

3, 1969

9

No. 9 OF 1968

Supreme Court of Ceylon,
No. 56 (Final) of 1965.

District Court of Nuwara Eliya,
Case No. 5409/M

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

BETWEEN

DON PETER MELLAARATCHY of "Reigate," Nuwara Eliya,
and presently of "Craigvar," Nuwara Eliya. *Defendant-Appellant.*
APPELLANT

And

J. A. NAIDOO of Messrs. Julius & Creasy, Colombo, Executor of the Last Will and
Codicil of H. J. G. Marley, deceased. *Plaintiff-Respondent*
RESPONDENT

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
- 9 MAR 1970
25 RUSSELL SQUARE
LONDON, W.C.1.

(i)
INDEX - PART 1

Serial No.	Description of Document	Date	Page
1	Journal Entries	21. 11. 63 to 27. 3. 67	1
2	Plaint of the Plaintiff	21. 11. 63	14
3	Answer of the Defendant	29. 5. 64	18
4	Issues Framed	—	22
5	Plaintiff's Evidence	—	28
6	Defendant's Evidence	—	75
7	Addresses to Court	—	148
8	Judgment of the District Court	29. 1. 65	155
9	Decree of the District Court	29. 1. 65	173
10	Petition of Appeal to the Supreme Court	1. 2. 65	174
11	Decree of the Supreme Court	7. 9. 66	179
12	Reasons for Judgment of the Supreme Court	29. 9. 66	180
13	Application for Conditional Leave to Appeal to the Privy Council	29. 9. 66	183
14	Minute of Order granting Conditional Leave to Appeal to the Privy Council	9. 12. 66	184
15	Application for Final Leave to Appeal to the Privy Council	7. 1. 67	185
16	Minute of Order granting Final Leave to Appeal to the Privy Council	8. 3. 67	187

IN IX - PART II
Exhibits
PLAINTIFF'S DOCUMENTS

Exhibit Mark	Description of Document	Date	Page
P1	Letter of Guarantee given by H. J. G. Marley to the Mercantile Bank	..	
P2	Fixed Deposit Receipt issued by the Mercantile Bank of India Ltd. to H. J. G. Marley	.. 4. 11. 60	219
P3	Application to open a Joint Current Loan Account at the Mercantile Bank of India Ltd. by Eileen Marley and the Defendant	... 7. 11. 58	188
P4	Copy of Joint Current Loan Account of Mrs. E. F. M. Marley and the Defendant with the Mercantile Bank Ltd.	... —	242
P5	Mercantile Bank of India Cheque for Rs. 125,000/- drawn by E. Marley and the Defendant in favour of the Bank	... —	243
P6	Mercantile Bank Cheque for Rs. 257,500/- drawn by the Bank in favour of Borakanda Estate Co. Ltd. ..	29. 11. 60	243
P7	Mercantile Bank Cheque for Rs. 50,000/- drawn by H. J. G. Marley in favour of the Defendant	29. 11. 60	245
P7A	Endorsement on the reverse of cheque marked P7	... 7. 8. 60	200
P8	Mercantile Bank Cheque for Rs. 17,004/- drawn by H. J. G. Marley in favour of M/s. De Silva & Mendis	... —	200
P9	Receipt issued by the Mercantile Bank Ltd. for Rs 136,343.69	.. 18. 11. 60	231
P10	Copy of Borakanda Estate Current Account for the period 30. 11. 60 to 31. 7. 62	.. 12. 6. 63	320
P11	Letter sent to M s F. J. & G. de Saram by the Mercantile Bank Ltd.	... —	253
P11A	Photostat copy of Application made by Eileen Marley and the Defendant to the Mercantile Bank of India Ltd. to open a Joint Current Account	... 12. 1. 61	255
P11B	Photostat Copy of application made by the Defendant and Eileen Marley to the Mercantile Bank of India Ltd. to open a Current Loan Account (same as P3)	... —	256
P11C	Photostat copy of Letter of Gurantee given by H. J. G. Marley to the Mercantile Bank Ltd. (same as P1)	... —	242
		..	219

INDEX - PART II*Exhibits***PLAINTIFF'S DOCUMENTS (Continued)**

Exhibit Mark	Description of Document	Date	Page
P12	Letter sent to de Saram by H. J. G. Marley	7.8.60	200
P13	Deed of Transfer No. 1419 attested by S. Gunasekera, Notary Public	29.11.60	246
P14	Letter sent to the Defendant by M/s F.J. & G. de Saram	23.10/61	267
P15	Letter sent to M/s F. J. & G. de Saram by the Defendant	9.11.61	268
P16	Probate in District Court, Nuwara Eliya, Testamentary case No. 591	8/12.2.64	321
P16A	Last Will of H. J. G. Marley (No. 459 attested by P. N. Bartholomeusz, Notary Public)	9.10.61	322
P16B	First Codicil of H. J. G. Marley (No. 479 attested by P. N. Bartholomeusz, Notary Public)	17.5.62	329
P17	Letter sent to the Defendant by H. J. G. Marley	4.3.61	265
P18	Letter sent to the Defendant by M/s F.J. & G de Saram	21.2.61	262
P18A	Letter sent to M s De Silva & Mendis by M s F.J. & G. de Saram	21.2.61	263
P19	Letter sent to M s F. J. & de Saram by M's De Silva & Mendis	28.2.61	264
P20	Letter sent to M/s De Silva & Mendis by M s F. J. & G. de Saram	27.2.61	263
P21	Answer filed in District Court, Balapitiya, case No. M/1207	20.2.64	279
P22	Letter sent to Mercantile Bank Ltd. by the Defendant	8.9.60	211
P23	Mercantile Bank of India Cheque for Rs. 21,250/- drawn by Eileen Marley in favour of the Defendant	5.9.60	211
P24	Copy of Current Account of Mrs. E. F. M. Marley for the period 31.8.60 to 31.12.60	—	210
P25	Letter sent to M's F. J. & G. de Saram by M s Silva & Mendis	16.8.60	202

INDEX - PART II
Exhibits
DEFENDANT'S DOCUMENTS

Exhibit Mark	Description of Document	Date	Page
D1	Letter sent to the Defendant by the Mercantile Bank Ltd.	19. 9. 60	212
D2	Letter sent to the Defendant by the Mercantile Bank Ltd.	30. 9. 60	213
D3	Letter sent to the Defendant by the Mercantile Bank Ltd.	11. 10. 60	214
D4	Copy of the Letter of Guarantee given by H. J. G. Marley (P1)	4. 11. 60	222
D5	Agereement No. 227 attested by R. M. S. Karunaratne, Notary Public	2. 3. 62	294
D6	Typed Letter with Postscript (hand written)	12. 1. 61	257
D7	Letter sent to Martensz by H. J. G. Marley	19. 2. (61)	262
D8	Letter sent to H. J. G. Marley by David Martensz	16. 1. 61	259
D9	Part of a Letter signed by E. Marley	3. 3. 61	265
D10	Letter sent to M/s De Silva & Mendis	9. 8. 60	201
D11	Letter sent to David Martensz by H. J. G. Marley	18. 1. (61)	260
D12	Letter sent to H. J. G. Marley by David Martensz	23. 1. 61	260
D13	Letter sent to the Defendant by M/s F.J. & G. de Saram	18. 10. 60	215
D14	Bill of M/s F. J. & G. de Saram re Loan from Mercantile Bank Ltd. - Maha Borakanda Estate	14. 11. 60	229
D15	Letter sent by E. Marley to Fernando	7. 1. 60	189
D16	Letter sent to M/s F. J. & G. de Saram by the Defendant	15. 2. 61	261
D17	Letter sent to the Defendant by M/s F. J. G. de Saram	18. 2. 61	261
D18	Letter sent to the Defendant by M/s F. J. & G. de Saram	8. 8. 61	266
D19	Letter sent to Clarence L. de Silva, Crown Proctor, Ambalangoda, by the Defendant	12. 11. 61	269

INDEX - PART II
Exhibits
DEFENDANT'S DOCUMENTS (Continued)

Exhibit Mark	Description of Document	Date	Page
D20	Letter sent to Advocate J. C. Thurairatnam by David Martensz	13. 11. 61	270
D21	Letter sent to Advocate J. C. Thurairatnam by David Martensz	12. 1. 62	273
D22	Letter sent to H. J. G. Marley by David Martensz	3. 2. 62	273
D23	Letter sent to M/s Welikala & Fernando by M/s Julius & Creasy	5. 4. 62	302
D24	Letter sent to M/s Welikala & Fernando by M/s Julius & Creasy	17. 4. 62	304
D25	Letter sent to M/s Welikala & Fernando by M/s Julius & Creasy	18. 4. 62	305
D26	Letter sent to M/s Welikala & Fernando by M/s Julius & Creasy	5. 5. 62	306
D27	Letter sent to M/s Welikala & Fernando by M/s Julius Creasy	12. 5. 62	308
D28	Letter sent to M/s Welikala & Fernando by M/s Julius & Creasy	23. 5. 62	309
D29	Plaint in District Court Colombo case No. 1003/ZL	12. 7. 62	313
D30	Carbon copy of the Letter marked D6 without the postscript	12. 1. 61	257
D31	Deed of Lease No. 3341 attested by V. A. P. Nanayakkara, Notary Public	20. 2. 62	282
D32	Protocol of Deed of Lease No. 3341 attested by V. A. P. Nanayakkara, Notary Public	20. 2. 62	287
D33	Letter sent to the Defendant by Clarence L. de Silva	12 10. 61	266
D34	Copy of of Letter sent to Clarence L. De Silva by the Defendant (same as D19)	12. 11. 61	269
D35	Letter sent to the Defendant by Clarence L. De Silva	22. 11. 61	271
D36	Letter sent to Clarence L. De Silva by the Defendant (with Envelope)	8. 12. 61	272
D37	Plaint in District Court, Balapitiya, case No. M/1207	6. 2. 62	275
D38	Letter sent to M/s Julius & Creasy by M/s Welikala & Fernando	10. 4. 62	303

INDEX - PART II

Exhibits

DEFENDANT'S DOCUMENTS (Continued)

Exhibit Mark	Description of Document	Date	Page
D39	Letter sent to M/s Julius & Creasy by M/s Welikala & Fernando	28. 4. 62	306
D40	Letter sent to M/s Julius & Creasy by M/s Welikala & Fernando	9. 5. 62	307
D41	Letter sent to M/s Julius & Creasy by M/s Welikala & Fernando	16. 5. 62	309
D42	Letter sent to M/s Julius & Creasy by M/s Welikala & Fernando	5. 6. 62	311
D43	Bank of Ceylon Statement for August 1960 in respect of Defendant's Account No. 1001	—	209
D44	Loan Application for Rs. 31,645/57 made by the Defendant to the Bank of Ceylon	18.11.60	231
D45	Promissory Note for Rs. 31,645/57 given by the Defendant to the Bank of Ceylon	28.11.60	233
D46	Guarantee signed by Eileen Marley	28.11.60	233
D47	Receipt for Rs. 31,645/57 given by the Defendant to the Bank of Ceylon	28.11.60	241
D48	Letter sent to Bank of Ceylon, Nuwara Eliya, by the Defendant	28.11.60	241
D49	Letter sent to Bank of Ceylon, Nuwara Eliya, by the Defendant	28.11.60	241
D50	Copy of Suspense Account issued by the Mercantile Bank Ltd.	—	230
D51	Memorandum from John, Keell, Thompson, White Ltd. to Mercantile Bank Ltd. enclosing cheque for Rs. 2811/85	11. 1. 61	254
D52	Mercantile Bank Credit Account Slip for Rs. 6000/-	12. 1. 61	258
D53	Note written in Pencil	—	331
D54	Statement made to Dehiwala Police by S. Weerawardena	20. 2. 62	292
D55	Statement made to Ambalangoda Police by the Defendant	22. 2. 62	293
D56	Statement made to Ambalangoda Police by the Defendant	2. 3. 62	301

INDEX - PART II
Exhibits
DEFENDANT'S DOCUMENTS (Continued)

Exhibit Mark	Description of Document	Date	Page
D57	Letter sent to M/s Welikala & Fernando by M/s Julius & Creasy	2. 6. 62	310
D58	Letter sent to the Defendant by M/s Julius & Creasy	15. 6. 62	312
D59	Agreement No. 541 attested by F. C. de Saram, Notary Public	6. 8. 60	189
D60	Application to the Agricultural and Industrial Credit Corporation of Ceylon for a loan	19. 8. 60	203
D61	Agreement No. 562 attested by F. C. de Saram, Notary Public	12. 11. 60	225
D62	Letter sent to the Defendant by H. J. G. Marley	8. 12. 60	254
D63	Certificate issued by the Tea and Rubber Estates (Control of Fragmentation) Board	17. 4. 62	304
D64	Letter sent to M/s De Silva & Mendis by the Defendant	27. 2. 61	264
D65	Defendant's Diary for 1960 (not printed)	—	—
D66	Bank Statements (State Bank of India) in respect of Defendant's Account for September, October and November, 1960	—	215
D67	Bank Statements (The Chartered Bank) in respect of Defendant's Account for September, October and November 1960	—	216
D68	Bank Statements (Bank of Ceylon, Chilaw) in respect of Defendant's Account for September, October and November 1960	—	217
D69	Bank Statements (Bank of Ceylon, Nuwara-Eliya) in respect of Defendant's Account for September, October and November 1960	—	218

Supreme Court of Ceylon,
No. 56 (Final) of 1965.

