did you borrow from anyone else? At that time I had borrowed money from other persons too. I planted over 500 acres.

How much did you borrow from other persons? I can't say that at once.

Rs. 50,000? More than that.

Rs. 75,000? About that.

How much had you bought for that Rs. 75,000? I utilised that money for planting the lands I owned at that time.

How many acres did you own in your own right apart from the 140 acres? A little less than 600 acres.

All these were your wife's properties? Yes. I also own about 50 acres.

Your wife at the time you married her owned about 500 acres? At the time of the marriage she did not own so much.

After her parents died she inherited it? She inherited and she acquired some property.

All the property she inherited and the property you bought up were planted up with borrowed capital? Yes.

Your borrowing went up to nearly 2½ lacs? Yes.

20 When did you commence borrowing? from about 1925.

From 1925 right up to 1935 you were borrowing? Yes.

You were borrowing from one man to pay off another? Yes.

Did you get any income from these properties? Yes.

Now when did you begin to reap any income from these properties? I was getting a small income from 1925 but the income was little.

Rubber or tea? Rubber.

Are the 600 acres all tapping rubber? Yes.

When did the whole area come into tapping? After 1930. In fact out of the one lac 40,000 I had paid off one lac at once.

30 In 1929 there was a depression? Yes.

The coupon system was introduced? Yes.

About how long did the first restriction last? I can't remember.

During that period rubber was not worth anything? After that rubber was worth very little.

Rubber properties were being sold at bargain prices? Yes.

In 1934, 1935 what was the price of rubber? About 7 or 8 cents.

In fact so much so the cost of production was more than the price of a pound of rubber? Yes.

40 rose? Yes.

In fact an excellent rubber property could have been bought for Rs. 200 to Rs. 300 per acre before it went up? Yes.

No. 8  
Plaintiff's  
Evidence  
Tennekoon  
Mahatmaya  
—cross-  
examination  
—continued.

You remember the second restriction which was in about 1934? Yes.

Coupons themselves were being bought and sold? Yes.

You remember most rubber owners did not tap but sold their coupons?  
Some did that.

Most of the owners did that? I did both. I sold the coupons and produced rubber.

Coupons fetched as much as 30 to 40 cents? Yes.

Rubber was 7 cents? Yes.

Apart from the mortgage that you have executed in favour of the State Mortgage Bank and other bonds did you execute a mortgage in 10 favour of a Chettiar in Ratnapura? Yes.

I believe you executed a bond in favour of S. P. A. Anamalay Chettiar? I had signed a visvasa deed in favour of Anamalay Chettiar. It was a friendly mortgage bond. I got no money.

What was the amount of that bond? (Witness thinks deeply and says I can't remember.)

When did you execute that bond? 1934 so far as I remember.

Not in 1929? I can't remember.

Did Anamalay sue you on that bond? His sons sued me.

There was litigation in connection with that bond? Yes. 20

Why did Anamalay sue you on a friendly bond? At that time Anamalay Chettiar was not in Ceylon. Anamalay Chettiar is alive.

For what purpose did you execute the bond in favour of Anamalay? At that time there was litigation between Anamalay Chettiar and Thornhill. At that time he had borrowed money from Colombo Chettiars and there was trouble and he said he wanted to commit suicide. So I gave him this bond so that he may show this bond and raise money. I called it a visvasa bond because I did not raise any money on that. Besides that deed I had other transactions with Anamalay.

What other transaction had you? I owed him at that time some 30 monies.

How much did you owe Anamalay? I can't remember.

About Rs. 20,000 to Rs. 25,000? Yes, about that.

On what were they secured? On chits.

You were indebted to Anamalay Chettiar to the extent of Rs. 25,000 on chits? That was before that time.

How long before? I can't remember.

About a year before the date of the bond? Yes.

You granted the bond in 1929? Yes.

Had you paid off Anamalay when you granted the bond? Not fully. 40

How much of it had you paid off? A part of it had been paid off.

Give a few more details to his honour? I will have to refer to the books. No. 8  
Plaintiff's  
Evidence  
Tennekoon  
Mahatmaya  
—cross-  
examination  
—continued.

You have kept accounts? Yes.

Have you brought them here? There was no reason for me to bring. I did not bring the accounts of Anamalay. I did not bring any account books.

Why not? My deeds support my case.

You have kept regular accounts of your borrowings? Yes. I have kept accounts for some of my borrowings.

10 To Court: At the present moment there is a regular set of books in your possession showing your borrowings? Do you send Income Tax returns? I send.

In your Income Tax returns do you now show the interest you are paying on your borrowings? I show them.

In your Income Tax returns do you not show your borrowings? Yes.

Have you not to keep accounts books for that? Yes.

You have not brought them to Court? No.

These books will show your income? Yes.

You have such books? Yes.

20 Those books will show how much you got by selling your rubber coupons or rubber? Yes.

Those books will show the total amount of your assets? Yes.

Can you produce the books tomorrow? I have not brought the books.

You told us this was a visvasa bond? Yes.

By visvasa bond do you mean to suggest that you executed this bond as a cover for any difficulties that may arise? No.

What are the properties you mortgaged to Anamalay on this bond? Some high lands.

How many acres? Over 100 acres.

30 That is a portion of the land covered by the bond in favour of the defendant? No.

Anamalay Chetty sued you? Yes.

Do you remember Nadarajah Chetty was made a party? Yes.

Do you know why he was made a party? That was a mistake.

Whose mistake? That was a mistake of Anamalay Chetty's children.

(Sgd.) R. F. DIAS,  
*District Judge.*

Case postponed for tomorrow.

(Sgd.) R. F. DIAS,  
*District Judge.*



No. 12109.

10-3-43.

Counsel as before.

D. H. W. TENNEKOON—Affirmed :

I have known Fuard from this transaction. I did not know him before. Dissanayake was the broker and he spoke to him. I met Dissanayake on the 1st of June, 1936. I went and saw Fuard at his bungalow. Fuard had arranged the transaction with the Chettiar.

Did you ask Fuard to do anything on your behalf? No. Dissanayake took me to Fuard.

What for? To get this loan.

10

From whom? I was told that Mr. Fuard had arranged to raise the loan from a Chetty. Dissanayake told me. I had instructed Dissanayake to raise the loan and he came and told me that Fuard had found a suitable Chettiar. I saw Fuard for the first time three or four days after the 1st of June. It was on the 1st of June that I asked Dissanayake to raise the loan.

What did you tell Fuard? I asked him from whom he was raising the loan. He said from a Chettiar. He did not give me the name.

At that time when you spoke to Fuard the terms of the loan had not been arranged? When I met Fuard we came to an arrangement he asked me how I wanted to raise the loan and I said on interest.

Has Fuard appeared for you in any case? Yes. He has appeared in one case for me. That was after this. That was a case I had with Mr. Gomes.

What sort of case was that? Mr. Gomes lent me Rs. 15,000 and obtained a deed from me for Rs. 19,000.

Was that also an application under the Money Lending Ordinance? No.

You are sure of that? Yes.

Then what was the action about? Before that transaction of 15,000 I had borrowed Rs. 5,000 and paid it but he had also included that in the transaction.

What happened to that case? I have paid that money.

To Court: Gomes sued me for Rs. 19,000 and he paid me Rs. 6,000 odd which he had recovered from me in excess of what was due to him.

Gomes sued me in the District Court of Ratnapura and decree was obtained.

After that decree you instituted an action in the District Court of Colombo through Fuard? Yes.

That was on 7-3-1938 case No. 8135? Yes.

40

(Mr. Nadarajah marks certified copy of the plaint D1.)

That was a plaint by you and your wife? Yes.

(Para II read). You stated that the transaction with Gomes was harsh and unconscionable? Yes.

And you also stated that Gomes dominated your will? Yes.

Had your wife ever seen Mr. Gomes? Yes.

The whole transaction was put through by you? Yes.

And whatever you told her she accepted? Yes.

It is not correct to say that Gomes had anything to do with influencing your wife? In regard to that deed he influenced her.

At her signing the deed she was influenced? He had arranged to buy at 18 cents a coupon pound but when the deed came to be signed he said he would only pay at the rate of 15 cents. Even in regard to that transaction there was an arrangement to hand over the coupons? Yes.

And with Gomes you have had transaction since 1931? Yes.

And you executed four or five bonds in his favour? Yes.

In all the transactions you agreed to give the coupons to Mr. Gomes? Only in one or two instances I agreed to that.

Was it a question of selling the coupons to Gomes or did he take charge of them and sell them on your behalf? He arranged so that he should take over the coupons and he had the option.

Was he paid anything for the work he did in selling your coupons? At the time of the sale of the coupons a small amount had to be paid to the broker and I had to pay that.

Was Gomes paid anything for his trouble? He set off the value of the coupons against the amount due to him.

Did you pay him any commission for selling the coupons? I cannot remember.

You remember telling me a few minutes earlier that he had agreed to take the coupons at 18 cents and when you came to sign the deed he quoted something less? Yes.

To Court : What was the agreement, he was to account for the coupons at 18 cents and take any excess? He had to give me at 18 cents a coupon pound.

If he sold the coupon pound for 35 cents what was the arrangement? 18 cents came to me and he took the balance.

Only 18 cents went in liquidation of my debt. He took the balance.

Is it correct then that you agreed to sell your coupons at 18 cents to Gomes? Yes.

And he was at liberty to sell them at any price he liked? Yes.

I did not get the 18 cents into my hands that was credited to my account.

Coupons then were selling at 30 and 40 cents a pound? Yes.

So then you were paying him the difference between the price and the 18 cents? Yes.

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—cross-  
examination  
—continued.

In your petition or plaint against Gomes did you make any complaint of that account? No.

P2 was executed by me and my wife in Fuard's house. The second bond of 1938 was also executed in Fuard's house. The second bond was attested by Mr. Somasunderam.

Has Mr. Fuard anything to do with the present case? No.

He did not advise you on this matter? He gave me advice.

And he being your witness got the present proctor to file your proxy? Yes.

It was Mr. Fuard who introduced Mr. Paulick Pulle to me. 10

You remember fighting a case about a fortnight ago before Mr. James Joseph? Yes.

That is case 665 Mortgage Bond. That was by the executors of Haniffa Ibrahim and the case was against me. The action was for Rs. 6,000 odd.

Not Rs. 9,000? Yes, 9,000.

That action was filed in 1942 and the trial took place on 23-3-43. I filed answer in that case.

Denying liability? I stated in my answer what the amount due was.

How much did you admit liability in? I stated I had paid Rs. 2,000 or Rs 3,000 and that the balance was due. 20

You consented to judgment? Yes.

What was the property you had mortgaged to these people? Kunu-darahena 13 acres odd in extent.

I admit I was sued by one Dr. M. G. Perera in 1936. I contested that claim, D. C. 41344.

You filed answer denying liability? No, I admitted a part of the claim.

After trial judgment was entered for the full amount? I settled the case and agreed to pay the full amount. I remember E. P. A. Fernando sued me and I filed answer admitting part of the claim. Judgment went against me and I paid the amount. 30

I raised money from Keell & Waldock on a mortgage bond. The highest amount I raised at one time from them was one lac. That was on the security of Hakumu Estate. I tried to raise further money from them after that.

Did you succeed? Yes, I raised Rs. 45,000.

Your credit at Keell & Waldock was good? Yes.

But in 1936 you could not raise any money from them? No. I could not. 40

Why? Because I owed them money at the time and they had filed action against me.

Did you then approach the State Mortgage Bank? Yes. I applied for a loan of Rs. 85,000.

And you were prepared to mortgage to the State Mortgage Bank all the property you had mortgaged to the defendant? No.

To Court: What security did you tender to the State Mortgage Bank? 148 acres.

This land? Yes.

10 I applied for Rs. 85,000 but I got only Rs. 35,000. I wanted to mortgage the entire estate but they accepted only 148 acres.

Your offer was to mortgage 250 acres? Yes.

They rejected 110 acres and they were prepared to accept only 148 acres.

They rejected the 110 acres because the title was not satisfactory and their lawyers were not prepared to pass that title? Yes.

The Rs. 35,000 was not sufficient? Yes.

And you had to find someone who was prepared to lend on the 110 acres rejected by the State Mortgage Bank? Yes.

20 With that point in view you engaged the services of Dissanayake? Yes.

And Dissanayake engaged the services of Fuard? Yes.

To find a Chetty who was prepared to take the risk? To find a Chetty who would lend on that security? Yes.

And the Chettiar was prepared to lend you Rs. 46,000? Yes. That was in July, 1936.

And you were executing a secondary mortgage of the property mortgaged to the State Mortgage Bank in addition to the rejected title of the Bank? Yes.

30 In addition to the rejected title you threw in certain other small allotments? Yes. I had to get Crown grants in respect of those lots which I threw in.

To Court: These allotments were in the Kandyan provinces and I had no Crown grants or Certificate of Quiet Possession, but there were Watoru.

I told Fuard and the Chettiar that I was mortgaging property which the State Mortgage Bank lawyers did not take.

So there was a risk? There was no risk.

The Crown might come down suddenly and say it is Crown property? 40 There was no risk.

Even subsequently I raised Rs. 50,000.

The price of rubber estates then had gone down. It was not worth while to work an estate? Yes except for the coupons.

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Evidence  
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—cross-  
examination  
—continued.

Not most but some of the rubber estates closed down except on a care and maintenance basis.

In 1936 the only thing that was valuable land were the coupons? Yes.

And if the coupons came to a stop owing to some order of the Government the security was worth nothing? But I had given the mortgagee the right to tap. (I inform Mr. Nadarajah this is comment).

All the properties mortgaged to the Chettiar including the property mortgaged to the State Mortgage Bank formed one block? No. There were five allotments of land.

The biggest one was Hakumu Estate which was 242 acres. The rest 10 were extent of 50 acres and less.

There is no road to this estate? There is a road.

Can a motor car go up to the estate? Yes.

It is a private road which I made. I do not live on Hakumu Estate but close by, about 1/4th of a mile from the estate. The road I constructed was from my bungalow to the estate.

No person can get on to the estate unless he goes through your premises? The road passes through my residing land. That land is not mortgaged.

So that a purchaser of this estate under a mortgage decree will have considerable difficulty in getting access? No, on the other side there is another road.

To Court: Can I go to that estate now without passing over your land which is not mortgaged? No.

Under the agreement of July, 1936, the Chettiar was to take charge of the coupons from the Rubber Controller? Yes.

He had to sell them within two months of the date of issue? Yes.

And he was to render you accounts of the sales from time to time? Yes.

He had to take the coupons from the Rubber Controller's Office and deliver them to the broker for sale? Yes.

And he had also to watch the market to find out the most favourable prices? Yes.

To Court: He had to sell at the most advantageous price? Yes.

The defendant has been taking charge of the coupons from the Rubber Controller's Office.

And all the returns to the Controller in connection with the issue of coupons are made by the Chetty? No. I prepared them.

And the Chetty had to attend to the correspondence, between the Rubber Controller and the defendant? No, I had to send all the reports.

Correspondence? I do not know what letters the Chetty wrote.

I sent the returns and not the Chetty.

From time to time the Chetty rendered accounts to you? Yes.

Every month? Every time he sold coupons.

Those accounts are with my lawyers.

He was regular in sending those accounts to you? Yes. Those accounts ran into several pages. I do not know whether a clerk would have been necessary to keep and copy them.

In those accounts he showed the price the coupons realised, the 6 cents he deducted and the balance he carried to my account under the mortgage bond—and there was also the commission he deducted for selling the coupons.

That is the 6 cents? No, besides that. That was the broker's commission.

And he shows the 6 cents as commission for his trouble in this matter? Yes.

Those arrangements went on from July, 1936, till about February, 1940.

In early 1938 you found that you wanted further money? Yes.

To Court: In January, 1938, my total liabilities were over Rs. 50,000.

And you had no means of paying that? No.

20 What was the maximum? Rs. 75,000.

You had settled Keell & Waldock and Gomes and others and the only creditors were this defendant and the State Mortgage Bank? Yes, and there were other creditors for small sums.

The Chettiar had to get the balance on the Rs. 46,000. The State Mortgage Bank had to get the balance on the bond for Rs. 35,000.

Those two sums alone came to roughly half a lac. Those two came to Rs. 50,000 and the rest were sundry creditors amounting to Rs. 25,000.

So that you had Rs. 75,000 liability and 400 to 600 acres of property? Yes.

30 Could you have got Rs. 75,000 from the State Mortgage Bank if you gave up your remaining acreages also? No. Not at that time.

Why? Because the State Mortgage Bank accepted only title based on Crown grants.

Then you approached somebody else? No. I am referring to the earlier occasion.

We are talking of the 2nd occasion 1938. Did you approach is the question? Yes, H. O. Beven, a broker. I engaged him to arrange a loan for me. He did not introduce me to anybody. He did not give me the name of anyone but he said he had arranged about a loan. I have not summoned Beven and he is not on my list.

40 At that time in January, February, the lease in favour of the Chetty had not expired? No. There were about 18 months to run.

No. 8  
Plaintiff's  
Evidence  
Tennekoon  
Mahatmaya  
—cross-  
examination  
—continued.

And you wanted some money? Yes.

Did you approach Fuard? No.

Whom did you approach? The defendant. I went and asked him to discharge the bond. He said as there was still an unexpired term unless a rebate is paid he would not discharge it.

When you approached the Chetty you were being sued in three cases for large sums? Yes.

What did you do then? I had to give in to the defendant. The defendant offered me money he said do not go outside I will give you money. 10

Were you prepared to take it? Yes, because I had no option.

I took the money on the same terms.

Subsequently you approached A. B. Gomes? Yes. In 1940 through Mr. Seneviratne. I agreed to give Gomes the coupons.

How much was he to deduct for his trouble for selling the coupons? In lieu of interest and for his trouble he said he would accept 6 cents per coupon pound.

That is the same rate the Chetty charged? But in addition the Chetty charged 12 per cent. interest.

Gomes was willing to charge me 6 cents on the coupon pound without 20 interest.

You intended filing action against him in due course? No.

The 6 cents was partly for interest and partly for his trouble? Yes.

To Court: At the date you entered into this bond with Gomes did you intend bringing this case? Yes.

You had received legal advice by then that this action should be brought? Yes.

Till the rubber coupons were stopped by Government, Gomes was taking the coupons and he was deducting 6 cents per pound.

Now what has happened to him? I am paying interest to him. 30

He is taking 10 per cent. interest. After the coupons were stopped Gomes sent for me and he said the coupons had stopped and he would get nothing and he said I should pay interest and the principal in instalments. I am paying that. That agreement is oral.

Not put down in writing? I granted Gomes a mortgage bond also (P16, P17)—(Mr. Wickremenayake says that P16 and P17 are not 1579 and 1580 as stated yesterday but 1582 and 1580).

You gave him a bond, lease and a written agreement? Yes.

So the only difference between the charges that Gomes has levied and the Chetty levied is the 12 per cent. which the Chetty charged? Yes. 40

That is the only complaint you make now because you were perfectly satisfied with the arrangement with Gomes? Yes.

The 12 per cent. is the only complaint you are making? And also defendant charged a rebate for a long time.

Although I paid him the money he continued to charge the rebate till 1942.

If Gomes continued also you will have a complaint against him? No.

The second bond was not signed in Fuard's bungalow but in Mr. Somasunderam's bungalow.

To Court: You swore that the 2nd bond was attested by Somasunderam in Fuard's house? That is a mistake. The first bond was signed in Fuard's house and the second in Somasunderam's house.

Why did Fuard come to Somasunderam's house? I took him there.

So that on the occasion of the second bond he was your proctor? Yes.

To Court: And there was a warrant of attorney to be signed by you and you wanted an independent proctor to attest that? Yes.

And you chose Fuard as your proctor? Yes.

What is your income monthly? Rs. 6,000. Over Rs. 6,000.

In 1935—1936? It was less. There was no income.

For how long have you been paying income tax? From the time the department came into existence.

20 From 1935 to 1940 then you must have been paying? Yes.

Well, tell us what it was in 1935 or 1936 or 1937? I cannot say without looking at the books.

Will you admit you had some income? Yes.

Besides rubber have you got tea? Yes, a small block. It is about 3 acres. I have also 50 acres of coconut. Altogether I have over 50 acres of coconut—55 or 60. That 50 acres are not mortgaged.

Besides the coconut and tea and rubber you have property in the town? I have fields. I have 100 acres of paddy.

That is free from mortgage.

30 House property? Yes, four houses in Ratnapura. They are not mortgaged. I have a house in Castle Street, Colombo. My daughter is living there. It is not mortgaged.

Any more? Yes, a jungle land in Kukulkorale 500 acres, settled by Government.

Anything else? I have a plumbago mine in the Ratnapura District. It is working now and I get Rs. 2,000 to Rs. 3,000 a month from that. Since the war started plumbago is fetching goods prices.

To Court: What more property have you got? That is all.

40 What about the gem pits you have? I have mentioned that they are the fields. I have stopped working them.



No. 8  
Plaintiff's  
Evidence  
Tennekoon  
Mahatmaya:  
—cross-  
examination  
—continued.

To Court : How much money do you get into your hands from rubber, coconut, plumbago and house rent? About Rs. 10,000 a month. The expenses come to about Rs. 6,000—working expenses.

So you get Rs. 4,000 a month clear? Yes, that is now.

In 1935 how much income tax did you pay?

(Mr. Wickremenayake objects. I ask him to cite authority. He looks at the law and now withdraws his objection.)

In 1935 and 1936 I paid but I cannot say how much. I must refer to my books. I have not brought my books. My accounts are made up by a clerk of mine and Bond & Company prepared the income tax return. He is here to give evidence.

So that in 1938 you could have raised money on your other landed properties to meet your needs? At that time I was not able to mortgage the plumbago mines. I did not own the house in Colombo in 1938. I bought it in 1939. I paid Rs. 15,000 for it.

That is money from your properties? My daughter also had money. I utilised my wife's money and my daughter's money to buy that land. The deeds are in the name of my wife and daughter.

Where did that money come from? My daughter is married to the Dedigama Ratemahatmaya and he has money. 20

I live in one house in Ratnapura and the other three are rented out. They are worth Rs. 2,000 to Rs. 3,000 each.

To Court : In 1938 why did you not raise money mortgaging your unencumbered property? Because then no one would take house property. They wanted rubber in 1938.

Do you seriously say that? Yes.

Did you try to raise on the house property? I did not try because they are small lands.

What about the 100 acres of paddy? No one would take paddy.

The Dedigama Ratemahatmaya was a very wealthy man. He is now dead. He died 7 years ago. The Testamentary case is going on.

I do not know how much the estate is worth or what estate duty has been paid.

I raised Rs. 60,000 from A. B. Gomes. P. M. Seneviratne attended to that matter.

Having got the money you instructed Seneviratne to call for a claim from the Chetty? Yes, the claim he sent is P15.

The Chetty claimed Rs. 28,202.35. I instructed Mr. Seneviratne to send that money and it was sent on 9-3 by D2 of 9-3-40.

To Court : When you sent that you intended to sue the defendant ?  
 Yes.

No. 8  
 Plaintiff's  
 Evidence  
 Tennekoon  
 Mahatmaya  
 —cross-  
 examination  
 —continued.

Why did you not say the money is available I am going to sue you because money was due to you ? I told Seneviratne I would pay and sue them.

Why ? The deed could not be discharged unless the claim was paid.

Your object in paying the money was to get a discharge of the bond and surrender of the lands and a letter to the Rubber Controller ? Yes.

When the defendant got D2 Mr. Somasunderam sent D3 of 4-4-40 to  
 10 Seneviratne enclosing all the discharged bonds and leases.

*Re-examined* : You gave the defendant a secondary mortgage of an estate which the State Mortgage Bank has taken previously ? Yes.

Tennekoon  
 Mahatmaya  
 —Re-exami-  
 nation

Out of the consideration on the first bond did the Chetty retain any money in his hands to pay the instalments due to the State Mortgage Bank ?

(Mr. Nadarajah objects—does not arise. Allowed.)

Did the defendant retain money to cover the instalments due for 33 months ? Yes.

That is a sum of Rs. 12,788.86 ? Yes.

20 The case 8135 was settled and I was paid Rs. 6,000 or Rs. 7,000 by Gomes. In case 665 I agreed to pay the balance amount due by instalments of Rs. 500. The amount I had already paid was deducted and the balance fixed. The case started and the matter was settled by the parties.

How much money have you spent on plumbago during the last two or three years ? Over three lacs. I first began to mine in 1917 and this time I started after the war I first began to get a regular income about three months ago from plumbago. I stopped gemming immediately after the war began. I spent about Rs. 30,000 in prospecting for gemming. The case filed by Annamalay Chetty was dismissed.

30 You were asked whether Telahena was mortgaged to the defendant and to Annamalay Chetty ?

(I cannot remember the name Talahena. The question that was put was whether part of the land mortgaged to Annamalay Chettiar was mortgaged to this Chettiar.)

How many lands of that name have you got in that District ? Three allotments.

Sgd. R. F. DIAS,  
*District Judge.*

No. 8  
Plaintiff's  
Evidence  
Fuard—  
examination

A. M. FUARD—Affirmed :

I am a Proctor and Notary of this Court in practice for over 23 years. I know the plaintiff. In 1936 certain transactions took place. One Dissanayake saw me about the matter first along with Proctor Weeratunge who was occupying an inner room in my office. They wanted to raise Rs. 50,000.

To Court : Whose proctor were you ? Defendant's proctor.

(I ask how this witness can be asked to divulge confidential information passing between proctor and client.

I ask Mr. Nadarajah whether his client objects. 10

Mr. Wickremenayake says he will confine himself to such matters as Mr. Fuard disclosed to the plaintiff as the agent of the defendant.)

The plaintiff also came and saw you ? Yes.

I told the plaintiff that my client Nadarajah Chettiar is willing to lend Rs. 50,000.

At that stage plaintiff's dealings were with you as agent of defendant ? Yes.

Did plaintiff meet Nadarajah Chetty after that ? No. He met the Chetty only at his (plaintiff's) bungalow in Ratnapura. That was when we went to visit the land. 20

On what terms was he prepared to lend ? On interest. But we had not fixed the rate of interest then. Nadarajah Chetty, his Kanakapillai, the broker Dissanayake and I went and saw the land.

Was the Chetty satisfied with the land ? Yes. We came back after that and on the same day some of the title deeds were given to me and some were delivered at my office.

That was for drawing up the bond. I examined the title.

There was no encumbrance except a mortgage in favour of the State Mortgage Bank. I passed the title.

Thereupon was the bond drawn up ? No. Then the defendant did not want to lend the money on interest. I communicated that to the plaintiff—first to the broker and then to the plaintiff. I told plaintiff that defendant wanted to advance money on coupons to charge a rebate of six cents a pound. That is 6 cents per pound without interest. A mortgage bond, a lease and a non-notarial agreement had to be drawn up for that purpose. I communicated that to the plaintiff. The plaintiff was willing to take it on those terms. When I told the defendant that plaintiff agreed after one or two days defendant saw me and told me he is not in a position to lend this sum then as already he had invested all his moneys on coupon transactions and if the plaintiff wants the money very urgently he will have to borrow the money from somebody and pay him. If so plaintiff will have to pay him the rebate and interest at 12 per cent. I communicated that to plaintiff. The plaintiff was pressed for money and he consented. 40

(To Court : We do not want your inference what did he say? He consented.)

I cannot remember what he said but he agreed.

Apart from merely saying alright did he say anything more? I cannot remember the words he used.

The deeds were drawn up by me and they were sent to Mr. Somasunderam for approval and he approved them and returned them to me.

(Shown P2 and P3). P2 is the bond No. 1624 and the lease is P3 1626. 1625 is the Power of Attorney to confess judgment I think.

10 (To Court: Who was the independent proctor to represent the plaintiff for the signing of the Warrant of Attorney? I cannot say. I know there should be an independent proctor, most probably it was Mr. Somasunderam because he was there.

If you were the proctor for the defendant, why did you send the deeds to Somasunderam? This Chettiar had two or three proctors. I have been doing work for him and Somasunderam also. It is the practice among these Chetties to have the deeds drawn up by one proctor approved by another.

20 Therefore Somasunderam and you were both this Chetty's proctors? Yes.

And the warrant of attorney was attested by one of you? Yes.)

Can you tell me in whose handwriting is the manuscript portion in P3? Mr. Somasunderam put in an interpolation. It does not look like mine. I cannot say whose writing it is.

(Shown P4). 30 months has been altered to 33. I cannot say who did that it must be mine. It is probably mine.

30 How did that come about? The original agreement sent to Mr. Somasunderam contained 30 and he approved it and that was the agreement between the parties. Just before the deed was signed the Chetty wanted three months added and there was a discussion over if for about an hour.

(To Court : Are you still defendant's proctor? Yes.

You mean at present? No.)

How long did this take? They came at 6-30 and they left at 11-30.

Why all that time? There was a discussion over the three months and after the signing of the bond there was another discussion the defendant wanted to retain Rs. 1,000 as a deposit. That did not form any part of the agreement. Ultimately he retained the Rs. 1,000.

40 Was there any further discussion? Yes, defendant wanted to pay Mr. Somasunderam Rs. 150 out of this money and he wanted plaintiff to pay that. At the end plaintiff paid that also. My fee was also paid by the plaintiff. That is because the borrower generally pays the Notary's fees.

No. 8  
Plaintiff's  
Evidence  
Fuard—  
examination  
—continued.

The borrower did not want to pay the other Notary's fee and there was a discussion? There was no discussion over the Rs. 150.

(Shown P5.) This is the statement of disbursements and it is signed by me. That was written on 24-7-36. I gave this money after all payments had been made. It is signed by me. This is a correct statement. What is written in ink is also mine.

(To Court : Rs. 46,000 was lent on the bond. Rs. 1,000 was retained as interest and the Chetty paid the plaintiff Rs. 45,000.)

The plaintiff did not get Rs. 45,000? No, various cheques were drawn and he got Rs. 286.32. 10

The second item in P5 are the instalments plaintiff had to pay the State Mortgage Bank and that was retained by the Chetty. That is Rs. 12,000 odd. There was also a sum of Rs. 500 borrowed in 1938 from the same Chetty.

Did you know about the bond 4664? I came to know about it subsequently. I had nothing to do with it. I know P. M. Seneviratne and the transaction that plaintiff had with him.

I went and spoke to Seneviratne about this matter.

(To Court : In what capacity? As proctor for plaintiff.

When did you become plaintiff's proctor? Suddenly when he comes 20 and asks my opinion he becomes my client.) Seneviratne was acting for the lender of the money from whom plaintiff was raising the loan—Gomes. Seneviratne was Gomes' proctor. Seneviratne was prepared to lend the money provided those documents were discharged.

(Shown P15.) Did you see this before? Yes. I saw it a few days before signing of the bond P16. Plaintiff showed it to me. Plaintiff asked my advice regarding this whether defendant is entitled to recover the rebate on 248353 pounds when he is paying the money forthwith—that is before it became payable. I told him under the Money Lending Ordinance he can re-open the whole thing if he pays under protest, if 30 the defendant is not going to waive it.

(To Court : This document is dated 26-2. P16 is also dated 26-2.

The advice was given on the same day? Yes.

Did you take counsel's opinion before you gave that advice? I think I consulted.

All in one day? Yes.)

Did you convey to Mr. Seneviratne anything with regard to this payment? I wanted him to pay this amount under protest.

Did he do so? He did not. He gave me his reasons for not doing so.

**Cross-Examined :**

In this case Dissanayake approached me and asked me to raise a loan for the plaintiff. I then 'phoned up the defendant and got him up.

And the suggestion of the loan came from you? Yes.

And you went and inspected the land with your client Nadarajah? Yes.

Were you informed that the title of part of the property had been rejected by the State Mortgage Bank? Yes, I knew that.

That was all village title. The State Mortgage Bank never lend on village title, they want Crown Grants or something equivalent.

These are all lands in the Kandyan Provinces? In the Ratnapura District, I do not know whether they come under the Kandyan Provinces.

(To Court: Do you not know that prescription does not run against the Crown in regard to lands in the Kandyan Provinces? I did not think these were in the Kandyan Provinces. I considered them to be in the Ratnapura District). Certain portions came within the Kegalle District.

Kegalle is also within the Kandyan Provinces or District? No answer.

You know that there is an Ordinance promulgated that no person can deal with lands in the Kandyan District without the previous sanction of the Government Agent? I do not know that.

You know that in the Kandyan Provinces prescription does not run against the Crown? I am not aware.

Did you not know that? What I say is that I thought that Ratnapura was outside the Kandyan Provinces.

A good portion of the lands mortgaged had neither Crown Grants nor Certificate of Quiet Possession? Most of them were settled.

The first land mortgaged is the land called Hakimuwatta 243 odd acres but according to the plan it was a little more. I do not know whether the State Mortgage Bank rejected out of that a number of acres and accepted 149 only but they were satisfied with the 149 acres only.

(To Court: In passing title you should have found that out? I did not go into that. I was under the impression that the Bank was satisfied with 149 acres.)

Did you take down particulars on a sheet of paper and try to find out what portions came within the Crown Grants and what not and thereafter search the register? I must have done that. I do not have the notes with me.

You did not try to find out for what reason the State Mortgage Bank had rejected part of this property? No, because that question did not arise, what I knew was that they had lent on a portion of the land.

No. 8.  
Plaintiff's  
Evidence—  
Fuard—  
Cross-  
examination  
—continued.

Except for the Hakumu Estate of 149 acres the rest of the land had no Certificate of Quiet Possession, no Crown Grants issued in favour of the mortgagors? I think some had Certificate of Quiet Possession and he was paying for the Certificate of Quiet Possession by instalments.

Will you admit that the manner in which you approached the passing of title has not been quite satisfactory? No answer.

Did you search for encumbrances? I must have appointed a proctor in Ratnapura to search. I did not get copies of the encumbrances. I got a proctor Gunawardene to do it and he sent me the information

You relied on his information for the passing of title? Yes. 10

(To Court : So you did not examine the register and you went on the information of some other proctor? Yes, that is what we do with regard to outside properties.

Who paid that proctor? Plaintiff paid it.)

You told the Court that the defendant at one stage came and told you that he was not prepared to lend the money to the plaintiff? Yes.

And that he had invested his money on coupon transactions, was he dealing in coupons? Yes.

Largely? Yes.

He also told you that he would lend money if the coupons are handed to the defendant? Yes at 6 cents rebate.

You mentioned that to the plaintiff? Yes.

And plaintiff agreed? Yes.

You conveyed what defendant told you to plaintiff and what plaintiff told you to defendant? Yes.

Then defendant told you he had to find this money? Yes, two or three days after that.

And that plaintiff had to pay the interest he was paying? He did not say that. He said he will have to borrow it if plaintiff was in a hurry otherwise plaintiff would have to wait a month or two. 30

And finally the matter was put through by you and these documents took shape? Yes.

(To Court : Plaintiff could not wait? Yes he wanted money.)

Apart from this bond you had attested one other bond for defendant? Yes for Rs. 500.

These are the only two deeds you attested for him? No, I have been doing work for him.

Any other deeds? 7 or 8 years ago with C. T. Kandiah I attested a big mortgage bond in favour of the defendant.

Am I right in saying that prior to the bond 1624 you recollect attesting a bond along with Mr. C. T. Kandiah? Yes. 40

Mr. Kandiah died about 15 years ago? Yes.

So that for 15 years prior to this bond you did not do work for Nadarajah Chetty? No.

The only other bond is the Rs. 500 bond? Yes.

To Court: So only three bonds? Yes.

Mr. Kandiah was the main proctor in that big bond? I was representing certain insolvents—the thing was compounded. That bond was attested by me and was in favour of several Chettiars.

It was a concurrent bond and you represented one of them? Yes.

You have not appeared for the defendant in any case? No.

10 And am I right in saying that you have appeared for the plaintiff? The first time I met the plaintiff was in respect of this transaction, I had not met him before that.

Subsequently? I do not think I appeared for the plaintiff.

Do you remember the petition filed against Gomes? Yes. I remember appearing for the plaintiff in that case.

So that you have appeared for him? Yes.

And I believe you are the proctor who advised the plaintiff in connection with this present litigation? Yes.

20 And it was you who introduced the plaintiff to Mr. Paulicpulle? Yes. I got the proxy signed by plaintiff and passed it on to him to institute these proceedings as I was going to be a witness in this case.

Apart from that you have written some letters also on behalf of the plaintiff? In respect of the second mortgage bond.

Mr. Somasunderam is the proctor for Nadarajah Chetty, the majority of his work is attended to by Mr. Somasunderam? Yes.

You say that this bond that you drafted was perused by Mr. Somasunderam? No, the defendant asked me after it was drafted to hand it over to Mr. Somasunderam for his approval and I sent the deed to him and he approved of it.

30 Did you not feel hurt about it? No that is the practice among Chettiars.

Has any of Mr. Somasunderam's bonds been brought to you? Several without his knowledge and I have read through them.

(To Court: I did not think it a reflection on my professional ability to be asked that my document should be approved by another proctor, that is the practice among the Chetties. I was not offended.)

In all these matters it is Tennekoon who approached me, his wife did not come. I had nothing to do with the raising of money from Gomes. He did that independently of my help.

40 Have you attested similar bonds to 1624 an indenture and an agreement? During the existence of coupons I must have attested nearly a thousand bonds. It was a very common kind of transaction.



The person to whom these coupons were handed over generally made a charge for handling and selling? Yes.

And for rendering accounts? Yes that is one per cent.

They also charged rebates? Yes in addition to the one per cent.

The one per cent. goes to the broker? Yes.

The creditor himself charged a rebate.

(To Court: How many such transactions have you done? Over 300.)

These transactions became so common that we have printed forms for them like mortgage bonds and so on. Mr. Somasunderam also has such printed forms. 10

(To Court: Did it not strike you that all these transactions might be set aside under the Money Lending Ordinance when you got those forms printed? It did not strike me.)

These people who were dabbling in these coupons were taking a risk? There was no risk at all. They had the mortgage and the property and the lease.

If the title was bad? Then it is finished.

Now you know that Ratnapura is within the Kandyan Provinces and that so far as land in that district is concerned the Crown's right cannot be lost by prescription? Yes. 20

So that there was a certain amount of risk? Yes.