District Court of Nuwara Eliya,
Case No. 5409/M

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

BETWEEN

DON PETER MELLAARATCHY of "Reigate," Nuwara Eliya,
and presently of "Craigvar," Nuwara Eliya. *Defendant-Appellant.*
APPELLANT

And

J. A. NAIDOO of Messrs. Julius & Creasy, Colombo, Executor of the Last Will and
Codicil of H. J. G. Marley, deceased. ,, ,, ,, ,, ,, *Plaintiff-Respondant*
RESPONDENT

~~~~~  
RECORD OF PROCEEDINGS  
~~~~~

No. 1
Journal Entries.

No. 1
Journal Entries-
21. 11. 63
to
27. 3. 67

IN THE DISTRICT COURT OF NUWARA ELIYA.

No. M. 5409.	J. A. Naidoo of Messrs Julius & Creasy, Colombo,	
Class V	Executor of the Last Will and Codicil of H. J. G.	
Amount:	Marley, Deceased	<i>Plaintiff.</i>
Rs. 129486/34.	<i>vs.</i>	
Nature: Money	D. Peter Mellaaratchy of "Reigate" Nuwara Eliya.	
Procedure: Regular.		<i>Defendant.</i>

10

JOURNAL

The 21st day of November, 1963

Mr. P. N. Bartholomeusz files appointment and Plaint together with Proxy.

Plaint accepted and Summons ordered for 26th December 1963.

Sgd

District Judge.

(3) 26. 12. 63.

Mr. P. N. Bartholomeusz for Plaintiff.

Mr. D. P. Mellaaratchy

20

No return to Summons
Call and Reissue for 23. 1. 64.

Sgd.

District Judge.

26. 12. 63.

(4) 23. 1. 64.

Mr. P. N. Bartholomeusz for Plaintiff.

Summons not reissued.

Mr Bartholomeusz for Plaintiff

Sgd

District Judge.

23. 1. 64.

30

(5) 4. 3. 64

Mr. P. N. Bartholomeusz Proctor for Plaintiff moves for issue of Summons on the Defendant.

Allowed for 9. 4. 64.

Sgd

District Judge.

No. 1 Journal Entries. 21. 11. 63 to 27. 3. 67 Continued—	(6) Summons to Defendant Issued.	Initialled 13/3.	
	(7) 9. 4. 64. Mr. P. N. Bartholomeusz for Plaintiff. Defendant D. P. Mellaaratchy Summons served on Defendant. Proxy filed. Answer for 7/5.	Sgd 10 <i>District Judge.</i> 9. 4. 64.	
	(8) 9. 4. 64. Deficiency of stamps Rs 36/- due from Mr. P. N. Bartholomeusz, on his Summons issued to Defendant.	Sgd 9/4	
	(9) 7. 5. 64. Mr. P. N. Bartholomeusz for Plaintiff. Mr. D. Perera for Defendant Answer due, not filed, same for 28/5 (Final)	Sgd <i>District Judge.</i>	20
	(10) 28. 5. 64. Mr. P. N. Bartholomeusz for Plaintiff. Mr. D. Perera for Defendant Answer due (Final) Today is a Public Holiday. Call case on 29. 5. 64.	Sgd <i>District Judge.</i> 28. 5. 64.	30
	(11) 29. 5. 64. Mr. P. N. Bartholomeusz for Plaintiff. Mr. D. Perera for Defendant Answer due filed. Case called Call case on 18. 6. 64 to fix trial and for replication if any.	Sgd <i>District Judge.</i> 29. 5. 64.	40

- (12) 18. 6. 64.
 Mr. P. N. Bartholomeusz for Plaintiff.
 Mr. D. Perera for Defendant.
 Case called.
 Replication not filed.
 Trial 28th and 29th September 64.
 This case is specially fixed for trial on these dates.

Sgd
District Judge.
 18. 6. 64.

No. 1
 Journal Entries-
 21. 11. 63
 to
 27. 3. 67
 Continued—

- 10 (13) 3 9. 64.
 Mr. P. N. Bartholomeusz Proctor for Plaintiff files list of documents and witnesses and moves for Summons on witness No. 9. Proctor for Defendant received notice.

1. File.
2. Allowed.

Sgd
District Judge.

- (14) 15. 9. 64.
 20 Mr. P. N. Bartholomeusz Proctor for Plaintiff files list of witnesses and documents and moves for summons on witnesses Nos. 1 & 2

1. File.
2. Allowed.

Sgd
District Judge.

- (15) 16. 9. 64.
 Mr. D. Perera Proctor for Defendant files List of witnesses and moves for summons on witnesses Nos. 2, 3, 4 and 6.

Proctor for Plaintiff receives notice and copy.

- 30 1. File.
 2. Allowed.

Sgd
District Judge.

- (16) 18. 9. 64.
 Mr. D. Perera Proctor for Defendant files additional list of witnesses and moves for summons on 3 witnesses.

Proctor for Plaintiff receives notice and copy.

1. File.
2. Allowed.

- 40 Sgd
District Judge.

No. 1
Journal Entries-
21. 11. 63
to
27. 3. 67
Continued--

(17) 22. 9. 64.

Mr. D. Perera Proctor for Defendant files additional list of witnesses in this Case with notice to the Proctor for Plaintiff and moves for summons on them.

Allowed.

Sgd
District Judge.

(18) 22. 9. 64.

Mr. P. N. Bartholomeusz Proctor for Plaintiff files additional list of witnesses and documents in this case with notice to the Proctor 10 for Defendant.

File.

Sgd
District Judge.

(19) 24. 9. 64.

Mr. D. Perera Proctor for Defendant files 3rd additional list of witnesses in this case with notice to the Proctor for Plaintiff.

File.

Sgd
District Judge. 20

(20) 25. 9. 64.

Mr. P. N. Bartholomeusz Proctor for Plaintiff files an additional list of witnesses and documents with notice to the Proctor for Defendant.

File.

Sgd
District Judge.

(21) 28. 9. 64.

TRIAL (1)

Mr. P. N. Bartholomeusz for Plaintiff.

Mr. D. Perera for Defendant.

Mr. Advocate Amerasinghe with Mr. B. J. Fernando instructed by Mr. Bartholomeusz for Plaintiff. Mr. Thiagalingam Q. C., with Mr. Advocate Parathalingam and Mr. Crossette Thambiah instructed by Mr. D. Perera for Defendant.

Sgd
District Judge.

TRIAL (2)

(22) 29. 9. 64.

Mr. P. N. Bartholomeusz for Plaintiff.

Mr. D. Perera for Defendant.

Same appearances.

Vide Proceedings.

Further hearing 16, 17, 18

November 1964.

Sgd

(23) Requisition for Rs. 50/- posted to Mrs. E. F. M. Marley under Registered
10 Cover.

Sgd

(24) 16. 10. 64

29/9

Mr. D. Perera Proctor for Defendant files 4th Additional List of
Witnesses and moves for Summons on 18 Witnesses with notice to
the Proctor for Plaintiff.

1. File.

2. Allowed.

Sgd

District Judge.

20 (25) 16. 10. 64

Mr. Perera Proctor for Defendant moves that the Summons to
Witnesses filed on 15. 9. 64 and Summons returned unserved be reissued.
Allowed.

Sgd

District Judge.

TRIAL (3)

(26) 16. 11. 64

Mr. P. N. Bartholomeusz for Plaintiff.

Mr. D. Perera for Defendant.

30 Same appearances

Vide Proceedings.

Further hearing 17/11.

D 32 to remain in the record.

Sgd

District Judge.

No. 1
Journal Entries-
21. 11. 63
to
27. 3. 67
Continued—

No. 1
Journal Entries.
21. 11. 63
to
27. 3. 67
Continued—

(27) 17. 11. 64

TRIAL (4)

Mr. P. N. Bartholomeusz for Plaintiff.

Mr. D. Perera for Defendant.

Same appearances.

Vide Proceedings

Further hearing 18. 4.

Sgd
District Judge.

(28) 18. 11. 64

TRIAL (5)

Mr. P. N. Bartholomeusz for Plaintiff.

Mr. D. Perera for Defendant.

Same appearances.

Vide Proceedings.

Documents for 26. 11.

Further hearing on 21/12.

Sgd

(29) 21. 12. 64

Mr. P. N. Bartholomeusz for Plaintiff.

Mr. D. Perera for Defendant.

Same appearances.

20

Mr. Advocate Thiagalingam Q.C., states that at Page 114 the sentence "Then I took this letter and subsequently" should read as "Then I took this letter and went to see Advocate Thurairatnam and I told him to deny this and write a letter."

22. 12. 64

Mr. P. N. Bartholomeusz for Plaintiff.

Mr. D. Perera for Defendant.

Same appearances.

Vide Proceedings.

Order on 29. 1. 65.

30

Sgd

(30) 29. 1. 65

Mr. P. N. Bartholomeusz for Plaintiff.

Mr. D. Perera for Defendant.

for Order.

Mr. Mahesan takes notice on behalf of Mr. Bartholomeusz.

Defendant – Present.

Plaintiff -- Absent.

No. 1
Journal Entries -
21. 11. 63.
to
27. 3. 67

Continued--

Order delivered. Judgment for Plaintiff, as prayed for with costs. Enter decree accordingly.

Sgd
District Judge.

(31) 1. 2. 65

Mr. D. Perera Proctor for Defendant tenders.

- 10 (1) Petition of Appeal,
- (2) Notice of Security.
- (3) 2 Notices of Security to be sent to the Plaintiff and his Proctor by Registered Post together with the stamped envelopes.
- (4) Application for typewritten copies
- (5) Stamps for Rs. 84/- for Secretary's Certificate in appeal.
- (6) Stamps for Rs. 148/- for Supreme Court decree.
- (7) Notice of Appeal together with two copies to be sent by Registered Post and he moves that the Petition of Appeal be accepted and notice of Security be issued to the Plaintiff and Copies be sent
- 20 to the Plaintiff and the Plaintiff's Proctor by registered post.

ORDER

- 1. Petition of Appeal is accepted.
- 2. Enter in appeal register
- 3. Issue notice of security as applied for returnable on 11.2.65.

Sgd
District Judge.

(32) Nos. 2 and 3 attended to.

Intd:
2/2

30 (33) 9. 2. 65

Decree entered.

Sgd
District Judge.

(34) 11. 2. 65

Mr. P. N. Bartholomeusz for Plaintiff.

Mr. D. Perera for Defendant.

No. 1
Journal Entries-
21. 11. 63
to
27. 3. 67
Continued--

Notice of Security not served on Plaintiff as there is no time for service and report. Security agreed on at Rs. 600/-. Issue notice of appeal on security being furnished for 25/2.

Sgd
District Judge.

(35) 13. 2. 65

Mr. P. N. Bartholomeusz Proctor for Defendant files application for execution of Decree for the recovery of amount in the Decree. And moves for a notice on the Defendant.

Issue notice of application on Judgment Debtor returnable on 25. 2. 65 10

Sgd
District Judge.

(36) 17/2

Bond furnished
Notice of Appeal issued.

Intld. 17/2

(37) Notice issued to Defendant.

Vide Journal Entry of 13. 2. 65.

Intld. 19/2

(38) 25. 2. 65

Mr. P. N. Bartholomeusz for Plaintiff. 20

Mr. D. Perera for Defendant.

Notice not served on Judgment Debtor as he had gone to Colombo. Re-issue for 18/3.

Sgd
District Judge.

(39) 18 3. 65

Mr. P. N. Bartholomeusz for Plaintiff.

Mr. D. Perera for Defendant.

No return to notice on Judgment Debtor, notice returned later unserved as the Defendant is not to be found. 30

Call case regarding notice of appeal as well as notice of application of writ for 22. 4.

Sgd
District Judge.

(40) 22. 4. 65

Mr. P. N. Bartholomousz for Plaintiff.

Mr. D. Perera for Defendant.

Notice of Appeal served.

Notice of application of writ served.

Forward record in due course to Supreme Court.

Mr. Advocate Parathalingam instructed for Defendant moves for 40 a date for objections. Objections for 13/5.

Sgd
District Judge.

- (41) 13. 5. 65
 Mr. P. N. Bartholomeusz for Plaintiff-Respondent
 Mr. D. Perera for Defendant-Appellant
 Called for objections.
 Objections for 27/5.

No. 1
 Journal Entries-
 21. 11. 63
 to
 27. 3. 67
 Continued--

Sgd.
District Judge.

- (42) 27. 5. 65
 Mr. P. N. Bartholomeusz for Plaintiff-Respondent.
 Mr. D. Perera for Defendant - Appellant.
 Case called for objections:
 10 Objections on 10. 6.

Sgd.
District Judge.

- (43) 10. 6. 65
 Mr. P. N. Bartholomeusz for Plaintiff - Respondent.
 Mr. D. Perera for Defendant - Appellant.
 Objections due.
 Mr. Advocate Fernando instructed by Mr. Bartholomeusz for
 Plaintiff-Respondent
 Mr. D. Perera for Defendant - Appellant files objections.

- 20 Inquiry for 9/7.
 Mr. Perera states that the Defendant will not dispose of any
 properties until the hearing of this inquiry.

Sgd.

- (44) 9. 7. 65 INQUIRY I
 Mr. P. N. Bartholomeusz for Plaintiff-Respondent.
 Mr. D. Perera for Defendant-Appellant.
 Mr. Advocate Fernando instructed by Mr. Bartholomeusz for Plaintiff.
 Mr. Advocate Parathalingam instructed by Mr D. Perera for Defendant-
 Appellant.

- 30 Case called.

The Plaintiff - Respondent is entitled to issue writ in this case.
 However, if the Defendant Appellant brings into court a sum of
 Rs. 60,000/- by way of security in cash in the following manner -namely
 a sum of Rs. 10,000 in cash on or before 15. 8. 65, a sum of Rs. 20,000/-
 before 15. 10. 65 and the balance sum of Rs. 30,000/- on or before 15.1.66
 writ not to issue till the final determination of the appeal now pending.

In default of any one payment as aforesaid writ to issue with notice.

Intd:
District Judge.
 9/7.

No. 1
Journal Entries-
21. 11. 63
to
27. 3. 67
Continued—

(45) 12. 8. 65:
Kachcheri Receipt No. 484 of 12. 8. 65 for Rs. 10,000/-received and filed.

Intd:
Record Keeper 12/8

(46) 27. 11 65:

Mr. P. N. Bartholomeusz Proctor for Plaintiff – vide his Motion dated 23. 11. 65 filed of record states that application for writ has been made and as Defendant has failed to deposit the sum of Rs. 20,000/- on 15. 10 65 moves for notice under Section 219.

Issue notice under Section 219 returnable on 23. 12. 65. 10

Intd:
District Judge.

(47) 23. 12. 65:

Mr. P. N. Bartholomeusz for Plaintiff-Respondent.

Mr. D. Perera for Defendant-Appellant.

Notice not served on Defendant-Appellant.

Affidavit for 8. 1. 66

Intd:
District Judge

(48) 8. 1. 66

Mr. P. N. Bartholomeusz for Plaintiff-Respondent.

Mr. D. Perera for Defendant-Appellant.

Affidavit due. – filed.

Issue summons by way of substituted service in terms of last paragraph of the affidavit - returnable 2. 2.

Intd:
District Judge.

(49) 2. 2 66

Mr. P. N. Bartholomeusz for Plaintiff-Respondent.

Mr. D. Perera for Defendant-Appellant.

30

Summons served on Defendant by way of substituted service on 18. 1. 66.

219 Inquiry for 24. 2.

Intd:
District Judge.

(50) 24. 2. 66:

Deposit Note No. 041636 for Rs. 10,000/- issued to defendant.

Intd:

(51) 24. 2. 66

Mr. P. N. Bartholomeusz for Plaintiff-Respondent.
Mr. D. Perera for Defendant - Appellant.
Examination under Section 219-Civil Procedure Code.
Inquiry for 31. 3.

No. 1
Journal Entries-
21. 11 63
to
27. 3. 67
Continued—

Intd:
District Judge

INQUIRY (1)

(52) 31. 3. 66

10 Mr. P. N. Bartholomeusz for Plaintiff-Respondent.
Mr. D. Perera for Defendant-Appellant.
Case called.
Defendant examined.
Call 2. 5.

Intd:
District Judge

(53) 2. 5. 66

20 Mr. P. N. Bartholomeusz for Plaintiff-Respondent.
Mr. D. Perera for Defendant-Appellant.
Case called - Defendant absent.
Call case on 15. 5. 66

Intd:
District Judge.

(54) 15. 5. 66

Mr. P. N. Bartholomeusz for Plaintiff-Respondent.
Mr. D. Perera. for Defendant-Appellant.
Case called - for 6.6

Intd:
District Judge.

30 (55) 6. 6. 66

Mr. P. N. Bartholomeusz for Plaintiff-Respondent.
Mr. D. Perera for Defendant-Appellant.
Case called.
No order.

Intd:
District Judge.

(56) 7. 6. 66

40 Mr. D. Perera, Proctor for Defendant-Appellant files petition and affidavit from the Defendant-Appellant and on grounds stated therein moves that the execution of the writ be stayed pending the payment of security by the Plaintiff-Respondent in terms of Section 763.

No. 1
Journal Entries-
21. 11. 63
to
27. 3. 67
Continued—

Also he moves for notice on the plaintiff.

ORDER

Support in open Court.

Intd:
District Judge

(57) 18. 6. 66

Mr. P. N. Bartholomeusz, Proctor for plaintiff states that his application for issue of writ and the defendant's application for stay of writ was the subject of inquiry and that terms of settlement were recorded. As the defendant has defaulted in depositing the instalments 10 of security having deposited the first instalment he moves for writ against the defendant.

Issue writ.

Intd:
District Judge.

(58) 20. 6. 66.

Mr. P. N. Bartholomeusz for plaintiff.

Mr. D. Perera for defendant.

Case called to support application—vide Journal Entry (56)

Mr. Advocate Guruswamy instructed by Mr. Perera for appellant. 20

Mr. Guruswamy

Mr. Guruswamy cites 66 NLR

55 NLR 249

Notice plaintiff respondent for 22. 7.

Stay writ pending inquiry.

Intd:
District Judge.

(59) 3.7.66.

Mr. D. Perera, Proctor for Defendant—Appellant moves that he be allowed to amend the petition by deleting para (a) of the prayer 30 and substituting thereof the following para:

“(a) that the execution of the writ be stayed till security is furnished by the Plaintiff—Respondent.”

Also he files the amended petition and moves that the same be accepted.

Copy sent to Plaintiff—Respondent by registered post.

1. File

2. Mention on 22.7.66.

Intd:
District Judge. 40

(60) 22.7.66.
Mr. P. N. Bartholomeusz for Plaintiff.
Mr. D. Perera for Defendant.
1. Notice served on Plaintiff - J. A. Naidee.
2. Case mentioned vide Journal Entry at (59)
Call for 28.7 to fix date of inquiry.

Intd: ..
District Judge

10 (61) 28.7.66.
Mr. P. N. Bartholomeusz for Plaintiff.
Mr. D. Perera for Defendant.
Case called to fix date of inquiry,
Call for 5.8.

Intd:
District Judge

(62) 5.8.66.
Mr. P. N. Bartholomeusz for Plaintiff.
Mr. D. Perera for Defendant.
Case called.
20 Inquiry for 20.8.

Intd: ..
District Judge.

(63) 20.8.66. INQUIRY (1)
Mr. P. N. Bartholomeusz for Plaintiff.
Mr. D. Perera for Defendant.
Mr. Advocate Fernando instructed for Plaintiff.
Mr. Advocate Guruswamy instructed by Mr. D. Perera for Defendant.
Mr. Guruswamy addresses me.
Mr. Fernando addresses me.
30 Order for 4.9.

Intd: ..
District Judge.

(64) 4.9.66.
Mr. P. N. Bartholomeusz for Plaintiff.
Mr. D. Perera for Defendant.
Order delivered in open court.
Defendant's application dismissed with costs.
Writ to issue

Intd:.....
District Judge.

No. 1
Journal Entries-
21. 11 63
to
27. 3. 67
Continued—

14.9.66.

Record received today together with documents and Supreme Court Decree No. 56/65 (F) dismissing the Appeal.

It is ordered and decreed that the Defendant Appellant do pay to the Plaintiff - Respondent the taxed costs of this Appeal.

Proctors for parties to note.

Sgd. . . .
District Judge.

19.1.67

Mr. C. L. de Silva, Proctor forwards Money Order for Rs. 81.30 10 in respect of copying fees and stamp fees for copies applied for.

Intd: . . .

Eo die

Money Order sent for cashing. Receipt sent.

Intd: . . .

27.3.67.

Registrar, Supreme Court, by his letter No. B. 25/67 of 23.3.67 requests that this case record be sent to him to take necessary action as permission has been granted to Appeal to the Privy Council. Forward with all documents.

20

Intd: . . .

District Judge.

No. 2
Plaint of the
Plaintiff-
21. 11. 63

No. 2

Plaint of the Plaintiff

IN THE DISTRICT COURT OF NUWARA ELIYA.

M. 5409

J. A. Naidoo of Messrs Julius & Creasy, Colombo,
Executor of the Last Will and Codicil of H. J. G.
Marley, Deceased. *Plaintiff.*

Vs.

D. Peter Mellaaratchy of "Reigate" Nuwara Eliya 30
Defendant.

On this 21st day of November 1963.