You said you visited the estate the path through this estate lies over plaintiff's compound? Yes. That bungalow or compound is not mortgaged. If that road is blocked I think you can still go to this estate because Tenahena estate adjoins this land. That will not affect the security. I went to the estate once. I do not think we spent more than three hours there. I did not inspect all the land. The defendant was satisfied when he saw the estate.

Having visited this land for three hours you say there is another access to this estate? Yes because I saw a river passing that way and I saw the main road. 30

(To Court: Are you suggesting that the access was by boat? Adjoining this estate we visited another block of land and through that you can go to this land.

Why did you go? The lender generally takes the proctor. We are taken to see the boundaries and things like that and also for fixing the rates of interest.

Did you not think a surveyor would have been better? No answer.)

**Re-examined :**

I advised the action. There was a consultation with counsel and I attended that consultation and the plaint was settled by counsel. It was because I realised that I would be a witness in this case that I got another proctor to file the action. When I examine registers I make a note and Mr. Goonewardene also must have made notes and they must have been sent on to me.

No. 8  
Plaintiff's  
Evidence  
Fuard—  
Re-  
examination

Sgd. R. F. DIAS,  
*District Judge.*

10 P. M. SENEVIRATNE affirmed.

I am a proctor of the Supreme Court since 1915. I was acting for Mr. Gomes in this transaction between plaintiff and Gomes. Mrs. Gomes and Dr. Thiagarajah lent the money. They were lending the money on the security of P 16 and P 17. There were encumbrances on this property and they had to be discharged first. For that purpose I sent P 12 of 23-1 to Mr. Somasunderam calling for a memo of his client's claim and the title deeds. I got no reply and sent P 13. Then I sent P 14 on 26-2 and on 26-2 I received P 15 the claim. Mr. Fuard saw me in this connection. Mr. Fuard represented Mr. Tennekoon and when the memo was placed  
20 before them there was a discussion as regards the claim and then there was a question as to whether the cheque should be sent under protest.

No. 8  
Seneviratne  
—exami-  
nation

Did Mr. Fuard suggest it? I think so. I did not send it under protest because Mr. Gomes was there and he thought there might be some trouble in getting the bond discharged and so it was not sent under protest. I believe they said they would file a separate action and wanted me to send the cheque.

They wanted you to send it under protest? Yes, but my clients were not prepared to do that.

**Cross-Examined :**

80 And the plaintiff agreed to your sending it without protest? Yes, after discussion.

No. 8  
Seneviratne  
—Cross-  
examination

It was ultimately arranged that the cheque should be sent without protest and that they would file a separate action? Yes.

When you sent the cheque to Somasunderam you called upon him to discharge the mortgage bonds and surrender the lease and cancel the agreement? Yes. After receipt of the cheque Mr. Somasunderam sent me all the discharged documents.

(Shown D 3 of 4th April?) I wrote this in reply to P 15. Mr. Somasunderam sent me D 3 on 4-4 enclosing about nine documents leases bonds  
40 and agreements. If I did not send that cheque I would not have got those documents.

No. 8  
Plaintiff's  
Evidence  
Seneviratne  
—Re-exami-  
nation

**Re-examined :**

I received the memo on 26-2 and I attested the bonds on 26-2. Payment was made on 9-3 that is because I might have paid after the registration of the bonds. The money was in my hands. I had the money at the time of execution but nothing was paid till the registration of the bond. That was arranged.

Sgd. R. F. DIAS,  
*District Judge.*

Mr. Wickremanayake closes his case on the issues which are now before the Court. He puts in P 1 to P 19. 10

Sgd. R. F. DIAS,  
*District Judge.*

In answer to Mr. Nadarajah, Mr. Wickremanayake says that the plaintiff admits that the plaintiff made application to the State Mortgage Bank to borrow Rs. 85,000 and that only Rs. 35,000 was lent and that only 148 acres was accepted as security and the rest was rejected.

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**No. 9.**

No. 9  
Defendant's  
Evidence

**Defendant's Evidence**

Mr. Nadarajah reads in evidence D 1 to D 3 and closes his case on the issues now before the Court. 20

Sgd. R. F. DIAS,  
*District Judge.*

Mr. Nadarajah addresses Court.

Partnership Ordinance, Chapter 69, Sections 3 and 4.

23 N. L. R. 342 at page 343.

Section 6 of the Money Lending Ordinance.

Issue 1. No dispute. But in addition evidence is, he dealt in coupons.

2. May have been.

3. No evidence. Fact that a man has a number of judgments against him is not proof that a man is in financial difficulties. 30 Evidence is that plaintiff has a large income.

4. Not a single money lending transaction. Even if it is the agreement must be dissociated from the interest or charges in respect of the loan. The 6 cents per pound for the rubber coupons is a separate transaction.

5. Same as 4.  
8 and 9 are accounting issues.

10. Admitted.

11. No.

12. No evidence. Trap laid for defendants.

15. No.

16. No.

17. Will depend on the findings on other issues.

10 20. If the Court holds against the defendant on the other issues  
Court must fix the interest. Accept the plaintiff's evidence.  
Section indicates what are reasonable rates of interest.  
Defendant was taking a risk. Rate of interest can be  
exceeded. Note the risk involved.

21A. Yes.

(B)

23.

24.

Mr. Wickremanayake addresses Court :—

24. T. L. R. 476.

20 (1906) Law Reports Court of Appeal Cases 461 at 471.  
Section 6 of the Money Lending Ordinance.

Further hearing tomorrow.

Sgd. R. F. DIAS,  
*District Judge.*

11th March, 1943.

Same appearances as before.

Adv. Mr. van Geyzel addresses Court :

(1906) Appeal Cases 461 at 467, 470 and 473.

34 N. L. R. 287.

37 N. L. R. 179.

30 35 N. L. R. 352.

C. A. V.

Sgd. R. F. DIAS,  
*District Judge.*

No. 10.

Judgment of the District Court. 9-4-43

JUDGMENT

D. C. Colombo 12109/M.

The plaintiffs are husband and wife, who about the year 1925 had to borrow money to pay off their debts. In 1928 owing to the fall in the price of rubber, their financial position became worse. In 1934 the price

No. 9  
Defendant's  
Evidence  
--continued.

No. 10  
Judgment  
of the  
District  
Court  
9-4-43

No. 10  
Judgment  
of the  
District  
Court  
9-4-43  
—continued.

of a pound of rubber was less than the cost of producing it. The result was that creditors who had remained quiet began to demand payment, and file actions against the plaintiffs. A particularly troublesome creditor was Messrs. Keell & Waldock who filed action 705/M on a bond, and obtained decree on 20-7-1934. The plaintiffs appear to have successfully prevented the order to sell the mortgaged property from issuing until 31-7-1935, but on that day order to sell was issued made returnable on 31-7-1936. Therefore, unless Keell & Waldock was paid off before this day, property which the plaintiffs greatly valued would be sold up at a forced sale probably for less than its true value. They tried to raise a 10 loan from the State Mortgage Bank, but the bank's lawyers would not pass title. The credit of the plaintiffs was exhausted, and they were so desperately in need of money that they were prepared to obtain a loan on any terms.

In June, 1936,—that is to say, one month before the returnable date of the commission to sell the mortgaged property—a man called Dissanayake introduced the plaintiffs to a Sea Street money lender, this defendant. The exhibit P 18 shows that besides the business of money lending he is also a trader in tea and tea coupons. It is to be observed that in D 18 the defendant does not call himself a dealer in rubber or rubber 20 coupons.

The defendant has not given evidence or faced cross-examination. I therefore assume that he is not in a position to contradict the evidence of the 1st plaintiff and proctor Fuard. There is no doubt that the plaintiffs are improvident people, but that is no reason for rejecting the evidence of the 1st plaintiff solely on that ground. The Money Lending Ordinance was intended to help improvident persons or as was said in a case to which reference will be made presently: "The Act was intended to protect borrowers against themselves".

It is clear from the evidence that the defendant took advantage of 80 the debtors' necessity. He first agreed to lend money but the rate of interest was not specified. He demanded to inspect the land and having satisfied himself of the adequacy of the security, he had the title examined by Mr. Fuard. Defendant then told Fuard that he did not want to lend money on interest, but that he was willing to advance money on the coupons from the land with a rebate of six cents per pound without interest. The defendant suggested that in order to give effect to this the plaintiffs should, besides giving a mortgage bond, execute a lease of the lands, and enter into an agreement about the coupons. Fuard communi- 40 cated these suggestions to the plaintiffs who agreed. They had no alter- native. Then the defendant told Fuard that he was not in a position to find the money, as all his funds had been invested—a strange thing to say after the defendant had even gone to see the land and decided to give the loan. He suggested that if the plaintiffs wanted money very urgently, he would have to borrow the money at interest, and that therefore the plaintiffs would have to pay him a rebate of six cents on the pound plus interest at 12 per cent. The plaintiffs having no choice agreed to these terms.

Thereupon Mr. Fuard was instructed to draft three deeds.

P 2 is mortgage bond No. 1624 by the plaintiffs in favour of the defendant for a loan of Rs. 46,000 at 12 per cent. interest. At the same time another deed, No. 1625, was executed—probably a warrant of attorney to confess judgment, but it has not been produced. By P 3, deed No. 1626, the plaintiffs leased to the defendant the mortgaged properties. The Rs. 46,000 referred to in the bond was “to be taken as rent”. It is a matter for comment that both in this lease P 3 as well as in the contemporaneous agreement P 4 the documents as originally drafted  
 10 by Mr. Fuard was to the effect that the lease and the agreement were to be in force for “thirty months”. At the time of execution, however, an interpolation was made which altered the period to thirty-three months thus: “thirty-three months”. This supports the oral evidence that at the last moment the defendant was not satisfied with the terms agreed upon but induced the plaintiffs to extend the period to thirty-three months. The defendant has not given evidence himself nor called proctor Somasundram who made the interpolation to deny the suggestion that the creditor dominated the situation and took advantage of the necessity of the debtor. I see no reason to disbelieve Mr. Fuard’s evidence. He says  
 20 that from 6-30 p.m. until 11-30 p.m. the defendant and the 1st plaintiff were haggling over these new terms. Some attempt to discredit Mr. Fuard was made by suggesting that he was displeased because the deeds drafted by him were sent to Mr. Somasundram. I reject that suggestion. It is quite clear that the defendant was taking advantage of the necessity of the borrower to increase his demands.

By P 2 the plaintiffs having mortgaged their lands, by P 3 they leased them to the defendant for thirty-three months. The defendant was to be in possession. He was to receive from the Rubber Controller the rubber coupons until the expiry of the thirty-three months, or till such further  
 30 period until the defendant recovered the full amount of the advance. If at the expiry of the thirty-three months it was found that the coupons received by the defendant fell short of the advance deposited, it was to be lawful for him to be in possession till such time as he was able to obtain a sufficient amount of coupons to cover the short fall; and the defendant was authorised by the plaintiffs to have the period extended by the Rubber Controller. It was specially provided that the defendant was to have the right to recover the money on the Bond P 2 at any time notwithstanding anything contained in the lease. It is clear that the bond and the lease form part of one money lending transaction. The agreement P 4 recites  
 40 P 2. The consideration for this agreement is said to be the money advanced on P 2, and confers on the defendant the right to have the rubber coupons issued to him for thirty-three months. The defendant agrees to sell the coupons at the market price, and after paying brokerage, *and himself a commission of six cents per pound*, to credit the balance to the plaintiffs’ account towards reducing the money due on the Bond P 2. If at the end of thirty-three months the money so credited proved insufficient to liquidate the amount of the bond, the defendant was to be allowed to obtain

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from the Controller a further quantity of coupons during a further period under the same terms until the amount due under the mortgage bond P 2 was fully paid up. If, however, the bond was paid off before the expiry of the thirty-three months, the defendant, nevertheless, was to have the benefit of the agreement P 4 for the full period of thirty-three months. It is therefore clear that P 2, P 3 and P 4 are all parts of one money lending transaction.

In 1938 the plaintiffs again became financially embarrassed. In February of that year there were three actions filed against them for sums varying from Rs. 2,735 to Rs. 7,672—P 6—P 8. Instead of realising their 10 assets and paying off their creditors, the plaintiffs wanted to borrow more money. I believe the evidence that they might have been able to obtain better terms than those which defendant gave them, but he proved adamant and refused to cancel the lease P 3 on the ground that it was still current. Therefore, the plaintiffs had no option but to go to him again and borrow on his own terms.

On 19-2-1938 the Bond No. 4664—P 9, for Rs. 52,000, a lease P 10 (Deed No. 4666) and the agreement P 11 were executed.

The rate of interest in bond P 9 is 12 per cent. The notary's attestation in P 9 shows that a sum of Rs. 7,002.47 was deducted as the balance 20 due on the Bond P 2 (No. 1624) and a sum of Rs. 19,000 was retained by the defendant for the discharge of Bond No. 423 of 24-7-36, and that the balance Rs. 15,838.88 was paid to the plaintiffs by five cheques. P 10 is a lease in consideration of Rs. 52,000 which was to be taken as rent for the full term of five years. The terms of this lease are similar to those of P 3. P 11 is an agreement similar to P 4 and recites P 6 and P 7. The defendant was to receive the coupons and sell them, provided the defendant was not to receive more than 347,000 coupon pounds after 31-7-39, if the Rs. 52,000 due on P 9 and interest was fully paid up. The defendant was to cause the coupons to be sold, and after paying brokerage and a com-30 mission to himself of six cents per coupon pound, he was to credit the balance proceeds to the plaintiffs' account in reduction of the debt under P 9. It is therefore clear that P 9, P 10 and P 11 are all parts of one money lending transaction. It is also clear from the attestation in P 9 that part of the money lent under P 9 was retained by the defendant against money due on the Bond P 2—thus linking the two transactions together.

In 1940 the plaintiffs found they could borrow on better terms elsewhere. They went to Proctor Seneviratne who found one A. B. Gomes. On 23-1-40 the letter P 12 was written to the defendant's proctor—Mr. 40 Somasundram, asking for the title deeds of the lands together with a memo of the full claim due to the defendant. No reply was received to this letter. By P 13 dated 31-1-40 attention was invited and it was pointed out that delay was prejudicial to the plaintiffs' interests, as they desired to pay off the defendant. On 26-2-40 by letter P 14 attention was again invited. On the same day Mr. Somasundram by letter P 15 replied to plaintiff's proctor. A memo showing the amount due was sent, and it

was stated that further money was due to the defendant under a certain lease for six years. The defendant's claim was for Rs. 28,202.35 with interest on Rs. 14,289.17 at 12 per cent. per annum from 23-2-40 until payment in full. The proctor requested that his fee of Rs. 10.50 should be added to this sum. The plaintiffs accept the memo appended to P 15.

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of the  
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—continued.

Without loss of time, on the same day, the plaintiffs raised Rs. 60,000, from Gomes on Deeds P 16 and P 17. It has been suggested that P 16 and P 17 are similar to the transactions which the plaintiffs entered into with the defendant. That may or may not be so. It will be time enough to consider whether the plaintiffs can attack those transactions under the Money Lending Ordinance if and when that question is raised.

On 9-3-40 the plaintiffs without protest paid and settled the defendant's claim—D 2. On 4-4-40 by D 3 the defendant returned to the plaintiff all the deeds, etc., duly discharged. On 1-7-40 the plaintiffs filed the present action claiming relief under the Money Lending Ordinance. The Supreme Court has held that the Court has jurisdiction to entertain this claim for relief.

For the defendant it is argued that the Money Lending Ordinance does not strike at transactions allied to a mortgage bond, as for instance, where the relations of principal and agent are created between borrower and lender, or where the return which the creditor is to receive is a share of the profits. Therefore says counsel if B wants money to open a land and borrows money from A promising to give a half share of the profits, such a transaction would not be caught up by the Money Lending Ordinance. He also argues that if A lends money to B to plant a land, and B agrees to repay by giving A a share of the profits, this would not be a money lending transaction. It is also stated that if A having money available gives it to B to buy coupons on B's undertaking to pay A 10 cents per coupon, this is not a money lending transaction. Similarly it is said if A lends Rs. 10,000 to B on his undertaking to give all his coupons to A as B's agent with an undertaking by B that A is to receive a commission of 6 cents per coupon for his trouble, this is not a money lending transaction, but a pure question of agency. It is submitted that the fact that A happens to be a money lender, does not and should not deprive him of his right to contract. It is contended that the document P 4 creates an agency coupled with an interest. It is urged that the plaintiffs appointed the defendant their agent. He had to keep books, sell the coupons, and was given a commission for his trouble—but why the defendant should do this work when the plaintiffs themselves could have done it as well, the defendant has not chosen to state from the witness box. It is further argued that in view of the terms of the letter D 2 and the money having been paid without protest, the plaintiffs are now estopped and 23 N. L. R. at page 343 is cited as an authority for this proposition. It is submitted that the conduct of the plaintiffs show that under the guise of asking for Equity, they are really seeking to do Iniquity.

It is however plain from the provisions of the Money Lending Ordinance that a very wide jurisdiction has been conferred upon the Courts



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in proper cases to give effect to the provisions of that Ordinance. But before a debtor can claim that a transaction should be re-opened and an account taken, it is his duty to satisfy the Court of certain things. He must prove that the return to be received by the creditor over and above what was actually lent, by whatever name that return may be called, having regard to any sums already paid on account, is excessive *and* that the transaction was harsh and unconscionable, or as between the parties thereto substantially unfair. What amounts to excessive interest is to be determined by the tribunal in each case—the question of risk being a material matter for consideration. When excessive interest has been 10 apparently established, any facts which show that the transaction was not harsh and unconscionable should be proved by the lender. The burden is on him—*Samuel vs. Newbold* (1906) Appeal Cases at page 473—House of Lords.

A transaction is harsh and unconscionable when it is one sided, and inequitable in its terms—Mozley & Whiteley's Legal Dictionary ; extravagant, exorbitant—Stroude ; unreasonable, unscrupulous, grossly unfair that its performance should not be enforced. In *Blair vs. Buckworth* (1908) 24 Times Law Reports (English) 474 a money lending transaction was re-opened where the Court came to the conclusion that the borrower being 20 under the necessity of raising a sum of money at short notice, the money lender took advantage of that necessity to induce the borrower to sign a promissory note with interest at 44 per cent. per annum, *the primary security being an equitable mortgage of land which was sufficient security for the advance.* It was laid down that the real question for the Court to consider is whether in all the circumstances of the case, the interest charged in respect of the money lent was excessive and the transaction was harsh and unconscionable? The fact that the borrower knew all about the transaction was only one element to be taken into consideration in seeing whether it was harsh and unconscionable. It was held that the money 30 lender knew of the urgent necessity of the borrower for money within a few days, and that it was essential for him to leave England with the money, and he took advantage of that necessity. It was also held that the rate of interest was *quite extravagant in view of the sufficiency of the security and the nature of the risk which the lender ran.* The Court also held that the promissory note was introduced at the last moment to enable the lender to squeeze the borrower in respect of the interest ; and that looking at the transaction as a whole, it was harsh and unconscionable considering the security the plaintiff was getting for the loan. It was also pointed out that the Money Lending Act was intended to protect borrowers against 40 themselves.

I have quoted this case at some length because of its similarity to the case now before us. The defendant knew of the necessity of the plaintiffs. They had to find a large sum of money by a certain date. The security of a mortgage at 12 per cent. was ample security for the money that was lent. The defendant having seen the land, realised that he had an opportunity of squeezing the plaintiffs so as to give him greater advantages.

It seems to me that both the transactions of 1936 and 1938 were harsh and unconscionable and substantially unfair, and that the total return to be received by the defendant having regard to the sufficiency of the mortgage at 12 per cent. was excessive. I do not think 12 per cent. interest is excessive, but the commission of 6 cents per coupon pound cannot stand and must be repaid. Counsel for the defendant has stated that if a conversion is made into a rate per centum per annum, it would come to 24 per cent. for the full period and 34 per cent. for a shorter period.

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of the  
District  
Court  
9-4-48  
—continued.

The plaintiffs, however attack the transactions on a further ground. They say that these transactions have been induced by undue influence under S. 2 (1) (b). “Undue influence” has been defined for the purpose of this section. I think the plaintiffs have proved that the relations subsisting between them were such that the defendant was in a position to dominate the will of the plaintiffs, and that he did in fact use that position to obtain an unfair advantage, not once but twice. It is only necessary to call to mind the manner in which the terms in 1936 were increased by degrees until even at the time when the deeds were to be executed, the defendant kept on increasing his demands. Then in 1938 when the plaintiffs wanted to pay and settle him in February, 1938, the defendant took advantage of the situation to put them off on the ground that P 3 was still current, and in effect compelled them to borrow from him again under P 9, P 10, P 11.

I do not think the fact that a money lender uses the forms of the law such as agency to mask his usury, can be allowed to prevent a Court from ascertaining the real nature of the transaction. I do not think the doctrine of estoppel or the case reported in 23 N. L. R. 343 apply to this case, which was not decided under the Money Lending Ordinance, S. 2 of the Ordinance shows that the doctrine of estoppel is not to apply in proceedings of this kind.

I answer the issues on this part of the case as follows :—

- |         |                  |
|---------|------------------|
| 1. Yes  | 16. Yes          |
| 2. Yes  | 17. Yes          |
| 3. Yes  | 20. 12 per cent. |
| 4. Yes  | 21 (a) Yes       |
| 5. Yes  | (b) Yes          |
| 10. Yes | 22. Yes          |
| 11. Yes | 23. Yes          |
| 12. Yes | 24. No.          |
| 15. Yes |                  |

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Judgment  
of the  
District  
Court  
9-4-43  
—continued.

I therefore direct that an accounting between the parties be held on the lines indicated in this judgment. The question of costs will be dealt with when final decree is entered. Call case on 24-4.

Sgd. R. F. DIAS,  
*District Judge.*  
9-4-43.

Pronounced in open Court in the presence of the proctors for the parties.

Sgd. R. F. DIAS,  
*District Judge.* 10

No. 11  
Petition  
of Appeal to  
the Supreme  
Court  
against the  
Order of  
9-4-43  
16-4-43

**No. 11.**

**Petition of Appeal to the Supreme Court against the Order of 9-4-43**

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

1. CHANDRASEKERA HERAT MUDIYANSELAGE RAN  
MENIKA WIJEYWARDENE TENNEKOON WALAUWA  
MAHATMEE, and
2. DON HENRY WIJEYWARDENE TENNEKOON  
BANDARA MAHATMAYA, both of Ratnapura..... *Plaintiffs.*

D. C. Colombo No. 12109/M                      *vs.*                      20

M. R. M. M. M. N. NADARAJAN CHETTIAR of 178, Sea  
Street in Colombo..... *Defendant.*

M. R. M. M. M. N. NADARAJAN CHETTIAR of 178, Sea  
Street in Colombo ..... *Appellant.*

*And*

1. CHANDRASEKERA HERAT MUDIYANSELAGE RAN  
MENIKA WIJEYWARDENE TENNEKOON WALAUWA  
MAHATMEE, and
2. DON HENRY WIJEYWARDENE TENNEKOON  
BANDARA MAHATMAYA, both of Ratnapura.....*Respondents.* 30

To

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

No. 11  
Petition of  
Appeal to  
the Supreme  
Court  
against the  
Order of  
9-4-43  
16-4-43

—continued.

On this 16th day of April, 1943.

The Petition of Appeal of the defendant-appellant abovenamed appearing by Sabapathy Somasundaram his Proctor, states as follows :—

1. The plaintiffs, wife and husband, alleging that certain transactions they had with defendant were purely money lending transactions, sued  
10 defendant in this action for a re-opening of those transactions and for the taking of an account.

2. On 11th July, 1936, plaintiffs executed in favour of defendant :—

(a) Mortgage Bond No. 1624 marked P 2 for Rs. 46,000.

(b) Indenture of lease No. 1625 marked P 3 whereby plaintiffs leased to defendant certain rubber properties of theirs for thirty-three months ;  
and

(c) An agreement marked P 4 which regulated the manner in which defendant was to realise the coupons of the leased rubber properties and appropriate the proceeds of realisation.

20 3. Later on 19th February, 1938, and before the expiry of the term mentioned in P 2, P 3 and P 4 the plaintiffs entered into three similar documents P 9, P 10 and P 11.

4. In 1940 the documents P 9, P 10 and P 11 were discharged by payment made by plaintiffs without protest.

5. Defendant denied plaintiffs' allegations and objected to a re-opening of the transactions.

6. The case went to trial on the following issues :—

(1) Does the defendant carry on the business of money lender ?

(2) Were the plaintiffs in July, 1936, indebted to sundry creditors  
30 and judgment-debtors ?

(3) Were the plaintiffs in February, 1938, in acute financial distress and were they obliged to obtain from the defendant a further loan ?

(4) Is the transaction represented by the mortgage bond 1624 of 11-7-1936 and the deed of lease 1625 of the same date and the agreement entered into on the same date as these two instruments a single money lending transaction ?

(5) Is the transaction represented by Mortgage Bond No. 4664 of 19-2-1938, deed of lease 4666 of the same date and agreement entered into on 21-2-1938 a further single money lending transaction ?

40 (6) What sum was due to the defendant on Mortgage Bond No. 1624 as at 19-2-1936 ?

(7) What sum had the defendant paid himself in liquidation of the amount due under the said mortgage bond ?

No. 11  
Petition of  
Appeal to  
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Court  
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Order of  
9-4-43  
16-4-43  
—continued.

(8) Is the sum of Rs. 4,069.23 referred to in para. 10B of the plaint money belonging to plaintiffs ?

(9) Did the defendant wrongfully retain Rs. 7,002.47 for the purpose of discharging Mortgage Bond No. 1624 ?

(10) Did the plaintiffs in February, 1940, negotiate with a third party to raise Rs. 60,000 so as to pay off the defendant ?

(11) Did the defendant wrongfully claim that Rs. 28,202.35 was due to him under Mortgage Bond No. 4664 as at 26-2-1940 ?

(12) Did the defendant wrongfully refuse to discharge the Mortgage Bonds Nos. 1624 and 4664 unless the aforesaid sum was paid ? 10

(13) What sum was due to the defendant under Mortgage Bond 4664 as at 26-2-1940 ?

(14) What sum did the defendant recover between 19-2-1938 and 26-2-1940 by the sale of rubber coupons ?

(15) Are the transactions referred to in issues 4 and 5 harsh and unconscionable ?

(16) Were the said transactions induced by the undue influence of the defendant ?

(17) Are the plaintiffs entitled to a re-opening of the said transactions and to have an accounting taken between them and the defendant of the 20 amounts properly due under the said transactions ?

(18) Are the plaintiffs entitled to a decree in their favour ordering the defendant to pay them the sum of Rs. 4,068.23, Rs. 7,247 and Rs. 26,154.60 referred to in paras. 10B, 11 and 17B of the plaint or any of these sums, or to any sum of money which may be found due to the plaintiff upon an accounting taken between them and the defendant ?

(19) Can plaintiffs maintain this action to re-open the transactions upon Bonds Nos. 1624 of 11-7-1936 and 4664 of 19-2-1938 as no sums are claimed to be due to the defendant thereon at the date of action ?

(20) If issue 15 is answered in the affirmative, what rate of interest 30 was the defendant entitled to charge as being reasonable in all the circumstances of the case ?

(21) (a) Did the plaintiffs make payments to the defendant without protest ?

(b) Did the plaintiffs make the payment to the defendant with the full knowledge of the facts which he pleads in this action ?

(22) If issues 21 (a) and/or 21 (b) is answered in favour of the defendant, can plaintiffs maintain this action ?

(23) Did the plaintiffs by making the payments to the defendant upon Bonds Nos. 1624 and 4664 and in respect of the Indentures of Lease 40 Nos. 1625 and 4666 induce the defendant to surrender his rights under the said Indentures ?

(24) If so, are the plaintiffs estopped from maintaining this action? and by his judgment dated the 9th April, 1943, the learned District Judge ordered the transactions to be re-opened and an account to be taken.

No. 11  
Petition of  
Appeal to  
the Supreme  
Court  
against the  
Order of  
9-4-43  
16-4-43  
—continued.

7. Being aggrieved with the said judgment and the decree thereon the defendant begs to appeal therefrom to Your Lordships' Court on the following amongst other grounds that might be urged at the hearing of this appeal :—

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

10 (b) The transactions in question were not purely money lending transactions and the Court should not have ordered them to be re-opened.

(c) The finding that defendant exercised undue influence is wrong and is not justified by the evidence in the case.

(d) The learned Judge fails to discuss adequately all the evidence on the adequacy of the security the defendant had. Defendant had no proper security for his money and took great risks in the matter.

(e) If the learned Judge's finding is correct that the whole thing was a purely money lending transaction, then the learned Judge should have considered all the circumstances in arriving at what is a proper return to  
20 defendant. Twelve per cent. interest is too small a return in the circumstances. Twelve per cent. interest and the six cents commission charged by defendant are an adequate return to defendant and cannot be considered harsh or unconscionable in all the circumstances.

Wherefore the defendant-appellant prays :

(1) that the judgment and decree appealed from be set aside.

(2) that plaintiffs' action be ordered to be dismissed.

(3) or in the alternative the adequate return be fixed at a rate very much higher than twelve per cent. interest per annum.

(4) for costs in both Courts, and

30 (5) for such other and further relief as to Your Lordships' Court shall seem meet.

Sgd. S. SOMASUNDERAM,  
*Proctor for Defendant-Appellant.*

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## Further Order of the District Court

No. 12109.

21-4-43.

ADVOCATE WICKREMANAYAKE for the plaintiff.

ADVOCATE CHELVANAYAGAM for the defendant.

Mr. Chelvanayagam says that an appeal has been taken by the defendant against the last judgment of the Court and he asks that further proceedings be stayed until the Supreme Court decides the appeal.

Mr. Chelvanayagam says that if the Supreme Court sets aside the judgment of this Court an accounting will not be necessary, or even if the order is varied if an accounting now takes place it will have to be gone through again.

Mr. Wickremanayake is heard. Submits case should not be heard piece-meal. Submits plaintiff's claim will be unnecessarily delayed. Interlocutory appeal does not stay proceedings. Mr. Wickremanayake is willing to agree not to take any objection that appeal was not taken.

Mr. Chelvanayagam says the appeal is not an interlocutory appeal.

## ORDER

This is an accounting under the Money Lending Ordinance. The case had to be tried piece-meal. First of all there was the question of jurisdiction. That matter went up in appeal and was decided by a Full Court. Next the Court had to decide certain matters preliminary to the accounting. These matters have now been decided, and the third stage will be reached when in accordance with these findings an accounting will have to be taken. The defendant has appealed against the second order. Supposing in spite of this appeal this Court were to proceed with the accounting, and the Supreme Court were to set aside or vary the order of this Court, all that work would either be of no use or may have to be re-done. I therefore do not think that the plaintiff will really be prejudiced by waiting for the accounting until the appeal is decided one way or the other. Parties are agreed that after the issues are finally decided the question of accounting will present no difficulty. It is true that an interlocutory appeal does not stay proceedings but this is a matter of discretion and in the exercise of that discretion I think that the case should be postponed until the Supreme Court finally decides the manner in which the accounting should take place if it is to take place at all. I therefore allow defendant's application to stay proceedings, but I direct each side to bear its costs of today.

Sgd. R. F. DIAS,

*District Judge.* 40

Decree of the Supreme Court Affirming the Order  
of 9-4-43. 25-7-44.

No. 13  
Decree of the  
Supreme  
Court  
Affirming  
the Order of  
9-4-43  
25-7-44

GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN,  
IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS,  
KING, DEFENDER OF THE FAITH, EMPEROR OF INDIA

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

Supreme Court No. 35/1944.

- 1. CHANDRASEKERA HERAT MUDIYANSELAGE RAN
- 10 MENIKA WIJEYWARDENE WALAUWA
- MAHATMEE AND ANOTHER.....*Plaintiffs-Respondents.*

*Against*

M. R. M. M. N. NADARAJAH CHETTIAR of 178, Sea  
Street ..... *Defendant-Appellant.*

Action No. 12109/M. District Court of Colombo.

This cause coming on for hearing and determination on the 25th day  
of July, 1944, and on this day, upon an appeal preferred by the defendant  
before the Hon. Sir John Curtois Howard, Kt., K.C., Chief Justice, and  
the Honourable Mr. A. E. Keuneman, K.C., Puisne Justice of this Court,  
20 in the presence of counsel for the appellant and the respondents.

It is considered and adjudged that the decree made in this action by  
the District Court of Colombo and dated the 9th day of April, 1943, be  
and the same is hereby affirmed and this appeal is dismissed.

And it is further ordered and decreed that the defendant-appellant  
do pay to the plaintiffs-respondents their taxed costs of this appeal.

Witness the Hon. Sir John Curtois Howard, Kt., K.C., Chief Justice,  
at Colombo, the 25th day of July, in the year of our Lord One thousand  
Nine hundred and forty-four, and of Our Reign the Eighth.

Sgd. D. A. A. PERERA,  
*1st Deputy Registrar, S. C.*



## No. 14.

No. 14  
Application  
of the  
Defendant-  
Appellant  
for Condi-  
tional Leave  
to Appeal to  
the Privy  
Council  
against the  
Order of the  
Supreme  
Court of  
25-7-44  
28-8-44

**Application of the Defendant-Appellant for Conditional Leave to  
Appeal to the Privy Council against the Order of the  
Supreme Court of 25-7-44.**

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

In the matter of an application for leave to appeal to the  
Privy Council from the judgment of this Court in S. C.  
No. 35 of 1944, District Court (Final) Colombo 12109/M.

*Between*

M. R. M. M. M. N. NADARAJAN CHETTIAR of 127, New 10  
Chetty Street in Colombo .....*Defendant-Appellant....*

S. C. No. 35 of 1944. *vs.*

D. C. Colombo (Final) No. 12109/M.

1. CHANDRASEKARA HERAT MUDIYANSELAGE RAN  
MENIKA WIJEYWARDENE TENNEKOON WALAUWA  
MAHATMEE,
2. DON HENRY WIJEYWARDENE TENNEKOON  
BANDARA MAHATMAYA, both of Ratnapura.....*Plaintiffs-  
Respondents.*

*To* 20

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

On this 23rd day of August, 1944.

The humble petition of M. R. M. M. M. N. Nadarajan Chettiar the  
defendant-appellant abovenamed appearing by Sabapathy Somasunderam  
his Proctor, states as follows :—

1. That feeling aggrieved by the judgment and decree of this  
Honourable Court pronounced on the 25th day of July, 1944, the appellant  
is desirous of appealing therefrom to His Majesty the King in Council.

2. That the said judgment is a final judgment and the matters in 30  
dispute on the appeal amount to or are of the value of Rupees five thousand  
or upwards.

3. Notice of this application has been served on the respondents  
through the Court, through the post, by telegrams and by direct service  
by the appellant's agent Veeanna Rana Karuppiahpillai within fourteen  
days of the judgment appealed from. An affidavit by the said Veeanna

Rana Karuppiahpillai testifying to the service by him by post and by telegrams has already been filed in these proceedings.

Wherefore the appellant prays for conditional leave to appeal to His Majesty the King in Council against the said judgment of this Court delivered on the 25th July, 1944.

Sgd. S. SOMASUNDARAM,  
*Proctor for Defendant-Appellant.*

No. 14  
Application  
of the  
Defendant-  
Appellant  
for Condi-  
tional Leave  
to Appeal to  
the Privy  
Council  
against the  
Order of the  
Supreme  
Court of  
25-7-44  
28-8-44  
—continued.

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No. 15.

**Judgment of the Supreme Court Dismissing the Application  
for Conditional Leave to Appeal.**

10

**Application for Conditional Leave to Appeal to the Privy Council  
in 35/D. C. Colombo No. 12109.**

No. 15  
Judgment  
of the  
Supreme  
Court  
Dismissing  
the Appli-  
cation for  
Conditional  
Leave to  
Appeal  
12-9-44

*Present* : HOWARD, C.J. & WIJEYWARDENE, J.

*Argued and Decided on* : 12th September, 1944.

N. NADARAJAH, K.C., with S. J. V. CHELVANAYAGAM, for the  
Defendant-Petitioner.

H. V. PERERA, K.C., with F. C. W. VAN GEYZEL, for the Plaintiffs-  
Respondents.

HOWARD, C.J.

20 It is sufficient to say that we do not think that this is a final order.  
The application is dismissed with costs.

Sgd. J. C. HOWARD,  
*Chief Justice.*

Sgd. E. A. L. WIJEYWARDENE,  
*Puisne Justice.*

## No. 16.

No. 16  
Decree of  
the Supreme  
Court Dis-  
missing the  
Application  
for Condi-  
tional  
Leave to  
Appeal  
12-9-44

**Decree of the Supreme Court Dismissing the Application  
for Conditional Leave to Appeal.**

GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN,  
IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS,  
KING, DEFENDER OF THE FAITH, EMPEROR OF INDIA.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

1. CHANDRASEKERA HERAT MUDIYANSELAGE RAN  
MENIKA WIJEYWARDENE TENNEKOON WALAUWA  
MAHATMEE AND ANOTHER..... *Plaintiffs-Respondents.* 10

*Against*

M. R. M. M. N. NADARAJAN CHETTIAR..... *Defendant-Appellant.*

Action No. 12109 (S. C. No. 35).

District Court of Colombo.

In the matter of an application by the defendant-appellant  
abovenamed dated 23rd August, 1944, for Conditional  
Leave to appeal to His Majesty the King in Council against  
the decree dated 25-7-44.

This matter coming on for hearing and determination on the 12th  
day of September, 1944, before the Hon. Sir John Curtois Howard, Kt.,  
K.C., Chief Justice, with Hon. Mr. E. A. L. Wijeyewardene, K.C., Puisne 20  
Justice of this Court, in the presence of counsel for the petitioner and the  
respondents.

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

And it is further ordered and decreed that the defendant-petitioner  
do pay to the plaintiffs-respondents their taxed costs of this application.

Witness the Hon. Sir John Curtois Howard, Kt. K.C., Chief Justice,  
at Colombo, the 12th day of September, in the year of our Lord One  
thousand Nine hundred and forty-four, and of Our Reign the Eighth.