The Plaintiff of the Plaintiff abovenamed appearing by Percival Neville Bartholomeusz, his Proctor, states as follows:

1. The Plaintiff abovenamed is the Executor and Trustee of the Last Will and Codicil of the abovenamed H. J. G. Marley, deceased, filed of record and duly proved in Testamentary Case No. 591 of the District Court of Nuwara Eliya.

No. 2
Plaint of the
Plaintiff-
21. 11. 63.
Continued—

2. The Defendant resides at Nuwara Eliya within the local limits of the jurisdiction of this Court.

3. That prior to the dates material to this Action the Defendant abovenamed and Eileen Florence Marley, the wife of the abovenamed H. J. G. Marley, deceased, by Agreement No. 541 dated 6th August 1960 attested by F. C. de Saram, Notary Public, had agreed to purchase all that estate, plantation and premises called and known as "Maha Borakande Division" situate at Karandeniya for the price or sum of Rs. 425,000/-.

4. That the Defendant and the said Eileen Florence Marley having requested the said H. J. G. Marley, now deceased, to provide certain monies needed by them for the completion of the aforesaid agreement to purchase, it was agreed between them and said H. J. G. Marley.

- (a) that the said H. J. G. Marley do through his Bankers, Mercantile Bank Limited, lend and advance to the Defendant and the said Eileen Florence Marley jointly in equal shares a sum of Rs. 125,000/- to be repaid by them together with interest thereon as demanded and on such terms as stipulated by the said Bank;
- (b) that the said H. J. G. Marley shall by way of loan provide and pay on account of the Defendant and the said Eileen Florence Marley such monies as shall be required for legal and other expenses connected with the purchase of the aforesaid estate;
- (c) that the Defendant abovenamed would be liable to repay one half share of the monies lent and advanced as aforesaid by the said H. J. G. Marley.

5. That in pursuance of the said Agreement and at the request of the said H. J. G. Marley and upon the personal guarantee and security given to the said Mercantile Bank Limited by him, the said Bank in or about November 1960 lent and advanced to the Defendant and the said Eileen Florence Marley jointly a sum of Rs. 125,000/- which was applied in part payment of the aforesaid purchase price at the execution of the Deed of Transfer No. 1419 dated 29th November 1960 attested by S. Gunasekera, Notary Public, in favour of the Defendant and the said Eileen Florence Marley. The said sum of Rs. 125,000/- was repayable to the Bank together with interest at five per centum

per annum or at such rate as may from time to time be fixed or charged by the Bank, and for securing such repayment the said H. J. G. Marley assigned to the said Bank a sum of Rs. 150,000/- held by it in fixed deposit to the credit of the said H. J. G. Marley.

6. That the said H. J. G. Marley in pursuance of the aforesaid Agreement also paid a sum of Rs. 17,004/- on account of the legal and other expenses connected with the purchase as aforesaid of the estate by the Defendant and the said Eileen Florence Marley.

7. That by reason of the facts herein before pleaded the Defendant became liable to repay to the said H. J. G. Marley:-

10

- (a) the sum of Rs. 62,500/- together with interest thereon as stipulated;
- (b) a sum of Rs. 8,502/-.

8. That the said H. J. G. Marley died on or about the 26th February 1963 leaving a Last Will bearing No. 495 dated 9th October 1961 and Codicil bearing No. 479 dated 17th May 1962 filed of record in the said Testamentary Case No. 591 of this Court and duly proved, whereby he nominated and appointed the Plaintiff and H. T. Perera as his executors and Trustees thereof. The said H. T. Perera having renounced his right to claim Probate of the said Last Will and Codicil, the Plaintiff has applied to the said Court for Probate.

20

9. There was due and owing to the said Mercantile Bank Limited from the Estate of the said H. J. G. Marley, deceased, as at 31st May 1963, on account of the aforesaid advance of Rs. 125,000/-, a sum of Rs. 136,343/69 on account of principal and interest, and in satisfaction of the said debt, the said Mercantile Bank Limited lawfully appropriated an amount equivalent thereto out of the said sum of Rs. 150,000/- held in fixed deposit and assigned to it as aforesaid by the said H. J. G. Marley

10. That thereupon the Defendant abovenamed became liable to repay to the Plaintiff as Executor as aforesaid a sum of Rs. 68,171/84 on that account, which said sum or any part thereof the Defendant has failed and neglected to repay though thereto demanded.

30

FOR A FIRST CAUSE OF ACTION.

11. That there is due and owing from the Defendant to the Plaintiff as Executor as aforesaid the said sum of Rs. 68,171/84 and a cause of action has therefore accrued to the Plaintiff as Executor as aforesaid

to sue the Defendant for the recovery of the said sum of Rs. 68,171/84 with legal interest thereon.

No. 2
Plaint of the
Plaintiff-
21. 11. 63.

FOR A SECOND CAUSE OF ACTION

Continued—

12. That the Defendant has failed and neglected to repay the aforesaid sum of Rs. 8,502/- due and owing from him to the said H. J. G. Marley, though thereto demanded, and that the said amount is still due and owing to the Plaintiff as Executor aforesaid. That in the premises a cause of action has accrued to the Plaintiff as Executor aforesaid to sue the Defendant for the recovery of the said sum of
10 Rs. 8,502/- together with legal interest thereon.

FOR A THIRD CAUSE OF ACTION.

13. That on or about the 7th day of November 1960 the said H. J. G. Marley lent and advanced to the Defendant and the Defendant borrowed and received from the said H. J. G. Marley a sum of Rs. 50,000/- which he agreed to repay on demand together with interest thereon at 2 1/2 per centum per annum.

14. There is now due and owing from the Defendant an aggregate sum of Rs. 52,812/50 being Rs 50,000/- in respect of principal and Rs. 2,812/50 being interest at the aforesaid rate from the 7th August
20 1960 up to 6th November 1963 which said sum or any part thereof the Defendant has failed and neglected to repay to the Plaintiff as Executor aforesaid though thereto demanded.

15. A cause of action has therefore accrued to the Plaintiff as Executor thereof to sue the Defendant for the recovery of the said sum of Rs. 52,812/50 together with interest.

Wherefore the Plaintiff prays:-

- 30 (a) for judgment against the Defendant in a sum of Rs. 68,171/84 together with legal interest thereon from date hereof till date of decree and thereafter on the aggregate amount of the decree till payment in full;
- (b) for judgment against the Defendant in a further sum of Rs. 8,502/- together with legal interest thereon from date hereof till date of decree and thereafter on the aggregate amount of the decree till payment in full.
- (c) for judgment against the Defendant in a further sum of Rs. 52,812/50 together with interest at the rate of 2 1/2 per centum per annum on the sum of Rs. 50,000/- from the 7th November 1963 till date of decree and thereafter with legal interest thereon on the aggregate amount of the decree till payment in full;

No. 2
Plaint of the
Plaintiff-
21. 11. 63.
Continued—

- (d) for costs of suit;
- (e) for such other and further relief as to this Court shall seem meet.

Sgd .
Proctor for Plaintiff.

Settled by
B. J. Fernando
Eric Amerasinghe
Advocates.

No. 3
Answer of the
Defendant-
29. 5. 64

No. 3

10

Answer of the Defendant

IN THE DISTRICT COURT OF NUWARA-ELIYA.

J. A. Naidoo of Messrs Julius & Creasy,
Colombo, Executor of the Last Will and Codicil of
H. J. G. Marley, Deceased *Plaintiff.*

No. M. 5409.

vs

D. Peter Mellaaratchy of "Reigate", Nuwara Eliya.
Defendant.

On this 29th day of May, 1964.

The Answer of the Defendant abovenamed appearing by David 20
Perera, his Proctor, states as follows:-

1. Answering paragraph 1 of the Plaintiff, the Defendant does not
admit the averment contained therein.

2. Answering paragraph 2 of the Plaintiff, the Defendant admits the
jurisdiction of this Court,

3. Answering paragraph 3 of the Plaintiff, the Defendant states that
the Agreement No. 541 dated the 6th August 1960 attested by F. C. De
Saram, Notary Public, referred to therein was entered into by the
Defendant at the express request of H. J. G. Marley, deceased, and
his wife Mrs. Eileen Florence Marley on the express terms and 30
conditions herein averred to.

4. The Estate called and known as Maha Borakanda Division
referred to in paragraph 3 of the Plaintiff, was to be bought in the
names of Eileen Florence Marley and the Defendant, each being
entitled to a half share.

5. By agreement between H. J. G. Marley, Eileen Florence Marley and the Defendant, the sum of Rs. 425,000/- being the consideration for the purchase of Maha Borakanda Division, was to be provided as follows:-

No. 3
Answer of the
Defendant-
29. 5 64

-Continued

- 10
- (a) The Defendant was to contribute a sum of Rs. 25,000/- and the said sum of Rs. 25,000/- the Defendant was to borrow from the Bank of Ceylon on a guarantee furnished by Mrs. Eileen Florence Marley.
 - (b) The Defendant and Mrs. Eileen Florence Marley were to grant a mortgage of Maha Borakanda Division to Borakanda Estate Co. Ltd., the owners thereof, to secure the payment of Rs. 125,000/-.
 - (c) The balance consideration was to be provided by the said H. J. G. Marley and Eileen Florence Marley.

20 6. The Defendant, by reason of the agreement between H. J. G. Marley, Eileen Florence Marley and the Defendant, was to be in the sole management of Maha Borakanda Division after the transfer of same. The Defendant being in such sole management, agreed to manage the same with care and diligence, as though the property was the Defendant's own, and to apportion and pay out the net income therefrom in the following manner:

- 30
- (a) the sum of Rs. 125,000/- which was to have been covered by a hypothecary bond in favour of Borakanda Estate Co. Ltd. and interest thereon was to be paid and discharged;
 - (b) the sum of Rs. 275,000/- was to be paid to H. J. G. Marley and/or to Eileen Florence Marley; and that payments under this head was to be credited to a separate account at the Mercantile Bank, and
 - (c) to maintain an account under the name Borakanda Estate for such moneys as would be necessary for running the Estate.

7. The Defendant denies all and singularly the paragraphs 4, 5, 6, 7, 9, 10, 11, 12, 13, 14 and 15 of the Plaintiff, subject to the express admissions herein contained.

No. 3
Answer of the
Defendant-
29. 5. 64

—Continued

8. Under and by virtue of the Deed of Transfer No. 1419 dated 29th November 1960 attested by S. Gunasekera, Notary Public, Borakanda Estate Co. Ltd. transferred the said Maha Borakanda Division to Eileen Florence Marley and the Defendant in equal shares and Eileen Florence Marley and the Defendant entered into an Agreement No. 564 dated 29th November 1960 attested by F. C. De Saram, Notary Public, with Borakanda Estate Co. Ltd., to grant a mortgage of Maha Borakanda Division to secure the sum of Rs. 125,000/-. Thereupon the Defendant duly entered into the sole management of the said Maha Borakanda Division and was in such management of 10 the same as agreed up to 20th February 1962.

9. As at the 20th February 1962, the Defendant has expended a sum of about Rs. 20,000/- of his own money in running the Maha Borakanda Division, and the Defendant's personal belongings on the said Maha Borakanda Division was of the value of about Rs. 2,000/-. Also the Defendant had

- (a) placed to the credit of Maha Borakanda Division working account referred to in paragraph 6 (c) hereof, Rs. 3, 993/25;
- (b) paid accruing interest on the sum of Rs. 125,000/- on 20 the said Agreement to mortgage Maha Borakanda Division; and
- (c) paid to the credit of separate account referred to in paragraph 6 (b) hereof, Rs. 6,000/-.

10. In breach of and contrary to agreements averred to herein, H. J. G. Marley and Eileen Florence Marley, on 20th February 1962, along with some thugs, wrongfully took forcible possession of Maha Borakanda Division from the Defendant. Also the said Eileen Florence Marley at the instigation of and or with the express knowledge and without protest from H. J. G. Marley, on the night 30 of 20th February 1962, dishonestly and fraudulently removed from the said Maha Borakanda Division, rubber of the approximate value of Rs. 15,000/- and coconuts of the approximate value of Rs. 4,000/-. The books of accounts kept under the directions of the Defendant were on the Estate at all relevant times and have not been available to the Defendant after 20th February 1962.

11. On the 20th February 1962 Eileen Florence Marley had fraudulently purported to lease the entirety of Maha Borakanda Division by Indenture of Lease No. 3341 attested by V. A. P. Nanayakkara, Notary Public.

No. 3
Answer of the
Defendant-
29. 5. 64
-- Continued

12. On and after 20th February 1962 the Defendant was wrongfully deprived of his rightful possession of Maha Borakanda Division and of his belongings, by H. J. G. Marley and Eileen Florence Marley, and the Defendant acting on legal advice took the necessary steps against Eileen Florence Marley and H. J. G. Marley to regain possession of Maha Borakanda Division, the books of accounts, the rubber and coconuts referred to.

13. Thereupon Eileen Florence Marley with the concurrence, approval and knowledge of and together with H. J. G. Marley acting by their Proctor Mr. Welikala and others, entered into negotiations with the Defendant as a result whereof the Defendant was discharged from all obligations to pay any moneys to H. J. G. Marley or Eileen Florence Marley and the Agreement No. 227 dated 2nd March 1962 attested by R. M. S. Karunaratne, Notary Public, was entered into between Eileen Florence Marley and the Defendant. The copy of the said Indenture of Agreement is annexed hereto marked "A" and pleaded as part and parcel of this Answer. The Defendant thereafter and in consequence thereof abandoned all steps taken by him and referred to above, and gave up all claims against Eileen Florence Marley and H. J. G. Marley and was thus and otherwise absolved and released by H. J. G. Marley and Eileen Florence Marley from all or any liability to pay any sum of money to H. J. G. Marley or to Eileen Florence Marley. In the circumstances aforesaid, H. J. G. Marley was estopped and barred from making any claim and the Plaintiff has no cause of action against the Defendant.

Wherefore the Defendant prays:

- (a) that the action of the Plaintiff be dismissed;
- (b) for costs; and
- (c) for such other and further relief as to this Court shall seem meet.

Sgd: D. Perera
Proctor for Defendant.

Settled by:
Crossette Thambiah, Junior.
C. Thiagalingam Q. C. Advocates.

Issues Framed

28. 9. 64.

Mr. Advocate E. Amerasinghe with Mr. B. J. Fernando instructed by Mr. Bartholomeusz for the *Plaintiff*.
Mr. Advocate Thiagalingam q.c., with M/s. Parathalingam and Crosseite-Thambiah instructed by Mr. David Perera for the *Defendant*.
Defendant-present. Plaintiff-absent.

Mr. Amerasinghe opens his case. He says the plaintiff in this case **10** is the Executor and Trustee of the Last Will and Codicil of H. J. G. Marley, deceased, and duly proved in District Court Nuwara Eliya Testamentary Case No. 591. He says the defendant and Eileen Florence Marley, the widow of the deceased, had agreed to purchase the estate known as Maha Borakanda Division for the sum of Rs. 425,000/-. In pursuance of this agreement to purchase, the late H. J. G. Marley provided certain monies to the defendant and Eileen Florence Marley and Rs. 125,000/- was to be advanced by the Mercantile Bank Ltd. to the defendant and Mrs. Marley jointly. Para 4 of the plaint is referred to. In pursuance of the agreement the Bank had advanced **20** Rs. 125,000/- and a joint loan account was opened at the Bank in the name of Mrs. Marley and the defendant. He says Marley did advance to the defendant Rs. 50,000/-, and Rs. 8,502/- and these sums have not been paid. The Rs. 125,000/- loan had mounted up to Rs. 136,343/69 along with interest up to 31. 5. 63 and the Bank had appropriated this sum out of the Rs. 150,000/- held in fixed deposit and assigned to it by the said H. J. G. Marley. Para: 5, 6 and 13 of the Agreement are referred to.

Mr. Advocate Amerasinghe raises the following issues:

- (1) In or about November 1960, was it agreed (a) that H. J. G. Marley, now deceased, should through his Bankers, the **30** Mercantile Bank of India Ltd., lend and advance to the defendant and Mrs. Marley jointly in equal shares the sum of Rs. 125,000/- to be repaid by them together with interest thereon as demanded and on such terms as stipulated by the said Bank;
- (1b) That the said H. J. G. Marley should by way of loan provide and pay on account of the defendant and Mrs.

Marley such monies as should be required for legal and other expenses connected with the purchase of the estate called Maha Borakande Division: No. 4
Issues Framed
—Continued

- 10 (1c) That the defendant would be liable to repay one half share of the monies lent and advanced as aforesaid by the said H. J. G. Marley;
- (2a) Did the Mercantile Bank Ltd., in pursuance of the said Agreement and at the request of the said Marley and upon the personal guarantee and security given to the said Bank by him in or about November 1960, lend and advance a sum of Rs. 125,000/- to the defendant and Mrs. Marley repayable to the said Bank together with interest at 5 per cent per annum or at such or other rate as may, from time to time, be fixed or charged by the Bank;
- (2b) Did the said Marley for securing such repayment assign to the Bank a sum of Rs. 150,000/- held by him in fixed deposit to the credit of the said Marley;
- 20 (3a) Did the said Marley in pursuance of the aforementioned agreement pay a sum of Rs. 17,004/- on account of the legal and other expenses connected with the purchase by the defendant and Mrs. Marley of the said Estate;
- (3b) Did the defendant become liable to repay to the said Marley a half share of the said amount, to wit: Rs. 8,502/-;
- (4) On or about 7th August 1960, did the said Marley lend and advance to the defendant and did the defendant borrow and receive from him a sum of Rs. 50,000/- repayable on demand together with interest at 2½ per cent per annum;
- 30 (5a) Did the said Marley die in or about February 1963, leaving a Last Will and Codicil which have been duly proved in District Court Nuwara Eliya Case No. T-591;
- (5b) Is the plaintiff the lawful executor of the said Last Will and Codicil;
- (6a) As at 31st May 1963, was there due and owing to the Mercantile Bank of India Ltd., on account of the aforesaid loan of Rs. 125,000/-, a sum of Rs. 136,343/69;

- (6b) Did the said Bank in satisfaction of the said debt lawfully appropriate an amount equivalent thereto out of the fixed deposit of the late H. J. G. Marley held by and assigned to them;
- (7) Did the defendant thereupon become liable to repay one half share of the said debt to wit: Rs 68,171/84 to the plaintiff as Executor as aforesaid;
- (8) Is the plaintiff as Executor now entitled to recover from the defendant—
- (a) the said sum of Rs 68,171/84 with legal interest 10 from date of action;
- (b) the said sum of Rs. 8,502/- with legal interest from date of action; and
- (c) the said sum of Rs 50,000/- with 2½ per cent interest up to date of action and legal interest thereafter.

Mr. Advocate Thiagalingam states that it is not correct to say that the defendant wanted to purchase the estate. The defendant and Marley were good friends. Marley wanted the defendant to buy an estate near the seaside. The defendant said that he did not have the finances and that he would find a buyer. Marley said that the defendant 20 should have at least a stake in this business and wanted him to provide, at least, Rs 25,000/-. The defendant said he did not have the money. Marley said that Mrs. Marley would guarantee to the Bank of Ceylon the loan of Rs. 25,000/- to be given to the defendant. On the date of the agreement i. e. on 6. 8. 60 the defendant did not have a cent to his account. He says the first payment of Rs. 50,000/- paid by Marley to the defendant's account was not a loan but was consideration provided by Marley in regard to the purchase of Borakande Estate. At the request of Marley, Mrs. Marley and the defendant signed the application for a loan to the A. I. C. C. At 30 the request of Marley, the defendant went to the Mercantile Bank and asked them to give an advance of a sum of Rs. 125,000/- a secondary mortgage of Borakande which they were going to buy. Borakande was to carry a primary mortgage in favour of the Sellers in Rs. 125,000/-. The Mercantile Bank was willing to give that loan but they wanted interest at 7 per cent. He says the Rs. 125,000/ provided by Marley is not a loan. On the date of the transfer i. e. on 29. 11. 60 Mrs. Marley and the defendant went to the

Mercantile Bank. On the date of the agreement to buy, a sum of Rs. 42,500/- had been paid as 10 per cent of the purchase price. Marley had put into the defendant's account Rs. 50,000/-. The defendant had borrowed from the Bank of Ceylon on the guarantee of Mrs. Marley Rs. 25,000/-. The defendant paid this sum of Rs. 25,000/- to the Mercantile Bank and Rs. 7,500/- being Marley's money. On that day Mrs. Marley paid two cheques. The Mercantile Bank gave a cheque in favour of Borakanda Estate Ltd., for Rs. 257,500/-, Rs. 25,000/- being the defendant's money, Rs. 7,500/- being the balance of
 10 Marley's money from out of the Rs. 50,000/-, two cheques for Rs. 50,000/- each, i. e. Rs. 100,000/-; and the Mercantile Bank added Rs. 125,000/- totalling Rs. 257,500/-. Marley told the defendant to manage the Estate and that he would tell the Bank to open a Borakande Loan A/c., and every month to pay into this account Rs. 6,000/-. The defendant had to work for about 7 or 8 years and was not expecting anything for his Rs. 25,000/-.

On 5. 2. 61 a conference was held wherein certain suggestions were made. Marley made a Last Will on 9. 10. 61 for the first time formulating a kind of case against the defendant and followed it up by
 20 getting his wife to send a letter of demand about the mismanagement of the estate. On 6. 2. 62 Mrs. Marley filed an action against the defendant in the Balapitiya Court. On 20. 2. 62 Mrs. Marley leases the whole property to certain lessees. On the night of 20. 2. 62 the Marleys took forcible possession of the estate.

Mr. Thiagalingam says that issue No. 2 contains too many limbs and he is not interested with the request of Mr. Marley and, for this reason, he objects to the words in this issue. He says Marley did provide Rs. 125,000/- which is admitted but he denies it is a loan. He says that he admits that Marley on 7. 8. 60 paid into the credit
 30 of the defendant's account a sum of Rs. 50,000/- but not as a loan. Mr. Advocate Thiagalingam suggests:

(9) Was Agreement No. 541 to buy Borakande Estate in the names of Eileen Marley and the defendant entered into by the defendant at the express request of H. J. G. Marley, deceased?