Sgd. D. A. A. PERERA, 30  
*1st Deputy Registrar, S. C.*

## No. 17.

## Further Proceedings before the District Court

No. 12109.

16-5-45.

No. 17  
Further  
Proceedings  
before the  
District  
Court  
16-5-45

ADVOCATE CHELVANAYAGAM for the plaintiff.  
ADVOCATE WICKREMANAYAKE for the defendant.

Defendant undertakes to file a statement setting out the amounts due in accordance with the judgment of the Supreme Court on 22-6. On the statement being filed, within two weeks of that plaintiff will file a statement showing any items challenged.

10

Sgd. W. SANSONI,  
*District Judge.*

## No. 18.

## Further Proceedings before the District Court

No. 12109.

6-12-45.

No. 18  
Further  
Proceedings  
before the  
District  
Court  
6-12-45

ADVOCATE CHELVANAYAGAM for the plaintiff.  
ADVOCATE WICKREMANAYAKE for the defendant.

On 16-5-45 this Court directed the defendant to file a statement setting out the amount due in accordance with the judgment of the Supreme Court on 22-6. The statement of account was in fact filed on 20 29-6. The plaintiff was directed to file a statement showing the items which he proposed to challenge in the plaintiff's account and the plaintiff purported to file such a statement on 13-7, but the statement filed by the plaintiff is not a statement as contemplated by the order of Court and it seems to me that the statement of account filed by the plaintiff does not permit of the dispute between the parties being adjudicated upon. I think the plaintiff must comply with the order of Court and set out specifically the items he challenges or state specifically the objections he takes to the accounts filed if he is not in a position to object to any particular item.

30 Objections will be filed on 25-1-46.

Sgd. C. NAGALINGAM,  
*District Judge.*

## No. 19.

No. 19  
Statement  
of Accounts  
Filed by  
Defendant  
29-6-45

## Statement of Accounts Filed by Defendant

## Defendant's Statement of Accounts

Bond No. 1624 of 11-7-1936	Rs.	Cts.	Rs.	Cts.
To Principal due on Bond ...			46,000	00
„ Interest from 11-7-36 to 14-10-36 ...			1,426	00
By Net proceeds of sale of 22,791 coupon lbs. on 14-10-1936 ...	6,994	56		
To Interest from 15-10-1936 to 4-3-1937 ...			1,859	83
By Net proceeds of sale of 10,000 coupon lbs. on 4-3-1937 ...	3,200	00		
To Interest from 4-3-1937 to 5-3-1937 ...			13	03 10
By Net proceeds of sale 39,964 coupon lbs. on 5-3-1937 ...	12,788	48		
To Interest from 6-3-1937 to 31-7-1937 ...			1,271	94
By Net proceeds of sale of 49,964 coupon lbs. on 31-7-1937 ...	13,726	36		
To Interest from 1-8-1937 to 3-12-1937 ...			568	30
By Net proceeds of sale of 21,654 coupon lbs. on 3-12-1937 ...	5,145	00		
To Interest from 4-12-1937 to 17-2-1938 ...			232	13
By Net proceeds of sale of 55,516 coupon lbs. on 17-2-1939 ...	13,259	30		
			55,113	65
			51,371	23
To credit of plaintiffs ...	3,742	42		20

Note.—Vide Schedule A for particulars of sale of coupons.

Sgd. S. SOMASUNDARAM,  
*Proctor for Defendant.*  
29-6-1945.

## SCHEDULE " A "

## Bond No. 1624 of 11-7-1936 for Rs. 46,000

Coupons Received on	Quantities of Coupons Received	Value Realised		Brokerage etc. Incurred		Balance to Credit of Plaintiff	
		Rs.	Cts.	Rs.	Cts.	Rs.	Cts.
14-10-1936	22,791	7,065	21	70	65	6,994	56
4-3-1937	10,000	3,200	00	—		3,200	00
5-3-1937	39,964	12,788	48	0	05	12,788	43
31-7-1937	49,964	13,865	01	138	65	13,726	36
3-12-1937	21,654	5,196	96	51	96	5,145	00
17-2-1938	55,516	13,393	23	133	93	13,259	30
	199,889	55,508	89	395	24	55,113	65

### Defendant's Statement of Accounts

Bond No. 4664 of 19-2-1938		Rs.	Cts.	Rs.	Cts.	No. 19 Statement of Accounts Filed by Defendant 29-6-45 <i>—continued.</i>
	To Principal due on bond ...	...	...	52,000	00	
	To Interest from 19-2-1938 to 15-8-1938 ...	...	...	3,068	00	
	By Net proceeds of sale of 16,655 coupon lbs. on 15-8-1938 ...	5,070	20			
	To Interest from 16-8-1938 to 13-12-1938 ...	...	...	1,999	92	
	By Net proceeds of sale of 16,100 coupon lbs. on 13-12-1938 ...	5,000	00			
	To Interest from 14-12-1938 to 27-2-1939 ...	...	...	1,174	95	
	By Net proceeds of sale of 33,310 coupon lbs. on 27-2-1939 ...	11,047	26			
10	To Interest from 28-2-1939 to 10-8-1939 ...	...	...	2,041	87	
	By Net proceeds of sale of 33,310 coupon lbs. on 10-8-1939 ...	10,305	28			
	To Interest from 11-8-1939 to 14-11-1939 ...	...	...	901	93	
	By Net proceeds of sale of 27,831 coupon lbs. on 14-11-1939 ...	6,199	35			
	To Interest from 15-11-1939 to 22-2-1940 ...	...	...	765	86	
	By Net proceeds of sale of 70,616 coupon lbs. on 22-2-1940 ...	17,477	46			
	To Interest from 23-2-1940 to 11-3-1940 ...	...	...	41	12	
	By Amount paid by plaintiffs on 11-3-1940 ...	28,283	10			
	„ Amount in deposit with defendant on account of interest on the said Bond ...	1,000	00			
20		84,382	65	61,993	65	
		61,993	65			
	To credit of plaintiffs ...	22,389	00			

**Note.**—*Vide* Schedule B for particulars of sale of coupons.

Sgd. S. SOMASUNDARAM,  
*Proctor for Defendant.*

#### SCHEDULE " B "

#### Bond No. 4664 of 19-2-1938 for Rs. 52,000.

Coupons Received on 30	Quantities of Coupons Received	Value Realised		Brokerage etc., Incurred		Balance to Credit of Plaintiff	
		Rs.	Cts.	Rs.	Cts.	Rs.	Cts.
15-8-1938	16,655	5,121	41	51	21	5,070	20
13-12-1938	16,100	5,051	37	50	51	5,000	86
27-2-1939	33,310	11,158	85	111	59	11,047	26
10-8-1939	33,310	10,409	37	104	09	10,305	28
14-11-1939	27,831	6,261	97	62	62	6,199	35
22-2-1940	70,616	17,654	00	176	54	17,477	46
	197,822	55,656	97	556	56	55,100	41

## No. 20.

## Statement of Accounts Filed by Plaintiffs

No. 20  
Statement  
of Accounts  
Filed by  
Plaintiffs  
10-7-45

D. C. No. 12109.

Plaintiff's Statement of Account.

6 Cts. per lb. Commission A/c.

1. C. H. M. RAN MENIKA WIJEYWARDENA TENNEKOON WALAUWE  
MAHATMEE, and  
2. D. H. W. TENNEKOON ..... Plaintiffs.  
vs.  
M. R. M. M. N. NADARAJAN CHETTIAR ..... Defendant.

## Interest on the Loan of Rs. 46,000, Bond No. 1624.

		Interest charged as per Original Statement of Defendant. p. 19		Now shown to Court.	
		Rs.	Cts.	Rs.	Cts.
1936					
Oct. 14	Interest on Rs. 33,211.14 for 5 days at 12%	Rs. 55.35			
	Do. ,, 36,251.00 for 91 do.	1,099.62			
			1,154 97	1,426 00	
1937					
Mar. 4	Do. ,, 31,778.87 for 63 do.	667.36			
	Do. ,, 35,090.87 for 78 do.	912.36			
			1,579 72	1,859 83	
July 31	Do. ,, 23,680.00 for 105 do.	828.80			
	Do. ,, 26,930.00 for 44 do.	394.98			
			1,223 78	1,271 94	
Dec. 3	Do. ,, 17,425.26 for 123 do.	726.06			
	Sundries		726 06	813 46	
			434 75		
			5,119 28	5,371 23	

## Interest on the Loan of Rs. 52,000, Bond 4664.

1938					
Aug. 15	Interest on Rs. 23,846.40 for 88 days	Rs. 699.49			
	Do. ,, 42,846.40 for 31 days	442.75			
	Do. ,, 44,432.94 for 59 days	873.85			
			2,016 09	3,068 00	
Dec. 13	Do. ,, 42,378.13 for 120 days		1,695 12	1,999 92	
1939					
Feb. 27	Do. ,, 40,088.39 for 3 days	40.04			
	Do. ,, 41,600.88 for 10 days	188.67			
	Do. ,, 41,604.88 for 63 days	873.71			
			1,052 42	1,174 95	
Aug. 10	Do. ,, 33,608.64 for 109 days	1,221.11			
	Do. ,, 35,147.11 for 55 days	644.37			
			1,865 48	2,041 87	
Dec. 14	Do. ,, 28,705.91 for 126 days				
Dec. 14	Do. ,, 28,705.91 for 126 days		1,205 65	1,667 79	
1940					
Feb. 22	Do. ,, 25,382.07 for 1 day	8.46			
	Do. ,, 25,386.88 for 2 days	19.21			
	Do. ,, 26,901.20 for 67 days	600.80			
			628 47	41 12	
			8,463 23	9,993 65	
	Interest on both transactions	Rs. 13,582 51	15,364 88		

Coupons received and sold by the defendant on the 1st transaction of Rs. 46,000 as per a/c submitted by him—199,889 lbs. at 6 cts. ...	11,993	34
Coupons received and sold by the defendant on the 2nd transaction of Rs. 52,000 as per a/c. submitted by him—197,822 lbs. at 6 cts. ...	11,869	32
	23,862	66
Commission claimed and received from the plaintiffs on a/c. coupons receivable up to the end of the year 1943 as per memo dated 26-2-40 sent through Proctor P. M. Seneviratne as the loan was repaid earlier (p. 15)—248,553 lbs. at 6 cts. ...	14,913	18
Total commission recovered from plaintiffs by defendant ...	38,775	84
* The defendant has recovered by way of interest as per details shown on page 1 ...	13,582	51
The defendant has recovered by way of petty charges such as translating letters from English to Tamil, typing charges, etc. ...	18	76
Total ...	52,377	11

\* The defendant has overcharged a sum of Rs. 74.86 as interest on the 1st transaction.

The defendant has overcharged a sum of Rs. 118.34 as interest on the 2nd transaction

Rs. 193.20

Also the plaintiff has to get Rs. 240 by way of interest for two years at 12% on the interest deposit of Rs. 1,000.

Sgd. T. F. PAULICKPULLE,

Colombo, 10th July, 1945.

Proctor for Plaintiff.

This statement of account was prepared from Account particulars marked P 19 filed in the above case which I certify to be correct :

Sgd. F. A. PERERA,  
Public Accountant.

## The Statement of Objections Filed by Plaintiffs.

## IN THE DISTRICT COURT OF COLOMBO

1. CHANDRASEKERE HERAT MUDIYANSELAGE RAN  
MENIKA WIJEYWARDENE TENNEKOON WALAUWE  
MAHATMEE, and
2. DON HENRY WIJEYWARDENE TENNEKOON  
BANDARA MAHATMAYA, both of Ratnapura..... *Plaintiffs.*

No. 12109/Money . . . . . *vs.*

- 10 M. R. M. M. N. NADARAJAN CHETTIAR of 178, Sea  
Street, Colombo . . . . . *Defendant.*

On this 25th day of January, 1946.

The statement of objections appearing by T. F. Paulick Pulle, the plaintiffs' Proctor, sheweth as follows :—

1. As will appear from the Bond No. 1624 (P 2) dated 11th July, 1936, and attested by A. M. Fuard, Notary Public, and from the account particulars supplied by the defendant P 19 the principal sum of Rs. 46,000 for which the said bond was granted was advanced not on the date of the execution but from time to time. The defendant in his statement  
20 hereby objected to has charged interest on Rs. 46,000 from the date of the said bond and has given credit to the plaintiff for monies recovered against the sum of Rs. 46,000 and not against the amount of principal outstanding from time to time at the dates of recoveries. The plaintiffs state that the defendant is entitled to charge interest 12 per cent. only on the principal sums advanced outstanding from time to time.

2. The plaintiffs accept the correctness of all the credit items set out in the defendant's statement of accounts *re* the Bond No. 1624 of 11th July, 1936.

3. The plaintiffs attach hereto an abstract " A " taken from the  
30 defendant's statement of accounts P 19 showing the amounts advanced, recovered and outstanding on the several dates and the amount of the interest at 12 per cent. on the outstandings.

4. As will appear from the Bond No. 4664 (P 9) dated 26th February, 1940, and attested by S. Somasundaram of Colombo, Notary Public, and from the account particulars supplied by the defendant P 19 the principal sum of Rs. 52,000 for which the said bond was granted was advanced not on the date of the execution but from time to time. The defendant in his statement hereby objected to has charged interest on Rs. 52,000 from the date of the bond and has given credit to the plaintiffs for monies  
40 recovered against the sum of Rs. 52,000 and not against the amount of principal outstanding from time to time at the dates of recoveries. The plaintiffs state that the defendant is entitled to charge interest at 12 per cent. only on the principal sums advanced outstanding from time to time.



No. 21  
Statement of  
Objections  
Filed by  
Plaintiffs  
25-1-46  
—continued.

5. The plaintiffs accept the correctness of all the credit items set out in the defendant's statement of accounts *re* the Bond No. 4664 dated 26th February, 1940.

6. The plaintiffs attach hereto an abstract "B" taken from the defendant's statement of accounts P 19 showing the amounts advanced, recovered and outstanding on the several dates and the amount of the interest at 12 per cent. on the outstandings.

7. The plaintiffs state that in any event the defendant is estopped from charging interest calculated in a different manner in view of the said statement of accounts P 19 tendered by the defendant to the plaintiffs. 10

Sgd. T. F. PAULICKPULLE,  
*Proctor for Plaintiffs.*

" A "

Date	Amount Advanced		Amount Recovered		Amount Outstanding		Period Outstanding	Interest Due at 12%		
	Rs.	Cts.	Rs.	Cts.	Rs.	Cts.		Rs.	Cts.	
11-7-36	33,211	14	—	—	33,211	14	5 days	1,154	97	
16-7-36	3,039	86	—	—	36,251	00	91 "			
14-10-36	—	—	6,994	56	30,415	41	63 "	638	71	
17-12-36	3,312	00	—	—	33,727	41	78 "	876	91	20
4-3-37	—	—	3,200	00	32,043	03	1 "	10	68	
5-3-37	—	—	12,788	43	19,265	28	105 "	674	33	
18-6-37	3,250	00	—	—	22,515	28	44 "	330	22	
31-7-37	—	—	13,726	36	9,794	45	125 "	408	08	
3-12-37	—	—	5,145	00	5,057	53	13 "	28	66	
17-12-37	3,187	50	—	—	8,245	03	63 "	173	15	
21-12-37										
17-2-38	—	—	13,259	30	4,812	46				
					<i>i.e.</i> 4,812	46	due to plaintiffs as over recovered			30

Sgd. T. F. PAULICKPULLE,  
*Proctor for Plaintiffs.*

Colombo, 25th January, 1946.

" B "

Date	Amount Advanced		Amount Recovered		Amount Outstanding		Period Outstanding	Interest Due at 12%		
	Rs.	Cts.	Rs.	Cts.	Rs.	Cts.		Rs.	Cts.	
19-2-38	23,841	35	—	—	23,841	35	88 days	699	34	
18-5-38	19,000	00	—	—	42,841	35	31 "	442	69	
18-6-38	1,586	54	—	—	44,427	89	59 "	874	75	
18-8-38	—	—	5,070	20	41,362	47	120 "	1,654	48	40
13-12-38	—	—	5,000	00	38,016	95	3 "	38	01	
17-12-38	1,562	49	—	—	39,519	44	73 "	961	63	
27-2-39	—	—	11,047	26	29,471	82	109 "	1,070	81	
17-6-39	1,538	47	—	—	31,010	29	55 "	568	52	
10-8-39	—	—	10,305	28	22,344	34	126 "	938	45	
14-12-39	—	—	6,199	35	17,088	54	3 "	17	07	
18-12-39	1,514	42	—	—	18,597	96	71 "	440	15	
22-2-40	—	—	17,477	46	1,566	34	17 "	8	87	
11-3-40	—	—	28,283	10	26,707	89				
					paid in cash on					50
					behalf of plaintiffs, <i>i.e.</i> overpaid by plaintiffs.					

Sgd. T. F. PAULICKPULLE,  
*Proctor for Plaintiffs.*

Colombo, 25th January, 1946.

12109/M

25-3-46.

## ORDER

The only question to be decided is whether the defendant is entitled to charge interest (1) on Rs. 46,000 on the Bond No. 1624 of 1936 ; and (2) on Rs. 52,000 on Bond No. 4664 of 1938.

The bonds themselves are for Rs. 46,000 and Rs. 52,000, but these bonds themselves show that at the execution of the bonds sums of money were retained by the mortgagee for the purpose of making certain payments to the State Mortgage Bank.

The entire principal amount was not given to the plaintiff at the execution of the bonds. Further advances were made from time to time.

The plaintiffs contend that they should be charged interest only on the actual amount of money lent to them and not on the principal amount as stated in the bond.

Defendant's Counsel contended that the whole case was disposed of by my predecessor and the only question now was the interpretation of his judgment. He points to certain passages in the judgment and contends that the Judge held that the defendant was entitled to charge interest on Rs. 46,000 and Rs. 52,000.

I am unable to agree with this contention. At page 70 of his judgment the Judge said : " The security of a mortgage at 12 per cent. was ample security for the *money that was lent*. Now what was the money actually lent ?

In order to answer this there is clear evidence on the record. The defendant's own account on which he made a claim (P 19) shows how the defendant himself understood the original transaction and charged interest. The very first item describes the nature of the transaction and on what amount interest is being charged " As per terms and conditions of the Bonds Nos. 1624 for Rs. 46,000, deducting the amount to be deposited at the State Mortgage Bank, the balance amount as per Imperial Bank cheques—Rs. 33,211.14 ". If the interest could have been charged on Rs. 46,000 would not the defendant Chetty have so charged the plaintiffs ?

And so, right through the accounts interest has been charged only on the money actually paid to the plaintiffs.

The reason for this is because the defendant had the use of the money that was " deducted " while the plaintiffs had to pay interest to the State Mortgage Bank.

The statements A and B filed by the plaintiffs with their statement of objections show correctly the amounts advanced to the plaintiff the amounts outstanding and the interest due at various dates.

The figures were not challenged. The only question was whether interest should be charged on the amounts actually advanced or on the principal amount as it appears in the bonds.

No. 22  
Judgment  
of the  
District  
Court  
25-3-46  
—continued.

I am of opinion that the plaintiffs' contention is correct. The fact that this was what the defendant himself actually did before shows the agreement between the parties and how even the defendant understood the position.

When the entire transaction was re-opened and the trial Judge held that certain moneys debited to the plaintiffs should be repaid, the defendant adopted this new method of charging interest.

I accept the statements A and B tendered by the plaintiff as correctly showing what is due to the plaintiffs.

As the question of costs was reserved to be dealt with at this stage, I make order that the plaintiffs who were successful at every stage of this action, are entitled to the costs of this action and of this inquiry.

The plaintiffs will also be entitled to legal interest from date of decree till payment in full.

Sgd. W. SANSONI,  
25-3-46.

No. 23  
Decree of  
the District  
Court  
25-3-46

**No. 23.**  
**Decree of the District Court. 25-3-46.**

**DECREE**

No. 12109/M

IN THE DISTRICT COURT OF COLOMBO

20

1. CHANDRASEKERA HERAT MUDIYANSELAGE RAN MENIKA WIJEYWARDENE TENNEKOON WALAUWE MAHATMEE, and
2. DON HENRY WIJEYWARDENE TENNEKOON BANDARA MAHATMAYA, both of Ratnapura .....*Plaintiffs.*

*Against*

M. R. M. M. N. NADARAJAN CHETTIAR of 178, Sea Street, Colombo .....*Defendant.*

This action coming on for final disposal before Waldo Sansoni, Esquire, District Judge, Colombo, on the 25th day of March, 1946, in the presence of Proctor on the part of the plaintiff and of Proctor, on the part of the defendant it is ordered and decreed that the defendant do pay to the plaintiff the sum of Rs. 33,095.56 with legal interest thereon from date hereof till payment in full and costs.

Sgd. W. SANSONI,  
*District Judge.*

The 25th day of March, 1946.

**Petition of Appeal to the Supreme Court against the  
Order of 25-3-46.**

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

- 1. CHANDRASEKERA HERAT MUDIYANSELAGE RAN  
MENIKA WIJEYWARDENE TENNEKOON WALAUWE  
MAHATMEE, and
- 2. DON HENRY WIJEYWARDENE TENNEKOON  
BANDARA MAHATMAYA, both of Ratnapura ..... *Plaintiffs.*

10 D. C. Colombo No. 12109 (M). *Versus*

M. R. M. M. N. NADARAJAN CHETTIAR of 178, Sea  
Street in Colombo ..... *Defendant.*

M. R. M. M. N. NADARAJAN CHETTIAR of 178, Sea  
Street, Colombo..... *Appellant.*

*And*

- 1. CHANDRASEKARA HERAT MUDIYANSELAGE RAN  
MENIKA WIJEYWARDENE TENNEKOON WALAUWE  
MAHATMEE, and
- 2. DON HENRY WIJEYWARDENE TENNEKOON  
BANDARA MAHATMAYA, both of Ratnapura..... *Respondents.*

*To*

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

On this 26th day of March, 1946.

The Petition of Appeal of the defendant-appellant abovenamed  
appearing by Sabapathy Somasundaram his Proctor, states as follows :—

1. The plaintiffs, wife and husband, alleging that certain transactions  
they had with defendant on the deeds marked P 2, P 3, P 4, P 9, P 10 and  
30 P 11 were purely money-lending transactions, sued defendant in this  
action for a re-opening of those transactions and for the taking of an  
account.

2. The case went to trial on the 9th day of March, 1943, on various  
issues including the following issue :—

“(17) Are the plaintiffs entitled to a re-opening of the said  
transactions and to have an accounting taken between them and the  
defendant of the amounts properly due under the said transactions ? ”

No. 24  
Petition of  
Appeal to  
the Supreme  
Court  
against the  
Order of  
25-3-46  
26-3-46  
—continued.

3. The learned District Judge by his judgment dated the 9th April, 1943, ordered the transactions between the plaintiffs and the defendant in respect of Bonds No. 1624 (P 2) and No. 4664 (P 9) to be re-opened and an account to be taken and also held that defendant was entitled only to the moneys lent by him on the said bonds with interest calculated at 12 per centum per annum.

4. In pursuance of the said Order both the plaintiffs and the defendant filed statements of account shewing the amounts due by defendant to plaintiffs in terms of the judgment of the learned District Judge of the 9th April, 1943. 10

5. The plaintiffs claimed a sum of Rs. 33,095.56 from the defendant and the defendant filed a statement shewing that the plaintiffs are entitled only to a sum of Rs. 26,131.42 on the footing of the Order of the 9th April, 1943.

6. The matter of accounting came up before the learned District Judge on the 20th day of March, 1946, and by his judgment dated the 25th March, 1946, the learned District Judge held that the statements marked A and B filed by the plaintiffs set out correctly the amount due to them from the defendant and entered decree in favour of the plaintiffs accordingly. 20

7. Being aggrieved with the said judgment and the decree entered thereon the defendant begs to appeal therefrom to Your Lordships' Court on the following amongst other grounds that might be urged at the hearing of the appeal :—

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

(b) The order of the learned District Judge made on the 9th April, 1943, gave the defendant the right to interest on the principal sums of Rs. 46,000 and Rs. 52,000 from the respective dates of the bonds.

(c) The finding that defendant is not entitled to interest on moneys 30 retained by him at the request of the plaintiffs to be paid later on plaintiffs' account is not justified by the evidence in the case or by the order of the 9th April, 1943.

Wherefore the defendant-appellant prays :—

(a) that the said Order of the 25th March, 1946, be set aside ;

(b) that the statement of accounts filed by the defendant be accepted as shewing the correct amount payable to the plaintiffs in terms of the finding of the 9th April, 1943, and that decree be entered accordingly ; and

(c) for such other and further relief as Your Lordships' Court shall seem meet. 40

Sgd. S. SOMASUNDARAM,  
*Proctor for Defendant-Appellant.*

## Decree of the Supreme Court

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

Supreme Court No. 445 (Final) of 1946.

1. CHANDRASEKERA HERAT MUDIYANSELAGE RAN  
MENIKA WIJEYWARDENE TENNEKOON WALAUWE  
10 MAHATMEE, and
2. DON HENRY WIJEYWARDENE TENNEKOON  
BANDARA MAHATMAYA, both of Ratnapura.....*Plaintiffs-  
Respondents.*

*Against*

M. R. M. M. M. N. NADARAJAN CHETTIAR of 178, Sea  
Street, Colombo .....*Defendant-Appellant.*

Action No. 12109/M.

District Court of Colombo.

This cause coming on for hearing and determination on the 18th day  
of February, 1948, and on this day, upon an appeal preferred by the  
20 defendant before the Hon. Sir John Howard, Kt., K.C., Chief Justice, and  
the Hon. Sir F. J. Soertsz, Kt., K.C., Senior Puisne Justice of this Court,  
in the presence of counsel for the appellant and respondents.

It is considered and adjudged that this appeal be and the same is  
hereby dismissed with costs.

Witness the Hon. Sir John Curtois Howard, Kt., K.C., Chief Justice,  
at Colombo, the 18th day of February, in the year of our Lord One  
thousand Nine hundred and Forty-eight, and of Our Reign the Twelfth.

CLARENCE DE SILVA,  
*Registrar, S. C.*

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

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

In the matter of an application for leave to appeal to the  
Privy Council from the judgment of this Court in S. C.  
No. 445 of 1946 District Court (Final) Colombo 12109/M.

S. C. No. 445 of 1946 *Between*  
D. C. Colombo (Final) No. 12109/M. 10  
M. R. M. M. N. NADARAJAN CHETTIAR of 178, Sea  
Street in Colombo ..... *Defendant-Appellant.*

*And*

1. CHANDRASEKERA HERAT MUDIYANSELAGE RAN  
MENIKA WIJEYWARDENE TENNEKOON WALAUWE  
MAHATMEE, and
2. DON HENRY WIJEYWARDENE TENNEKOON  
BANDARA MAHATMAYA, both of Ratnapura.....*Plaintiffs-  
Respondents.*

*To* 20  
THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUDGES  
OF THE SUPREME COURT AFORESAID.

On this 17th day of March, 1948.

The Petition of M. R. M. M. N. Nadarajan Chettiar, the above-  
named defendant-appellant appearing by Sabapathy Somasundaram his  
Proctor, states as follows :—

1. That feeling aggrieved by the judgment and decree of this  
Honourable Court pronounced on the 18th day of February, 1948, the  
abovenamed defendant-appellant is desirous of appealing therefrom to  
His Majesty the King in Council. 30

2. That the said judgment is a final judgment and the matters in  
dispute on the appeal amount to or are of the value of Rupees Five  
thousand (Rs. 5,000) or upwards.

3. Notice of this application has been served on the plaintiffs-  
respondents through this Court, by telegrams, by post and by direct  
service by the appellant's agent Theyanna Annamalay within fourteen

days of the judgment appealed from. An affidavit from the said Theyanna Annamalay testifying to the service by him direct, by post and by telegraph has already been filed in these proceedings.

No. 26  
Application  
for Condi-  
tional Leave  
to Appeal  
to the Privy  
Council  
17-3-48  
—continued.

Wherefore the defendant-appellant prays for conditional leave to appeal against the said judgment of this Court delivered on the said 18th day of February, 1948, to His Majesty the King in Council.

Sgd. S. SOMASUNDARAM,  
*Proctor for Defendant-Appellant.*

No. 27.

10      **Decree of the Supreme Court Granting Conditional  
Leave to Appeal.**

No. 27  
Decree of the  
Supreme  
Court  
Granting  
Conditional  
Leave to  
Appeal  
11-5-48

Application No. 137.

**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. **CHANDRASEKERA HERAT MUDIYANSELAGE RAN  
MENIKA WIJEYWARDENE TENNEKOON WALAUWA  
MAHATMEE, and**  
20 2. **DON HENRY WIJEYWARDENE TENNEKOON BANDARA  
MAHATMAYA, both of Ratnapura.....Plaintiffs-Respondents.**

*Against*

**M. R. M. M. N. NADARAJAN CHETTIAR of 178, Sea  
Street in Colombo .....Defendant-Appellant.  
(Petitioner)**

Action No. 12109 (S. C. No. 445, Final).

District Court of Colombo.

80      **In the matter of an application by the petitioner abovenamed  
for Conditional Leave to Appeal to His Majesty the King  
in Council against the decree of this Court dated 18th  
February, 1948.**

This matter coming on for hearing and determination on the 11th day of May, 1948, before the Hon. Mr. E. G. P. Jayetileke, K.C., Puisne Justice, and the Hon. Mr. A. R. H. Canekeratne, K.C., Puisne



No. 27  
Decree of  
the Supreme  
Court  
Granting  
Conditional  
Leave to  
Appeal  
11-5-48  
—continued.

Justice of this Court, in the presence of Counsel for the appellant and respondents.

It is considered and adjudged that this application be and the same is hereby allowed upon the condition that the applicant do within one month from this date :—

1. Deposit with the Registrar of the Supreme Court a sum of Rs. 3,000 and hypothecate the same by bond or such other security as the Court in terms of section 7 (1) of the Appellate Procedure (Privy Council) Order shall on application made after due notice to the other side approve ;

2. Deposit in terms of the provisions of section 8 (a) of the Appellate Procedure (Privy Council) Order with the Registrar a sum of Rs. 300 in respect of fees mentioned in section 4 (b) and (c) of Ordinance No. 31 of 1909 (Chapter 85).

Provided that the applicant may apply in writing to the said Registrar stating whether he intends to print the record or any part thereof in Ceylon, for an estimate of such amounts and fees and thereafter deposit the estimated sum with the said Registrar.

Witness the Hon. Mr. Edwin Arthur Lewis Wijeyewardene, K.C., Acting Chief Justice, at Colombo, the 11th day of May, in the year of our Lord One thousand Nine hundred and Forty-eight and of Our Reign the Twelfth.

Sgd. CLARENCE DE SILVA,  
*Registrar, S. C.*

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No. 28.

Application for Final Leave to Appeal to the Privy Council.

IN THE HONOURABLE THE SUPREME COURT OF THE  
ISLAND OF CEYLON

In the matter of an application for leave to appeal to the Privy Council from the judgment of this Court in S. C. No. 445 of 1946, D. C. Final Colombo 12109 (M). 30

*Between*

M. R. M. M. N. NADARAJAN CHETTIAR of 178, Sea Street in Colombo .....*Defendant-Appellant.*

*And*

1. CHANDRASEKERA HERAT MUDIYANSELAGE RAN MENIKA WIJEYWARDENE TENNEKON WALAUWA MAHATMEE, and

2. DON HENRY WIJEYWARDENE TENNEKOON  
 BANDARA MAHATMAYA, both of Ratnapura.....*Plaintiffs-*  
*Respondents.*

No. 28  
 Application  
 for Final  
 Leave to  
 Appeal to  
 the Privy  
 Council  
 11-6-48  
 —continued.

To

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUDGES  
 OF THE SUPREME COURT AFORESAID.

On this 11th day of June, 1948.

The Petition of the defendant-appellant abovenamed appearing by Sabapathy Somasundaram his Proctor, states as follows :—

10 1. That the defendant-appellant on the 11th day of May, 1948, obtained conditional leave from this Honourable Court to appeal to His Majesty the King in Council from the judgment and decree of this Court pronounced on the 18th day of February, 1948.

2. That the defendant-appellant has in compliance with the conditions on which such leave was granted deposited with the Registrar of this Court a sum of Rupees Three thousand (Rs. 3,000) and hypothecated such sum by bond dated the seventh day of June, 1948.

3. That the defendant-appellant has further deposited with the said Registrar a sum of Rupees Three hundred in respect of fees.

20 Wherefore the defendant-appellant prays that he be granted final leave to appeal from the said judgment and decree of this Court pronounced on the 18th day of February, 1948, to His Majesty the King in Council.

Sgd. S. SOMASUNDARAM,  
*Proctor for Defendant-Appellant.*

No. 29.

**Decree of the Supreme Court Granting Final Leave to Appeal**

Application No. 260.

GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN,  
 IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS, KING,  
 30 DEFENDER OF THE FAITH.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

1. CHANDRASEKERA HERAT MUDIYANSELAGE RAN  
 MENIKA WIJEYWARDENE TENNEKOON WALAUWA  
 MAHATMEE, and

No. 29  
 Decree of  
 the Supreme  
 Court  
 Granting  
 Final Leave  
 to Appeal  
 2-7-48

No. 29  
Decree of  
the Supreme  
Court  
Granting  
Final Leave  
to Appeal  
2-7-48  
—continued.

2. DON HENRY WIJEYWARDENE TENNEKOON  
BANDARA MAHATMAYA, both of Ratnapura.....*Plaintiffs-*  
*Respondents.*

*Against*

M. R. M. M. N. NADARAJAN CHETTIAR of 178, Sea  
Street in Colombo.....*Defendant-Appellant.*

Action No. 12109 (S. C. No. 445 Final).

District Court of Colombo.

10 In the matter of an application by the defendant abovenamed  
dated 11th June, 1948, for final leave to appeal to His  
Majesty the King in Council against the decree of this  
Court dated 18th February, 1948.

This matter coming on for hearing and determination on the 2nd day  
of July, 1948, before the Hon. Mr. E. A. L. Wijeyewardene, K.C., Acting  
Chief Justice, and the Hon. Mr. E. G. P. Jayetileke, K.C., Puisne Justice,  
of this Court, in the presence of counsel for the applicant and respondents.

The applicant having complied with the conditions imposed on him  
by the order of this Court dated 11th May, 1948, granting Conditional  
Leave to Appeal.

20 It is considered and adjudged that the applicant's application for  
Final Leave to Appeal to His Majesty the King in Council be and the same  
is hereby allowed.

Witness the Hon. Mr. Edwin Arthur Lewis Wijeyewardene, K.C.,  
Acting Chief Justice, at Colombo, the Second day of July, in the year of  
our Lord One thousand Nine hundred and Forty-eight, and of Our Reign  
the Twelfth.

Sgd. CLARENCE DE SILVA,  
*Registrar, S. C.*

**PART II.**

**EXHIBITS.**

**No. P 6.**

**Exhibits**  
**No. P 6.**  
**Journal**  
**Entries in**  
**D. C. Ratna-**  
**pura Case**  
**No. 5843**  
**1934**

**Journal Entries in D. C. Ratnapura No. 5843**

**P 6.**

**IN THE DISTRICT COURT OF RATNAPURA**

**J. N. GOMES .....Plaintiff.**

**No. 5843 vs.**

**Amount Rs. 7,672**

**10 Nature—M. Bond.**

**C. H. M. R. W. TENNAKOON & ANOTHER.....Defendants.**

**JOURNAL**

**21-5-34. Mr. Peeris for plaintiff.**

**Mr. Attygalle for defendants.**

**Trial. Case settled. Terms of settlement already signed by plaintiff and 2nd defendant.**

**To be submitted tomorrow with 1st defendant's signature.**

**Intd. S. R.,**  
**D. J.**

**20 22-5-34. Mr. Peeris for plaintiff.**

**Mr. Attygalle for defendants.**

**Settlement motion filed.**

**Enter decree accordingly.**

**Sgd. S. RODRIGO,**  
**D. J.**

Exhibits

No. P 2.  
Bond  
No. 1624  
11-7-36

No. P 2.

Bond No. 1624

P 2.

Prior Registration : (Schedule A) B 218/40, 213/252, B 219/247, 218/47,  
A 214/237. (Schedule B) B 218/76, 218/77, 218/79,  
B 218/78 and 220/8, Ratnapura.

No. 1624

Know all men by these presents that we Chandrasekera Herat Mudi-  
yanselage Ran Menika Wijeyewardene Tennekoon Walauwe Mahatmee  
and Don Henry Wijeyewardene Tennekoon Bandara Mahatmaya both 10  
of Ratnapura (hereinafter called and referred to as the said obligors which  
term shall mean and include ourselves and each of us and our or each of  
our respective heirs executors administrators and assigns where the con-  
text so requires or admits) are jointly and severally held and firmly bound  
unto Nadarajan Chettiar son of Muttiah Chettiar carrying on business  
under the name vilasam style or firm of M. R. M. M. N. Nadarajan  
Chettiar at No. 155 Sea Street in Colombo (hereinafter called and referred  
to as the said obligee which term shall mean and include him his heirs,  
executors, administrators and assigns) in the sum of Rupees Forty-six  
Thousand (Rs. 46,000) lawful money of Ceylon being money borrowed by 20  
us the said obligors from the said obligee (the receipt whereof we do and  
each of us doth hereby admit and acknowledge) to be paid to the said  
obligee together with interest thereon at the rate of twelve (12) per centum  
per annum from the date of these presents on demand and for which  
payment to be well and truly made whenever demanded we the said  
obligors do hereby jointly and severally engage and bind ourselves firmly  
by these presents.

And for securing unto the said obligee the repayment of all sums of  
money payable under and by virtue or in respect of these presents I the  
said first obligor do hereby specially mortgage and hypothecate to and 30  
with the said obligee as a primary mortgage free from all encumbrances  
all those premises hereinafter more fully described in the Schedule A and  
as a secondary Mortgage subject to the primary mortgages created by  
Bonds hereinafter mentioned all those premises more fully described in  
the Schedule B but free from any other encumbrance whatsoever together  
with all the buildings plantations crops income produce and coupons tools  
implements and other live and dead stock on the premises described in  
the said Schedules A and B and all the rights privileges easements servi-  
tudes and appurtenances whatsoever thereunto belonging or in anywise  
appertaining or usually held occupied used or enjoyed therewith or reputed 40  
to be or known as part and parcel thereof and all the estate right title  
interest property claim and demand whatsoever of me the said first obligor  
in to upon or out of the same.

And we the said obligors do hereby covenant and declare to and with the said obligee that we have good and legal right to make the foregoing mortgage in manner aforesaid and that the said premises are (save as aforesaid) not subject to any other mortgage lease lien seizure sequestration or other encumbrance whatsoever and that we shall and will at all times hereafter at the request of the said obligee but at our own cost and expense do and execute or cause to be done and executed all such further and other acts deeds matters and things whatsoever necessary for the better or more perfectly assuring the said premises unto the said obligee by way of mortgage and hypothecation as by him shall or may be reasonably required.

Exhibits  
No. P 2.  
Bond  
No. 1624  
11-7-36  
—continued.

Now the condition of the above written bond or obligation and the mortgage and hypothecation hereby given and granted is such that if we the said obligors shall and will well and truly repay or cause to be repaid unto the said obligee the said principal sum whenever demanded and until such repayment pay interest on the aforesaid principal sum at and after the rate of twelve per centum per annum to be computed from the date hereof and payable quarterly and shall and will during the continuance of the mortgage effected by these presents well and carefully keep and maintain the said premises hereby mortgaged and shall and will permit the said obligee or his authorised agent to visit and inspect the said premises then the above written bond or obligation shall be null and void but otherwise the same shall be and remain in full force and virtue.

And these presents further witness that we do hereby authorise the said obligee to retain in his hands a sum of Rupees Twelve Thousand seven hundred and eighty-eight and Cents Eighty-six (Rs. 12,788.86) to be paid by him on our behalf to the State Mortgage Bank as follows :—

A sum of Rupees Three thousand and thirty-nine and Cents Eighty-six (Rs. 3,039.86) on the 14th day of July, 1936, a sum of Rupees Three thousand three hundred and twelve (Rs. 3,312) on the 18th day of December, 1936, a sum of Rupees Three thousand two hundred and fifty (Rs. 3250) on the 18th day of June, 1937, and a sum of Rupees Three thousand one hundred and Eighty-seven (Rs. 3,187) on the 18th day of December, 1937.

In witness whereof we the said obligors do hereunto and to two others of the same tenor and date as these presents set our respective hands at Colombo on this Eleventh day of July, One thousand nine hundred and Thirty-six.

#### The Schedule " A " above referred to

All that and those the estate plantation and premises called and known as " Hakamuwa Estate " comprising the following allotments of land to wit :—

1. An allotment of land called Hakamuwawatta situated at Hakamuwa in Meda Pattu of Nawadun Korale in the District of Ratnapura, Sabaragamuwa Province, bounded on the North by Lot No. 3 of Kaluwa-

Exhibits  
 No. P 2.  
 Bond  
 No. 1024  
 11-7-36  
 —continued.

kanattehena Lot No. 4 of Kaluwakanattehena whereon Dingitta resides Lot No. 5 of Kaluwakanattehena whereon Hapanpediyalage Kirisanga resides the two Lots Nos. 6 and 7 of Kaluwakanattehena whereon Rankira resides Lot No. 9 of Baduwatta and Aluthewayalayewatta, on the East by Deniyakumbura Lot No. 10 of Deniyahena, Demetaketiyaowita, Maha Ela Egodawatta portions bearing Nos. 11 and 12 of Meragalagodahena Patangalakumbura Lot No. 13 of Meragalagodahena Lot No. 14 of Kalugeliyaddagawahena Hewadiwela Narangahaowita tract of Bohitiyawekumburayaya Mudduwagekumbura Kekamalayehena Lekamalayewatte and Gansabawa Road, on the South by the Dola Gilimalagehena and 10 Wandurukapolle Mukalana, and on the West by the Rubber Estate of Mr. William Dias and Mudduwa village boundary containing in extent two hundred and forty-three acres three roods and six perches (243A. 3R. 6P.) which said extent is more correctly said to be two hundred and forty-two acres three roods and nineteen and half perches (242A. 3R. 19½P.) in the figure of survey dated March, 1917, made by S. R. Poulier, Surveyor and Leveller, but according to the sixteen chain diagram made by the Survey Department dated 25th April, 1924, is said to be bounded on the North by Lots 17Ac, 17B, 17C, 17D, 17E, 17F, 17G, on the East by the Lots 16m 17H, 4, 15, 4A, 4, 9, 14, 17T, 17U, on the South by Lots 26m, 20 17Aa, 18, 17AB and land described in T. P. 356959, and on the West by Mudduwa village and Ettoya village containing in extent Two hundred and fifty-one acres and nineteen perches (251A. 0R. 19P.).

2. All that allotment of land called Wandurukapolle Mukalana situated at Hakamuwa aforesaid bounded on the West and North by Lot 17AM and on the East and South by Lot 18 containing in extent one acre one rood and nineteen perches (1A. 1R. 19P.) according to the survey and description thereof authenticated by A. J. Wickwar, Esquire, Acting Surveyor-General, bearing date the 15th November, 1923, and No. 356959 both registered in the Rubber Controller's Office under No. 180E2R7 30 excluding from the said Estate known as Hakamuwa Estate a portion of the extent of one hundred and forty-nine acres two roods and twenty-three perches consisting of the following allotments of land to wit :—

All that allotment of land called Kaluwakanattehena and Potukoladeniyahenyaya being Lot 17Ad in Block Survey Preliminary Plan No. 18 of the extent of twenty-seven acres three roods and thirteen perches registered in B 218/76.

(2) All that allotment of land called Medabeattehena being Lot 17AI in Block Survey Preliminary Plan No. 18 of the extent of fourteen acres and twenty-nine perches registered in B 218/77. 40

(3) All that allotment of land called Potukoladeniyehenyaya being Lot No. 17AJ in Block Survey Preliminary Plan No. 18 of the extent of twenty acres one rood and thirty-seven perches (20A. 1R. 37P.) registered in B 218/79 ' and

(4) All that allotment of lands called Kerakokudeniyahena and Godakumburehenyaya being Lot No. 17 in Block Survey Preliminary Plan

No. 18 of the extent of eighty-five acres three roods and five perches (85A. 3R. 5P.) registered in B 218/78. Exhibits

3. All that Rubber Estate called and known as Tennehena Estate bearing registered No. 182E2R7 at the Rubber Controller's Office situated at Madduwa in the Medapattu aforesaid and comprised of the following contiguous allotments of land namely :—

Mahatennehena registered under title B 204/36, Hettigamaethige Tennehena registered under title B89/387 and 126/189, Diyagallanehena and Kalawaneghehena registered under title B 96/206, Badalmuhandirama-  
 10 lage Diyagallenehena registered under title B 126/20, Elabodawatte Lekamalaye Tennehena registered under title B 89/377, 130/241 and 196/67, Kerekokudeniyahena registered under title B 89/378 and 196/66 and Imbulagawahena registered under title B 89/379 and which said Tennehena Estate is bounded on the North by Dampegawahena, Gulanehena, Higgastennehena and Degalassehena on the East by Hakamuwa Estate bearing registered No. 180E2R7 at the Rubber Controller's Office on the South by Batalawattehena and the village limit of Ettoya, and on the West by Imbulagawadeniya containing in extent thirty-nine acres (39A. 0R. 0P.) together with the rubber and other plantations and buildings  
 20 machinery factories cooly lines outhouses and everything else standing thereon.

All those contiguous allotments of land called Polwatttegala Estate bearing Lots 5, 6 and 7 in Plan No. 179 dated the 23rd November, 1928, made by Alfred C. Alles, Licensed Surveyor and Leveller and registered under title B 208/264 Kitulehena registered under title B 172/47 and 172/137 and Dimbulwitiyahena registered under B 187/125 and which said contiguous allotments of land are now called and known as "Polwatttegala and Kitulehena Estate" situated at Batugedera in the Meda Pattu aforesaid and are together bounded as follows:—on the  
 30 North by Kitulehena and Muwantennehena, on the East by Dimbulwitiyahena, on the South by Wakkumburehena, and on the West by Kirimetidola and Muwantennehena containing in extent eighteen acres two roods and twenty-seven perches (18A. 2R. 27P.) and registered in the Rubber Controller's Office under No. 181E1R6 as containing twenty-two acres two roods and twenty-three perches (22A. 2R. 23P.) together with the rubber and other plantations buildings machinery factories cooly lines outhouses and everything else standing thereon, and

5. All that allotment of land called and known as Kunugodahena bearing registered No. 162E1R17 at the Rubber Controller's Office situated  
 40 at Udukulana in Gilimale village in the Uda Pattu of Kuruwiti Korale in the District of Ratnapura of the Province of Sabaragamuwa, bounded on the North by the forest of Mr. Stephen, on the East by Kaluganga, on the South by Rada Elamodera, on the West by Rada Ela containing in extent about six amunams paddy sowing and registered under title A 119/72 together with the rubber and other plantations buildings machinery factories cooly lines outhouses and everything else standing thereon.

No. P 2.  
 Bond  
 No. 1624  
 11-7-36  
 —continued.



## Exhibits

No. P 2.  
 Bond  
 No. 1624  
 11-7-86  
 —continued.

## The Schedule " B " above referred to

1. All that defined portion of the Estate plantation and premises called and known as Hakamuwa Estate (together with the buildings and plantations now standing thereon or those which may hereafter be erected thereon and all the machinery stores fixtures furniture and fittings tools and implements cattle and other the live and dead stock thereon crops and produce standing thereon or in anywise thereto appurtenant) situated at Hakamuwa in the Meda Pattu of Nawadun Korale in the District of Ratnapura, Sabaragamuwa Province and comprising the five following allotments, the first three of which are contiguous to each other and the remaining two in close proximity to them as shown in the Surveyor-General's Sketch Plan dated 25th April, 1924, called the 16-Chain Diagram, all which five allotments aggregate an extent of one hundred and forty-nine acres two roods and twenty-three perches (149A. 4R. 23P.) to wit :—

(1) All that allotment of land called Kaluwakanattihena and Potukoladeniyahenyaya situated at Hakamuwa aforesaid being Lot 17Ad in Block Survey Preliminary Plan 18 and bounded on the North by Kaluwakanattewatta (private) Kaluwakanattewatte claimed by Hapanpediyalage Rankira Watadeniyalage Ihalawatta claimed by Hapanpediyalage Jantua Baduwatta claimed by Hapanpediyalage Rankira a footpath Horiadeniya 20 claimed by Galagama Achchige Mudiyanse and others Talamandiyawatta claimed by Alutwalayalage Domingua and others Galkoratuwalaye-kumburuyaya claimed by G. Kiri Banda and others, on the East by Galkoratuwalaye-kumburuyaya claimed by G. Kiri Banda and others Kaluwakanattewatta *alias* Deniyahenawatta claimed by Huluwalinge Ramachintriwalli Deniyahenawatta (private) Demetaketiyadeniyakumbura (private) Iddamal-okanda claimed by Tumbagoda Kankanamalage Jayatuhamy and others Egodahakanattewatta claimed by Manannalage Sendiriya and others Potukoladeniyahenyaya (private), on the South by Potukoladeniyahenyaya (private) Medabattehena sold under the Waste 30 Lands Ordinance to the mortgagor and another, and on the West by Medabattehena sold under the Waste Lands Ordinance to the mortgagor and another Potukoladeniya (private) Potukoladeniyahena sold under the Waste Lands Ordinance to the mortgagor and another and the village limit of Madduwa exclusive of the footpath and containing in extent twenty-seven acres three roods and thirteen perches (27A. 3R. 13P.) as per Block Survey Preliminary Plan aforesaid being property to which the mortgagor is entitled under and by virtue of the Settlement Order No. 577 (Ratnapura) published in the Ceylon Government Gazette No. 7398 of 6th June, 1924.

40

(2) All that allotment of land called Medabattehena situated at Hakamuwa aforesaid being Lot 17AI in Block Survey Preliminary Plan 18 and bounded on the North by Potukoladeniya (private) Kaluwakanattihenyaya sold under the Waste Lands Ordinance to the mortgagor and another, on the East by Kaluwakanattewatteheniyaya sold under the Waste Lands Ordinance to the mortgagor and another Potukoladeniya-

henyaya (private) Halugeliyaddehenawatte (private), on the South by Bohitiyawekumbura claimed by Manannalage Salma and others Narangahawila claimed by Wahumpurage Santosa and others, and on the West by Andiyadeniyagodella claimed by Hulawalinge Saummawalli and Potukoladeniya (private) and containing in extent fourteen acres and twenty-nine perches (14A. 0R. 29P.) only as per Block Survey Preliminary Plan aforesaid being property to half of which the mortgagor is entitled under and by virtue of the Settlement Order No. 578 (Ratnapura) published in the Ceylon Government Gazette No. 7398 aforementioned and to the remaining half by right of purchase under Deed No. 792 dated 22nd July, 1925, attested by S. G. A. Julius of Colombo, Notary Public.

Exhibits  
No. P 2.  
Bond  
No. 1624  
11-7-36.  
—continued.

(3) All that allotment of land called Potukoladeniyahenyaya situated at Hakamuwa aforesaid being Lot 17AJ in Block Survey Preliminary Plan 18 and bounded on the North by the village limit of Mudduwa, Kaluwakanattehenyaya sold under Waste Lands Ordinance to the mortgagor and another, on the East by Potukoladeniya (private) and Andiyadeniyagodella claimed by Hulawalinge Saummawalli, on the South by Udadeniyahenewatta *alias* Medagodadeniyehenawatta claimed by Hulawalinge Saummawalli Udadeniya claimed by Watadeniyalage Santosa and others Aliyamalagodahenewatta claimed by Hulawalinge Saummawalli, Aliamalagodahenewatta (private) and Diyagalahena (private), and on the West by the village limit of Mudduwa and containing in extent twenty acres one rood and thirty-seven perches (20A. 1R. 37P.) as per Block Survey Preliminary Plan aforesaid being property to half of which the mortgagor is entitled under and by virtue of Settlement Order No. 578 (Ratnapura) aforementioned and to the remaining half by right of purchase under Deed No. 792 aforesaid.

(4) All that allotment of land called Kerekokudeniyahena and Godakumburehenyaya situated at Hakamuwa aforesaid being Lot 17 in Block Survey Preliminary Plan 18 and bounded on the North by Diyagalahena (private) Kerekokudeniya (private) Diyagalahena (private) Aliyamalagodahenawatta (private) Aliyamalagodahenawatta claimed by Hullwalinge Saummawalli Aliyadeniya claimed by Wahumpurage Santosa and others Narangahawila claimed by Wahumpurage Santosa and others Narangahawiladeniya claimed by Manannalage Salma and others Narangahaowita claimed by Wahumpurage Santosa and others Bohitiyawekumbura claimed by Manannalage Salma and others Eriyagahadeniya (private) Eriyagahadeniyeowita (private) Bohiriyawekumbura claimed by Manannalage Salma and others, on the East by Dehigahahenyaya (private) Pitapeladeniya (private) Dehigahahenyaya (private) Wewedeniya (private) Dehigahahenyaya (private) Wandurukapolle Mukalana declared to be the property of the Crown under the Waste Lands Ordinance, on the South by Wandurukapolle Mukalana declared to be the property of the Crown under the Waste Lands Ordinance Menchihena Weniwelketiyahena sold under the Waste Lands Ordinance to Ponnahenedige William Dias and the village limit of Ettoya, and on the West by village limit of Ettoya and containing in extent eighty-five acres three

Exhibits  
 No. P 2.  
 Bond  
 No. 1624  
 11-7-86  
 —continued.

roods and five perches (85A. 3R. 5P.) as per Block Survey Preliminary Plan aforesaid being property to half of which the mortgagor is entitled under and by virtue of the Settlement Order No. 578 (Ratnapura) aforesaid and to the remaining half by right of purchase under Deed No. 792 aforesaid mentioned ; all of which four allotments together with allotments marked 17AL and 17AM in the Block Survey Preliminary Plan 18 aforesaid form one estate called Hakamuwawatta which is described as follows :—On the North by Lot No. 3 of Kaluwakanattehena Lot No. 4 of Kaluwakanattehena whereon Dingitta resides Lot No. 5 of Kaluwakanattehena whereon Hapanpediyalage Kirisanga resides the two Lots Nos. 6 and 10 7 of Kaluwakanattehena whereon Rankira resides Lot No. 9 of Baduwatta and Aluthewayalayawatta, on the East by Deniyakumbura Lot No. 10 of Deniyahena Demetaketiyaowita Maha Ela Egodawatta portions bearing Nos. 11 and 12 of Meragalagodahena Patangalakumbura Lot No. 13 of Meragalagodahena Lot No. 14 of Kaluliyaddagawahena Hewadiwela Narangahawila tract of Bohitiyawekumbura Mudduwagekumbura Lekamalahahena Lekamalayewatte and Gamsabawa Road, on the South by the Dola Gilimalagehena and Wandurukapolla Mukalana, and on the West by the Rubber Estate of Mr. William Dias and Mudduwa village boundary containing in extent two hundred and forty-three acres 20 three roods and six perches (243A. 3R. 6P.) which said extent is more correctly said to be two hundred and forty-two acres three roods and nineteen and half perches (242A. 3R. 19½P) in the figure of survey dated March, 1917, made by S. R. Poulter, Surveyor and Leveller, but according to the 16-chain Diagram made by the Survey Department dated 25th April, 1924, is said to be bounded on the North by Lots 17Ac, 17B, 17C, 17D, 17E, 17F, 17G, on the East by Lots 16m, 17H, 4, 15, 4A, 4, 9, 14, 17T, 17U, on the South by Lots 26m, 17Aa, 18, 17AB and land described in T. P. 856959, and on the West by Mudduwa village and Ettoya village containing in extent two hundred and fifty-one acres and nineteen perches 80 (251A. 0R. 19P.) ; which said defined portion of the estate plantation and premises of the extent of one hundred and forty-nine acres two roods and twenty-three perches comprised of Lots 17AD, 17AI, 17AJ and 17 above described is subject to a primary mortgage created by Bond No. 124 dated 18th December, 1935, and attested by G. E. Abeysekera of Colombo, Notary Public.

2. All that allotment of land called Koragahakelehenawatta bearing registered No. 173E2R7 situated at Watupitiya in the Meda Pattu aforesaid bounded on the North by Lindaliyaddadeniya Lot 38 Lindaliyadda Wetitibena Dola Udagaiyayakumburayaya Lot 35 Pottekumburayaya 40 Lot 32, on the East by Pottekumburuyaya Lot 32 Lindaliyadda Lot 89 Waduwwatta Lot 128 Udahawatuyaya Lot 129, on the South by Ketadola and Galpote Ela and on the West by Meegahawatta and other lands Lot 80 Udahawatta and other lands Lot 82 Koragahakelehena Alutwatta Lot 84 Maralaettehena Lot 41 Udawatta Lot 40 Lindaliyadda Lot 38 and containing in extent forty-nine acres one rood and seventeen perches

(49A. 1R. 17P.) which said premises are subject however to the primary mortgage created by Bond No. 149 dated 31st October, 1929, and attested by W. A. Muttettuwagama of Ratnapura, Notary Public.

Exhibits  
No. P 2.  
Bond  
No. 1624  
11-7-36  
—continued.

Sgd. C. H. R. TENNEKOON,  
Sgd. D. H. W. TENNEKOON.

Witnesses :

Sgd. C. W. DISSANAYAKE,  
Sgd. D. JOACHIM NISSANGA.

Sgd. A. M. M. FUARD,  
N. P.

10

Date of attestation : 11th July, 1936.

No. P 3.

Lease Bond No. 1626.

No. P 8.  
Lease Bond  
No. 1626  
11-7-36

P 3.

Prior Registration : B 218/40, 213/252, 219/247, 218/47, A214/237  
and B 220/8 Ratnapura.

No. 1626

This Indenture made and entered into at Colombo on this Eleventh day of July, One thousand nine hundred and thirty-six, between Chandrasekera Herat Mudiyansele Ran Menike Wijeyewardene Tennekoon Walauwe Mahatmee and Don Henry Wijeyewardene Tennekoon Bandara Mahatmaya both of Ratnapura (hereinafter called the lessors which expression shall mean and include themselves or each of them and their respective heirs executors administrators and assigns where the context so requires or admits) of the one part and Nadarajan Chettiar son of Muttiah Chettiar carrying on business under the name style and firm or vilasum of M. R. M. M. N. Nadarajan Chettiar at No. 155, Sea Street, Colombo (hereinafter called the lessee which expression shall mean and include himself his heirs executors administrators and assigns where the context so requires or admits) of the other part.

Witnesseth as follows :—

That the lessors in consideration of the sum of Rupees Forty-six thousand (Rs. 46,000) lawful money of Ceylon well and truly paid to the lessors by the lessee at the execution of these presents (the receipt whereof the lessors do hereby expressly admit and acknowledge) and which said sum of Rupees Forty-six thousand (Rs. 46,000) is to be taken and applied as rent for the term hereby demised do hereby let lease and demise unto the lessee all those Rubber plantations and buildings standing on all those several premises described in the Schedule hereto annexed A and B.

Exhibits  
 No. P 8.  
 Lease Bond  
 No. 1626  
 11-7-36  
 —continued.

To hold the said premises hereby demised unto the lessee for the full end and term of thirty-three months reckoned as from first day of August One thousand nine hundred and thirty-six, to be fully completed and ended.

Yielding and paying therefor unto the lessors for the said period the total rental of Rupees Forty-six thousand (Rs. 46,000) paid in advance as aforesaid at the execution of these presents.

And the lessors do hereby covenant and agree with the lessee as follows :—

(1) That the lessee shall and may hold and possess the said demised <sup>10</sup> premises during the said term without any interruption on the part of the lessors or any person claiming through or under them.

(2) That the lessee shall be entitled to receive from the Rubber Controller all coupons to be issued in respect of the said Rubber plantations standing on the said premises described in the Schedules A and B hereto during the said period of thirty-three months commencing as from the first day of August, One thousand nine hundred and thirty-six and for that purpose the lessors hereby grant to the lessee full authority warrant leave and license to apply to and obtain from the Rubber Controller the said Rubber coupons and to issue receipt or receipts for the same. 20

(3) That the lessors shall not in any manner revoke or cancel the authority they have given the lessee to apply for and obtain the Rubber coupons till the expiration of the aforesaid period of thirty-three months or till such further period until the lessee shall recover the full amount of the said advance.

(4) That on the expiration of the aforesaid period of thirty three months if it is found that the Rubber coupons received by the lessee in respect of the premises described in the Schedules A and B falls short of the amount of the advance deposited then it shall be lawful for the lessee to be in possession and occupation of the said premises subject to the <sup>30</sup> aforesaid conditions and covenants till such time as the lessee is able to obtain sufficient amount of the Rubber coupons to cover the short fall and the lessee is hereby authorised by the lessors to have the period extended accordingly by the Rubber Controller.

(5) That the lessors shall and will at their own costs and expenses keep and maintain the said Rubber plantations and the buildings standing on the said premises described in the Schedules A and B hereto in a fit and proper state of management and cultivation and free from weeds and undergrowth.

(6) Provided however that the lessee shall have the right to recover <sup>40</sup> the moneys due on the Bond No. 1624 dated 11th day of July, 1936, and attested by A. M. Fuard of Colombo, Notary Public, at any time notwithstanding anything herein contained.

In witness whereof the lessors and the lessee have hereunto and to two others of the same tenor and date as these presents set their respective hands at Colombo on the day month and year in the beginning hereof written.

Exhibits  
No. P 3.  
Lease Bond  
No. 1626  
11-7-36  
—continued.

### The Schedule " A " above referred to

All that and those the Estate plantations and premises called and known as " Hakamuwa Estate " comprising the following allotments of land to wit :—

1. An allotment of land called Hakamuwawatta situated at Hakamuwa in the Meda Pattu of Nawadun Korale in the District of Ratnapura, Sabaragamuwa Province, bounded on the North by Lot No. 3 of Kaluwakanattehena, Lot No. 4 of Kaluwakanattehena whereon Dingitta resides, Lot No. 5 of Kaluwakanattehena whereon Hapanpediyalage Kirisanga resides, the two Lots Nos. 6 and 7 of Kaluwakanattehena whereon Rankira resides, Lot No. 9 of Baduwatta and Aluthewayalayawatta, on the East by Deniyakumbura, Lot No. 10 of Deniyehena, Demataketiyeowita, Mahaela, Egodawatta, portions bearing Nos. 11 and 12 of Meragalagodahena, Patangalakumbura, Lot No. 13 of Meragalagodahena, Lot No. 14 of Kaluliyaddagawahena, Hewadiwela, Narangahawila, tract of Bohitiyawekumbura, Mudduwagekumbura, Lekamalayehena, Lekamalayewatta and Gansabawa Road, on the South by Dola, Gilimalagehena and Wandurukapolle Mukalana, and on the West by the Rubber Estate of Mr. William Dias and Mudduwa village boundary containing in extent two hundred and forty-three acres three roods and six perches (243A. 3R. 6P.) which said extent is more correctly said to be two hundred and forty-two acres three roods and nineteen and half perches (242A. 3R. 19½P) in the figure of survey dated March, 1917, made by S. R. Poulier, Surveyor and Leveller, but according to the 16-chain Diagram made by the Surveyor-General's Department dated 25th April, 1924, is said to be bounded on the North by Lots 17Ac, 17B, 17C, 17D, 17E, 17F, 17G, on the East by Lots 16m, 17H, 4, 15, 4A, 4, 9, 14, 17T, 17U, on the South by Lots 26m, 17Aa, 18, 17AB, and land described in T. P. 356959, and on the West by Mudduwa village and Ettoya village containing in extent two hundred and fifty-one acres and nineteen perches (251A. 0R. 19P.).

2. All that allotment of land called Wandurukapolle Mukalana situated at Hakamuwa aforesaid bounded on the West and North by Lot 17AM, and on the East and South by Lot 18 containing in extent one acre one rood and nineteen perches (1A. 1R. 19P.) according to the survey and description thereof authenticated by A. J. Wickwar, Esquire, Acting Surveyor-General, bearing date the 15th November, 1923, and No. 356959 both registered in the Rubber Controller's Office under No. 180E2R7.

3. All that Rubber Estate called and known as Tennehena Estate bearing registered No. 182E2R7 at the Rubber Controller's Office, situated

Exhibits  
 No. P 3.  
 Lease Bond  
 No. 1626  
 11-7-36  
 —continued.

at Madduwa in the Meda Pattu aforesaid and comprised of the following contiguous allotments of land, namely :—

Mahatennehena registered under title B 204/36 in the Ratnapura District Land Registry Office, Hettigamaettige Tennehena registered under title B 89/387 and 126/189, Diyagallenahena and Kalawanagehena registered under title B 96/206, Badalmuhandiramalage Diyagallenahena registered under title B 126/20, Elabodawatta Lekamalaye Tennehena registered under title B 89/377, 130/241 and 196/67, Kerekokudeniyahena registered under title B 89/378 and 196/66 and Imbulagawahena registered under title B 89/379 and which said Tennehena Estate is bounded on the 10 North by Dampegawahena, Gulanehena, Higgastennehena and Degalassehena, on the East by Hakamuwa Estate bearing registered No. 180E2R7 at the Rubber Controller's Office, on the South by Batalawattehena and the village limit of Ettoya, and on the West by Imbulagawadeniya containing in extent thirty-nine acres (39A. 0R. 0P.) together with the Rubber and other plantations, buildings, machinery, factories, cooly lines, outhouses and everything else standing thereon.

4. All those contiguous allotments of land called Polwattagala Estate bearing Lots 5, 6 and 7 in Plan No. 179 dated the 23rd November, 1928, made by Alfred C. Alles, Licensed Surveyor and Leveller, and registered 20 under title B 208/264 in the Ratnapura District Land Registry Office, Kitulahena registered under title B 172/47 and 172/137 and Dimbulwitiyahena registered under title B 187/125 and which said contiguous allotments of land are now called and known as Polwattagala and Kitulehena Estate situated at Batugedera in the Meda Pattu aforesaid and are together bounded as follows :—

On the North by Kitulehena and Muwantennehena, on the East by Dimbulwitiyahena, on the South by Wakkumburehena, and on the West by Kirimeti Dola and Muwantennehena containing in extent eighteen acres two roods and twenty-seven perches (18A. 2R. 27P.) and registered 30 at the Rubber Controller's Office under No. 181E2R6 as containing twenty-two acres two roods and twenty-three perches (22A. 2R. 23P.) together with the rubber and other plantations, buildings, machinery, factories, cooly lines, outhouses and everything else standing thereon.

5. All that allotment of land called and known as Kunugodahena bearing registered No. 162E1R17 at the Rubber Controller's Office and situated at Udukulana in the Gilimala village in Uda Pattu of Kuruwita Korale in the District of Ratnapura, Sabaragamuwa Province, bounded on the North by the forest of Mr. Stephen, on the East by Kaluganga, on the South by Rada Elamodera, and on the West by Rada Ela containing 40 in extent about six amunams paddy sowing registered under title A 199/73 in the Ratnapura Land Registry Office together with the rubber and other plantations, buildings, machinery, factories, cooly lines, outhouses and everything else standing thereon.

## The Schedule " B " above referred to

Exhibits

6. All that allotment of land called Koragahakelehenewatta bearing registered No. 173E2R7 situated at Watupitiya in the Meda Pattu of Nawadun Korale aforesaid, bounded on the North by Lindaliyaddadeniya, Lot 38 Lindaliyadda, Wetitibena Dola Udagaiyagakumburuyaya, Lot 35 Potttekumbureyaya Lot 32, on the East by Potttekumbureyaya Lot 32, Lindaliyadda Lot 89, Waduwatta Lot 128, Udahawatuyaya Lot 129, on the South by Keta Dola and Galpote Ela, and on the West by Meegahawatte and other lands Lot 80, Udahawatta and other lands Lot 82, Koragahakelehene Alutwatta Lot 84, Maralaettehena Lot 41, Udawatta Lot 40, Lindaliyadda Lot 38 and containing in extent forty-nine acres one rood and seventeen perches (49A. 1R. 17P.).

No. P 3.  
Lease Bond  
No. 1826  
11-7-36  
---continued.

Sgd. C. H. R. TENNEKOON,  
Sgd. D. H. W. TENNEKOON,  
Sgd. M. R. M. M. M. N. NADARAJAN  
CHETTIAR.

Witnesses :

Sgd. C. W. DISSANAYAKE,  
Sgd. D. JOACHIM NISSANGA.

20

Sgd. A. M. M. FUARD,  
N. P.

Date of attestation : 11th July, 1936.

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No. P 4.

No. P 4.  
Agreement  
11-7-36

Agreement

P 4.

This agreement made and entered into at Colombo on this Eleventh day of July, One thousand nine hundred and thirty-six, between Chandrasekera Herat Mudiyansele Ran Menike Wijewardena Tennekoon Walauwa Mahatmee and Don Henry Wijewardene Tennekoon Bandara Mahatmaya both of Ratnapura (hereinafter called the parties of the first part) of the one part and Nadarajan Chettiar son of Muttiah Chettiar carrying on business under the name style firm of vilasam of M. R. M. M. M. N.



Exhibits  
No. P 4.  
Agreement  
11-7-36  
—continued.

Nadarajan Chettiar at No. 155, Sea Street, Colombo (hereinafter called the party of the second part) of the other part witnesseth :—

Whereas the parties of the first part are the owners of the premises described in the Bond No. 1624 dated the Eleventh day of July, One thousand nine hundred and thirty-six and attested by A. M. Fuard of Colombo, Notary Public.

And whereas the parties of the first part became indebted to the party of the second part in the sum of Rupees Forty-six thousand (Rs. 46,000) lawful money of Ceylon on the aforesaid Bond No. 1624.

And whereas for the purpose of securing the repayment of the principal 10 sum and interest the premises described in the aforesaid Bond No. 1624 were mortgaged and hypothecated to and with the party of the second part.

And whereas the parties of the first part in consideration of the party of the second part having paid the sum of Rupees Forty-six thousand (Rs. 46,000) as a loan in respect of the aforesaid Bond No. 1624 have agreed to give deliver and transfer all rubber coupons that will be issued by the Rubber Controller in respect of the said properties to the party of the second part.

And whereas the party of the second part has agreed to appropriate 20 the proceeds of the sale of the said coupons less the expenses and commission hereinafter set forth in liquidation of the said sum of Rupees Forty-six thousand (Rs. 46,000).

Now this agreement witnesseth and it is hereby agreed by and between the parties hereto as follows :—

(1) That the said parties of the first part in consideration of the said loan lent and advanced to them under the aforesaid Bond No. 1624 have agreed to assign and transfer and permit and allow the party of the second part to obtain all the rubber coupons that will be issued for a period of thirty-three months commencing from first day of August, One thousand 30 nine hundred and thirty-six, in respect of the aforesaid premises. And further agreed to cause the Rubber Controller to issue the said coupons in favour of the said party of the second part.

(2) That the said party of the second part shall sell the said coupons at the ruling market price within two months from the date of the issue of the coupons and after paying the usual brokerage and other charges out of the nett proceeds, shall pay himself a commission of six cents on every pound of rubber represented by such coupons so sold and credit to the account of the parties of the first part the balance proceeds towards the liquidation of the money due in respect of the bond. 40

(3) If the amount realised on the expiration of the aforesaid period of thirty-three months by the party of the second part is not sufficient to

liquidate the amount due on the said bond then and in such case the parties of the first part do hereby agree and undertake to permit, allow, empower and authorise the said party of the second part to obtain from the Rubber Controller a further quantity of Rubber Coupons during a further period under the same terms and conditions as aforesaid till the amount due in respect of the said bond is fully liquidated.

Exhibits  
No. P 4.  
Agreement  
11-7-36  
—continued.

It is hereby mutually agreed that in case if the party of the second part shall fail to dispose of the rubber coupons that will be issued to him as aforesaid without rubber then and in any and every of such cases the parties of the first part shall supply such quantity of ribbed smoked sheets of rubber of No. 1 quality covering the said coupons and the said rubber shall be delivered at Colombo within fifty days from the date of the issue of such coupons to the party of the second part and in that event the party of the second shall pay to the parties of the first part such sum or sums of money for rubber supplied as aforesaid calculated at the rate of eight cents per pound on delivery thereof. The proceeds of the sale of Coupons and Rubber after deducting the above charges commission and payment of the said rate of eight cents per pound shall be credited to the parties of the first part.

20 And it is also hereby agreed that even if all moneys due on the said bond are fully liquidated before the expiration of the said period of thirty-three months the party of the second part shall be entitled to the benefit of this agreement for the full period of the said thirty-three months.

Provided however and the right is hereby expressly reserved to the party of the second part in the event of the Rubber Restriction being renewed or in the event of his being unable to get the said coupons as aforesaid to sue for and recover all moneys due under the said bond notwithstanding anything contained in this agreement. This right is only to exercise at the option of the party of the second part and he cannot be called upon to exercise that right by the parties of the first part.

In witness whereof the said parties of the first and second parts hereto have hereunto and to another of the same tenor and date as these presents set their respective hands at Colombo on the day month and year aforesaid.

Sgd. C. H. R. TENNEKOON,  
Sgd. D. H. W. TENNEKOON,  
Sgd. M. R. M. M. N. NADARAJAN  
CHETTIAR.

Witnesses :

40 Sgd. C. W. DISSANAYAKE,  
Sgd. D. JOACHIM NISSANGA.

Exhibits  
 No. P 5.  
 Memo of  
 Charges  
 24-7-36

No. P 5. Memo of Charges

P. 5.

A. M. FUARD.

130, Hultsdorp Street,  
 Colombo, 24-7-1936.

Bond No. 1624 for Rs. 46,000.00

			Rs.	Cts.
Retained by mortgagee interest in advance	...		1,000	00
Retained by mortgagee to pay State Mortgage Bank, Colombo	... ..		12,788	86 10
Messrs. Julius & Creasy (Keell & Waldoek)	...		13,032	75
G. N. Gomes	... ..		13,255	07
Muttiah Chettiar	... ..		2,244	00
			<hr/>	
			42,320	68
<b>Paid by A. M. Fuard :</b>				
Paid Julius & Creasy	... ..	Rs. 65.00		
Mr. Ferdinands	... ..	„ 42.00		
Mr. Dissanayake	... ..	„ 21.50		
Two Cheques	... ..	„ 125.00		
			<hr/>	
		Rs. 253.50	253	50 20
Fees and Stamps	... ..		1,629	50
Broker Commission	... ..		1,150	00
Mr. Somasunderam	... ..		150	00
			<hr/>	
			45,503	68
Rs.	46,000.00			
„	45,503.68			
	<hr/>			
Rs.	496.32			
„	210.00			
	<hr/>			
Rs.	286.32			
	<hr/>			

As per statement of expenses submitted  
 by Mr. Dissanayake

30

Sgd. A. M. FUARD,  
 24-7-36.

No. P. 1. Journal Entries in D. C. Colombo Case No. 705

Exhibits

P 1.

No. P 1.  
Journal  
Entries in  
D. C.  
Colombo  
Case No. 705  
1984—1987

IN THE DISTRICT COURT OF COLOMBO

No. 705. Class V.  
Amount Rs. 37,712.24.  
Nature, Money,  
Procedure, Regular.

JAMES COORAY..... *Plaintiff.*

vs.

10 C. H. M. RAMMENIKA WIJEWARDENA TENNAKOON  
and two others ..... *Defendants.*

JOURNAL

The 18th day of April, 1934.

Messrs. Julius & Creasy file appointment and *Plaint* together with documents marked A, B, C (copy of Bond, Scheme of Advertisement and conditions of sale).

*Plaint* accepted and summons ordered for 9-5-34.

Sgd. G. C. THAMBYAH,  
*District Judge.*

20 -4-34. Summons issued with precept returnable 7th day of May, 1934.  
9-5-34. Case called.

Messrs. Julius & Creasy for plaintiff.  
Summons served on 3rd defendant.