(10) Was it agreed between Marley, the deceased, and the defendant that the consideration for the purchase of Borakanda Estate was to be provided:

- (a) in respect of Rs. 25,000/- by the defendant;
- (b) in respect of Rs. 125,000/- by the grant of a mortgage for Rs. 125,000/- to Borakanda Estate Co. Ltd., the vendors;
- (c) in respect of the balance Rs. 275,000/- by Marley the deceased and his wife Eileen Marley.
- (11) Prior to the Deed of Transfer No. 1419 of 29th November 1960 of Borakanda Estate to the defendant and Mrs. Marley, was it agreed between H. J. G. Marley, the deceased, and the defendant
- (a) that the defendant was to be in sole management of 10 Borakanda Estate after the transfer;
- (b) that the defendant was to manage the same and pay out the nett income therefrom:
- (i) the sum of Rs. 125,000/- and interest thereon due to Borakanda Estate Co. Ltd. on a mortgage to be entered into in favour of the said Company;
- (ii) the sum of Rs. 275,000/- to the said Marley, deceased, and Eileen Florence Marley by crediting the same to a separate account with the Mercantile Bank Ltd., and
- (iii) the defendant was to maintain an account under the name 'Borakanda Estate' for the purpose of running the Estate. 20
- (12) Was the defendant after the transfer of Borakanda Estate on 20th November 1960, in management of same until 20th February, 1962,
- (13) As at 20. 2. 62, had the defendant:-
- (a) expended a sum of about Rs. 20,000/- of his own money towards the running of Borakanda Estate?
- (b) placed to the credit of Borakanda working A/c. a sum of Rs. 3,993/25;
- (c) paid accruing interest on the sum of Rs. 125,000/- to Borakanda Estate Co. Ltd., in respect of the Mortgage 30 of Borakanda to be duly executed;
- (d) paid to the credit of a separate account called the 'Borakanda Loan A/c' a sum of Rs. 6,000/- against the sum of Rs. 275,000/- referred to above?
- (14) As at 20. 2. 62 were there personal belongings of the defendant to the value of about Rs. 2,000/- on the Estate;

- (15) (a) Did H. J. G. Marley, deceased, and his widow Eileen Florence Marley on 20. 2. 62 along with some thugs take wrongful and forcible possession of Borakanda Estate from the defendant?
- (b) Did Eileen Florence Marley at the express instigation and with the knowledge of H. J. G. Marley, deceased, remove on the night of 20. 2. 62 from Borakanda Estate, rubber to the value of Rs. 15,000/- and coconuts to the value of Rs. 4,000/- and books of account kept by and under the direction of the defendant?
- 10 (16) Was the defendant wrongfully deprived of the possession and management of—
- (a) Borakanda Estate; and
- (b) of his belongings to the value of Rs. 2,000/- on 20. 2. 62 by Marley, deceased, and Eileen Florence Marley;
- (17) Did the defendant thereupon take necessary steps to regain possession of Borakanda Estate, the books of account, rubber coconuts etc.,
- (18) Did the deceased H. J. G. Marley thereupon agree with the defendant whereunder:
- 20 (a) the defendant was discharged of all obligations to pay any monies to H. J. G. Marley, deceased, or Eileen Florence Marley, his widow;
- (b) Agreement No. 227 of 2. 3. 62 attested by R. M. S Karunaratne, Notary Public was entered into between the defendant and Eileen Florence Marley?
- (c) the defendant abandoned all steps taken against Eileen Florence Marley and H. J. G. Marley, deceased?
- (19) (a) Has the defendant been released and absolved from liability to pay any sum of money to H. J. G. Marley, deceased, or to Eileen Florence Marley?
- 30 (b) Is the Estate of H. J. G. Marley, deceased, estopped and barred from making any claim against the defendant?

Mr. Amerasinghe objects to Issues Nos. 9-17 as irrelevant and to Issue No. 18 in the form in which it is drafted and also to Issue No. 19 to the form in which it has been drafted. He says the facts adumbrated in Issues Nos. 9-17 are pleaded. He cites;

No. 4
Issues Framed
—Continued

49 N. L. R. at Page 157.

He says assuming that the issues are all answered in the affirmative, it does not still dispose of the question whether it was a loan or not. He says none of the Issues 9–17 have any bearing on the question whether these sums were lent. He says Issue No. 19 should be recast. He objects to Issue No. 19a.

I accept all the issues and the parties go to trial on them.

Sgd
District Judge.
28. 9. 61.

10

No. 5
Plaintiff's
Evidence.
—
Evidence of M.T.
Jayawardena
-Examination.

No. 5

Plaintiff's Evidence

PLAINTIFF'S CASE

Mr. Advocate Amarasinghe calls.

M. T. Jayawardena: Affirmed Chief Clerk, Securities Department Mercantile Bank of India Ltd., Colombo.

I knew the late Mr. H. J. G. Marley and he was a customer of the Bank. The Mercantile Bank of India Ltd., were his Bankers. (Shown document dated 4. 11. 60 which is produced and marked P1): This is what is described as a Letter of Guarantee signed by the 20 late Mr. Marley to which I myself have signed as a witness. (Mr. Amerasinghe reads out the contents of P1) By this document Mr. Marley guarantees the re-payment of loan facilities up to a sum of Rs. 125,000/-. He also by this document (P1), Clause IV, delivered and deposited with us Fixed Deposit Receipt No. 102/421 dated 16. 11. 59 for Rs. 150,000/- endorsed. I produce the Fixed Deposit Receipt dated 7. 11. 58 P2 which was endorsed by Mr. Marley on this date i. e. 5. 11. 1960.

Q. This fixed deposit receipt is renewed from year to year ?

A. Yes.

Q. And overleaf on (P2) is set out the periodic renewals ?

A. Yes.

30

Q On the day of the Letter of Guarantee P1 dated 4.11.60, what would be the current renewal?

A. This renewal would be made on 7. 11. 60.

Q. As a result of P1 & P2, was a loan of Rs. 125000/- made to Mrs. Marley and the defendant?

A. Yes, there was a loan granted.

Q. Did the defendant and Mrs. Marley sign the prescribed letter to the Bank for opening this Loan A/c?

A. Yes.

10 (Shown a document); This shows the joint opening account, which I produce marked P3. P3 is signed both by the defendant who has signed as D. P. Mellaaratchy and Eileen Florence Marley.

Q. You have with you a certified copy of that current Loan Account?

A. Yes.

This is a joint loan account No. 3396 and certified by our Accountant. I produce this marked - P4.

Q. Was a cheque drawn by the defendant and Mrs. Marley simultaneously with the opening of that account?

20 *A.* Yes.

I have got this cheque. With the opening of this account, a cheque book was issued. They also asked for a cheque book and this is mentioned in the last line of (P3). I produce Cheque No. Q - 804624 dated 29th November, 1960, signed by Eileen Marley and D. P. Mellaaratchy, the defendant in this case for Rs. 125,000/- payable to the Mercantile Bank Ltd., marked P5. (P4) shows that on the 29th November, 1960, the cheque (P5) has been debited.

30 A cheque for Rs 275,500/- was drawn in favour of Borakanda Estate Ltd. No. W-032134 dated 29. 11. 60 on the Mercantile Bank Ltd. I produce this cheque dated 29. 11. 60 marked P6. P6 was a cheque drawn by the Mercantile Bank Ltd. in favour of Borakanda Estate Ltd. The monies were comprised of the loan amount of Rs. 125,000/- plus various other monies which had been furnished by

No 5
Plaintiff's
Evidence.
—
Evidence of M.T.
Jayawardena
Examination.
—Continued

Mrs. Marley and the defendant. These amounts were held in a Suspense Account until the payment of this cheque. (Shown Cheque No. V 591427 dated 7th August 1960 which is produced and marked P7): This is a cheque drawn by H. J. G. Marley for Rs. 50,000/- in favour of D. P. Mellaaratchy, the defendant who has endorsed it overleaf 'please credit to my account' (Mr. Amerasinghe marks the endorsement - P7A.) It has been cleared through the Bank of Ceylon; Nuwara Eliya, who are the payee's Bankers. (Shown Cheque No. V-591459 dated 18th November, 1960 marked P8): This is a cheque drawn by Mr. H. J. G. Marley in favour of Messrs. De Silva 10 & Mendis for a sum of Rs. 17,004/- and paid to the Bankers of Messrs. de Silva & Mendis, the Hongkong & Shanghai Banking Corporation.

I know that Mr. Marley died and the Bank repaid itself what was due on the Loan Account from the fixed deposit. On 31st May 1963 the amount without the last instalment of interest was Rs. 134,776/31. This was without the interest for April and May. The interest from 1st April to 31st May 1963, was Rs. 1,576/98. The Bank paid itself this amount from the fixed deposit of Rs. 150,000/- and issued this receipt to the executors of the deceased. I produce 20 this Receipt dated 12th June 1963 - P9.

Q. In P4 the only credit item paid by the account holders is shown against January 12th, 1961, by Cheque John Keell Thompson White Ltd. Rs. 6000/- ?

A. Yes.

Q. There are no other credits in this account ?

A. No.

The other entries indicate the Debit Tax and the actual interest on the loan. In this Statement of Account (P4) credit has been given for that payment of Rs. 6,000/-. 30

Q. Was another account entitled 'Borakanda Estate A/c' opened with your Bank ?

A. Yes.

The authorised persons who were entitled to sign cheques were Mrs. Marley and the defendant. I produce a certified statement of account of Borakanda Estate Account maintained by Mrs. Marley and the defendant marked P10. This statement is up to 31st July, 1962.

(Adjourned for lunch)

Sgd.

District Judge.

28. 9. 64.

Resumed.

M. T. Jayawardena: Affirmed Recalled.

Cross - Examined by Mr. Advocate Thiagalingam:

No. 5
Plaintiff's
Evidence.
—
Evidence of M.T.
Jayawardena-
Cross-Examina-
tion

(Shown P3. I did not see this document being filled up. I am not a Ledger Clerk in the Bank. Ledgers are kept in loose leaf forms. (Shown P5): I did not see this document being filled up. I cannot indentify the handwriting of the word 'payee', the amount and the word 'yours' on the cheque. The word 'yours' on P5 is the handwriting of the late Mr. Bell. I did not see the plaintiff's
10 lawyers this morning. This morning I was standing out in Court about 10 to 10 o'clock when the plaintiff's lawyers came in. I did not have a conference with the plaintiff's lawyers.

Q. In P5 the words "Rupees One Hundred and Twenty Five Thousand" is also in Mr. Bell's handwriting ?

A. Yes.

Q. And the figure "Rs. 125,000/-" is also in Mr. Bell's handwriting ?

A. Yes.

Q. You did not see it being written ?

20 A. No.

I am the Chief Clerk of the Securities Division. I do not pass cheques. I am familiar with Mr. Bell's handwriting. (Shown P6); I did not see P6 being drawn up. This has been drawn up by one of the Clerks in the Bank. The name of the Payee 'Borakanda Estates Ltd.' is in the handwriting of one of the Clerks in the Bank. I am familiar with the writing of the people in the Bank. The figures 'Rs 125,000/- only' is also in the same handwriting. This has been signed by Mr. Brown and by Mr. Pandithasekera. Mr. Bell was the General Manager and he was a
30 higher officer than Mr. Brown. (Shown letter dated 19th September 1960 which is produced marked - D1): This is a letter from my Bank addressed to Mr. Mellaaratchy, the defendant.

Q. There is a reference in this to the defendant's letter dated 9.9.60?

A. I have not got this letter. This letter must be in the Bank files.

No. 5
Plaintiff's
Evidence.

(Shown letter dated 30.9.60 which is produced marked - D2): This letter also has been written by the Bank.

Evidence of M.T.
Jayawardena-
Cross Examina-
tion

Q By (D2) your Bank agreed to advance up to Rs. 125,000/- on a mortgage of Borakanda Estate, on a first mortgage?

--Continued

A. Yes.

Q. And the amount was to be liquidated by instalments of Rs. 6,000/- to be paid in by John Keell Thompson White Ltd.?

A. Yes.

(Shown letter dated 11.10.60 which is produced marked - D3): This is a letter written by the Bank. This transaction never went through 10
(Shown P1): This document was typed by one of the typists in the Bank. The name of the typist is not here. Normally they do not put their initials on documents but the initials are put down only in letters. The initials of the typist are found usually on letters

Q. Which do you do more in the Bank on letters to parties or on formal documents like this?

A. On letters to parties.

Q. On letters to parties you put down the initials?

A. Just his initials.

Q. On no formal documents are the initials of the typist put 20 down?

A. No.

I did not see this document being typed. (Shown D4): This is a carbon copy of (P1). I have no doubt that they look alike. We did not make 2 or 3 carbon copies of (P1).