He is

2. No. return to summons on 1st and 2nd defendants.

They are

Await and re-issue for 13-6.

Proxy of 3rd defendant filed.

Answer 13-6.

30

Intld. G. C. T.,  
*D. J.*

15-5-34. Messrs. Julius & Creasy move that the summons returnable date be advanced to 30-5-34.

Allowed for 30-5-34.

Intld. G. C. T.,  
*D. J.*

Exhibits No. P 1. Journal Entries in D. C. Colombo Case No. 705 1934—1937 —continued.	18-5-34.	Summons re-issued on 1st and 2nd.	
	30-5-34.	Case called. No return to summons on 1st and 2nd defendants. They are Await and re-issue for _____ Proxy filed. Answer 15-6.	
			Intld. G. C. T., D. J.
	15-6-34.	Case called. Answer of 1st and 2nd defendants not filed. Affidavit filed. Fix inquiry 20-7-34. Objections, if any, of 3rd defendant on 27-6.	10
			Intld. G. C. T., D. J.
	27-6-34.	Case called. Objections of 3rd defendant. The 3rd deft. abides by the affidavit filed by the 1st deft. Fix inquiry 11th July.	20
			Intld. G. C. T., D. J.
	11-7-34.	Case called. Fix inquiry for 20-7 along with the application of other defts.	
			Intld. G. C. T., D. J.
	20-7-34.	Case called. Adv. Ferdinands for plaintiff. Adv. Kurukulasuriya for 3rd defendant. Adv. Nadaraja for 1st and 2nd defts. Enter judgment in terms of motion filed.	30
			Intld. G. C. T., D. J.
	25-6-35.	Decree entered. Messrs. Julius & Creasy move to certify payments aggregating Rs. 14,071.94 made by the 1st and 2nd defendants in part settlement of the amount due in this case. Allowed.	
			Intld. G. C. T., D. J. 40
	9-7-35.	Mr. Abeyewardene files petition from the petitioner, together with petition and affidavit and moves : (a) that the payment of Rs. 14,071.94 may be certified of record ;	

- (b) for direction of Court ordering the plaintiffs not to take out commission to sell the property or to advertise the same for 2 months from this date ;
- (c) for an interim order on the plaintiffs not to take steps in execution of the decree without notice to the petitioners without further order of this Court.
- (d) that the Court be pleased to postpone the sale, if any, of the property mortgaged and the advertisement thereof for a period of 2 months from this date.

Exhibits  
No. P 1.  
Journal  
Entries  
in D. C.  
Colombo  
Case No. 705  
1934—1937  
—continued.

10 Mr. Adv. Thiagalingam in support.

Let notice of this application be given to the plaintiff's Proctor for 31-7-35.

Submit to me any application made by plaintiff for issue of commission in the meantime.

Intld. G. C. T.,  
D. J.

9-7-35. Messrs. Julius & Creasy move that Auctioneer Vandersmagt be appointed to conduct the sale of the mortgaged property at his rooms No. 20, Baillie Street, Fort, Colombo, instead of by Messrs. Keell & Waldock.

20

*Vide* order on defendant's application dated 9-7-35.  
Submit on 31-7-35.

Intld. G. C. T.,  
D. J.

12-7-35. Mr. Rowan sees me in Chambers and wants the date of inquiry advanced, as he desires to issue the order to sell before the year elapses.

Advance date of inquiry to 17th July, and inform the Proctor for defendants.

30

Intld. G. C. T.,  
D. J.

12-7-35. Notice issued on Mr. H. A. Abeyawardena.

17-7-35. Case called.

*Vide* proceedings and order.

Intld. G. C. T.,  
D. J.

Proc. and Order filed on 18-7.

D 1 not filed.

24-7-35. With reference to the order of Court dated the 17-7-35, Messrs. Julius & Creasy file the formal application for commission to be issued to Mr. J. G. Vandersmagt, Auctioneer, and moves to issue commission to sell the mortgaged property with directions to the Commissioner that the mortgaged property

40

Exhibits  
 No. P 1.  
 Journal  
 Entries  
 in D. C.  
 Colombo  
 Case No. 705  
 1934—1937  
 —continued.

- be not advertised for sale until after one month from the date of the said order.  
 Allowed.
- Intld. G. C. T.,  
 D. J.
- 31-7-35. Commission to sell issued returnable 30-7-36.
- 6-8-35. D 1 not filed.  
 Issue notice for 20-9.
- Intld. C. N.,  
 D. J. 10
- Issued.
- 20-9-35. Case called.  
 Notice to produce document marked D 1 served on Mr. H. A. Abeyawardena, Proctor.  
 Document tendered.
- Intld. G. C. T.,  
 D. J.
- 30-4-36. The 1st and 2nd defendants having paid Rs. 34,326.10 through the State Mortgage Bank on 28-2-36, Proctors for plaintiffs move that such payment be certificated. 20  
 Allowed.
- Intld. S. C. S.,  
 D. J.
- 26-2-37. Proctors for plaintiff move to certify payment of Rs. 13,032.75 by 1st and 2nd defendants on 21-7-36 in part payment of the claim.  
 Allowed.
- Intld. M. W. H. DE S.,  
 D. J.
- 4-3-37. Proctors for plaintiffs move for a notice under Section 219 of 30 the C. P. C. on 1st and 2nd defendants.  
 Allowed for 23-4-37.
- Intld. M. W. H. DE S.,  
 D. J.
- 8-3-37. Notice issued on 1st and 2nd defendants to Ratnapura.
- 23-4-37. Section 219 notice served on 2nd defendant on 6-4-37.  
 He is present. S. O. 7-5-37.  
 Not served on 1st defendant. She is not to be found in Ratnapura. Re-issue 7-6-37.
- Intld. M. W. H. DE S., 40  
 D. J.

26-11-37. Re-issued on 1st defendant to Ratnapura.

5-5-37. This case having been settled Proctors for plaintiffs move that satisfaction of judgment be entered.

Enter a satisfaction of decree.

Intld. M. W. H. DE S.,  
D. J.

Exhibits

No. P 1  
Journal  
Entries  
in D. C.  
Colombo  
Case No. 705  
1934—1937  
—continued.

No. P 8. Journal Entries in D. C. Ratnapura Case No. 5827

P 8.

No. P 8.  
Journal  
Entries  
in D. C.  
Ratnapura  
Case  
No. 5827  
1934—1937

IN THE DISTRICT COURT OF RATNAPURA

10 No. 5827. Class IV.

Amount Rs. 5,252.41

Nature, Bond, Procedure, Regular.

KURUPPU ARACHCHIGE DON ALLIS APPUHAMY

executor of the Last Will of G. A. Josilinahamine of

Ratnapura ..... *Plaintiff.*

*vs.*

1. D. H. W. TENNAKOON BANDARA MAHATMAYA

and two others ..... *Defendants.*

JOURNAL

20 11-9-34. Messrs. Gunasekera & Gunasekera for plaintiff.

Mr. Attygalle for 1st and 2nd defendants.

Mr. Adv. Weerasooriya instructed by Messrs. Gunasekera & Gunasekera for plaintiff.

Mr. Adv. E. G. P. Jayatileke instructed by Mr. Attygalle for 1st and 2nd defendants.

3rd defendant is absent. The case is settled.

Of consent hypothecary decree is to be entered in favour of plaintiff against 1st and 2nd defendants jointly and severally for Rs. 5,400 with interest thereon at 9% per annum from today and costs of suit. If the 30 1st and 2nd defendants pay Rs. 75 on or before 15-10-34 a still further



Exhibits  
 No. P 8.  
 Journal  
 Entries  
 in D. C.  
 Ratnapura  
 Case  
 No. 5827  
 1934—1937  
 —continued.

Rs. 75 on or before 15-12-34 and Rs. 150 each month from and after 15-1-35 up to 15-12-35 and the balance on or before 31-12-35 satisfaction of decree is to be entered. If the 1st and 2nd defendants fail to pay any one of the above stipulated instalments on the due date order to sell is to issue forthwith for the balance then due. Plaintiff is not entitled to take an order to sell until 31-12-35 if the said instalments are paid regularly.

Enter decree accordingly against the 1st and 2nd defendants making the strictly hypothecary part of it only binding on the 3rd defendant.

Sgd. S. RODRIGO,  
*D. J.* 10

11-9-34.

On the application of M. P. Diyagama, N. P., a witness in this case pay requisition for Rs. 6 is issued to him being his batta for attending Court this day.

Intld. S. R.,  
*D. J.*

11-9-34.

Messrs. Gunasekera & Gunasekera for plaintiff move for a pay requisition for the sum of Rs. 5 out of the money deposited in this case in favour of Mr. D. D. Gomes being searching fees. 20

Pay requisition for Rs. 17 issued being searching fees Rs. 5 and his batta for attending Court as a witness in this case today.

Intld. S. R.,  
*D. J.*

14-9-34.

Messrs. Gunasekera & Gunasekera, Proctors for plaintiff, move for an order of payment in their favour for Rs. 5.50 being the balance out of the money deposited by the plaintiff as batta for witnesses in this case. Plaintiff has consented.

Allowed.

Intld. S. R.,  
*D. J.* 30

11-10-34.

1st defendant deposits Rs. 75 and files Kachcheri Receipt No. 233 of 11-10-34.

Intld. K. M. K.

15-11-34.

1st defendant deposits Rs. 75 and files K. R. 385 of 15-11-34.

Intld. K. M. K.

14-12-34.

The 1st defendant deposits Rs. 75 and files Kachcheri Receipt No. 515 of 14-12-34. 40

Intld. K. M. K.

- |             |   |   |
|-------------|---|---|
| 15-1-35.    | 1st defendant deposits Rs. 150 and files K. R. No. 405 of 15-1-45.  | Exhibits  |
|             | Intld. K. M. K.   | No. P 8.<br>Journal<br>Entries<br>in D. C.<br>Ratnapura<br>Case<br>No. 5827<br>1984-1987<br>—continued. |
| 17-2-35.    | Deposit order No. 77326 issued to 1st defendant and he files K. R. 375 of 17-2-35 for Rs. 150.  |   |
|             | Intld. K. M. K.   |   |
| 14-3-35.    | 10 Deposit Order No. 77337 for Rs. 150 issued to 1st defendant and he files K. R. No. 366 of 14-3-35 for Rs. 150.   |   |
|             | Intld. K. M. K.   |   |
| 14-4-35.    | Deposit order No. 77350 for Rs. 150 issued to 1st defendant and he files K. R. 362 of 12-4-35 for Rs. 150.  |   |
|             | Intld. K. M. K.   |   |
| 14-5-35.    | Deposit Order No. C 3857 for Rs. 150 issued to 1st defendant and he files K. R. 374 of 14-5-35.   |   |
|             | Intld. K. M. K.   |   |
| 20 15-6-35. | Deposit Order No. C 3868 for Rs. 150 issued to 1st defendant and he files K. R. 6835 of 15-6-35.  |   |
| 12-7-35.    | Deposit Order No. C 3878 for Rs. 150 issued to 1st defendant and he files K. R. 436 of 12-7-35.   |   |
|             | Intld. K. M. K.   |   |
| 15-8-35.    | Deposit Order for C 3886 for Rs. 150 issued to 1st defendant and he files K. R. 390 of 15-8-35.   |   |
| 30          |   |   |
|             | Intld. K. M. K.   |   |
| 16-9-35.    | Deposit Order No. C 3900 for Rs. 150 issued to the 1st defendant and he files K. R. 409 of 16-9-35.   |   |
| 5-10-35.    | Deposit Order No. 53962 for Rs. 150 issued to 1st defendant and he files K. R. 352 of 15-10-35.   |   |
|             | Intld. K. M. K.   |   |
| 14-11-35.   | 40 Deposit Note No. C 3978 for Rs. 150 issued to 1st defendant and he files K. R. No. 435 of 14-11-35.  |   |
|             | Intld. K. M. K.   |   |
| 19-11-35.   | Messrs. Gunasekera & Gunasekera for plaintiff file bill of costs payable by the 1st and 2nd defendants, together with a receipt from the Advocate and also a receipt for the <i>lis pendens</i> and a letter from the National Bank, and move that the bill be taxed. |   |

Exhibits  
 No. P 8.  
 Journal  
 Entries  
 in D. C.  
 Ratnapura  
 Case  
 No. 5827  
 1934—1937  
 —continued.

Mr. Attygalle for 1st and 2nd defendants received notice.

Tax.

Intld. L. H. DE A.,  
 D. J.

11-12-35.

Mr. Attygalle for petitioner files petition supported by an affidavit and for the reasons stated therein moves that he be given further time to satisfy the balance amount of the decree by payment in instalments till the end of 1936.

Messrs. Gunasekera & Gunasekera for plaintiff object. 10  
 Inquiry 19-12-35.

Intld. L. H. DE S.,  
 D. J.

16-12-35.

Defendants deposit Rs. 150 and file K. R. 501 of 16-12-35.

19-12-35.

Messrs. Gunasekera & Gunasekera for plaintiff.

Mr. Attygalle for defendants.

Inquiry *vide* J. E. on 11-12-35.

Proctors are heard. 20

**Order** : I am unable to go behind the final order (of settlement) made on 11-9-34.

Even if I could interfere with the order made in favour of the defts., the previous history of the case shows that 1st defendant is not entitled to any indulgence.

The order of 11-9-34 will stand.

Sgd. L. H. DE ALWIS,  
 D. J.

27-1-36.

Messrs. Gunasekera & Gunasekera for plaintiff move for an order of 30 payment in their favour for Rs. 2,025, being the amount deposited by the 1st and 2nd defendants to the plaintiff's credit. Plaintiff consents.

Allowed.

Intld. L. H. DE A.  
 D. J.

6-3-36.

Messrs. Gunasekera & Gunasekera for plaintiff file application and move to issue order to sell against 1st and 2nd defendants.

Copy of application to be served on debtors first for 23-3-36.

Intld. C. F. D., 40  
 D. J.

23-3-36.

Messrs. Gunasekera & Gunasekera for plaintiff.

Notice served on 1st defendant and 2nd defendant not found.

Messrs. Gunasekera & Gunasekera move that the notice against 2nd defendant be dispensed with.

C. A. V. for 30-3-36.

Sgd. H. E. GARVIN,  
D. J.

Exhibits  
No. P 8.  
Journal  
Entries  
in D. C.,  
Ratnapura  
Case  
No. 5827  
1934—1937  
—continued.

Refused. The provisions of Section 347 appear to be imperative. Plaintiff can, if so advised, proceed against 1st defendant.

Sgd. H. E. GARVIN,  
D. J.

10 30-6-36.

Messrs. Gunasekera & Gunasekera for plaintiff.

Mr. Attygalle for defendants.

Vide previous order of Court *re* notice on 2nd defendant.

Not served—re-issue for 27-4-36.

Sgd. H. E. GARVIN,  
D. J.

27-4-36.

Messrs. Gunasekera & Gunasekera for plaintiff.

Mr. Attygalle for defendants.

20 Notice on 2nd defendant not served. She is said to have gone to Dedigama. Re-issue for 18th May.

Sgd. H. E. GARVIN,  
D. J.

18-5-36.

Messrs. Gunasekera & Gunasekera for plaintiff.

Mr. Attygalle for defendants.

Notice on 2nd defendant not served. She is said to have gone to Dedigama. Re-issue for 15th June, 1936.

Sgd. H. E. GARVIN,  
D. J.

30

15-6-36.

Messrs. Gunasekera & Gunasekera for plaintiff.

Mr. Attygalle for defendants.

2nd defendant is said to have gone to Dedigama. Re-issue for 7th July.

Sgd. H. E. GARVIN,  
D. J.

7-7-36.

Messrs. Gunasekera & Gunasekera for plaintiff.

40 Fiscal reports that the 2nd defendant is evading service of notice. Call on 28-7 for steps *re* substituted service.

Sgd. H. E. GARVIN,  
D. J.

Exhibits  
 No. P 8.  
 Journal  
 Entries  
 in D. C.  
 Ratnapura  
 Case  
 No. 5827  
 1984—1987  
 —continued.

16-7-36.

Messrs. Gunasekera & Gunasekera, Proctors for plaintiff, file affidavit from the plaintiff and for the reasons stated therein move for substituted service of the notice on the 2nd defendant and that the Court will be pleased to prescribe the mode of service by directing that the said notice be affixed to the outer door of the 2nd defendant's last known place of abode at Mudduwa.

Allowed.

Sgd. H. E. GARVIN,  
 D. J. 10

27-7-36.

Messrs. Gunasekera & Gunasekera for plaintiff.

Notice reported served by substituted service on 2nd defendant to show cause why order to sell should not be re-issued.

2nd defendant absent. Issue order to sell.

Sgd. H. E. GARVIN,  
 D. J.

28-7-36.

Mr. A. C. Attygalle, Proctor for defendants, files petition supported by an affidavit from the 1st petitioner and for the reasons stated therein move that the petitioners be granted further time of 6 months to pay the balance amount and that the order to sell issued in this case be recalled. He also moves to tender Rs. 2,000 as part payment of the claim.

Messrs. Gunasekera & Gunasekera for plaintiff object.

Deposit Note for Rs. 2,000 issued. Kachcheri Receipt No. 852 of 28-7-36 for Rs. 2,000 filed.

Itld. K. M. K.

30-7-36.

Messrs. Gunasekera & Gunasekera for plaintiff.

Mr. Attygalle for defendants.

30

*Vide* papers filed by defendant. Of consent call on 19-8-36 and recall order to sell.

Sgd. H. E. GARVIN,  
 D. J.

6-8-36.

Messrs. Gunasekera & Gunasekera for plaintiff move for an order of payment in their favour for the sum of Rs. 2,000 being the amount deposited by the 1st and 2nd defendants to the credit of the plaintiff in this case.

Plaintiff consents and Mr. Attygalle for 1st and 2nd defendants received notice.

Allowed.

Intld. A. R. H.,  
 D. J.

19-8-36.

Messrs. Gunasekera & Gunasekera for plaintiff.  
 Mr. Attygalle for defendants.  
 Case called *vide* J. E. of 30-7-36.  
 Inquiry postponed of consent for 1st September.

Intld. C. F. D.,  
*D. J.*

Exhibits  
 No. P 8.  
 Journal  
 Entries  
 in D. C.  
 Ratnapura  
 Case  
 No. 5827  
 1934—1937  
 —continued.

1-9-36.

Messrs. Gunasekera & Gunasekera for plaintiff.  
 10 Mr. Ayytgalle for defendants.  
 Inquiry. Proctors are heard.

**Order:** I grant 6 months' time to pay the balance due. The deft. has paid Rs. 2,000 which has been drawn by the plaintiff. Defendant must understand that no further time will be allowed and unless the debt is fully liquidated writ to issue for the balance.

Sgd. V. JOSEPH,  
*D. J.*

2-3-37.

As the 1st and 2nd defendants failed to pay the plaintiff the balance  
 20 due to him in terms of the order made on 1-9-36, Messrs. Gunasekera &  
 Gunasekera for plaintiff move that the order to sell be issued to the  
 Fiscal for execution.

*Vide* last order. Application is allowed.

Intld. L. H. DE A.,  
*D. J.*

12-4-37.

The defendants having paid the principal amount due under the  
 decree, also part of interest, they deposit a further sum of Rs. 500 on  
 account of interest and costs.

30 Mr. Attygalle for defendants moves that the defendants be allowed  
 three months' time to pay the full balance due. He states the sale has  
 not yet been advertised.

He files K. R. No. 327 for Rs. 500.  
 Write to Fiscal to stay proceedings.  
 Notice plaintiff for 27-5-37.

Intld. L. H. DE A.,  
*D. J.*

27-5-37.

Mr. Attygalle for defendants is absent owing to floods.  
 40 Notice as per previous J. E. served on the plaintiff.  
 Call on 1-6-37.

Intld. L. H. DE A.,  
*D. J.*

Exhibits  
No. P 8.  
Journal  
Entries  
in D. C.  
Ratnapura  
Case  
No 5827  
1984—1987  
—continued.

1-6-37.

Messrs. Gunasekera & Gunasekera for plaintiff.

Mr. Attygalle for defendants states principal sum and part interest has been paid. Indulgence is sought for a little further time to pay the balance interest.

Final date allowed till 15-7-37 to pay balance.

Sgd. L. H. DE ALWIS,  
D. J.

22-7-37.

Messrs. Gunasekera & Gunasekera for plaintiff move that the Fiscal, 10 Sabaragamuwa Province be ordered to execute the order to sell issued in this case and fix the land for sale as the 1st and 2nd defendants failed and neglected to pay the balance due to the plaintiff on 15-7-37. The defts. have deposited in Court a further sum of Rs. 500 on 12-4-37.

They file a statement, and state that the balance that the defendants have to pay is Rs. 1,310.42 with interest on Rs. 5,400 at 9% from 11-9-34.

Vide remarks on motion.

29-7-37.

Deposit Note C33495 for Rs. 2,125 issued.

29-7-37.

Mr. Attygalle, Proctor for defendants, tenders Kachcheri Receipt for Rs. 2,125, being the full balance amount due from the defendants and moves that satisfaction of decree be entered in this case. 20

Messrs. Gunasekera & Gunasekera for plaintiff received notice and they say that a further sum of Rs. 75 should be paid by defendant before satisfaction is entered.

Mr. Attygalle to note.

Intld. L. H. DE A.,  
D. J.

30-7-37.

Messrs. Gunasekera & Gunasekera, Proctors for plaintiff move for an order of payment in their favour for the sum of Rs. 2,658, being the amount deposited to the credit of the plaintiff in this case. 30

Plaintiff has consented.

Allowed.

Sgd. L. H. DE ALWIS,  
D. J.

26-8-37.

As the 1st and 2nd defendants failed and neglected to pay the plaintiff the sum of Rs. 75, being the balance sum due to the plaintiff in this case, 40 Messrs. Gunasekera & Gunasekera for plaintiff move that the Fiscal, Sabaragamuwa Province be ordered to execute the order to sell issue and to recover from the defendants Rs. 75.

Notice defendant's Proctor.

Intld. L. H. DE A.,  
D. J.

31-8-37

As the 1st and 2nd defendants have now paid Rs. 75 being the balance sum due to the plaintiff Messrs. Gunasekera & Gunasekera for plaintiff move that satisfaction of decree be entered and the Fiscal be ordered to return to Court the order to sell unexecuted at the expense of the defendant.

Exhibits  
No. P 8.  
Journal  
Entries  
in D. C.  
Ratnapura  
Case  
No. 5827  
1934—1937  
—continued.

1. Satisfaction noted.

2. Recall order to sell unexecuted on payment of Fiscal's fees by defendant.

Sgd. L. H. DE ALWIS,  
D. J.

10

3-9-37.

D. F. Sab. returns order to sell unexecuted.

Intld. A. E. DE S.

No. P 7. Journal Entries in D. C. Colombo Case No. 6202

P 8.

No. P 7.  
Journal  
Entries in  
D. C.  
Colombo  
Case  
No. 6202  
1936—1938

IN THE DISTRICT COURT OF COLOMBO

No. 6202. Class III.

Amount Rs. 2,735.31

Nature, Money

20 Procedure, Regular.

E. P. A. FERNANDO.....*Plaintiff.*

*vs.*

C. H. RAN MENIKA WIJewardene TENNEKOON..... *Defendant.*

JOURNAL

The 24th day of November, 1936.

Mr. John Wilson files appointment and plaint, together with documents marked A.

Plaint accepted and summons ordered for 22-1-37.

Sgd. G. C. THAMBYAH,  
*District Judge.*

30



- Exhibits 9-12-36.  
 No. P 7.  
 Journal  
 Entries in  
 D. C.  
 Colombo  
 Case  
 No. 6202  
 1936 to 1938  
 —continued.
- Summons issued to Ratnapura with precept returnable the 20th day of January, 1937.
- 22-1-37. Summons served on defendant.  
 Proxy filed.  
 Answer 8-2-37.
- 8-2-37. Case called.  
 Answer filed.  
 Trial 27-4-36 (C).
- 22-4-37. Plaintiff's list of witnesses filed.  
 27-4-37. Case called.  
 Enter decree accordingly.  
 Decree entered.
- 19-5-37. Plaintiff's bill of costs taxed :
- |                |     |            |
|----------------|-----|------------|
| Incurred costs | ... | Rs. 158.52 |
| Pro costs      | ... | Rs. 108.03 |
|                |     | Rs. 266.55 |
- 23-8-37. Proctor for plaintiff applies for execution of decree by issue of writ against the defendant.  
 Allowed for claim, interest and costs.
- 26-8-37. Writ issued to Ratnapura returnable 25-8-38.
- 31-1-38. Proctor for plaintiff moves for an order on the Deputy Fiscal, 30 Ratnapura, directing him to give credit to the defendant in a sum of Rs. 1,000.  
 Allowed.
- 24-2-38. The claim and costs having been paid, Proctor for plaintiff moves that satisfaction of decree be entered.  
 Enter satisfaction of decree.

Intld. M. W. H DE S.,  
*D. J.*

10

Intld. M. W. H. DE S.,  
*D. J.*

*D. J.*

20

Intld. M. W. H. DE S.,  
*D. J.*

Intld. M. W. H. DE S.,  
*D. J.*

Intld. M. W. H. DE S.,  
*D. J.* 40

4-3-38. As claim and costs have been paid, Mr. Wilson for plaintiff moves for an order on the Fiscal, Ratnapura, to return writ to Court unexecuted. Exhibits

Direct Fiscal to return the writ to Court unexecuted.

Intld. M. W. H. DE S.,  
D. J.

No. P 7.  
Journal  
Entries in  
D. C.  
Colombo  
Case  
No. 6202  
1936 to 1938  
—continued.

No. D 1. Copy of Case No. D. C. Colombo 8135

D 1.

No. D 1.  
Copy of  
Case No.  
D. C.  
Colombo  
8135  
1938

IN THE DISTRICT COURT OF COLOMBO

10 No. 8135, Class IV.  
Amount Rs. 9,275.06  
Nature, Money,  
Procedure, Regular.

1. C. H. M. R. WIJEWARDENE TENNEKOON, and
2. DON HENRY WIJEWARDENE TENNEKOON, both  
of Ratnapura..... *Plaintiffs.*

*vs.*

JOSEPH NAZARETH GOMES of Kinross Avenue, Wellawatte, Colombo ..... *Defendants.*

20 *Plaint accepted.*  
*Summons to issue.*

Intld. M. W. H. DE S.,  
D.J.

On this 7th day of March, 1938,

The plaint of the plaintiffs abovenamed appearing by A. M. Fuard, their Proctor, states as follows :—

1. The 1st plaintiff is the wife of the 2nd plaintiff.
2. The defendant resides at Colombo within the local limits of the jurisdiction of this Court.
- 30 3. On or about the 16th May, 1931, the plaintiff borrowed from the defendant the sum of Rs. 6,000 secured by Mortgage Bond No. 539

Exhibits  
 No. D 1.  
 Copy of  
 Case No.  
 D. C.  
 Colombo  
 8185  
 1988  
 —continued.

attested by B. James St. V. Perera, Notary Public, and in Case No. 5843 of the District Court of Ratnapura instituted by the defendant to recover moneys due under the said Bond a decree was entered against the plaintiffs for the sum of Rs. 9,026.40.

4. On the 22nd December, 1934, the plaintiffs executed in the defendant's favour Deed of Lease No. 281 and Deed of Agreement No. 282 both attested by B James St. V. Perera, Notary Public, where they undertook to pay the defendant the said sum of Rs. 9,026.40, together with the sum of Rs. 7,000 lent to them by the defendant on the said date subject to the terms and conditions contained in the said deeds. 10

5. On the 20th December, 1935, the plaintiffs executed in the defendant's favour Deed of Lease No. 2145 and Mortgage Bond No. 2146 both attested by John Wilson, Notary Public, to secure the repayment of the sum of Rs. 15,000 to the defendant. The said sum of Rs. 15,000 included a sum of Rs. 6,900 representing the balance of the principal and interest due under the said Deed No. 282 which was accordingly discharged on the 13th of May, 1936.

6. On the 8th of July, 1936, the defendant agreed with the plaintiffs to discharge the said Deed and Bond No. 2145 and 2146 on payment of the amount due thereunder, viz., Rs. 13,255.07 but the defendant refused to accept the said sum when it was tendered by the plaintiffs demanding to be paid a further sum of Rs. 1,848.86.

7. Thereafter the plaintiffs being in acute financial difficulties and being unable otherwise to secure the discharge of the said Deed and Bond Nos. 2145 and 2146, executed in favour of the defendant Mortgage Bond No. 423 attested by B. James St. V. Perera, Notary Public, which purports to secure the repayment of the sum of Rs. 19,000 with interest thereon at the rate of 18 per centum per annum.

8. In arriving at the said sum of Rs. 19,000 the defendant included :

(a) a sum of Rs. 5,000 as being due under the said Deed of Agreement No. 282 referred to in paragraphs 4 and 5 hereof ;

(b) the sum of Rs. 1,848.86 referred to in paragraph 6 hereof ;

(c) a sum of Rs. 10,000 purporting to be the amount of a loan made by the defendant to the plaintiffs at the date of the execution of the said Bond ;

(d) a sum of Rs. 3,987.50, being interest for 29 months in advance at the rate of 12 per centum per annum on the said sums of Rs. 10,000 and Rs. 5,000.

9. The plaintiffs states:—

(a) that in respect of the said Bond No. 423 they actually received only Rs. 7,438.98 and a cheque for Rs. 688 which said cheque of Rs. 688

was handed at the defendant's request to the defendant's Notary in connection with the alleged expenses of the execution of the said Bond ; and

(b) that they were not liable to pay the said sums of Rs. 5,000 and Rs. 1,848.86 and the defendant was not and is not entitled to claim the said sum.

Exhibits  
No. D 1.  
Copy of  
Case No.  
D. C.  
Colombo  
8185  
1938  
—continued.

10 10. The fees, stamp dues and disbursements in connection with the execution of the said Bond No. 423 amounted to Rs. 333.50.

11. The plaintiffs further state that the transaction which resulted in the execution of the said Bond No. 423 is harsh, unfair and unconscionable and was due to undue influence on the part of the defendant as it was induced by the defendant being in a position to dominate the will of the plaintiff and that in the premises aforesaid they are entitled to a reopening thereof and a accounting between the defendant and themselves as to the amount justly payable to the defendant for obtaining a discharge of the said Bond No. 423.

12. The amount which is justly due at the date hereof under the said Mortgage Bond No. 423 is (as set out in the statement of account filed herewith marked A) Rs. 9,275.06. The plaintiffs have made arrangements to pay the amount found due to the defendant.

20 Wherefore the plaintiffs pray :—

(1) that the Court may be pleased to order that an account of the transactions between the plaintiffs and the defendant in respect of the amount lent by the defendant to be taken ;

(2) for an order that the amount so found to be due be declared to be the sum due from the plaintiffs to the defendant in respect of the said loan and that the Court do declare that the said Bond No. 423 be discharged by the said sum of Rs. 9,275.06 or if the sum so found to be due exceeds the said sum of Rs. 9,275.06 by the further payment of such excess ;

30 (3) that if the defendant fails to render a full and complete account of the amount lent by him to the plaintiffs and of the amount actually due from the plaintiffs that the Court may declare (i) that the sum of Rs. 9,275.06 is the amount due from the plaintiff to the defendant; (ii) that the said Bond No. 423 has been discharged ; and

(4) for costs, and for such other and further relief in the premises as to this Court shall seem meet.

Sgd. A. M. FUARD,  
*Proctor for Plaintiffs.*



5. The plaint discloses no causes of action against the defendant. This is a premature attempt on the part of the plaintiffs to induce the defendant to forego part of the defendant's just claims.

Exhibits  
No. D 1.  
Copy of  
Case No.  
D. C.  
Colombo  
8135  
1938  
—continued.

Wherefore the defendant prays :—

- (1) that plaintiffs' action may be dismissed.
- (2) for costs of action, and for such other and further relief as this Court may be pleased to grant in the premises.

Sgd. J. THAMBYAH BARTLETT,  
*Proctor for Defendant.*

10

DECREE

IN THE DISTRICT COURT OF COLOMBO

- 1. C. H. M. R. WIJEWARDENA TENNEKOON, and
- 2. DON HENRY WIJEWARDENA TENNAKOON, both  
of Ratnapura ..... *Plaintiffs.*

No. 8135 *vs.*

JOSEPH NAZARETH GOMEZ of Kinross Avenue, Wellawatte ..... *Defendant.*

It is ordered and decreed that the plaintiffs' action be and the same is hereby dismissed without costs.

20

Sgd. C. NAGALINGAM,  
*District Judge.*

The 19th day of August, 1938.

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No. P 9. Bond No. 4664

No. P 9.  
Bond  
No. 4664  
19-2-38

Prior Registration :—Ratnapura B227/40, 220/122, 123, B221/232, A217/250, B221/188, 220, 125, 126, B221/187, 220/187.

No. 4664

Know all men by these presents that We, Chandrasekera Herat Mudiyansele Ran Menika Wijeyewardene Tennekoon Walauwe Mahatmee and Don Henry Wijeyewardene Tennekoon Bandara Mahatmaya both of Ratnapura (wife and husband) I the said Chandrasekera Herat

Exhibits  
 No. P 9.  
 Bond  
 No. 4664  
 19-2-38  
 —continued.

Mudiyanselage Ran Menika Wijeyewardene Tennekoon Walauwe Mahatmee acting herein with the consent and concurrence of my husband the said Don Henry Wijeyewardene Tennekoon Bandara Mahatmaya as is testified to by his being a party to and executing these presents (hereinafter called and referred to as the obligors which term shall where the context so requires or admits means and include as and each of us and our or each of our respective heirs executors and administrators) are jointly and severally held and firmly bound unto Nadarajan Chettiar son of Muttiah Chettiar of 155 Sea Street in Colombo carrying on business under the name style and firm or vilasam of Moona Ravanna Mana Moona 10 Moona Nana also known as M. R. M. M. N. (hereinafter called and referred to as the obligee which term shall where the context so requires or admits mean and include him his heirs executors administrators and assigns) in the sum of Rupees Fifty-two thousand (Rs. 52,000) lawful money of Ceylon being money borrowed and received by us the said obligors from the said obligee (the receipt whereof we do and each of us doth hereby admit and acknowledge) to be paid to the said obligee together with interest thereon at the rate of twelve per cent. per annum from the date of these presents on demand and for which payment to be well and truly made we the said obligors do hereby jointly and severally engage 20 and bind ourselves firmly by these presents.

And for securing unto the said obligee the payment of the said sum of Rupees Fifty-two thousand and all other sum and sums of money payable under and by virtue or in respect of these presents I the said Chandrasekera Herat Mudiyanselage Ran Menike Wijeyewardene Tennekoon Walauwe Mahatmee do hereby specially mortgage and hypothecate to and with the said obligee as a primary mortgage free from all encumbrance all those lands and premises in the Schedule A hereto fully described and the fifth land in the Schedule B hereto fully described and as a secondary mortgage subject to the primary mortgage created by Bond 30 No. 124 dated 18th December, 1935, attested by G. E. Abeyesekera of Colombo Notary Public but free from any other encumbrance whatsoever all those lands and premises numbered 1, 2, 3 and 4 in the Schedule B hereto fully described together with all the buildings factories fixtures plantations crops income produce tools implements and other live and dead stock on the premises and all coupons issued or to be issued in respect of the said lands and premises by the Rubber Controller and all the rights privileges easements servitudes and appurtenances whatsoever thereunto belonging or in anywise appertaining or usually held and occupied used and enjoyed therewith or reputed to be or known as part 40 and parcel thereof and all the estate right title interest property claim and demand whatsoever of me the said first obligor in to upon or out of the same.

And we the said obligors do hereby covenant and declare to and with the said obligee that we have good and legal right to make the foregoing mortgage in manner aforesaid and that the said premises are (save as aforesaid) not subject to any other charge mortgage lease lien seizure

sequestration or other encumbrance whatsoever and that we shall and will at all times hereafter at the request of the said obligee but at our own cost and expense do and execute or cause to be done and executed all such further and other acts deed matters and things whatsoever necessary for the better and more perfectly assuring the said premises unto the obligee by way of mortgage and hypothecation as aforesaid as by him shall or may be reasonably required.

Exhibits  
No. P 9.  
Bond  
No. 4664  
19-2-38  
—continued.

Now the condition of the abovewritten Bond or Obligation and the mortgage and hypothecation hereby given and granted is such that if we the said obligors shall and will well and truly repay or cause to be repaid unto the said obligee the said principal sum whenever demanded and until such repayment pay interest on the aforesaid principal sum at and after the rate of twelve per cent. per annum to be computed from the date hereof and shall and will during the continuance of the mortgage effected by these presents well and carefully keep up and maintain the said lands and premises and plantations hereby mortgaged in good condition and cultivation and shall and will during the continuance of these presents permit the said obligee or his authorised agent to visit and inspect the said premises then the abovewritten Bond or Obligation shall be null and void but otherwise the same shall be and remain in full force and virtue.

Provided however that if we the said obligors shall fail to pay all moneys due under these presents on demand or if we fail to observe or perform any of the other covenants herein contained then it shall be lawful for the said obligee at once to sue for and recover all moneys payable under these presents anything herein contained to the contrary notwithstanding.

And these presents further witness that we the said obligors have left in deposit with the obligee at the execution of these presents a sum of Rupees One thousand (Rs. 1,000) on account of interest and/or principal that may be due under these presents at the time of the cancellation and discharge of these presents at the time of the institution of an action for the recovery of the moneys due under these presents.

And these presents also witness that we do hereby authorise the said obligee to retain in his hands out of the said sum of Rupees Fifty-two thousand a sum of Rupees Nine thousand one hundred and fifty-eight and Cents Sixty-five (Rs. 9,158.65) to be applied by him in payment on our behalf to the Ceylon State Mortgage Bank in the manner following, that is to say :—

A sum of Rupees One thousand five hundred and eighty-six and Cents Fifty-four (Rs. 1,586.54) on the 18th day of June, 1938, a sum of Rupees One thousand five hundred and Sixty-two and Cents Forty-nine (Rs. 1,562.49) on the 18th day of December, 1938, a sum of Rupees One thousand five hundred and thirty-eight and Cents Forty-seven (Rs. 1,538.47) on the 18th day of June, 1939, a sum of Rupees One thousand five hundred and fourteen and Cents Forty-two (Rs. 1,514.42) on the 18th day of



Exhibits  
 No. P 9.  
 Bond  
 No. 4664  
 19-2-38  
 —continued.

December, 1939, a sum of Rupees One thousand four hundred and ninety and Cents Thirty-nine (Rs. 1,490.39) on the 18th day of June, 1940, and a sum of Rupees One thousand four hundred and sixty-six and Cents Thirty-four (Rs. 1,466.34) on the 18th day of December, 1940.

In witness whereof we the said obligors have set our hands to three of the same tenor and date as these presents at Colombo on this Nineteenth day of February, One thousand nine hundred and Thirty-eight.

### The Schedule A above referred to

All that and those the estate plantations and premises called and known as Hakamuwa Estate comprising the following allotments of land 10 to wit :—

1. An allotment of land called Hakamuwawatta situated at Hakamuwa in Meda Pattu of Nawadun Korale in the District of Ratnapura, Sabaragamuwa Province, bounded on the North by Lot No. 3 of Kaluwakanattehena Lot No. 4 of Kaluwakanattehena whereon Dingitta resides Lot No. 5 Kaluwakanattehena whereon Hapanpediyalage Kirisanga resides the two Lots Nos. 6 and 7 of Kaluwakanattehena whereon Rankira resides Lot No. 9 of Baduwatta and Aluthewayalayewatta, on the East by Deniyakumbura Lot No. 10 of Deniyahena Demetaketiyaowita Maha Ela Egodawatta portions bearing Nos. 11 and 12 of Meragalagodahena 20 Patangalakumbura Lot No. 13 of Meragalagodahena Lot No. 14 of Kaluliyaddagawahena Hewadiewela Narangahaowita tract of Bohitiyawekumburayaya Mudduwagekumburahena Lekamalayehena Lekamalayewatta and Gansabawa Road, on the South by the Dola Gilimalagehena and Wandurukapollemukalana, and on the West by the Rubber Estate of Mr. William Dias and Mudduwa village boundary containing in extent two hundred and forty-three acres three roods and six perches (243A. 3R. 6P) which said extent is more correctly said to be two hundred and forty-two acres three roods and nineteen and half perches (242A. 3R. 19½P.) in the figure of survey dated March, 1917, made by S. R. Poulter, Surveyor and 30 Leveller, but according to the sixteen chain diagram made by the Survey Department dated 25th April, 1924, is said to be bounded on the North by Lots 17Ac, 17B, 17C, 17D, 17E, 17F, 17G, on the East by the Lots 16m, 17H, 4, 15, 4A, 4, 9, 14, 17T, 17U, on the South by Lots 26m, 17Aa, 18, 17AB and land described in T. P. 356959, and on the West by Mudduwa village and Ettoya village containing in extent two hundred and fifty-one acres and nineteen perches (251A. 0R. 19P.).

2. All that allotment of land called Wandurukapollemukalana situated at Hakamuwa aforesaid, bounded on the West and North by Lot 17AM, and on the East and South by Lot 18 containing in extent 40 one acre one rood and nineteen perches (1A. 1R. 19P.) according to the survey and description thereof authenticated by A. J. Wickwar, Esq., Acting Surveyor-General, bearing date the 15th November, 1923, and No. 356959 both registered in the Rubber Controller's Office under

No. 180E2R7 excluding from the said Estate known as Hakamuwa Estate a portion of the extent of one hundred and forty-nine acres two roods and twenty-three perches (149A. 2R. 23P.) consisting of the following allotments of land to wit :—

Exhibits  
No. P 9.  
Bond  
No. 4664  
19-2-38  
—continued.

(1) All that allotment of land called Kaluwakanattehena and Potukoladeniyahenyaya being Lot 17Ad in Block Survey Preliminary Plan No. 18 of the extent of twenty-seven acres three roods and thirteen perches (27A. 3R. 13P.) registered in B218/76. (2) All that allotment of land called Medabeattehena being Lot 17AI in Block Survey Preliminary Plan No. 18 of the extent of fourteen acres and twenty-nine perches (14A. 0R. 29P.) registered in B218/17. (3) All that allotment of land called Potukoladeniyehenyaya being Lot No. 17AJ in Block Survey Preliminary plan No. 18 of the extent of twenty acres one rood and thirty-seven perches (20A. 1R. 37P.) registered in B218/79; and (4) All those allotments of lands called Kerakokudeniyahena and Godakumburehenyaya being Lot No. 17 in Block Survey Preliminary Plan No. 18 of the extent of eighty-five acres three roods and five perches (85A. 3R. 5P.) registered in B218/78.

3. All that Rubber Estate called and known as Tennehena Estate bearing registered No. 182E2R7 at the Rubber Controller's Office situated at Mudduwa in the Meda Pattu aforesaid and comprised of the following contiguous allotments of land namely Mahatennehena registered under title B204/36 Hettigamaethige Tennehena registered under title B89/387 and 126/189 Diyagallanehena and Kalawanegehena registered under title B96/206 Badalauhandiramalage Diyagallehehena registered under title B126/20 Elabodawatte Lekamalaya Tennehena registered under title B89/377, 130/241 and 196/67 Kerekokudeniyahena registered under title B89/378 and 196/66 and Imbulagawahena registered under title B89/379 and which said Tennehena Estate is bounded on the North by Dampewawahena Gulanehena Higgastennehena and Degalassehena, on the East by Hakamuwa Estate bearing registered No. 180E2R7 at the Rubber Controller's Office, on the South by Batalawattehena and the village limit of Ettoya and on the West by Imbulagawadeniya containing in extent thirty-nine acres (39A. 0R. 0P.).

4. All those contiguous allotments of land called Polwattegala Estate bearing Lots 5, 6 and 7 in Plan No. 179 dated 23rd November, 1928, made by Alfred C. Alles, Licensed Surveyor and Leveller, and registered under title B208/264 Kitulehena registered under title B172/47 and 172/137 and Dimbulwitiyahena registered under B187/125 and which said contiguous allotments of land are now called and known as Polwattegala and Kitulehena Estate situated at Batugedera in the Meda Pattu aforesaid and are together bounded as follows :—On the North by Kitulehena and Muwantennehena, on the East by Dimbulwitiyahena, on the South by Wakumburehena, and on the West by Kirimedidola and Muwantennehena containing in extent eighteen acres two roods and twenty-seven perches (18A. 2R. 27P.) and registered in the Rubber Controller's Office under No. 181E1R6 as containing twenty-two acres two roods and twenty-three perches (22A. 2R. 23P.).

Exhibits  
 No. P 9.  
 Bond  
 No. 4064  
 19-2-38  
 —continued.

5. All that allotment of land called and known as Kunugodahena bearing registered No. 162E1R17 at the Rubber Controller's Office situated at Udukulana in Gilimale village in the Uda Pattu of Kuruwiti Korale in the District of Ratnapura aforesaid bounded on the North by the forest of Mr. Steven, on the East by Kalu Ganga, on the South by Rada Ela-modera, and on the West by Rada Ela containing in extent about six amunams of paddy sowing and registered under title A119/72.

### The Schedule B above referred to

1. All that defined portion of the estate plantation and premises called and known as Hakamuwa Estate situated at Hakamuwa aforesaid 10 and comprising the five allotments, the first three of which are contiguous to each other and the remaining two in close proximity to them as shown in the Surveyor-General's sketch plan dated 25th April, 1924, called and 16-chain Diagram all of which five allotments aggregate and extent of one hundred and forty-nine acres two roods and twenty-three perches (149A. 2R. 23P.). to wit :—

(1) All that allotment of land called Kaluwakanatthen and Potukoladeniyahenyaya situated at Hakamuwa aforesaid being Lot 17Ad in Block Survey Preliminary Plan 18 and bounded on the North by Kaluwakanattewatta (private) Kaluwakanattewatta claimed by Hapanpediyalage 20 Rankira Watadeniyalage Ihalawatta claimed by Hapanpediyalage Rankira Watadeniyalage Ihalawatta claimed by Hapanpediyalage Jantua Baduwatta claimed by Hapanpediyalage Rankira a footpath Horayadeniya claimed by Galagawa Achchige Mudiyanse and others Talamandiyawatta claimed by Alutwalayalage Domingua and others Galkoratuwalayekumburuyaya claimed by G. Kiri Banda and others, on the East by Galkoratuwalaye Kumburuyaya claimed by G. Kiri Banda and others Kaluwakanattewatta *alias* Deniyahenawatta claimed by Hullawalinge Ramachintrimalli Deniyahenawatta (private) Demetaketiyadeniyakumbura (private) Iddamal Okanda claimed by Tumbagoda Kanakanamalage Jayatuhamy 30 and others Egodahakanattewatta claimed by Manamalage Sendiriya and others Potukoladeniyahenyaya (private), on the South by Potukoladeniyahenyaya (private), on the South by Potukoladeniyahenyaya (private) Medabattehena sold under the Waste Lands Ordinance to the mortgagee and another, and on the West by Medabattehena sold under the Waste Lands Ordinance to the mortgagee and another Potukoladeniya (private) Potukoladeniyahena sold under the Waste Lands Ordinance to the mortgagor and another and the village limit of Mudduwa exclusive of the foot path and containing in extent twenty-seven acres three roods and thirteen perches (27A. 3R. 13P.) as per Block Survey Preliminary Plan aforesaid 40 being property to which the mortgagor is entitled under and by virtue of the Settlement Order No. 577 (Ratnapura) published in the Ceylon Government Gazette No. 7398 of 6th June, 1924.

2. All that allotment of land called Medabattehena situated at Hakamuwa aforesaid being Lot 17AI in Block Survey Preliminary Plan 18

and bounded on the North by Potukoladeniya (private) Kaluwakanattehenyaya sold under the Waste Lands Ordinance to the mortgagor and another, on the East by Kaluwakanattewewattehenyaya sold under the Waste Lands Ordinance to the mortgagor and another Potukoladeniyahenyaya (private) Halugeliyaddehenawatta (private), on the South by Bohitiyawekumbura claimed by Manamalage Salma and others Narangahawila claimed by Wahumpurage Santosa and others, and on the West by Andiriyadeniyagodella claimed by Hullawalinge Saumawilli and Potukoladeniya (private) and containing in extent fourteen acres and twenty-  
 10 nine perches (14A. 0R. 29P.) as per Block Survey Preliminary Plan aforesaid being property to half of which the mortgagor is entitled under and by virtue of the Settlement Order No. 578 (Ratnapura) published in the Ceylon Government Gazette No. 7398 aforementioned and to the remaining half by right of purchase under Deed No. 792 dated 22nd July, 1925, attested by S. G. A. Julius of Colombo, Notary Public.

Exhibits  
 No. P 9.  
 Bond  
 No. 4664  
 19-2-38  
 —continued.

3. All that allotment of land called Potukoladeniyahenyaya situated at Hakamuwa aforesaid being Lot 17AJ in Block Survey Preliminary Plan 18 and bounded on the North by the village limit of Mudduwa Kaluwakanattehenyaya sold under the Waste Lands Ordinance to the  
 20 mortgagor and another, on the East by Potukoladeniya (private) and Andiyadeniyagodella claimed by Hullawalinge Saummawalli, on the South by Udadeniyahenawatta *alias* Medagodadeniyahenawatta claimed by Hullawalinge Saummawalli Udadeniya claimed by Watadeniyalage Santosa and others Aliyamalagodahenawatta claimed by Hullawalinge Saummawalli Alimalagodahenawatta (private) and Diyagalahena (private), and on the West by the village limit of Mudduwa and containing in extent twenty acres one rood and thrity-seven perches (20A. 1R. 37P.) as per Block Survey Preliminary Plan aforesaid being property to which the mortgagor is entitled under and by virtue of Settlement Order No. 578  
 30 (Ratnapura) aforementioned and to the remaining half by right of purchase under Deed No. 792 aforesaid.

4. All that allotment of land called Kerekokudeniyahena and Godakumburehenyaya situated at Hakamuwa aforesaid being Lot 17 in Block Survey Preliminary Plan 18, and bounded on the North by Diyagalahena (private) Kerekokudeniya (private) Diyagalahena (private) Aliyamalagodahenawatta (private) Aliyamalagodahenawatta claimed by Hullawalinge Saummawalli Aliyadeniya claimed by Wahumpurage Santosa and others Narangalawila claimed by Wahumpurage Santosa and others Narangahawiladeniya claimed by Manamalage Salma and others Naran-  
 40 gahaowita claimed by Wahumpurage Santosa and others Gohitiyawekumbura claimed by Manannalage Salma and others Eriyagahadeniya (private) Eriyagahadeniyaowita (private) Bohitiyawekumbura claimed by Manannalage Salma and others, on the East by Dehigahahenyaya (private) Pitapeladeniya (private) Dehigahahenyaya (private) Wewedeniya (private) Dehigahahenyaya (private) Wandurukapolle Mukalana declared to be the property of the Crown under the Waste Lands Ordinance, on the South by Wandurukapolle Mukalana declared to be the property of

Exhibits  
 No. P 9.  
 Bond  
 No. 4664  
 19-2-38  
 —continued.

the Crown under the Waste Lands Ordinance Menchihena Weniwelketiya-hena sold under the Waste Lands Ordinance to Ponnahennedeige William Dias and the village limit of Ettoya, and on the West by the village limit of Ettoya and containing in extent eighty-five acres three roods and five perches (85A. 3R. 5P.) as per Block Survey Preliminary Plan aforesaid being property to half of which the mortgagor is entitled under and by virtue of the Settlement Order No. 578 (Ratnapura) aforesaid and to the remaining half by right of purchase under Deed No. 792 aforementioned. All of which four allotments together with allotments marked 17AL and 17AM in the Block Survey Preliminary Plan 18 aforesaid form one estate 10 called Hakamuwawatta which is described as follows :—On the North by Lot 3 of Kaluwakanattehena Lot No. 4 of Kaluwakanattehena whereon Dingitta resides Lot No. 5 of Kaluwakanattehena whereon Hapanpediyalage Kirisanga resides the two Lots Nos. 6 and 7 of Kaluwakanattehena whereon Rankira resides Lot No. 9 of Baduwatta and Aluthewayalayawatta, on the East by Deniyakumbura Lot 10 of Dehiyahena Demetaketiyaowita Maha Ela Egodawatta portions of Lots bearing Nos. 11 and 12 of Meragalagodahena Patangalakumbura Lot No. 13 of Meragalagodahena Lot No. 14 of Kaluliyaddagawahena Hewadiwela Narangahawila tract of Bohitiyawekumbura Mudduwagekumbura Lekamalayehena Le-20 kamalayewatte and Gansabawa Road, on the South by the Dola Gili-malagahena and Wandurukapolle Mukalana, and on the West by the Rubber Estate of Mr. William Dias and Mudduwa village boundary containing in extent two hundred and forty-three acres three roods and six perches (243A. 3R. 6P.) which said extent is more correctly said to be two hundred and forty-two acres three roods and nineteen-and-half perches (242A. 3R. 19½P.) in the figure of Survey dated March, 1917, made by S. R. Poulter, Surveyor and Leveller but according to the 16-chain Diagram made by the Survey Department dated 25th April, 1924, is said to be bounded on the North by Lots 17Ac, 17B, 17C, 17D, 17E, 17F, 17G, on 30 the East by Lots 16M, 17H, 4, 15, 4A, 4, 9, 14, 17T, 17U, on the South by Lots 26m, 17Aa, 18, 17AB and land described in T. P. 356959, and on the West by Mudduwa village and Ettoya village containing in extent two hundred and fifty-one acres and nineteen perches (251A. 0R. 19P.).

5. All that allotment of land called Koragaha Kelehenawatta bearing registered No. 173E2R7 in the Rubber Controller's Office situated at Watupitiya in the Meda Pattu aforesaid, bounded on the North by Lindalidyaddadeniya Lot 38 Lindalidyadda Wetitibena Dola Udagaiyayakumburayaya Lot 35 Pottekumburayaya Lot 32, on the East by Pottekumburuyala 32 Lindalidyadda Lot 89 Waduawatta Lot 128 Udahawatuyaya Lot 129, 40 on the South by Ketadola and Galpote Ela, and on the West by Meegahawatta and other lands Lot 80 Udahawatta and other lands Lot 82 Kora-

gahakelehena Alutwatta Lot 84 Maralaettehena Lot 41 Udawatta Lot 40 Exhibits  
Lindaliyadda Lot 38 and containing in extent forty-nine acres one rood No. P 9.  
and seventeen perches (49A. 1R. 17P.). Bond  
No. 4664  
19-2-38  
—continued.

Sgd. C. H. R. TENNEKOON,  
Sgd. D. H. W. TENNEKOON.

Witnesses :

Sgd. W. A. BOTEJUE,  
Sgd. A. M. SHAMSUDDEEN.

Sgd. S. SOMASUNDARAM,  
N. P.

10

I, Sabapathy Somasundaram of Colombo in the Island of Ceylon, Notary Public, duly admitted and practising, do hereby certify and attest that the foregoing Instrument having been read over and explained by me to therein named Chandrasekera Herat Mudiyansele Ran Menike Wijeyewardene Tennekoon Walauwe Mahatmee (who is not known to me) and Don Henry Wijeyewardene Tennekoon Bandara Mahatmaya (who is known to me) in the presence of Welatantrige Albert Botejue of Etulkotte in Cotta and Assena Marikar Shamsuddeen of 2 Eladuwawatta Nugegoda both in the District of Colombo the subscribing witnesses  
20 thereto (both of whom are known to me) the same was signed by the said executants as "C. H. R. Tennekoon" and "D. H. W. Tennekoon" respectively by the said witnesses and by me the said Notary in the presence of one another all being present together at the same time at Colombo on this nineteenth day of February, One thousand nine hundred and Thirty-eight.

Sgd. S. SOMASUNDARAM,  
*Notary Public.*

Date of attestation :  
19th February, 1938.

**No. P 10. Bond No. 4666**

30

**P 10** No. P 10.  
Bond  
No. 4666  
19-2-38

Prior Registration : Ratnapura B227/40, 220/122, 123, B221/232,  
A217/250, 221/188, 220/125, B220/126, 221/187  
220/187.

**No. 4666**

This Indenture made and entered into at Colombo on this nineteenth day of February, One thousand nine hundred and Thirty-eight, between (1) Chandrasekera Herat Mudiyansele Ran Menika Wijeyewardene Tennekoon Walauwe Mahatmee acting herein with the consent and concurrence of her husband Don Henry Wijeyewardene Tennekoon Bandara  
40 Mahatmaya as, is testified to by his being a party hereto and signing

Exhibits  
 No. P 10.  
 Bond  
 No. 4666  
 19-2-38  
 ---continued.

these presents, and (2) the said Don Henry Wijeyewardene Tennekoon Bandara Mahatmaya both of Ratnapura (hereinafter referred to as the Lessors which expression shall where the context required or admits mean and include them and each of them and their respective heirs executors administrators and assigns of the one part and Nadarajan Chettiar son of Muttiah Chettiar of 155 Sea Street in Colombo carrying on business under the name style and firm or vilasam of Moona Ravanna Mana Moona Moona Nana also known as M. R. M. M. N. (hereinafter referred to as the Lessee which expression shall where the context so requires or admits mean and include himself his heirs executors administrators and assigns) 10 of the other part.

Witnesseth as follows :—

That the lessors in consideration of the sum of Rupees fifty-two thousand (Rs. 52,000) lawful money of Ceylon well and truly paid to the Lessors by the Lessee at the execution of these presents (the receipt whereof the lessors do hereby expressly admit and acknowledge) and which said sum of Rupees fifty-two thousand is to be taken and applied as rent for the full term hereby demised do hereby let lease and demise unto the Lessee all those Rubber Estates and plantations in the Schedules A and B hereto fully described with the buildings plantations and other 20 appurtenances thereon and thereto belonging.

To hold the said premises hereby demised unto the Lessee for the full and the term of five years from the date of this Indenture.

Yielding and paying therefor unto the Lessors for the said period the total rental of Rupees fifty-two thousand (Rs. 52,000) paid in advance as aforesaid at or before the execution of these presents.

And the Lessors do hereby covenant and agree with the Lessee as follows :—

1. That the Lessee shall and may hold and possess the said demised premises during the said term without any interruption on the part of 30 the lessors or any person claiming through or under them.

2. That the Lessee shall be entitled to receive from the Rubber Controller all coupons to be issued in respect of the said Rubber plantations standing on the said premises described in the Schedules A and B hereto during the said period of five years and for that purpose the lessors hereby irrevocably grant to the lessee full authority warrant leave and license to apply for and obtain from the Rubber Controller the said Rubber coupons and to issue receipts for the same.

3. That the Lessors shall furnish all such information and sign all such returns and other documents as may be required by the Lessee for 40 the purpose of complying with the orders of the Rubber Controller or other authority.

4. That nothing herein contained shall affect the rights of the lessee to sue for and recover at any time the said sum of Rupees fifty-two thousand (Rs. 52,000) and other moneys due under Bond No. 4665 dated this day and attested by the Notary attesting these presents.

And the Lessee doth hereby covenant and agree with the lessors that he shall and will at the expiration of the said period of five years surrender to the lessors' possession of the said premises but shall not be liable to the lessors for the state or condition of the said premises or of the plantations thereon at any time.

Exhibits  
No. P 10.  
Bond  
No. 4666  
19-2-38  
—continued.

In witness whereof the Lessors and the Lessee have hereunto and to two others of the same tenor and date as these presents set their respective hands at Colombo at the beginning hereof written.

### The Schedule A above referred to

10 All that and those the estate plantations and premises called and known as "Hakamuwa Estate" comprising the following allotments of land to wit :—

1. An allotment of land called Hakamuwawatta situated at Hakamuwa in Meda Pattu of Nawadun Korale in the District of Ratnapura, Sabaragamuwa Province, bounded on the North by Lot No. 3 of Kaluwakanattehena Lot No. 4 of Kaluwakanattehena whereon Dingitta resides Lot No. 5 of Kaluwakanattehena whereon Hapanpediyalage Kirsanga resides the two Lots Nos. 6 and 7 of Kaluwakanattehena whereon Rankira resides Lot No. 9 of Baduwatta and Aluthewayalayewatta, on the East  
20 by Deniyakumbura Lot No. 10 of Deniyahena Demetaketiyaowita Maha Ela Egodawatta portions being Nos. 11 and 12 of Meragalagodahena Patangalakumbura Lot No. 13 of Meragalagodahena Lot No. 14 of Kalugeliyaddagawahena Hewadiwela Narangahaowita tract of Bohitiyakumburayaya Mudduwagekumburahena Lekamalahena Lekamalayewatta and Gansabawa Road, on the South by the Dola Gilimalagehena and Wandurukapolla Mukalana and on the West by the Rubber Estate of Mr. William Dias and Mudduwa village boundary containing in extent two hundred and forty-three acres three roods and six perches (243A. 3R. 6P. which said extent is more correctly said to be two hundred and forty-two  
30 acres three roods and nineteen and half perches (242A. 3R. 19½P.) in the figure of survey dated March, 1917, made by S. R. Poulier, Surveyor and Leveller, but according to the sixteen-chain Diagram made by the Survey Department dated 25th April, 1924, is said to be bounded on the North by Lots 17Ac, 17B, 17C, 17D, 17E, 17F, 17G, on the South by Lots 26m, 17Aa, 18, 17AB and land described in T. P. 356959, and on the West by Mudduwa village and Ettoya village containing in extent two hundred and fifty-one acres and nineteen perches (251A. 0R. 19P.).

2. All that allotment of land called Wandurukapolle Mukalana situated at Hakamuwa aforesaid bounded on the West and North by  
40 Lot 17AM, and on the East and South by Lot 18 containing in extent one acre one rood and nineteen perches (1A. 1R. 19P.) according to the survey and description thereof authenticated by A. J. Wickwar, Esquire, Acting Surveyor-General, bearing date the 15th November, 1923, and No. 356959 both registered in the Rubber Controller's Office under No. 180E2R7 excluding from the said Estate known as Hakamuwa Estate a



Exhibits  
 No. P 10.  
 Bond  
 No. 4666  
 19-2-38  
 —continued.

portion of the extent of one hundred and forty-nine acres two roods and twenty-three perches (149A. 2R. 23P.) consisting of the following allotments of land to wit (1) all that allotment of land called Kaluwakanattehena and Potukoladeniyahenyaya being Lot 17Ad in Block Survey Preliminary Plan No. 18 of the extent of twenty-seven acres three roods and thirteen perches (27A. 3R. 13P.) registered in B218/76, (2) all that allotment of land called Medabeattehena being Lot 17AI in Block Survey Preliminary Plan No. 18 of the extent of fourteen acres and twenty-nine perches (14A. 0R. 29P.) registered in B218/77, (3) all that allotment of land called Potukoladeniyahenyaya being Lot No. 17AJ in Block Survey Preliminary Plan No. 18 of the extent of twenty acres one rood and thirty-seven perches (20A. 1R. 37P.) registered in B218/79, and (4) all those allotments of lands called Kerakokudeniyahena and Godakumburehenyaya being Lot No. 17 in Block Survey Preliminary Plan No. 18 of the extent of eighty-five acres three roods and five perches (85A. 3R. 5P.) registered in B218/78.

3. All that Rubber Estate called and known as Tennehena Estate bearing registered No. 182E2R7 at the Rubber Controller's Office situated at Mudduwa in the Meda Pattu aforesaid and comprised of the following contiguous allotments of land namely :—Mahatennehena registered under title B204/36 Hettiganeethige Tennehena registered under title B89/387 and 126/189 Diyagallanehena and Kalawanegehena registered under title B96/206 Baddalmuhandiramalage Diyagallehena registered under title B126/20 Elabodawatte Lekamalaye Tennehena registered under title B89/379 and which said Tennehena Estate is bounded on the North by Dampegawahena Gulanehena Higgastennehena and Degalassehena, on the East by Hakamuwa Estate bearing registered No. 180E2R7 at the Rubber Controller's Office, on the South by Batalawattehena and the village limit of Ettoya, and on the West by Imbulagawadeniya containing in extent thirty-nine acres (39A. 0R. 0P.).

30

4. All those contiguous allotments of land called Polwatttegala Estate bearing Lots 5, 6 and 7 in Plan No. 179 dated 23rd November, 1928, made by Alfred C. Alles, Licensed Surveyor and Leveller, and registered under title B298/264 Kitulehena registered under title B172/47 and 172/137 and Dimbulwitiyahena registered under B187/125 and which said contiguous allotments of land are now called and known as Polawattehala and Kitulehena Estate situated at Batugedera in the Meda Pattu aforesaid and are together bounded as follows :—On the North by Kitulehena and Muwantennehena, on the East by Dimbulwitiyahena, on the South by Wakkumburehena, and on the West by Kirimedidola and Muwantennehena containing in extent eighteen acres two roods and twenty-seven perches (18A. 2R. 27P.) and registered in the Rubber Controller's Office under No. 181E1R6 as containing twenty-two acres two roods and twenty-three perches (22A. 2R. 23P.).

5. All that allotment of land called and known as Kunugodahena bearing registered No. 162E1R17 at the Rubber Controller's Office situated at Udukulana in Gilimale village in the Uda Pattu of Kuruwiti

Korale in the District of Ratnapura aforesaid, bounded on the North by the forest of Mr. Steven, on the East by Kalu Ganga, on the South by Rada Elamodera, on the West by Rada Ela containing in extent about six amunams of paddy sowing and registered under title A119/72.

Exhibits  
No. P 10.  
Bond  
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—continued.

### The Schedule B above referred to

1. All that defined portion of the estate plantation and premises called and known as Hakamuwa Estate situated at Hakamuwa aforesaid and comprising the five allotments the first three of which are contiguous to each other and the remaining two in close proximity to them as shown  
10 in the Surveyor-General's Sketch Plan dated 25th April, 1924, called the 16-chain diagram all of which five allotments aggregate an extent of one hundred and forty-nine acres two roods and twenty-three perches (149A. 2R. 23P.) to wit :—

(2) All that allotment of land called Kaluwakanattehena and Potukoladeniyahenyaya situated at Hakamuwa aforesaid being Lot 17Ad in Block Survey Preliminary Plan No. 18 and bounded on the North by Kaluwakanattewatta (private) Kaluwakanattewatta claimed by Hapanpediyalage Jantua Baduwatta claimed by Hapanpediyalage Rankira a footpath Horayadeniya claimed by Galagawa Achchige Mudiyanse and  
20 others Talamandiyawatta claimed by Alutwalayalage Domingua and others Galkoratuwalayekumburuyaya claimed by G. Kiri Banda and others, on the East by Galkoratuwalayekumburuyaya claimed by G. Kiri Banda and others Kaluwakanattewatta *alias* Deniyahenawatta claimed by Hulla Wallinge Ramachantriwalli Deniyahenawatta (private) Demetaketiadeniyakumbura (private) Iddamal Okanda claimed by Tumbagoda Kananamalage Jayatuhamy and others Egodahakanattewatta claimed by Manamalage Sendiriya and others Potukoladeniyahenyaya (private) on the South by Potukoladeniyahenyaya (private) Medabattehena sold under the Waste Lands Ordinance to the mortgagor and another, and  
30 on the West by Medabattehena sold under the Waste Land Ordinance to the mortgagor and another Potukoladeniya (private) Potukoladeniyahena sold under the Waste Lands Ordinance to the mortgagor and another and the village limit of Mudduwa exclusive of the footpath and containing in extent twenty-seven acres three roods and thirteen perches (27A. 3R. 13P.) as per Block Survey Preliminary Plan aforesaid being property to which the mortgagor is entitled under and by virtue of the Settlement Order No. 577 (Ratnapura) published in the Ceylon Government Gazette No. 7398 of 6th June, 1924.

2. All that allotment of land called Medabattehena situated at  
40 Hakamuwa aforesaid being Lot 17AI in Block Survey Preliminary Plan 18 and bounded on the North by Potukoladeniya (private) Kaluwakanattehenyaya sold under the Waste Lands Ordinance to the mortgagor and another, on the East by Kaluwakanattewattehenyaya sold under the Waste Lands Ordinance to the mortgagor and another Potukoladeniyahenyaya (private) Halugeliyaddehenwatta (private), on the South by

Exhibits  
 No. P 10.  
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 19-2-38  
 —continued.

Bohitiyawekumbura claimed by Manamalage Salma and others Narangahawila claimed by Wahumpurage Santosa and others, and on the West by Andiriyadeniyagodella claimed by Hullawalinge Saummawalli and Potukoladeniya (private) and containing in extent fourteen acres and twenty-nine perches (14A. 0R. 29P.) as per Block Survey Preliminary Plan aforesaid being property to half of which the mortgagor is entitled under and by virtue of the Settlement Order No. 578 (Ratnapura) published in the Ceylon Government Gazette No. 7398 aforementioned and to the remaining half by right of purchase under Deed No. 792 dated 22nd July, 1925, attested by S. G. A. Julius of Colombo, Notary Public.

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3. All that allotment of land called Potukoladeniyahenyaya situated at Hakamuwa aforesaid being Lot 17AJ in Block Survey Preliminary Plan 18 and bounded on the North by the village limit of Mudduwa Kaluwakanattehenyaya sold under the Waste Lands Ordinance to the mortgagor and another, on the East by Potukoladeniya (private) and Andiyadeniyagodella claimed by Hullawalinge Saummawalli, on the South by Udadeniyahenawatta *alias* Medagodadeniyahenawatta claimed by Hullawalinge Saummawalli Udadaniya claimed by Watadeniyalage Santosa and others Aliyamalagodahenawatta (private) and Diyagalahena (private), and on the West by the village limit of Mudduwa and containing 20 in extent twenty acres one rood and thirty-seven perches (20A. 1R. 37P.) as per Block Survey Preliminary Plan aforesaid being property to half of which the mortgagor is entitled under and by virtue of Settlement Order No. 578 (Ratnapura) aforementioned and to the remaining half by right of purchase under Deed No. 792 aforesaid.

4. All that allotment of land called Kerekokudenyahena and Godakumburehenyaya situated at Hakamuwa aforesaid being Lot 17 in Block Survey Preliminary Plan 18, and bounded on the North by Diyagalahena (private) Kerekokudeniya (private) Diyagalahena (private) Aliyamalagodahenawatta (private) Aliyamalagodahenawatta claimed by Hullawalinge Saummawalli Aliyadeniya claimed by Wahumpurage Santosa and others Narangahawila claimed by Wahumpurage Santosa and others Narangahawaladeniya claimed by Manamalage Salma and others Narangahaowita claimed by Wahumpurage Santosa and others Bohitiyawekumbura claimed by Manannalage Salma and others Eriyagahadeniya (private) Eriyagahadeniyeowita (private) Bohitiyawekumbura claimed by Manannalage Salma and others, on the East by Dehigahahenyaya (private) Pitapeladeniya (private) Dehigahahenyaya (private) Wewedeniya (private) Dehigahahenyaya (private) Wandurukapolle Mukalana declared to be the property of the Crown under the Waste Lands Ordinance, on the South 40 by Wandurukapolle Mukalana declared to be property of the Crown under the Waste Lands Ordinance Menchihena Weniwelketiyahena sold under the Waste Lands Ordinance to Ponnahennedige William Dias and the village limit of Ettoya, and on the West by village limit of Ettoya and containing in extent eighty-five acres three roods and five perches (85A. 3R. 5P.) as per Block Survey Preliminary Plan aforesaid being property to half of which the mortgagor is entitled under and by virtue of

the Settlement Order No. 578 (Ratnapura) aforesaid and to the remaining half by right of purchase under Deed No. 792 aforementioned; and all of which four allotments together with allotments marked 17AI and 17AM in the Block Survey Preliminary Plan 18 aforesaid form one estate called Hakamuwawatta which is described as follows, on the North by Lot 3 of Kaluwakanattehena Lot No. 4 of Kaluwakanattehena whereon Dingitta resides Lot No. 5 of Kaluwakanattehena whereon Hapanpediyalage Kiri-sarga resides the two Lots Nos 6 and 7 of Kaluwakanattehena whereon Rankira resides Lot No. 9 of Baduwatta and Aluthewayalayawatta, on the East by Deniyakumbura Lot 10 of Dehiyahena Demetaketiyaowita Maha Ela Egodawatta portions of Lots bearing Nos. 11 and 12 of Mera-galagodahena Patangalakumbura Lot No. 13 of Meragalagodahena Lot No. 14 of Kaluliyaddagawahena Hewadiwela Narangahawila tract of Bohitiyawekumbura Mudduwagekumbura Lekamalayehena Lekamalaye-watta and Gansebawa Road, on the South by the Dola Gilimalagahena and Wandurukapolle Mukalana, and on the West by the Rubber Estate of Mr. William Dias and Mudduwa village boundary containing in extent two hundred and forty-three acres three roods and six perches (243A. 3R. 6P) which said extent is more correctly said to be two hundred and forty-two acres three roods and nineteen and half perches (242A. 3R. 19½P.) in the figure of survey dated March, 1917, made by S. R. Poulier, Surveyor and Leveller but according to the 16-chain diagram made by the Survey Department dated 25th April, 1924, is said to be bounded on the North by Lots 17Ac, 17B, 17C, 17E, 17F, 17G, on the East by Lots 16M, 18H, 4, 15, 4A, 4, 9, 14, 17T, 17U, on the South by Lots 26m, 17As, 18, 17AB and land described in T. P. 256959, and on the West by Mudduwa village and Ettoya village containing in extent two hundred and fifty-one acres and nineteen perches (251A. 0R. 19P.).

5. All that allotment of land called Koragahakelehenawatta bearing registered No. 173E2R7 in the Rubber Controller's Office situated at Watu-pitiya in the Meda Pattu aforesaid, bounded on the North by Lindaliyadda-deniya Lot 38 Lindaliyadda Wetitibena Dola Udagaiyayakumburuyaya Lot 35 Potttekumburayaya Lot 32, on the East by Potttekumburayaya Lot 32 Lindaliyadda Lot 89 Waduwatta Lot 128 Udahawatuyaya Lot 129, on the South by Kotadola and Galpote Ela, and on the West by Mee-gahawatta and other lands Lot 80 Udahawatta and other lands Lot 82 Koragahakelehenena Alutwatta Lot 84 Maralaettehena Lot 41 Udawatta Lot 40 Lindaliyadda Lot 38 and containing in extent forty-nine acres one rood and seventeen perches (49A. 1R. 17P.).

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Sgd. C. H. R. TENNEKOON,  
Sgd. D. H. W. TENNEKOON,  
Sgd. NADARAJAN CHETTIAR.

Witnesses :

Sgd. W. A. BOTEJUE,  
Sgd. A. M. SHAMSUDDEEN.

Sgd. S. SOMASUNDARAM,  
N. P.

Exhibits  
No. P 10.  
Bond  
No. 4666  
19-2-38  
—continued.

Exhibits  
 No. P 10.  
 Bond  
 No. 4666  
 19-2-38  
 —continued.

I, Sabapathy Somasundaram of Colombo in the Island of Ceylon, Notary Public, duly admitted and practising, do hereby certify and attest that the foregoing Instrument having been read over and explained by me to the therein named Chandrasekera Herat Mudiyansele Ran Menike Wijeyewardene Tennekoon Walauwe Mahatmee (who is not known to me) and Don Henry Wijeyewardene Tennekoon Bandara Mahatmaya and Nadarajan Chettiar son of Muttiah Chettiar (who are known to me) in the presence of Welatantrige Albert Botejue of Etul Kotte in Cotta and Assena Marikar Shamsuddeen of 2 Eladuawatta Nugegoda both in the District of Colombo the subscribing witnesses thereto (who are known to me) the same was signed by the first two executants in English as C. H. R. Tennekoon and D. H. W. Tennekoon and by the third executant in Tamil as Moona Ravanna Mana Moona Moona Nana Nadarajan Chettiar by the said witnesses and by me the said Notary in the presence of one another all being present together at the same time at Colombo on this Nineteenth day of February, One thousand nine hundred and thirty-eight.