Q. In (D4) to whom Bank facilities are to be afforded is not mentioned?

A. It is not mentioned here. It is blank.

Q. Do you know why?

A. I do not know.

Q. In (P1). "Mrs. Eileen Marley" has not been typed at the same time as the rest of the two sentences were typed?

A. They were typed at the same time because this is typed in capital letters.

I am certain of this. This was typed in capitals and those were typed in simple letters. They must have taken the copy of (P1) without the names.

Q. Have you any doubts that (D4) is a carbon copy of P1?

A. It looks a carbon copy. I have no doubt about it.

10 Q. None of the words appearing in (P1) namely, "Mrs. Eileen Marley and Mr. Don Peter Mellaaratcy, Loan A/c" appear in D4?

A. They do not appear.

I have not done any typing myself.

Q. Is the alignment of the types of "Mrs. Eileen Marley" the same as the word "and"?

A. It looks to me the same.

Q. Is the spacing between the upper alignment of the line of "Marley" and the previous typing the same as the spacing between the word "and" and the previous line?

20 A. It is the same.

I was in the Manager's room and I was called up.

Mr. Marley was there and I signed it and went away. Thereafter, I do not know what happened.

Q. Did you read this before you signed it.

A. It was read out by the Manager to Mr. Marley from beginning to the end.

Q. Not that Mr. Marley took it into his hands and read it?

A. Mr. Bell read it and Mr. Marley was there. I was present when it was being read.

30 Q. Do you know that Borakanda Estate had not been bought by 4.11.1960?

A. I do not know.

Q. On 4th November 1960 the fixed deposit slip you did not see?

No. 5
Plaintiff's
Evidence.

Evidence of M.T.
Jayawardena-
Cross-
examination

—Continued

No. 5
Plaintiff's
Evidence.
—
Evidence of M.T.
Jayawardena-
Cross-
examination
—Continued

A. I did not see. I did not see the document (P2).

Q. (P3) bears no date?

A. No.

Q. The word 'loan' in the second line has been interpolated in the manuscript?

A. Yes.

Q. By whom?

A. I do not know.

Q. And the form is a form headed No. 2 Joint Account?

A. Yes

10

I do not know anything of this except that I produced it.

Q. '103' appearing in red ink was first written over the stroke '2'?

A. I think it is 294.

They give certain numbers when these documents are filed in the various files.

Q. '294' has been scored off and made into '300'?

A. Yes.

Q. What does those numbers refer to?

A. An officer of the Bank has done this.

I do not know anything about it. I think some mistake has been done. 20
These files are kept in the Bank and it is kept in serial numbers. I have not brought this book here today but this book is available in the Bank.

Q. I put it to you the word 'loan' has been interpolated later?

A. It cannot be later because it must have been there when the two people were signing it.

Q. Why do you say so?

A. Because it was a joint loan Account and they do not sign unless it was written.

Q. Cannot that be an interpolation?

30

A. It is a joint Loan Account. The word 'loan' can be an interpolation.

Q. The form itself is headed 'No. 2 Joint A/c.'?

A. Yes. The form itself is a form for opening a No. 2 Joint Account. I said that I do not know anything about the document (P3). P3 is a joint application form. I do not know about the filling of P3. There is no No. 1 Joint Account.

Q. Why is it 'No. 2 Joint Account'?

A. It is just printed by the printers.

People have a number of accounts in the Bank and for each account you get a form filled in. (P3) is the form for a No. 2 Joint Account.

10 Q. That is because the people were having more than one account?

A. I do not know.

When an account is opened generally we issue a cheque book.

No Cheque book was issued in respect of (P4).

Q. (P5) is just one cheque leaf produced at the Bank?

A. Yes.

Q. No Cheque book was issued to these people but when they came to the Bank they were asked to sign on the cheque (P5)?

A. Yes.

20 Q. The cheque (P5) must have been given to the drawers from your Bank?

A. Yes.

Q. They were not issued a cheque book?

A. No.

Q. Have you brought the accounts of 29. 11. 60?

A. No.

I know nothing about the cheque (P6) and I was not there.

Q. I put it to you that on 29. 11. 60 Mr. Bell was alive?

A. Yes.

30 Q. I put it to you that Mr. & Mrs. Marley and the defendant came to the Bank on 29. 11. 60?

A. I do not know.

Q. Do you know how this amount of Rs. 257,500/ was made up?

A. Yes.

Q. You looked at the relevant accounts?

A. Yes

Q. When?

No. 5
Plaintiff's
Evidence.
—
Evidence of M.T.
Jayawardena-
Cross-
examination
—Continued

No. 5
Plaintiff's
Evidence.
—
Evidence of M.T.
Jayawardena.
Cross-
examination
—Continued

A. When this cheque was asked to be produced I had to look at the accounts, because I had to know how this amount was made up.

I had to look at the account to get at the cheque. These cheques were filed in serial order from year to year. This particular cheque was drawn by the Bank. There is no account in this case.

Q. How do you know that?

A. Because this cheque had been drawn by the Bank.

Q. There is no account in regard to the Rs. 257,500/-?

A. This is our internal Bank A/c.
There is an account for this cheque.

10

Q. Did you see this account?

A. Yes. I saw it sometime back.

Q. Was it necessary for you to examine that account?

A. As I had to produce the cheque, I had to look into the account.

Q. I put it to you that on 29. 11. 60. the defendant gave to the Manager Rs. 25,000/- in cash?

A. I do not know.

I did not look into the defendant's account but I looked into this particular account.

Q. You know how this sum of Rs. 257,500/- was made up?

A. Yes.

Q. Did it include a payment of Rs. 25,000/- in cash by Mellaaratchy, the defendant?

A. I do not know.

Q. Another Rs. 7,500/- also in cash by Mellaaratchy?

A. I do not know.

Q. When a person pays money to your Bank, do you not open an account for him?

A. There is an account.

Q. Was any account opened for the defendant in your Bank on 29. 11. 60?

A. I do not know.

Q. I put it to you that on this date Mr. Marley paid two cheques for Rs. 100,000/-, Fifty Thousand each?

A. I do not know.

I had to produce this cheque along with another cheque. I looked into the account in regard to the Rs. 257,500/- cheque but I do not know the details of that account now. I had to get this cheque out and I had to look into the account. To get this cheque I had to look into a bundle of cheques. I had to look into the account to see when the cheque was drawn. I was given the date on which the cheque was drawn and I had to look into a file of cheques under that date. If the date is given, you take out the cheque from the cheque bundle.

No. 5
Plaintiff's
Evidence.
—
Evidence of M.T.
Jayawardena-
Cross-
examination
—Continued

10 Q. To trace the cheque (P6) when you were given the date and the amount, you did not have to look into any account?

A. Yes.

Q. Were you asked to find out anything about the loan accounts etc.,?

A. No.

I looked into the accounts in order to make myself conversant because I had to produce them in Court.

Q. Are you conversant with the fact that D4. the carbon of P1 has the names left Bank?

20 A. Yes.

Q. Were you summoned to produce any documents?

A. Yes.

Q. By whom?

A. By the Proctor. A statement was attached to the summons. I have got the summons. I was summoned to come and give evidence in this case. The Manager was summoned to produce or cause to be produced certain documents and the Manager got the documents and gave them to me. The summons was to the Manager to produce certain documents and the Manager wanted me to find out the documents.

30 Q. Were you asked by the Manager to look into the account?

A. I was asked by the Manager Mr. McGregor to be conversant with the loan accounts.

Q. On 30. 11. 60 you opened an account for Borakanda Estate and issued a cheque book?

A. Yes.

Q. Without any money in the account?

A. Yes.

No. 5
Plaintiff's
Evidence.

Evidence of M.T.
Jayawardena-
Cross-
examination
—Continued

Q. And that is the only cheque book you issued to the defendant and Mrs. Marley?

A. I do not know.

(Mr. Amerasinghe states that he has got a photostat copy):

I knew that a photostat copy has been taken by the plaintiff's lawyers. I did not see this file earlier.

Q. From the witness-box you have seen a document?

A. Counsel stated that he has got a photostat copy. I can see this copy.

Q. Does the Bank allow photostat copies of customers' applications 10 to be taken by third parties?

A. Well, if the Manager agrees. I do not know.

Q. There was Mr. Marley's money of Rs. 125,000/- lying in fixed deposit?

A. Yes.

Q. Carrying interest at 2 per cent?

A. Originally at $2\frac{1}{2}$ per cent and raised later to 3 per cent.

Q. You do not know the precise circumstances under which the account (P4) was opened?

A. I did know that it was on a guarantee from Mr. Marley on 20 a fixed deposit. Apart from the signed guarantee, I do not know anything.

Q. The full setting under which the account (P4) was opened, you do not know?

A. It was opened by the Manager himself and I do not know.

Q. Was the application made by the defendant and Mrs. Marley for this loan of Rs. 125,000/-?

A. Yes.

Q. You saw the application?

A. Yes, there is an application. 30

Q. Did you see it being signed?

A. No.

Q. And the application, you say, is this P3?

A. This is the joint application for that loan account.

Q. Is it usual for the Bank to get interpolations in their formal documents initialled by the signatories?

A. This is all handled by the Manager and I do not know what happened.

Q. Is it usual to have interpolations in typed formal documents initialled by the signatories? 40

A. It should be initialled. It is usual for the interpolations to be initialled by the signatories.

Q. Monthly statements are sent by your Bank to the constituents?

A. Yes, on current accounts.

Q. Do you write to your constituents monthly regarding the interest accruing on their loans?

A. We do write.

I do not know whether we write once in 2 or 3 months but it was handled by the Manager. I write in respect of other loans.

10 Q. In respect of loan accounts, you send monthly statements to customers?

A. Not on loan accounts but in respect of current accounts.

Q. In respect of other loan accounts, monthly statements are sent to customers?

A. Yes. It is not my function but it is done at the Bank.

Q. On loan accounts to customers it is the usual practice for setting out what amount is due and what interest has accrued?

A. Yes

Q. But in this case (P4) that was not done?

20 A. I do not know. In the case of loan accounts, we do not normally advise customers what interest is due because the interest is calculated quarterly.

Q. When the quarterly interest is made up, you send a statement setting out the position?

A. Yes.

Q. In the case of (P4) no such thing was done?

A. I do not know because it was handled by the Manager himself.

This account was opened personally by the Manager and all the time
30 handled by him and he is dead now.

Q. This is an unusual thing to do, is it not so?

A. I do not know. It is at the discretion of the Manager.

Q. Has he done that, to your knowledge, in any case?

A. He has done that in a number of cases.

I do not know what the intention of the Manager was. He must have phoned up the customer and told him his balance.

Q. Did the Bank ever call for this sum of money either from the defendant or from Mrs. Marley?

No. 5
Plaintiff's
Evidence.
—
Evidence of M.T.
Jayawardena-
Cross-
examination
—Continued

A. I do not know.

Q. All you know is that after Marley died the executor would appear to have paid the interest money ?

A. Yes.

(Shown P3): The red ink endorsement at the bottom of P3 is in the handwriting of Mr. Pandithasekera. He is one of the signatories to the cheque (P6).

Q. Can you give any reason why on 4. 11. 60 the security deposited was not endorsed ?

A. No. I only witnessed the document (P1). The fixed deposit 10 is done by another Department i.e. the Fixed Deposit Department.

Q. How long did Mr. Bell take to read out P1 ?

A. About 15 minutes. He sat and read it.

Mr. Marley was a long standing client of the Mercantile Bank of India Ltd.

Q. Had he not guaranteed other people before this ?

A. I do not know.

Q. Have you ever gone to the Bank Manager's room and heard Guarantee accounts read out by the Manager ?

A. Before this I had not gone to the Manager's room to 20 witness any document. This is the only time that I had been called to the Manager's room to witness a document.