Sgd. S. SOMASUNDARAM,  
*Notary Public.*

Date of attestation :  
 19th February, 1938.

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#### No. P 11. Agreement

No. P 11.  
 Agreement  
 21-2-38

P 11

This agreement made and entered into at Colombo on this twenty-first day of February, One thousand nine hundred and thirty-eight between Chandrasekera Herat Mudiyansele Ran Menike Wijeyewardene Tennekoon Walauwe Mahatmee and Don Henry Wijeyewardene Tennekoon Bandara Mahatmaya both of Ratnapura (wife and husband) the former acting herein with the consent and concurrence of her husband the said Don Henry Wijeyewardene Tennekoon Bandara Mahatmaya as is testified to by his becoming a party hereto and executing these presents (hereinafter referred to as the parties of the first part) of the one part and Nadarajan Chettiar son of Muttiah Chettiar of 155 Sea Street in Colombo carrying on business under the name style and firm or vilasam of Moona Ravanna Mana Moona Moona Nana also known as M. R. M. M. N. (hereinafter referred to as the party of the second part) of the other part witnesseth :

Whereas the said Chandrasekera Herat Mudiyansele Ran Menike Wijeyewardene Tennekoon Walauwe Mahatmee is the owner of the lands and premises described in Bond No. 4664 dated the 19th day of February, 1938, and attested by S. Somasundaram of Colombo, Notary Public.

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And whereas the parties of the first part are jointly and severally indebted to the party of the second part in the sum of Rupees fifty-two thousand (Rs. 52,000) lawful money of Ceylon on the aforesaid Bond No. 4664.

And whereas for the purpose of securing repayment of the principal sum and interest the lands and premises described in the aforesaid Bond No. 4664 were mortgaged and hypothecated to and with the party of the second part.

Exhibits  
No. P 11.  
Agreement  
21-2-38  
—continued.

And whereas the parties of the first part have thereafter by Indenture of Lease No. 4666 dated 19th day of February, 1938, and attested by S. Somasundaram of Colombo, Notary Public, leased and demised the said lands and premises for a period of five years from the date of the said Indenture.

10 And whereas the parties of the first part have requested the party of the second part to receive the Rubber coupons in respect of the said lands and premises and from the nett proceeds of the sale thereof to liquidate the said sum of Rupees fifty-two thousand and interest and to allow and permit the parties of the first part to manufacture rubber out of the latex taken from the said premises and to remove the rubber for their own benefit and the party of the second part has agreed to the same on the terms and conditions hereinafter set out.

Now this agreement witnesseth and it is hereby agreed by and between the parties hereto as follows :—

20 1. That the said parties of the first part in consideration of the said sum of Rupees fifty-two thousand (Rs. 52,000) borrowed and received by them under the aforesaid Bond No. 4664 do hereby authorise and empower the party of the second part to obtain and receive from the Rubber Controller all the rubber coupons to be issued for a period of five years commencing from the 19th day of February, One thousand nine hundred and thirty-eight in respect of the aforesaid premises and also agree to cause the Rubber Controller to issue the said coupons to the said party of the second part for the aforesaid period. Provided however that the party of the second part shall not be entitled to more than three hundred and  
30 forty-seven thousand (347,000) pounds coupons out of the issue to be made by the Rubber Controller after the 31st July, 1939, if the sum of Rupees fifty-two thousand and interest due on the said Bond is fully liquidated with the issue of the said quantity of three hundred and forty-seven thousand (347,000) pounds coupons and the coupons issued to the party of the second part prior to 31st July, 1939.

2. That the said party of the second part shall sell the said coupons at the ruling market price within two months from the respective dates of the issue of the coupons from time to time through any of the following firms of Brokers, namely, Messrs. Somerville & Co., Messrs. Keell &  
40 Waldock, Messrs. E. John & Co., and Messrs. Bartlett & Co. at the risk of the parties of the first part and after paying the usual brokerage and other charges out of the proceeds of such sales shall pay himself a sum of six cents on every pound rubber coupons so sold in consideration of the parties of the first part taking over the rubber produced on the said premises and of the party of the second part attending to all matters

Exhibits  
No. P 11.  
Agreement  
21-2-38  
—continued.

connected with the sale of the said coupons and credit the parties of the first part with the balance amounts towards the liquidation of the moneys due under the said Bond No. 4664. In the event of the parties of the first part failing to pay on any of the due dates the instalment payable by them to the Ceylon State Mortgage Bank under Bond No. 124 dated 18th December, 1935, attested by G. E. Abeyesekera of Colombo, Notary Public, after 31st January, 1941, the party of the second part shall be entitled to make the said payments to the said Ceylon State Mortgage Bank and debit the same against the parties of the first part and shall be entitled to interest at twelve per cent. per annum on the sums so paid 10 by him.

3. If the nett amounts realised out of the sales of the said Rubber coupons on the expiration of the aforesaid period of five years by the party of the second part are not sufficient to liquidate in full the moneys due on the said Bond No. 4664 then and in such case the parties of the first part do hereby agree and undertake to permit allow empower and authorise the said party of the second part to obtain from the Rubber Controller a further quantity of Rubber coupons for a further period under the same terms and conditions as aforesaid as shall be sufficient to cover the balance amount due in respect of the said Bond and for that 20 purpose to execute an Indenture of Lease or such other document or documents as may be necessary to enable the party of the second part to receive the said coupons.

4. In the event of the party of the second part at any time not being able to dispose of the Rubber coupons that may be issued to him as aforesaid without rubber then and in any and every such occasions the parties of the first part shall supply such quantity of smoked sheets of rubber of No. 1 quality of cover the said coupons and the said Rubber shall be delivered at Colombo within fifty days from the date of the issue of such coupons to the party of the second part and in the event the party 30 of the second part shall pay to the parties of the first part for the rubber so supplied as aforesaid at the rate of eight cents per pound on delivery thereof. In case of such payments being made to the parties of the first part the party of the second part shall debit such payments to the parties of the first part.

5. The party of the second part shall within a period of thirty days of the sales of each quantity of coupons render to the parties of the first part a full account relating to the sale of such coupons and the manner in which the proceeds have been applied.

6. The parties of the first part shall furnish all returns and other 40 informations as may be required by the Rubber Controller or any other authority and shall indemnify the party of the second part against any action that may be taken by the Rubber Controller or other authority for failing to make such returns or furnish such information.

7. In the event of all moneys due on the said Bond being fully liquidated prior to the expiration of the said period of five years the party of the second part shall even then be entitled to receive the coupons for the unexpired term of the said period of five years provided however that the quantity of coupons received by the party of the second part out of the issues to be made by the Rubber Controller after 31st July, 1939, shall not exceed three hundred and forty-seven thousand (347,000) pounds coupons and provided that the balance proceeds realised out of such coupons after payment of brokerage and other charges and the instalments payable to the Ceylon State Mortgage Bank (if any) and the payment to the party of the second part of six cents per pound coupon shall be paid to the parties of the first part.

Exhibits  
No. P 11.  
Agreement  
21-2-38  
—continued.

8. In the event of Rubber Restriction being removed before the expiration of the second period of five years or in the event of the party of the second part being unable to get the said coupons as aforesaid for any reason whatsoever it shall be lawful for the party of the second part to sue for and recover forthwith all moneys due under the said Bond together with the moneys the party of the second part would have been entitled to at the rate of six cents per pound coupon if the said rubber coupons had been issued to him during the said period of five years. For the purpose of assessing the quantity of coupons that would have been issued to the party of the second part for the period subsequent to 31st July, 1939, three hundred and forty-seven thousand (347,000) pounds coupons shall be taken as the quantity to which the party of the second part would be entitled to for the entire period subsequent to the 31st July, 1939.

9. The party of the first part shall at their own cost and expense keep up and maintain the said lands and premises in good condition order and cultivation during the continuance of the said Indenture of Lease No. 4666 and shall be in possession of the said premises unless the party of the second part calls upon them to give over possession of the same.

10. This agreement shall bind and the benefits thereof shall accrue to the parties hereto and their respective heirs executors administrators and assigns.

In witness whereof the said parties of the first and second parties have hereunto and to another of the same tenor and date as these presents set their hands at Colombo on the day at the beginning hereof written

Sgd. C. H. R. TENNEKOON,  
Sgd. D. H. W. TENNEKOON,  
Sgd. M. R. M. M. N. NADARAJAN  
CHETTIAR.

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Witnesses :

Sgd. W. A. BOTEJUE.



Exhibits  
 No. P 12.  
 Letter  
 23-1-40

**No. P 12. Letter**

**P 12**

23rd January, 1940.

S. SOMASUNDERAM, Esq.,  
 Proctor, Dam Street,  
 Colombo.

**Hakamuwa Estate**

Dear Sir,

I shall be much obliged if you will kindly send me the title deeds of the above Estate and of the other lands mortgaged with it to your client M. R. M. M. N. Nadarajan Chettiar, Sea Street, Colombo, together with a memo of the full claim due to your client.

I shall hold the deeds at your disposal.

Please obtain the deeds from your client as early as possible as my client has to settle certain transactions urgently.

My brother has already addressed a letter to the Chetty yesterday.

Yours faithfully,  
 Sgd. P. M. SENEVIRATNE.

No. P 13.  
 Letter  
 13-1-40

**No. P 13. Letter**

**P 13 20**

31st January, 1940.

S. SOMASUNDARAM, Esq.,  
 Proctor and Notary,  
 Colombo.

**Hakamuwa Estate, etc.**

Dear Sir,

I regret I have not received the title deeds of the above property and the memo of your client's claim.

Delay is prejudicial to the interest of my client's the owner.

Kindly draw this fact to the notice of your client and send me the 30 deeds without delay.

Yours faithfully,  
 Sgd. P. M. SENEVIRATNE,

**No. P 14. Letter**

Exhibits  
**P 14** No. P 14.  
 Letter  
 26-2-40

26th February, 1940.

S. SOMASUNDERAM, ESQ.,  
 Proctor, Colombo.

**Mrs. C. H. R. Tennekoon**

Dear Sir.

I am awaiting the memo of the claim due to your client by Mrs. Tennekoon on Bond No. 4664 attested by you.

10 On examining encumbrances I found that the previous bond in favour of your client, namely 1624 attested by A. M. Fuard has not been discharged.

Kindly confirm that on payment of the claim due to your client according to the memo your client will discharge the above two bonds and send them to me and also that he will execute a surrender of Lease No. 4666 at the costs of Mrs. Tennekoon.

Yours faithfully,  
 Sgd. P. M. SENEVIRATNE,

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**No. P 15. Letter**

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**P 15** No. P 15.  
 Letter  
 26-2-40

Colombo, 26th February, 1940.

P. M. SENEVIRATNE, ESQ.,  
 Proctor, etc.,  
 Dam Street, Colombo.

**Mrs. C. H. R. Tennekoon—Bond No. 4664 dated 19-2-1938**

Dear Sir,

With reference to your letter of today's date, I give below memo of the amount now due on Bond No. 4664 dated 19th February, 1938, and on the Lease No. 4666 of the same date and the Agreement relating thereto. The Bond No. 1624 referred to in your letter will also be cancelled and discharged on payment of the amount due on the Bond No. 4664.

I am instructed by Mr. M. R. M. M. N. Nadarajan Chettiar that he holds a mortgage and lease in respect of the lands called (1) Idolohena in extent 3A. 0R. 5P., (2) Pollwattegala Estate in extent 22A. 2R. 23P., and (3) Kunugodahena in extent 6 amunams and the lease is for a period of

Exhibits  
No. P 15.  
Letter  
26-2-40  
—continued.

six years from 1st January, 1937. There are moneys due on this transaction over and above the amount shewn in the memo above referred to.

Yours faithfully,  
Sgd. S. SOMASUNDERAM.

Colombo, 26th February, 1940.

**Memo referred to**

	Rs.	Cts.
Balance due on Bond No. 4664 up to 22-2-1940	14,289	17
Amount due on agreement on 248,553 lbs. undelivered		
Coupons at 6 cents	14,913	18 10
	<hr/>	
	Total	29,202 35
Deposit under Bond No. 4664	1,000	00
	<hr/>	
	Balance due	28,202 35

with interest on Rs. 14,289.17 at 12 per cent. per annum from 23rd February, 1940, until payment in full.

*E. & O. E.*

No. P 16.  
Bond  
No. 1582  
26-2-40

**No. P 16. Bond No. 1582**

P 16

Prior Registration : B160/102, 227/40, 218/61, 217/21, Ratnapura.

**No. 1582**

20

Know all men by these presents that Chandrasekera Herat Mudi-yanselage Ranmenika Wijeyewardene Tennekoon Walauwe Mahatmee and Don Henry Wijeyewardene Tennekoon Bandara Mahatmaya both of Ratnapura (hereinafter called and referred to as the obligors which term or expression shall mean and include their respective heirs executors and administrators where the context so requires or admits) wife and husband the former acting herein with the consent of the latter are jointly and severally held and firmly bound unto Charlotte Adeline Gomes of "Woodlands," Pickering's Road, Colombo, and Doctor Sagarajasekeram Tyagarajah of Gregory's Road, Colombo (hereinafter called and referred to as the obligees which term or expression shall mean and include their respective heirs executors administrators or assigns where the context as requires or admits) in the sums of money to become due to them in terms of these presents in the proportion of two-third to the said first-named obligee and one-third to the said second-named obligee be paid to the said obligees at Colombo for which payment well and truly to be made the said obligors do hereby bind themselves firmly by these presents.

And for the purpose of securing unto the said obligees the payment of all sums of money payable under and by virtue or in respect of these presents and the performance of the covenants conditions and provisos hereinafter contained the said obligors do hereby specially mortgage and hypothecate to and with the said obligees as a Secondary Mortgage that is to say, subject to primary mortgage created by Indenture No. 1580 bearing even date with and attested by the Notary attesting these presents but free from all other encumbrances whatsoever all those lands and premises in the Schedule hereto fully described together with all and  
 10 singular the plantations trees and buildings thereon and the crops machinery tools implements fixtures and live and dead stock thereto belonging and the rights privileges easements servitudes ways and appurtenances thereof or thereunto in anywise belonging or used or enjoyed therewith or reputed to be or known as part and parcel thereof and all the estate right title interest claim and demand whatsoever of the said obligors in to upon or out of the said premises and every part thereof and all deeds and writings relating thereto.

Exhibits  
 No. P 16.  
 Bond  
 No. 1582  
 26-2-40  
 —continued.

And the said obligors do hereby covenant and declare with and to the said obligees that the said premises hereby mortgaged and hypothe-  
 20 cated are free from all encumbrances whatsoever and that the same are not subject to any other mortgage charge lien seizure sequestration partition or other proceedings or encumbrances whatsoever save as aforesaid and that they have good right and full power to mortgage the said premises as aforesaid and that they shall and will at all times hereafter at the request of the said obligees and at the cost and expense of the obligors do and execute or cause to be done and executed all such further and other acts deeds matters assurances and things for better or more perfectly assuring unto the said obligees the said premises by way of mortgage and hypothecation as they shall or may reasonably require.

30 Whereas the above-bounden obligors by the said Indenture No. 1580 became held and firmly bound jointly and severally unto the first-named obligee in the sum of Rupees forty thousand (Rs. 40,000) and the second-named obligee in the sum of Rupees twenty thousand (Rs. 20,000) of lawful money of Ceylon and for securing the payment of the said sums mortgaged and hypothecated to and with the said obligees as a first or primary mortgage free from all encumbrances the premises in the Schedule hereto fully described and bearing registered No. E. 180E2R7 in the Office of the Rubber Controller.

40 And whereas in and by the said Indenture No. 1580 the said obligors demised to the said obligees the said premises to hold and possess the same with the rights to obtain all coupons which may be issued in respect of same subject to the terms and conditions therein contained.

And whereas the said sums represent the equivalent of advance upon the value of Four hundred thousand pounds (400,000) Rubber coupons which the said obligors have assured unto the said obligees that the Rubber Controller will issue in respect of the said premises from the date

Exhibits  
 No. P 16.  
 Bond  
 No. 1582  
 26-2-40  
 —continued.

hereof till the thirty-first day of December, One thousand nine hundred and forty-three calculated at the rate of fifteen cents (15) per pound Rubber coupons.

And whereas in consideration of the said obligors agreeing to supply the said obligees with coupons to cover any shortage in the event of the quantity of coupons issued by the Rubber Controller from date hereof up to the thirty-first December, One thousand nine hundred and forty-three falling short of the aforesaid full quantity of four hundred thousand Rubber coupons and also their undertaking to cultivate and maintain the said premises in good order and condition at their own cost and 10 expense the said obligees have agreed at their request to liquidate the said sums lent on the said Indenture No. 1580 by the sale of coupons in the manner hereinafter mentioned and to allow the obligors to manufacture rubber out of latex taken from the said premises and to remove the rubber for their own benefit subject to the terms and conditions hereinafter set out.

Now the condition of the above-written Bond or obligation is such that if the said sums of Rupees forty thousand (Rs. 40,000) and Rupees twenty thousand (Rs. 20,000) be fully accounted for and liquidated by the application of the moneys mentioned in the account sales of the broker 20 or brokers that is say the nett sums retained by the said obligees from the proceeds sale of the quantity of rubber coupons mentioned in such account sales in the manner hereinafter mentioned or if the said obligors shall at any time pay to the said obligees the said sums or any such balance thereof as shall remain unliquidated in either case together with a further sum calculated at six cents (6) per pound rubber coupon on the aforesaid full quantity of rubber coupons to be issued by the Rubber Controller and to be supplied by the obligors as hereinbefore mentioned or any balance thereof undelivered as the case may be and if the said obligors shall supply to the obligees coupons or their value calculated at 30 six cents (6) per pound rubber coupon to make up the aforesaid full quantity of rubber coupons in the event of coupons issued by the Rubber Controller from the date hereof till thirty-first December, One thousand nine hundred and forty-three falling short of the full quantity of rubber coupons aforesaid or if the said obligors shall pay on demand the balance amounts out of the said sums of Rupees forty thousand (Rs. 40,000) and Rupees twenty thousand (Rs. 20,000) left unliquidated on the thirty-first day of December, One thousand nine hundred and forty-three or on any earlier date after giving credit for the price realised by the sale of the full 40 quantity of coupons in the manner hereinafter provided with interest thereon at nine per centum per annum from such date and shall and will keep up the said premises and the buildings and plantations thereon in a fit and proper state of management and cultivation and shall and will supply the said obligees with such quantity of smoked sheets of rubber of No. 1 quality to cover the coupons from time to time whenever they become necessary for the sale of rubber coupons and shall and will furnish at their own cost and expense all returns and other informations as may

be required by the Rubber Controller or any other authority and shall and will observe and perform all the terms covenants provisos and agreements herein contained on their part to be performed and discharge all liabilities arising thereunder then the said Bond or Obligation shall be null and void but otherwise shall be and remain in full force and virtue.

Exhibits  
No. P 16.  
Bond  
No. 1582  
26-2-40  
—continued.

Provided however and it is hereby expressly covenanted and agreed by and between the said obligors and obligees as follows :—

1. The said obligors will cause the Rubber Controller to issue in favour of the said obligees in the proportion of two-third to the first-named obligee and one-third to the second-named obligee all rubber coupons to be issued in respect of the said premises from the date hereof till the thirty-first day of December, One thousand nine hundred and forty-three and do hereby authorise and empower the said obligees to obtain and receive all the rubber coupons to be issued during the said period from the Rubber Controller. Provided however that the said obligees shall not be entitled to more than four hundred thousand (400,000) pounds rubber coupons out of the issues to be made by the Rubber Controller during the said period.

2. The said obligees shall sell the said coupons at the ruling market price from time to time through any of the following firms of Brokers, namely Messrs. Somerville & Co., Messrs. Keell & Waldock, Messrs. E. John & Co., Messrs. Gordon & Co., and Messrs. Bartleet & Co. at the risk of the obligors.

3. The said obligees shall apply the proceeds of such sales in the manner following :—

Firstly, in payment of all expenses charges and brokerage payable in respect of the said sales. Secondly, in appropriating to themselves sums calculated at the rate of six cents (6) per pound rubber coupon on the quantity of rubber coupons sold in consideration of obligors taking over the rubber produced for their benefit. Thirdly, in applying the balance in liquidation of the sums due under the said Indenture No. 1580.

4. If the nett amounts realised out of the sales of the aforesaid full quantity of rubber coupons up to thirty-first December, One thousand nine hundred and forty-three are not sufficient to liquidate in full the moneys due on the said Indenture No. 1580 then in such case the obligors shall be liable to pay immediately the balance sums due thereon together with interest thereon at the rate of nine per centum per annum till payment in full. Provided that in the event of the coupons issued by the Rubber Controller during the said period falling short of four hundred thousand (400,000) pounds rubber coupons then the said obligors shall deliver coupons to cover such shortage or pay their value calculated at the rate of six cents (6) per pound rubber coupon to the obligees and the provisions of Clauses 2 and 3 hereof shall apply to the rubber coupons so delivered by the obligors. It shall however be optional for the obligees to receive under the same terms and conditions a further quantity of rubber coupons from the Rubber Controller for a further period as shall

Exhibits  
 No. P 16.  
 Bond  
 No. 1582  
 26-2-40  
 —continued.

be sufficient to cover the said balance amounts due on the said Indenture No. 1580 and the provisions of Clauses 2 and 3 hereof shall apply to such coupons.

5. In the event of the obligees not being able to dispose of the rubber coupons that may be issued to them as aforesaid without rubber then and in any and every such occasion the obligors shall supply such quantity of smoked sheets of rubber of No. 1 quality to cover the said coupons and the said rubber shall be delivered at Colombo within fifty days from the date of the issue of such coupons to the obligees and in that event the obligees shall pay to the obligors for the rubber so supplied 10 half the nett price realised less six cents (6) per pound rubber coupon.

6. The obligees shall within a period of thirty days of the sales of each quantity of coupons render to the obligors a full account relating to the sale of such coupons and the manner in which the proceeds have been applied.

7. The obligors shall furnish all returns and other informations as may be required by the Rubber Controller or any other authority and shall indemnify the obligees against any action that may be taken by the Rubber Controller or other authority for failing to make such returns or furnish such informations and in the event of the said obligors failing 20 to comply with the orders of the Rubber Controller or such other authority it shall be lawful for the said obligees to carry out such orders and furnish all such returns and informations and to debit the obligors with the expenses incurred by them in that behalf.

8. In the event of all moneys due on the said Indenture No. 1580 being fully liquidated prior to the expiration of the thirty-first day of December, One thousand nine hundred and forty-three, the obligees shall even then be entitled to receive the coupons to be thereafter issued by the Rubber Controller up to the thirty-first day of December, One thousand nine hundred and forty-three, provided however that the quantity of 30 coupons received by the obligees out of the issues to be made by the Rubber Controller after such liquidation together with the coupons received up to such liquidation by the obligees shall not exceed four hundred thousand (400,000) pounds coupon and provided that the balance proceeds realised out of such coupons after payment of brokerage and other charges and the payment to the obligees of a sum calculated at the rate of six cents (6) per pound coupon shall be paid to the obligors. In the event of the coupons issued by the Rubber Controller after such liquidation and before the expiration of the thirty-first day of December, One thousand nine hundred and forty-three together with coupons received by the 40 obligees prior to such liquidation falling short of four hundred thousand (400,000) pounds of rubber coupons the obligors shall be liable to supply the shortage in coupons to make up the said full quantity of four hundred thousand (400,000) pounds rubber coupons or pay the value of such deficiency calculated at the rate of six cents (6) per pound rubber coupon.

9. In the event of rubber restriction being removed before the thirty-first day of December, One thousand nine hundred and forty-three or in the event of the said obligees being unable to obtain the said coupons by reason of suspension by the Rubber Controller of any issue of coupons for neglecting to keep up the said premises or the buildings or plantation thereof in a fit and proper state of management and cultivation or for any other cause whatsoever or if the said obligors shall fail to supply the said obligees with coupons sufficient to cover any shortage of coupons received by the obligees as hereinbefore provided or fail to pay their value  
 10 or fail to deliver smoked sheets of rubber No. 1 quality to cover the coupons whenever it becomes necessary to do so for the sale of rubber coupons as hereinbefore provided it shall be lawful for the said obligees notwithstanding anything to the contrary contained herein or in the said Indenture No. 1580 to sue for and recover forthwith all moneys due under the said Indenture and hereunder together with the moneys the obligees would have been entitled to on the then remaining unsold or undelivered coupons out of the said full quantity of coupons at the rate of six cents (6) per pound coupon if the said rubber coupons and smoked sheets had been delivered to them. For the purpose of assessing the  
 20 quantity of coupons that would have been issued to the obligees by the Rubber Controller from the date hereof till thirty-first day of December, One thousand nine hundred and forty-three, four hundred thousand (400,000) pounds rubber coupons shall be taken as the quantity to which the obligees would be entitled to for the said period.

10. The obligors shall at their own cost and expense keep up and maintain the said premises and the plantations thereon in good condition order and cultivation and shall see to it that the tapping is done without any injury or damage to the trees and shall be in possession of the said premises with leave and license of the said obligees and shall give over  
 30 possession whenever called upon by them to do so provided however in the event of the obligors failing to keep up and maintain the said premises and the plantations in the manner aforesaid and to the satisfaction of the Rubber Controller by not complying with his orders it shall be lawful for the said obligees to do so and carry out such orders of the Controller and debit the obligors with all expenses incurred in that behalf.

Provided further that the mortgage hereby created shall be taken to be a concurrent mortgage and that in the event of the said security being realised and the proceeds of such realisation not being sufficient to satisfy the claim in full of the obligees they shall be entitled to claim *pro rata*  
 40 only on such proceeds in proportion to the amounts of their respective claims but nothing herein contained shall prevent the obligees from recovering the whole or any balance of their respective claims from the obligors.

In witness whereof the obligors and obligees do set their respective hands hereunto and to two others of the same tenor and date as These Presents at Colombo on this twenty-sixth day of February, One thousand nine hundred and forty.

Exhibits  
 No. P 16.  
 Bond  
 No. 1582  
 26-2-40  
 —continued.



## Exhibits

No. P 16.

Bond

No. 1582

26-2-40

—continued.

## The Schedule above referred to

All that and those the Estate plantations and premises called and known as Hakamuwa Estate comprising the following allotments of land to wit :—

1. An allotment of land called Hakamuwawatta situated at Hakamuwa in Meda Pattu of Nawadun Korale in the District of Ratnapura, Sabaragamuwa Province, bounded on the North by Lot No. 3 of Kaluwakanattehena Lot No. 4 of Kaluwakanattehena whereon Dingitta resides Lot No. 5 of Kaluwakanattehena whereon Hapanpediyalage Kirisanga resides the Lots Nos. 6 and 7 of Kaluwakanattehena whereon Rankira<sup>10</sup> resides Lot No. 9 of Baduwatta and Aluthewayalayewatta, on the East by Deniyakumbura Lot No. 10 of Deniyahena Demetaketiya Owita Maha Ela Egodawatta portions bearing Nos. 11 and 12 of Meragalagodahena Patangalakumbura Lot No. 13 of Meragalagodahena Lot No. 14 of Kalugeliyaddagawahena Hewadiwela Narangahaowita tract of Bohitiyawe kumburayaya Kudduwage Kumburahena Lekamalayehena Lekamalayawatta and Gansabawa Road, on the South by the Dola Gilimalagehena and Wandurukapolle Mukalana, and on the West by the Rubber Estate of Mr. William Dias and Mudduwe village boundary containing in extent two hundred and forty-three acres three roods and six perches (243A. 3R. 6P)<sup>10</sup> which said extent is more correctly said to be two hundred and forty-two acres three roods and nineteen and half perches (242A. 3R. 19½P.) in the figure of survey dated March, 1917, made by S. R. Poulier, Surveyor and Leveller, but according to the sixteen-chain diagram made by the Survey Department dated 25th April, 1924, is said to be bounded on the North by Lots 17Ac, 17B, 17C, 17D, 17E, 17F, 17G, on the East by the Lots 16m, 17H, 4, 15, 4A, 4, 9, 14, 17T, 17U, on the South by Lots 26m, 17Aa, 18, 17Ab and land described in T. P. 356959, and on the West by Mudduwa village and Ettoya village containing in extent two hundred and fifty-one acres and nineteen perches (251A. 0R. 19P.).<sup>30</sup>

2. All that allotment of land called Wandurukapolle Mukalana situated at Hakamuwa aforesaid, bounded on the West and North by Lot 17AM, and on the East and South by Lot 18 containing in extent one acre one rood and nineteen perches (1A. 1R. 19P.) according to the survey and description thereof authenticated by A. J. Wickwar, Esq., Acting Surveyor-General, bearing date the 15th November, 1923, and No. 356959.

3. All that defined part of Lot 4 called Iddamalakanda Kabarakanda Lindabodaokanda Kusawilaowitiyage in B. S. P. P. 18 situated at Hakamuwa aforesaid, bounded on the North by Lots 3 and 31, East<sup>40</sup> by remaining part of Lot 4, Lot 11, Lot 13 and paddy fields and deniya lands Lot No. 9, South by Lot No. 14, and West by Lots Nos. 17ag, 15, 17ad, 17ac, 17h and 16 containing in extent nine acres one rood and twenty perches (9A. 1R. 20P.) according to compiled survey plan made by J. Rodrigo, Licensed Surveyor and dated 15th June, 1935.

4. All those lands called Egodagederawatta and Meragalabodawatte bearing No. 14 in B. S. P. P. 18 situated at Hakamuwa aforesaid, bounded on the North by Lot 4a, East and South by paddy fields and deniya lands Lot 9, West by Lot 17ag containing in extent three roods and thirteen perches (0A. 3R. 13P.).

Exhibits  
No. P 16.  
Bond  
No. 1582  
26-2-40  
—continued.

5. All those lands called Egodakanattewatte and Meragalagodawatte bearing Lot No. 15 in B. S. P. P. 18 situated at Hakamuwa aforesaid, bounded on the North and East by Lot 4a, South by Lot 17ag, and West by Lot 17ad containing in extent one acre and twenty-five perches  
10(1A. 0R. 25P.).

6. All that land called Muduwage Henairawallahena bearing Lot No. 17O in B. S. P. P. 18 situated at Hakamuwa aforesaid, bounded on the North and East by paddy fields and deniya lands Lot No. 9, South and West by Lot 17 a m containing in extent one acre one rood and five perches (1A. 0R. 5P.).

7. All those Lots marked 21 and 22 in the compiled plan made by J. Rodrigo, Licensed Surveyor, dated 15th June, 1935, situated at Hakamuwa aforesaid and Mudduwa in the Meda Pattu aforesaid, bounded on the North by Tennehenyaya of R. D. H. W. Tennekoon, East by Andiya-  
20 deniya of Mr. D. H. W. Tennekoon, South by Rubber Estate of A. L. Abdul Latiff, and West by Hakamuwa Estate of Mr. D. H. W. Tennekoon containing in extent twenty-seven acres three roods and five perches (27A. 3R. 5P.) according to the said plan. The aforesaid lands according to the said compiled survey plan made by J. Rodrigo, Licensed Surveyor, dated 15th June, 1935, comprise the estate called and known as Hakamuwa Estate containing in extent two hundred and ninety-seven acres and five perches (297A. 0R. 5P.) and registered in the Rubber Controller's Office under No. 180E2R7.

30

Sgd. C. H. R. TENNEKOON  
Sgd. D. H. W. TENNEKOON  
Sgd. C. A. GOMES  
Sgd. SEGA TYAGARAJAH.

Witnesses :

Sgd. A. M. FUARD  
Sgd. W. A. BOTEJU.

Sgd. P. M. SENEVIRATNE,  
N. P.

I, Paul Melius de Silva Seneviratne of Colombo, Notary Public, do hereby certify and attest that the foregoing Instrument having been duly  
40 read over and explained by me the said Notary to the therein-named Chandrasekere Herat Mudianselage Ranmenika Wijewardene Tennekoon Walauwe Mahatmee and Don Henry Wijewardene Tennekoon Bandara Mahatmaya both of whom are not known to me and Charlotte Adeline Gomes and read over by Doctor Segarajasekeram Tyagarajah both of whom are known to me in the presence of Assena Marikar Mohamed

Exhibits  
 No. P 16.  
 Bond  
 No. 1582  
 26-2-40  
 —continued.

Fuard, Proctor, Hultsdorf, Colombo, who signed as "A. M. Fuard" and Welatantrige Albert Boteju of Kotte the subscribing witnesses thereto both of whom are known to me the same was signed by the said Chandrasekera Herat Mudianselage Ranmenika Wijewardene Tennekoon Walauwe Mahatmee as "C. H. R. Tennekoon" Don Henry Wijewardene Tennekoon Bandara Mahatmaya as "D. H. W. Tennekoon," Charlotte Adeline Gomes as "C. A. Gomes," Segarajasekeram Tyagarajah as "Sega Tyagarajah" by the said witnesses and by me the said Notary in my presence and in the presence of one another all being present together at the same time at Colombo on this twenty-sixth day of February, One thousand nine hundred and forty.

Sgd. P. M. SENEVIRATNE,  
*Notary Public.*

Date of attestation :  
 26th February, 1940.

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**No. P 17. Bond No. 1580**

No. P 17.  
 Bond  
 No. 1580  
 26-2-40

**P 17**

Prior Registration : B160/102, 227/40, 218/61, 217/217, Ratnapura.

**No. 1580**

This Indenture made and entered into at Colombo on this twenty-sixth day of February, One thousand nine hundred and forty, by and between Chandrasekera Herat Mudianselage Ranmenika Wijewardene Tennekoon Walauwe Mahatmee and Don Henry Wijewardene Tennekoon Bandara Mahatmaya both of Ratnapura, wife and husband, the former acting herein with the consent of the latter (hereinafter called and referred to as the obligors which term or expression shall mean and include their respective heirs executors and administrators where the context so requires or admits) of the one part and Charlotte Adeline Gomes of "Woodlands" Pickering's Road, Colombo, and Doctor Segarajasekeram Tyagarajah of Gregory's Road, Colombo (hereinafter called and referred to as the obligees which term or expression shall mean and include their respective heirs executors administrators or assigns where the context so requires or admits) of the other part.

Whereas the said obligees at the request of the said obligors have agreed to lend and advance to the said obligors the sum of Rupees forty thousand (Rs. 40,000) and Rupees twenty thousand (Rs. 20,000) respectively and it has also been agreed that the said sums of money should be secured by these presents and the mortgage and hypothecation hereby given and granted or expressed or intended so to be and that the said obligees should possess the premises in the Schedule hereto fully described for and in lieu of interest on the said sums of money until the said sums of money are fully paid and settled as hereinafter mentioned.

Now this Indenture witnesseth that the said obligors are jointly and severally held and firmly bound unto the first-named obligee in the sum of Rupees forty thousand (Rs. 40,000) and unto the second-named obligee in the sum of Rupees twenty thousand (Rs. 20,000) of lawful money of Ceylon being money borrowed and received by the said obligors from the said obligees (the receipt whereof the said obligors do and each of them doth hereby expressly admit and acknowledge) to be paid to the said obligees on demand after the thirty-first day of December, One thousand nine hundred and forty-three, for which payments to be well and truly made the said obligors bind themselves jointly and severally firmly by these presents.

Exhibits  
No. P 17.  
Bond  
No. 1580  
26-2-40  
—continued.

And for the purpose of further securing unto the said obligees the payment of all sums of money payable under and by virtue or in respect of these presents the said obligors do hereby specially mortgage and hypothecate to and with the said obligees as a first or primary mortgage free from all encumbrances all these allotments of lands and premises and plantations in the Schedule hereto more fully described together with all the buildings thereon and hereafter to be erected thereon and plantations now thereon and hereafter to be thereon together with crops tools implements machinery fixtures and live and dead stock belonging thereto and all appurtenances whatsoever to the said lands and premises belonging or in anywise appertaining or be held to belong or be appurtenant thereto or used or enjoyed therewith and all the estate right title property claim and demand whatsoever of the said obligors of in to upon or out of the said premises in the Schedule hereto fully described.

And the said obligors do hereby covenant with the said obligees that they now have good right full power and authority to mortgage and hypothecate the said premises hereby mortgaged and hypothecated or expressed so to be unto the said obligees and that the said lands and premises are not subject to any prior charge encumbrance or claim and further that the said obligors and all and every the person or persons having or claiming any right title interest property claim or demand whatsoever of in to upon or out of the said lands and premises shall and will at all times hereafter during the continuance of this security at the request of the said obligees and at the cost and expense of the said obligors do and execute or cause to be done and executed all such further and other acts deeds assurances matters and things whatsoever for the more perfectly assuring to the said obligees by way of mortgage and hypothecation the said lands and premises and every part thereof as shall or may be reasonably required.

Provided however it is hereby agreed that the said obligors shall not be entitled to repay the said sums of Rupees forty thousand (Rs. 40,000) and Rupees twenty thousand (Rs. 20,000) and that the said obligees shall not be entitled to demand payment of the said sums until the thirty-first day of December, One thousand nine hundred and forty-three.

Provided further that the mortgage hereby created shall be taken to be a concurrent mortgage and that in the event of the said security being

Exhibits  
 No. P 17.  
 Bond  
 No. 1580  
 26-2-40  
 —continued.

realised and the proceeds of such realisation not being sufficient to satisfy the claim in full of the obligees they shall be entitled to claim *pro rata* only on such proceeds in proportion to the amounts of their respective claims but nothing herein contained shall prevent the obligees from recovering the whole or any balance of their respective claims from the obligors.

And this Indenture further witnesseth that the said obligors do hereby demise unto the said obligees all those lands and premises in the Schedule hereto fully described and registered in the Office of the Rubber Controller bearing No. E. 180E2R7.

To hold the same unto the said obligees in the proportion of undivided two-third share to the first-named obligee and one-third share to the second-named obligee so long as the said sums of Rupees forty thousand (Rs. 40,000) and Rupees twenty thousand (Rs. 20,000) or any parts thereof are due and owing from the said obligors to the said obligees respectively and to receive and take for their own use the rents and profits thereof with all rights and authority to apply for and obtain from the Rubber Controller all coupons, which may be issued in respect of the said lands and premises hereby demised in the proportion of two-third of the said coupons to the first-named obligee and one-third to the second obligee.

Provided also it is hereby agreed as follows :—

20

(a) that the obligees shall be entitled to receive from the Rubber Controller all coupons to be issued hereafter in respect of the said lands and premises in the proportion of two-third of the said coupons to the first-named obligee and one-third to the second-named obligee and for that purpose the said obligors shall and will cause to be registered in the proper books of the Rubber Controller the names of the obligees as the owners of the said coupons and hereby grant to the obligees full authority warrant leave and licence to apply to and obtain from the Rubber Controller the rubber coupons and to issue receipt or receipts for the same.

(b) that the Obligees shall and may hold and possess the said lands and premises in the above proportions without any interruption on the part of the Obligors or any person claiming through or under them but without becoming in any manner whatsoever liable or accountable to the Obligors for or in respect of the upkeep maintenance management or cultivation of the said lands and premises hereby demised and the buildings thereon.

(c) that the said Obligors shall not be entitled to repay and that the said Obligees shall not be entitled to demand payment of the said sums of Rupees Forty thousand (Rs. 40,000) and Rupees Twenty thousand (Rs. 20,000) until the thirty-first day of December, One thousand Nine hundred and Forty-three except with their mutual consent.

(d) that on payment of the said sums of Rupees forty thousand (Rs. 40,000) and Rupees Twenty thousand (Rs. 20,000) the Obligees shall and will surrender and yield up possession of the said premises to the Obligors.

In witness whereof the parties hereto do set their respective hands hereunto and to two others of the same tenor and date as these presents at Colombo on the day month and year in the beginning hereof written.

Exhibits  
No. P 17.  
Bond  
No. 1580  
26-2-40  
—continued.

### The Schedule above referred to

All that and those the estate plantations and premises called and known as Hakamuwa Estate comprising the following allotments of land to wit :—

1. An allotment of land called Hakamuwawatta situated at Hakamuwa in Meda Pattu of Nawadun Korala in the District of Ratnapura, Sabaragamuwa Province, bounded on the North by lot No. 3 of Kaluwakanattehena Lot No. 4 of Kaluwakanattehena whereon Dingitta resides Lot No. 5 of Kaluwakanattehena whereon Hapanpediyalage Kirisanga resides the two Lots Nos. 6 and 7 of Kaluwakanattehena whereon Rankira resides Lot No. 9 of Baduwatta and Aluthewayalayewatta, on the East by Deniyahena Demetaketiyaowita Maha Ela Egodawatta portions bearing Nos. 11 and 12 of Meragalagodahena Patangalakumbura Lot No. 13 of Meragalagodahena Lot No. 14 of Kalugeliyaddagawahena Hewadiwela Narangaha Owita tract of Bohitiyawekumburayaya Muduwagekumburahena Lekamalayehena Lekamalayewatte and Gansabawa Road, on the South by the Dola Gilimalagehena and Wandurukapolle Mukalana, and on the West by the Rubber Estate of Mr. William Dias and Muduwe village boundary containing in extent two hundred and forty-three acres three roods and six perches (243A. 3R. 6P.) which said extent is more correctly said to be two hundred and forty-two acres three roods and nineteen and half perches (242A. 3R. 19½P.) which said extent is more correctly said to be two hundred and forty-two acres three roods and nineteen and half perches (242A. 3R. 19½P) in the figure of survey dated March, 1917, made by S. R. Poulter, Surveyor and Leveller, but according to the sixteen-chain diagram made by the Survey Department dated 25th April, 1924, is said to be bounded on the North by Lots 17Ac, 17B, 17C, 17D, 17E, 17F, 17G, on the East by the Lots 16m, 17H, 4, 15, 4a, 4, 9, 14, 17T, 17U, on the South by Lots 26m, 17Aa, 18, 17AB and land described in T. P. 356959, and on the West by Muduwa village and Ettoya village containing in extent two hundred and fifty-one acres and nineteen perches (251A. 0R. 19P.).

2. All that allotment of land called Wandurukapolle Mukalana situated at Hakamuwa aforesaid, bounded on the West and North by Lot 17AM, and on the East and South by Lot 18 containing in extent one acre one rood and nineteen perches (1A. 1R. 19P.) according to the survey and description thereof authenticated by A. J. Wickwar, Esq., Acting Surveyor-General, bearing date the 15th November, 1923, and No. 356959.

3. All that defined part of Lot 4 called Iddamalakanda Kabarokanda Lindabodaokanda Kusawilaowitiyage in B. S. P. P. 18 situated at Hakamuwa aforesaid, bounded on the North by Lots 3 and 31, East by remaining part of Lot 11, Lot 13 and paddy fields and deniya lands Lot No. 9,

Exhibits  
No. P 17.  
Bond  
No. 1580  
26-2-40  
—continued.

South by Lot No. 14, and West by Lots Nos. 17ag, 15, 17ad, 17af, 17ae, 17h and 16 containing in extent nine acres one rood and twenty perches (9A. 1R. 20P.) according to compiled survey plan made by J. Rodrigo, Licensed Surveyor, and dated 15th June, 1935.

4. All those lands called Egodagederawatte and Meragalagodawatte bearing Lot No. 14 in B. S. P. P. 18 situated at Hakamuwa aforesaid, bounded on the North by Lot 4a, East and South by paddy fields and deniya lands Lot 9, West by Lot 17ag containing in extent three roods and thirteen perches (0A. 3R. 13P.).

5. All those lands called Egodakanattewatte and Meragalagoda-10 watte bearing Lot No. 15 in B. S. P. P. 18 situated at Hakamuwa aforesaid, bounded on the North and East by Lot 4, and South by Lot 17ag, and West by Lot 17ad containing in extent one acre and twenty-five perches (1A. 0R. 25P.).

6. All that land called Muduwageheneirawallahena bearing Lot No. 170 in B. S. P. P. 18 situated at Hakamuwa aforesaid, bounded on the North and East by paddy fields and deniya lands Lot No. 9, South and West by Lot 17am containing in extent one acre one rood and five perches (1A. 1R. 5P.).

7. All those Lots marked 21 and 22 in the compiled plan made by 20 J. Rodrigo, Licensed Surveyor, dated 15th June, 1935, situated at Hakamuwa aforesaid and Mudduwa in the Meda Pattu aforesaid, bounded on the North by Tennehenyaya of Mr. D. H. W. Tennekoon, East by Andiyadeniya of Mr. D. H. W. Tennekoon, South by Rubber Estate of A. L. Abdul Latiff, West by Hakamuwa Estate of Mr. D. H. W. Tennekoon containing in extent twenty-seven acres three roods and five perches (27A. 3R. 5P.) according to the said plan. The aforesaid lands according to the said compiled survey plan made by J. Rodrigo, Licensed Surveyor, dated 15th June, 1935, comprised the Estate called and known as Hakamuwa Estate containing in extent two hundred and ninety-seven acres 30 and five perches (297A. 0R. 5P.) and registered in the Rubber Controller's Office under No. 180EqR7.

Sgd. C. H. R. TENNEKOON,  
Sgd. D. H. W. TENNEKOON,  
Sgd. C. A. GOMES  
Sgd. SAGA TYAGARAJA.

Witnesses :

Sgd. A. M. FUARD,  
Sgd. W. A. BOTEJU.

Sgd. P. M. SENEVIRATNE,  
N. P. 40

I, Paul Melius de Silva Seneviratne of Colombo, Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me the said Notary to the therein named Chandrasekera Herat Mudianselage Ran Menika Wijewardene Tennekoon Walauwa Mahatmee and Don Henry Wijewardene Tennekoon Bandara Mahatmeya both of whom are not known to me and Charlotte Adeline

Gomes and read over by Doctor Segarajasekeram Tyagarajah both of whom are known to me in the presence of Assena Marikar Mohamed Fuard, Proctor, Hultsdorf, Colombo, who signed as "A. M. Fuard" and Walatantrige Albert Boteju of Kotte the subscribing witnesses thereto both of whom are known to me the same was signed by the said Chandrasekera Herat Mudianselage Ranmenika Wijewardene Tennekoon Walauwa Mahatmee as "C. H. R. Tennekoon" Don Henry Wijewardene Tennekoon Bandara Mahatmeya as "D. H. W. Tennekoon" Charlotte Adeline Gomes as "C. A. Gomes" Segarajasekeram Tyagarajah as "Sega Tyagaraja" by the said witnesses and by me the said Notary in my presence and in the presence of one another all being present together at the same time at Colombo on this twenty-sixth day of February, One thousand Nine hundred and Forty.

Exhibits  
No. P 17.  
Bond  
No. 1580  
26-2-40  
—continued.

Sgd. P. M. SENEVIRATNE,  
*Notary Public.*

Date of attestation :  
26th February, 1940.

### No. 1580

I further certify and attest that the full consideration was paid as follows :—

	Rs.	c.
20 By Cheque No. 74120 dated 9th instant drawn by me on the Imperial Bank of India in full settlement of Bond No. 124 ... ..	21,664	67
By Cheque No. 74121 dated 9th instant drawn on the Imperial Bank of India by me in favour of M. R. M. M. N. Nadarajan Chettiar in full settlement of his claim against the Obligors on Bond No. 4664 attested by S. Somasunderam, Notary Public, and an agreement ...	28,283	10
30 By Cheque No. 74122 dated 9th instant drawn by me on the Imperial Bank of India in favour of Mr. S. Somasunderam, Proctor, for his fees due by the Obligors ...	10	50
By Cheque No. 74124 dated 11th instant drawn by me on the Imperial Bank of India in favour of the second named Obligor at the request of the first-named Obligor	8,655	03
By amount paid to me for fees, stamps and disbursements in connection with Deeds Nos. 1579, 1580, 1581, 1582 and 1583 attested by me ... ..	1,386	70
	Rs. ...	<u>60,000 00</u>

Sgd. P. M. SENEVIRATNE,  
*Notary Public.*

40 Date of Attestation : 11th March, 1940.



Exhibits  
No. D 2.  
Letter  
9-3-40

## No. D 2. Letter

D 2

Colombo, 9th March, 1940.

S. SOMASUNDERAM, Esq.,  
Proctor, Colombo.

Dear Sir,

With reference to your letter of the 26th ultimo, I am enclosing herewith a cheque for Rs. 28,283.10 in full settlement of your client's claim.

I am also enclosing a cheque for Rs. 10.50 for your fees. 10

Please have the bonds discharged and sent to me.

The surrender of lease No. 4666 has to be signed by your client, kindly instruct him to call over and sign the same. I shall also be obliged if you will kindly get your client to sign the accompanying letter addressed to the Rubber Controller.

Yours faithfully,  
Sgd. P. M. SENEVIRATNE.

No. D 3.  
Letter  
4-4-40

## No. D 3. Letter

D 3.

P. M. SENEVIRATNE, Esq.,  
Proctor, &c., Dam Street, Colombo. Colombo, 4th April, 1940. 20

Mr. D. H. W. Tennekoon

Dear Sir,

With reference to the cheque received in settlement of the claim of Mr. M. R. M. M. M. N. Nadarajan Chettiar on Bond No. 4664 I forward herewith the documents referred to in the Schedule hereto and five notifications to the Rubber Controller.

Yours faithfully,  
Sgd. S. SOMASUNDARAM.

**The Schedule above referred to**

1. Discharged Bond No. 4664 dated 19-2-1938.
2. Discharged Bond No. 1624 dated 11-7-1936.
3. Deed of Lease No. 1626 dated 11-7-1936.
4. Discharged Bond No. 423 dated 24-7-1936.
5. A Plan.
6. Deed of Lease No. 763 dated 13-5-1936.
7. Agreement No. 762 dated 13-5-1936.
8. Discharged Bond No. 2143 dated 20-12-1935.
- 10 9. Bond No. 2146 dated 20-12-1935.

Exhibits

No. D 3.  
Letter  
4-4-40  
—continued.

**No. P 18. Certificate of Registration of Business Name**

**Registration of Business Name Ordinance No. 6 of 1918**

**Certificate of Registration of an Individual Certificate No. 7402**

No. P 18.  
Certificate of  
Registration  
of Business  
Name  
20-12-40

I hereby certify that the following Statement made in pursuance of "The Registration of Business Names Ordinance, No. 6 of 1918" was registered in the Office of the Registrar of Business Names for the Western Province, under number 7401 on the Twentieth day of December, 1940, pursuant to a statement of change furnished under section 7 :—

- 20 1. The Business Name : Moona Ravanna Mana Moona Moona Nana.
2. The General Nature of Business : Money lending and dealer in tea and in tea-coupons.
3. The Principal Place of the Business : 178, Sea Street, Colombo.
4. The Date of commencement of Business, if the Business was commenced after November 7, 1918 : 16th June, 1929.
5. Any other Business Name or Names under which the Business is carried on :—
6. The present Name (in full) of the Individual : Muttiah Chetty Naderajan Chetty.
- 30 7. Any former Name (in full) of the Individual :—
8. The Nationality of the Individual : British.
9. The Nationality of Origin of the Individual, if not the same as the present Nationality :—
10. The usual Residence of the Individual : 178, Sea Street, Colombo.
11. The other Business Occupation (if any) of the Individual :—

Sgd. C. M. AGALAWATTE,  
*Asst. Registrar of Business Names  
for the Western Province.*

Office of the Registrar of Business  
40 Names for Western Province.

Dated at Colombo, this 20th day of December, 1940.

Exhibits  
No. P 19.  
Mortgage  
Account of  
Plaintiffs  
1936—1940

## No. P 19. Mortgage Account of Plaintiffs

P 19

Mortgage Account of (1) Mrs. C. H. R. Tennekoon and (2) D. H. W. Tennekoon  
of Ratnapura

WITH

M. R. M. M. N. Nadarajan Chettiar of Colombo

Date	Particulars	Cr. (Crédit) Rs. Cts.	Dr. (Debit) Rs. Cts.
1936			
July 11	Dr. as per terms and conditions of the Bond Nos. 1624, 1625 and 1626 all dated 11th July, 1936, for Rs. 46,000, deducting the amount to be deposited at the State Mortgage Bank, the balance amount as per Imperial Bank Cheque ... ..		33,211 14
„ 11	Dr. to deposit interest as referred to in the said Bonds...		1,000 00
„ 11	Cr. as per said particulars ... ..	1,000 00	
„ 16	Dr. drawn our Imperial Bank Cheque No. $\frac{B}{1}$ B11530 in favour of the State Mortgage Bank on this date and credited in the account of the aforesaid at the Chartered Bank ... ..		3,039 86
	Total ...	1,000 00	37,251 00
	Balance Dr. ...		36,251 00
Oct. 14	Dr. as per interest chittai (bill) to interest on Rs. 33,211.14 from 11th to 14th July, 1936, for 5 days at 1% Rs. 55.35 and Rs. 36,251 from 16th July to this date for 91 days Rs. 1,099.62, both amounting to		1,154 97
„ 14	Cr. Rubber coupons received on 8-9-36 from Rubber Control Office for assessment No. 180E2R7, 18991 lbs. No. 181 E2 R6, 436 lbs., No. 162 E1 R17, 868 lbs. and No. 182 E2 R7, 2496 lbs., all aggregating to 22791 lbs. ; which was sold to G. C. Wales & Co., at 31 cts. per lb. Rs. 7,065.21 ; deducting therefrom Rs. 70.65 being the said Company's brokerage cash Cr. Rs. 6,994.56 ; and deducting therefrom Rs. 1,367.47 being commission for us at 6 cts. per lb. ... ..	5,627 10	30
Dec. 17	Dr. drawn our Imperial Bank Cheque No. $\frac{B}{1}$ B74829 in favour of the State Mortgage Bank on this date and credited in the account of the aforesaid at Chartered Bank ... ..		3,312 00
	Total ...	5,627 10	40,717 97

Date	Particulars	Cr. (Credit) Rs. Cts	Dr. (Debit) Rs Cts.	Exhibits — No. P 19. Mortgage Account of Plaintiffs 1936—1940 —continued.
	Balance Dr. ...		35,090	87
1937				
Mar. 4	Dr. to interest as per interest chittai (bill) on Rs. 31,778.87 from 15th October to 16th December, 1936, for 63 days at 1% Rs. 667.36 and on Rs. 35,090.87 from 17th December, 1936, up to this date for 78 days			
10	Rs. 912.36, both aggregating to ...		1,579	72
.. 4	Cr. Rubber coupons received on 9-1-1937 from Rubber Control Office for assessment No. 182 E2 R7, 4680 lbs., No. 181 E2 R6, 2107 lbs., No. 180 E2 R7, 35,609 lbs., No. 162 E1 R17, 1628 lbs. and No. 173 E2 R7, 5940 lbs. all aggregating to 49964 lbs., out of this 10,000 lbs. was sold to S. K. M. Meiyappa Chettiar on this date at nett 32 cts. per lb. Rs. 3,200 by his Indian Bank Cheque No. C/30 93380 ; deducting therefrom Rs. 600 being commission for us at 6 cts. per lb. ...	2,600	00	
20 .. 5	Cr. Rubber coupons 39964 lbs. sold to Chettinad Corporation Limited on this date at nett 32 cts. per lb. Rs. 12,788.48, deducting therefrom 5 cts. for stamp Rs. 12,788.43 by their Eastern Bank Cheque No. Po. 581 ; and deducting thereon Rs. 2,397.84 being commission for us at 6 cts. per lb. ...	10,390	59	
	Total ...	12,990	59	36,670 59
	Balance Dr. ...		23,680	00
June 18	Dr. drawn our Chartered Bank Cheque No. B681708 in favour of State Mortgage Bank on this date and credited in the account of the aforesaid at the Chartered Bank ...		3,250	00
30				
	Total ...		26,930	00
July 31	Dr. to interest as per interest chittai (bill) on Rs. 23,680 from 5th March to 17th June, 1937, for 105 days at 1% Rs. 828.80 and on Rs. 26,930 from 18th June, 1937, up to this date for 44 days Rs. 394.98, both aggregating to ...		1,223	78
.. 31	Cr. received Rubber coupons on 3-6-1937 from Rubber Control Office for the 2nd quarter for assessment No. 180 E2 R7, 35,609 lbs., No. 173 E2 R7, 5,940 lbs., No. 182 E2 R7, 4,680 lbs., No. 181 E2 R6, 2,107 lbs. and No. 162 E1 R17, 1628 lbs. all aggregating to 49,964 lbs.; which was sold to Keell & Waldock on this date at 27 $\frac{3}{4}$ cts. per lb. Rs. 13,865.01; deducting therefrom Rs. 138.65 being the said Company's brokerage, Rs. 13,726.36 per Mercantile Bank Cheque No. 1668714 and deducting therefrom Rs. 2,997.84 being our commission at 6 cts. per lb. ...	10,728	52	
40				
	Total ...	10,728	52	28,153 78

Exhibits No. P 19. Mortgage Account of Plaintiffs 1936—1940 —continued.	Date	Particulars	Cr. (Credit) Rs. Cts.	Dr. (Debit) Rs. Cts.
		Balance Dr. ...		17,425 26
	1937			
	Dec. 3	Dr. to interest as per interest chittai (bill) on Rs. 17,425.26 from 1st August, 1937, to this date for 125 days ... ..		726 06
	„ 3	Cr. Rubber coupons received for the 3rd quarter 1937 from Rubber Control Office on 8-10-37 for assessment No. 180 E2 R7, 15,432 lbs., No. 162 E1 R17, 706 lbs., No. 182 E2 R7, 2028 lbs., No. 181 E2 R6, 914 lbs., and No. 173 E2 R7 2,574 lbs. all aggregating to 21,654 lbs.; which was sold on this date to Keell & Waldock at 24 cts. per lb. Rs. 5,196.96; deducting therefrom Rs. 51.96, being the said Company's brokerage at 1% Rs. 5,145 by one Mercantile Bank Cheque No. 1673113; and deducting therefrom Rs. 1,299.24, being commission for us at 6 cts. per lb. 3,845 76	3,845 76	10
	„ 17	Dr. drawn our Chartered Bank Cheque No. B681723 in favour of State Mortgage Bank on this date and credited in the account of the aforesaid at Chartered Bank ... ..		3,187 00
	„ 21	Dr. Cash credited by us at the Chartered Bank in the account of State Mortgage Bank in favour of the said Bank on this date ... ..		50
		Total ...	3,845 76	21,338 82
		Balance Dr. ...		17,493 06

P.S.—For further particulars please refer to my letter to you of this date (6-1-1938).

M. R. M. M. M. N. 30

M. R. M. M. M. N. Nadarajan Chettiar.  
155, Sea Street,  
Colombo, January 6, 1938.

D. H. W. TENNEKON, Esq.,  
Madduwa Walauwa, Ratnapura.

Dear Sir,

With reference to your letter of the 3rd ultimo and in continuation of my letter of the 11th idem, I am forwarding herewith statement of accounts from our ledger for your information as requested by you from the commencement of your transaction.

With regard to the monthly statements that are to be forwarded to the Rubber 40 Controller, I wrote very many letters and invited your attention for same but was not complied with. I shall however ask you to be kind enough to send the monthly statements for November and December, 1937, to the Rubber Controller forthwith and on failure I shall hold you responsible for all consequences arising from the Rubber Controller for default of compliance of his requests.

You will note from the annexed account particulars that a further sum of Rs. 17,493.06 and interest thereon from 4th December, 1937, commission, etc. in terms of the conditions of the Bonds referred to in the annexed account particulars are due to me.

Yours faithfully,  
Sgd. M. R. M. M. N. NADARAJAN CHETTIAR.  
6-1-38.

Exhibits  
No. P 19.  
Mortgage  
Account of  
Plaintiffs  
1936-1940  
—continued.

**Mortgage Account of Mr. & Mrs. Tennekoon**

WITH

**M. R. M. M. N. Nadarajan Chettiar of Colombo**

10	Date	Particulars	Cr. (Credit) Rs. Cts.	Dr. (Debit) Rs. Cts.
	1938	To amount as per account tendered on 6-1-38 ...		17,493 06
	Jan. 8	To expenses incurred for translation of accounts ...		3 00
	Feb. 17	To interest on Rs. 14,305.56 from 4-12-37 to 16-12-37 for 13 days Rs. 61.99; amount added on 17-12-37 Rs. 3,187 to Rs. 14,305.56 amounting Rs. 17,492.25; interest on Rs. 17,492.56 from 17-12-37 to 20-12-37 for 4 days Rs. 23.32 together with 50 cts. paid on 21-2-37, all amounting Rs. 17,493.06 and interest on the same amount from 21-12-37 to 7-1-38 for 18 days Rs. 104.99; debit on 8-1-38 Rs. 3, all amounting to Rs. 17,496.06 and interest on same from 8-1-38 to 17-2-38 Rs. 239.11 for 41 days (total interest as per interest chittai) ...		429 41
	„ 17	Cr. Rubber coupons received for 1st quarter from Rubber Control Office for assessment No. 173 E2 R7 6,600 lbs., No. 162 E1 R7 1,809 lbs., No. 180 E2 R7, 39,566 lbs., No. 182 E2 R7, 5,200 lbs., No. 181 E2 R6, 2,341 lbs., all aggregating 55,516 lbs., which was sold by Keell & Waldock at 24½ cts. per lb., Rs. 13,393.23; deducting therefrom Rs. 133.93, being the said Company's brokerage at 1% Rs. 13,259.30 by one Mercantile Bank Cheque; and deducting therefrom Rs. 3,330.96, being commission for us at 6 cts. per lb. ...	9,928 34	
		Total ...	9,928 34	17,925 47
		Balance Dr. ...		7,997 13
	40 Feb. 19	To interest on Rs. 7,997.13 from 18-2-38 to date (19-2-38) for 2 days ...		5 34
	„	By amount credited on Bond No. 1624 dated 11-7-36 on account of deposit ...	1,000 00	
	„	By amount credited on the same Bond in connection with the other Bond No. 4664 dated 19-2-38 attested by S. Somasundaram ...	7,002 47	
		Total ...	8,002 47	8,002 47

Exhibits			Cr.	Dr.
No. P 19.	Date	Particulars	(Credit)	(Debit)
Mortgage	1938		Rs. Cts.	Rs. Cts.
Account of	Feb. 19	To debit in terms of Mortgage Bond and Lease Nos. 4664, 4665 and 4666 and agreement and as per the several conditions contained in the said deeds for Rs. 52,000 deducting Rs. 9,158.65 payable to the State Mortgage Bank on the various dates as provided in the said Bonds and Rs. 19,000 payable on the Mortgage Bond attested by B. St. James V. Perera bearing No. 423 in terms of the Bond both aggregating to Rs. 28,158.65 balance debited as follows :—Chartered Bank Cheque No. B. 731595 for Rs. 11,556.36, Cheque on same Bank No. B. 731596 for Rs. 2,256.02, Cheque on the same Bank for Rs. 70 bearing No. B. 731597, Cheque on the same Bank No. B. 731598 for Rs. 400, Cheque on the same Bank No. B. 731599 for Rs. 1,556.50, and amount due to me on Bond No. 1624 attested by A. M. Fuard on 11-7-36 Rs. 7,002.47 and deposit interest Rs. 1,000 totalling		10
Plaintiffs		.. To interest deposit as per Deed No. 4664		20
1936—1940		.. By amount credited as interest as above referred to	1,000 00	35
—continued.				00
		Total	1,000 00	24,841 35
		Balance Debit		23,841 35

**Mortgage Account on Bond and Lease Nos. 4664, 4665 and 4666 and on Agreement of Mr. & Mrs. Tennekoon with M. R. M. M. N. Nadarajan Chettiar**

	Particulars	Cr.	Dr.
		Rs. Cts.	Rs. Cts.
1938	To amount debited as per account particulars rendered up to 19th February, 1938		23,841 35
	To amount debited on account of the transfer of name as present owner to receive coupons as per my letter of 6-6-38		5 05
May 18	To amount debited on account of the amount deposited with the Government Agent in the Colombo Kachechi to the credit of the case of Mr. Gomes in Bond No. 423 attested by B. James St. V. Perera in D. C. Colombo Case No. 8135		19,000 00
June 18	To amount debited by our Cheque No. J. 649030 for the amount deposited in the State Mortgage Bank <i>re</i> your account		1,586 54
Aug. 15	To interest on Rs. 23,846.40 for 88 days from 19-2-38 to 17-5-38 Rs. 699.49 at 12 per cent. per annum. To interest on Rs. 23,846.40 and Rs. 19,000, both aggregating Rs. 42,846.40 for 31 days at 12% from 18-5-38 to 17-6-38, Rs. 442.75. To interest on Rs. 23,846.40, Rs. 19,000 and Rs. 1,586.54, all aggregating Rs. 44,432.94 for 59 days at 12% from 18-6-38 to 15-8-38 Rs. 873.85 (the whole interest aggregating		50
			2,016 09
	Carried over		46,449 08

Date	Particulars	Cr. (Credit)		Dr. (Debit)		Exhibits — No. P 19. Mortgage Account of Plaintiffs 1936—1940 —continued.
		Rs.	Cts.	Rs.	Cts.	
1938	Brought forward ...			46,449	03	
Aug. 15	Cr. Rubber coupons received from the Rubber Controller on the 6th July, 1938, for the 2nd quarter 1938 <i>re</i> assessment Nos. 173 E2 R7, 1,980 lbs., 180 E2 R7, 11,870 lbs., 182 E2 R7, 1,560 lbs., 181 E2 R6 702 lbs., 162 E1 R17 543 lbs., (total 16,655 lbs.). The said 16,655 lbs. of coupons were sold by Keell & Waldock at 30½ cts per lb. for Rs. 5,121.41 and deducting Company's brokerage Rs. 51.21 received 10 Cheque No. 1680561 on the Mercantile Bank from the said Company for Rs. 5,070.20; deducting therefrom Rs. 999.30 being commission for us at 6 cts. per lb. ... ..	4,070	90			
	Total ...	4,070	90	46,449	03	
	Balance Debit ...			42,378	13	

Colombo, 26th August, 1938.

M. R. M. M. M. N.

**20 Mortgage Account on Bond and Lease Nos. 4664, 4665 and 4666 and on Agreement of Mr. & Mrs. Tennekoon with M. R. M. M. M. N. Nadarajan Chettiar**

Date	Particulars	Cr.		Dr.	
		Rs.	Cts.	Rs.	Cts.
1938					
Dec. 13	To amount debited as per account particulars rendered up to 15th August, 1938 ... ..			42,378	13
„ 13	Interest on Rs. 42,378.13 at 12 per cent. per annum from 15th August, 1938, up to date for 120 days ...			1,695	12
30	Rubber coupons received from the Rubber Controller for the 3rd quarter 1938 in respect of assessment No. 182 E2 R7 1,508 lbs., No. 181 E2 R6 680 lbs., No. 180 E2 R7 11,474 lbs., No. 173 E2 R7 1,914 lbs., No. 162 E1 R17 524 lbs.—Total 16,100 lbs. The said 16,100 lbs. of coupons were sold by Messrs. Keell & Waldock at 31½ cts. per lb. for Rs. 5,051.37 and deducting Company's brokerage Rs. 50.51, received from them a cheque on the Mercantile Bank of India bearing No. J.761614 for Rs. 5,000.86 and after deducting therefrom Rs. 966 being commission for us at 6 cents per lb. balance credited ... ..	4,034	86		
40	„ 17 To amount debited by our cheque No. J.686853 drawn on the Mercantile Bank of India for the amount deposited in favour of the State Mortgage Bank <i>re</i> your account ... ..			1,562	49
	Total ...	4,034	86	45,635	74
	Balance Debit ...			41,600	88



Exhibits		<b>Mortgage Account on Bond and Lease Nos. 4664, 4665 and 4666 and on Agreement of Mr. &amp; Mrs. Tennekoon with M. R. M. M. N. Nadarajan Chettiar</b>				
No. P 19. Mortgage Account of Plaintiffs 1936—1940 —continued.	1938	Particulars	Cr.		Dr.	
			Rs.	Cts.	Rs.	Cts.
	Dec. 17	To amount debited as per account particulars rendered up to this date (17-12-38) ... ..			41,600	88
	„ 27	To expenses incurred in translating the account particulars ... ..			4	00
	1939					
	Feb. 27	To interest on Rs. 40,038.39 at 12 per cent. from 14-12-38 to 16-12-38 (3 days) Rs. 40.04, and on Rs. 41,600.88 to wit Rs. 40,038.39 plus Rs. 1,562.49 from 17-12-38 to 26-12-38 for 10 days Rs. 138.67, and Rs. 4 added to the above totals Rs. 41,604.88 and interest on this amount from 27-12-38 to 27-2-39, 63 days Rs. 873.71 and debited as per interest chittai aggregating ... ..			1,052	42
	„ 27	By Rubber coupons received from the Rubber Controller for the 1st quarter 1939 in respect of assessment No. 162 E1 R17 1,085 lbs., No. 173 E2 R7 3,960 lbs., No. 181 E2 R6 1,405 lbs., No. 182 E2 R7 3,120 lbs. No. 180 E2 R7 23,740 lbs.—Total 33,310 lbs. The said 33,310 lbs. of coupons were sold by Messrs. Keell & Waldock at 33½ cts. per lb. for Rs. 11,158.85 and deducting Company's brokerage Rs. 111.59 received from them a cheque on the Mercantile Bank bearing No. J.763773 for Rs. 11,047.26 and after deducting therefrom Rs. 1,998.60 being commission for us at 6 cts. per lb. balance ... ..	9,048	66		20
		Total ...	9,048	66	42,657	30 30
		Balance Debit ...			33,608	64

Sgd. M. R. M. M. M. N. NADARAJAN CHETTIAR.  
13-3-39.

**Mortgage Account on Bond and Lease Nos. 4664, 4665 and 4666 and on Agreement of Mr. & Mrs. Tennekoon with M. R. M. M. M. N. Nadarajan Chettiar**

1939	Particulars	Cr.		Dr.	
		Rs.	Cts.	Rs.	Cts.
	Balance debit as per statement of accounts dated 13-3-39 ... ..			33,608	64
June 17	To amount credited to A/c of the State Mortgage Bank in the Chartered Bank by cheque No. J. 747024 ...			1,538	47
Aug. 10	To interest on Rs. 33,608.64 at 12 per cent. from 28-2-39 to 16-6-39 (109 days) Rs. 1,221.11 and on Rs. 35,147.11 (to wit Rs. 33,608.64 plus Rs. 1,538.47) from 17-6-39 to 10-8-39 (55 days) Rs. 644.37 and debited as per interest chittai aggregating ... .. (torn)				

1939	Particulars	Cr. Rs. Cts.	Dr. Rs. Cts.	Exhibits No. P 19. Mortgage Account of Plaintiffs 1936—1940 —continued.
Aug. 10	By Rubber coupons received from the Rubber Controller for the 2nd quarter 1939 in respect of assessment No. 162 E1 R17 1,085 lbs., No. 173 E2 R7 3,960 lbs., No. 181 E2 R6 1,405 lbs., No. 182 E2 R7 3,120 lbs., No. 180 E2 R7 23,740 lbs.—Total 33,310 lbs. The said 33,310 lbs. of coupons were sold by Messrs. Keell & Waldock at 31½ cts. per lb. for Rs. 10,409.37 and deducting Company's brokerage Rs. 104.09 received from them a cheque on the Mercantile Bank bearing No. J.768390 for Rs. 10,305.28 and after deducting therefrom Rs. 1,998.60 being commission for us at 6 cts. per lb. balance ...	8,306	68	
	Total ...	8,306	68	37,012 59
	Balance Debit ...			28,705 91

Colombo, 17th August, 1939.

Sgd. M. R. M. M. M. N. NADARAJAN CHETTIAR.

**Mortgage Account on Bond and Lease Nos. 4664, 4665 and 4666 and on Agreement of Mr. & Mrs. Tennekoon with M. R. M. M. N. Nadarajan Chettiar**  
178, Sea Street Colombo

1939	Particulars	Cr. Rs. Cts.	Dr. Rs. Cts.	
	Balance debit as per statement of accounts dated 17-8-39		28,705 91	
Dec. 14	To interest on Rs. 28,705.91 at 12 per cent. per annum from 11-8-39 to 14-12-39 (126 days) ...		1,205 65	
„ 14	By Rubber coupons received from the Rubber Controller for the 3rd quarter on 2-11-39 in respect of assessment No. 162 E1 R17 9,081 lbs., No. 173 E2 R7 3,309 lbs., No. 181 E2 R6 1,173 lbs., No. 182 E2 R7 2,607 lbs., No. 180 E2 R7 19,834 lbs.—Total 27,831 lbs. The said 27,831 lbs. of coupons were sold by Messrs. Keell & Waldock at 22½ cts. per lb. for Rs. 6,261.97 and deducting Company's brokerage Rs. 62.62 received from them a cheque on the Mercantile Bank bearing No. K.160860 for Rs. 6,199.35 and after deducting therefrom Rs. 1,669.86 being commission for us at 6 cts. per lb. balance ...	4,529	49	
	Total ...	4,529	49	29,911 56
	Balance Debit ...			25,382 07

40 Rupees Twenty-five thousand three hundred and eighty-two and cents seven.

Colombo, 15th December, 1939.

Sgd. M. R. M. M. M. N. NADARAJAN CHETTIAR.

Exhibits No. P 19. Mortgage Accounts of Plaintiffs 1936—1940 —continued.	1939	Particulars	Cr. Rs. Cts.	Dr. Rs. Cts.
		Balance debit as per statement of accounts dated 15-12-39		25,382 07
	Dec. 16	To amount paid to clerk for translating statement of account furnished Rs. 4.50 and registered postage for letter sent by Mr. S. Somasundaram 15-12-39 21 cts. both aggregating		10 4 71
	.. 18	To amount credited to A/c of the State Mortgage Bank in the Chartered Bank by cheque No. J 800689		1,514 42
	1940			
	Feb. 22	To interest on Rs. 25,382.07 15-12-39 for 1 day at 12 per cent. per annum, <i>i.e.</i> Rs. 8.46; interest on Rs. 25,386.78 (to wit: Rs. 25,382.07 plus Rs. 4.71) from 16-12-39 to 17-12-39 (2 days) at 12 per cent. per annum is Rs. 19.21 and interest on Rs. 26,901.20 (to wit): Rs. 25,386.78 plus Rs. 1,514.42) from 18-12-39 to 22-2-40 at 12 per cent. per annum (67 days), <i>i.e.</i> Rs. 600.80, all aggregating		20 628 47
	.. 22	By Rubber coupons received from the Rubber Controller for the 1st quarter 1940 on 13-1-40 in respect of assessment No. 162 E1 R17 2,301 lbs., No. 173 E2 R7 8,395 lbs., No. 180 E2 R7 50,328 lbs., No. 181 E2 R6 2,978 lbs., No. 182 E2 R7 6,614 lbs: Total 70,616 lbs. The said 70,616 lbs. of coupons were sold by Messrs. Keell & Waldock at 25 cts. per lb. for Rs. 17,654, and deducting Company's brokerage Rs. 176.54 received from them a cheque on the Mercantile Bank bearing K. 162006 for Rs. 17,477.46 and after deducting therefrom Rs. 4,236.96 being our commission for us at 6 cts. per lb. balance	13,240 50	30
		Total	13,240 50	27,529 67
		Balance Debit		14,289 17

Rupees Fourteen thousand two hundred and eighty-nine and cents seventeen.

Colombo, 29th February, 1940.

Sgd. M. R. M. M. M. N. NADARAJAN CHETTIAR.

No.....

Supreme Court of Ceylon  
No. 445/1946.

District Court, Colombo  
12109.

*In His Majesty's Privy Council  
on an Appeal from the Supreme Court of Ceylon*

BETWEEN

1. CHANDRASEKERA HERAT  
MUDIYANSELAGE RAN MENI-  
KA WIJEYWARDENE TENNE-  
KOON WALAUWA MAHATMEE.
2. DON HENRY WIJEYEWAR-  
DENE TENNEKOON BANDARA  
MAHATMAYA, both of Ratnapura.... *Plaintiffs-Respondents.*

AND

M. R. M. M. M. N. NADARAJAN  
CHETTIAR of 178, Sea Street in  
Colombo ..... *Defendant-Appellant.*

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RECORD  
OF PROCEEDINGS

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