Evidence of M.T.
Jayawardena-
Re-Examination

Re-examined (Shown letter dated 12.1.61 addressed by the Manager, Mercantile Bank of India Ltd., to Messrs F. J. & G. de Saram - P11). This is the signature of Mr. Pandithasekera. (P11 is read out). There are three annexures to P11 which Mr. Amerasinghe produces marked P11A, P11B, & P11C.

Q. These three annexures have been stapled originally?

A. Yes.

Q. And there is visible evidence of the fact that they have 30 been stapled ?

A. Yes.

Q. And there are marks of rust ?

A. Yes.

Q. P11A also is on a similar form as P3 ?

A. Yes.

Q. P11B is a photostat of P3 ?

A. Yes.

Q. P11C is a photostat of P1 ?

A. Yes.

Q. Therefore, was an account opened in pursuance of P11A ?

A. Yes.

Q. What is that account ?

A. This is the Borakanda Estate Account.

Q. Is (P10) a statement of that account ?

A. Yes.

Q. On (P11A) did Eileen Marley and D. P. Mellaaratchy supply specimen signatures ?

A. Yes.

10 *Q.* You said you are acquainted with the signatures of Eileen Marley and Peter Mellaaratchy ?

A. Yes.

(Shown P7A): This is the signature of Peter Mellaaratchy, the defendant in this case. I was asked about the Rs. 257,500/- cheque. As I said in cross-examination, there is no account in this case because the cheque has been drawn by the Bank. I was referring to the cheque of Rs. 257,500/-.

Q. Where did the Bank have the details of the money which went up to cover this Rs. 257,500/- cheque ?

20 *A.* It has got this in the Suspense Account.

Q. What is this Suspense Account ?

A. It consists of entries like these accounts.

Q. So that there will be a sheet showing the Bank Suspense Account?

A. Yes.

Q. Is this Suspense Account maintained for cheque transactions?

A. We credit it to the Suspense Account until the transaction is finalised.

30 *Q.* In connection with the Loan Account it was only the transaction of Mr. Marley that appeared ?

A. Yes.

Q. In the case of the Suspense Account of the Mercantile Bank would it contain the transaction of only one individual or several individuals ?

A. Of several individuals (Mr. Adv. Thiagalingam objects to this question because it elicits the contents of a document).

Q. Were you also requested to bring the original application of the Borakanda Estate Account ?

A. Yes.

No. 5
Plaintiff's
Evidence.

—
Evidence of M.T.
Jayawardena-
Re-examination
—Continued

No 5
Plaintiff's
Evidence.

Evidence of M.T.
Jayawardena-
Re-examination

—Continued

I have not brought it with me today. I could not find it at the moment I was asked to bring it.

Q. A customer of the Bank is entitled to access to all documents in regard to his Account?

A. Yes.

Q. And that right has been conceded without qualification by your Bank?

A. Yes.

Q. Your Manager had received summons sometime ago with regard to this case?

10

A. Yes.

Q. Was it that after your Manager received summons that you were given certain instructions?

A. Yes.

Q. Any summons from Court in connection with this case relating to this account was it brought to your notice thereafter?

A. I was asked to produce these documents on behalf of the Bank.

Q. Up to the time you were in the box, to your knowledge, was any charge made to your Manager that the document (P3) had an interpolation?

20

A. No.

Q. With regard to the account P4, the only cheque issued to two business account holders was the cheque (P5)?

A. Yes

Q. After P5 was issued was there any fund on which those account holders could have drawn?

A. No.

(With permission of Court, Mr. Advocate Thiagalingam asks):

Q. Originally P11A was made out without the words: "jointly by both" being typed on the form?

30

A. I did not know at that time how it was typed.

Q. At the bottom of P11A there is an endorsement. Do you know when this was written?

A. I do not know when this endorsement was written.

Q. You were to give facilities to the extent of Rs. 125,000/-?

A. Yes.

Q. Against the Rs. 6,000/- he could have drawn?

A. When the Rs. 6,000/- went in it reduced the Loan Account.

Q. Was he not allowed to draw up to Rs. 125,000/- at any time?

A. He was allowed facilities up to Rs. 125,000/-.

No. 5
Plaintiff's
Evidence.
—
Evidence of M.T.
Jayawardena-
Re-examination
—Continued

Sgd ..
District Judge.
28.9.64.

DAVID A. MAARTENSZ: Sworn. Proctor & Notary, Colombo

Evidence of
D. A. Martensz-
Examination.

I was the senior Partner of M/s. F. J. & G. de Saram during the years 1948 to 1962. Prior to that I was a partner of that Firm for several years. I retired in 1962. Subsequently, I have joined M/s. Julius & Creasy Proctors of Colombo as a partner, and I am presently a partner of this Firm. I knew the late Mr. Marley and Mrs. Marley too. I was Mr. Marley's lawyer in certain years. I think it commenced about 1960 and I ceased to be his lawyer in early 1962.

Q. Did you become aware of a proposal regarding the purchase of Berakanda Estate?

A. Yes.

Q. How did you come to know about that?

20 *A.* As a result of some telephone information given to me by Mr. Marley.

Q. Did Mr. Marley take any part in that transaction?

(Mr. Adv. Thiagalingam objects to this question as it is a leading question.)

I allow the question.)

A. Yes. He was present at the first interview and the others present were Mrs. Marley and the defendant in this case. He was to lend part of the money for the purchase of the estate.

Q. To whom was he to lend that?

30 *A.* To Mrs. Marley and Mr. Mellaaratchy.

Q. Were you consulted by Mr. Marley specifically on that matter?

A. Yes.

Q. Do you know ultimately what financial assistance he gave to both of them?

No 5
Plaintiff's
Evidence.
—
Evidence of
D. A. Martensz-
Examination
—Continued

A. Yes. He was to lend Rs. 50,000/- to Mrs. Marley and Rs. 50,000/- to Mr. Mellaaratchy. At the early stage the A. I. C. C. was to lend a part of the price. Later they were not going to lend that money and Mr. Marley had to guarantee a loan of Rs. 125,000/- which the Mercantile Bank guaranteed to Mrs. Marley and Mr. Mellaaratchy.

(Mr. Adv. Thiagalingam states that the question whether what Mr. Marley has stated is admissible in evidence or not he will raise at the end of the trial.)

Q. Do you personally know whether a loan of Rs. 50,000/- was given to Mr. Mellaaratchy? 10

A. Yes.

Q. How do you know that?

A. Mr. Marley sent a cheque for Rs. 50,000/- in favour of Mr. Mellaaratchy, the defendant, to me and, I think, he wrote a letter asking me

(Mr. Adv. Thiagalingam objects to this evidence. I uphold the objection.)

(Shown letter dated 7th August 1960 which Mr. Adv. Amerasinghe produces marked - P12). This is the letter from Mr. Marley which I referred to. I was asked to instruct Messrs De Silva & Mendis to 20 apply this cheque as part of the purchase price for this Estate. De Silva & Mendis were acting for Mrs. Marley and Mr. Mellaaratchy as purchasers.

(Shown P11): I received this letter from the Mercantile Bank and I received the enclosures referred to therein and they are P11A, P11B & P11C. P11 was in the custody of Messrs F. J. & G. de Saram, P11A and P11B were scrutinized by me. I learnt later about the Rs. 125,000/- and the documents P11B and P11C confirmed that.

Q. You know, as a matter of fact, that the sale was completed in respect of Borakanda Estate? 30

A. Yes.

(Shown Deed No. 1419 dated 29. 11. 60 in favour of the defendant and Mrs. Marley which is produced and marked - P13).

Q. Do you know whether any arrangements were made between Mr. Marley and the defendant regarding the repayment of the monies advanced?

A. Yes. Rs. 50,000/- was to be a loan repayable in 2 or 3 years, I am not quite sure which, with interest at 2½ per cent. The rate of interest was to be 2½ per cent.

Q. The interest was to be paid in what period of time?

A. Quarterly.

Q. Was there any agreement with regard to the legal expenses of this transaction?

A. I was not aware of that till later, till after the transaction was completed.

Mr. Adv. Amerasinghe says that he called for the original letter dated 4.3.61 addressed to the defendant by Mr. Marley.

Mr. Adv. Thiagalingam says there is no such letter in the
10 defendant's file.

Q. Did you write to the defendant on the instruction of Mr. Marley on 23.10.61?

A. Yes.

Mr. Adv. Amarasinghe calls for the letter

Mr. Adv. Thiagalingam accepts the receipt of this letter.

Mr. Adv. Amerasinghe produces letter dated 23.10.61 marked P14 which is taken from the custody of defendant's Counsel.

This is the original P14. (Witness reads the contents of P14)
(Shown letter dated 9.11.61, received from the defendant in reply to
20 the letter P14 which Mr. Adv. Amerasinghe produces marked P15)
P15 is a letter from the defendant.

Q. Did Mr. Thurairatnam contact you?

A. Yes.

Q. In P14 Our Ref: sets out the initials D-ED/14?

A. Yes.

D refers to me and ED the clerk who typed the letter. Mr. Thurairatnam represented Mr. Mellaaratchy.

Q. Did Mr. Thurairatnam deny any of the loans set out in your letter?

30 A. No.

Mr. Thurairatnam met me on two occasions. I think the defendant and Mr. Thurairatnam met me on the second occasion. On the occasion the defendant and Mr. Thurairatnam met me, they suggested that the defendant would buy Mrs. Marley's half share of the Estate in order to resolve the difficulties and repay what he owed to Mr. Marley and undertake to repay Mrs. Marley's debt to Mr. Marley.

No. 5
Plaintiff's
Evidence.

Evidence of
D. A. Martensz-
Examination.
—Continued

Q. Did you inform Mr. Marley of those proposals promptly in writing?

A. Yes.

I have got a copy of that letter with me. I set out the details in a letter.

(Mr. Adv. Amerasinghe says the original was sent to Mr. Marley who is dead. He cites Sec. 159 of the Evidence Ordinance. He says the original letter was sent to Mr. Marley and the office copy is available. He says he has mentioned the document for the witness to refresh his memory. He says he comes well within Sec. 159 (3). 10

Mr. Adv. Thiagalingam is heard in reply. He says that as far as copies of letters go, the Section that is applicable is Sec. 65. He says Mr. Marley is the plaintiff and the original must be with the plaintiff. Though Mr. Marley is dead the documents should be available. He says Sec. 159 (3) is not applicable.

I reject the document. If it is allowed, the contents of a letter relating to a transaction can be got out indirectly.)

Q. Did Mr. Mellaaratchy deny his liability to Mr. Marley on these money loans?

A. No.

20

Thereafter, I do not know anything about this matter. These letters which I produce were in the files of Messrs F. J. & G. de Saram. I asked them to lend me this file and I have this file with me at the office of Messrs Julius & Creasy.

Mr. Marley died leaving a Last Will No. 459 dated 9.10.61. I produce a certified copy of the Probate dated 8.12.64 P16 issued in D. C. N. Eliya Case No. 591 along with a certified copy of the Last Will No. 459 of 1961 P16A - and Codicil No. 479 of 1962-P16B.

Mr. Advocate Thiagalingam objects to the production of these documents through this witness. He also does not accept the correctness of the contents of the Last Will. He objects to the contents of the Last Will and the Codicil in toto as not being admissible in evidence and he reserves it for argument. 30

I allow the documents to go in.

On P16 Mr. J. A. Naidoo has been issued Probate in this case.

Q. Apart from the letter dated 9.11.61 from the defendant in reply to your previous letter dated 23/10. did you receive any other letter from him?

A. No, I do not think so.

CROSS-EXAMINED BY ADVOCATE THIAGALINGAM:

The defendant came with Mr. Advocate Thurairatnam with a certain deed. This was sometime in March or April, 1962. The defendant and Mr. Thurairatnam showed me the document. I remember being shown the agreement. (Mr. Advocate Thiagalingam produces Agreement No. 227 attested by Proctor Karunaratne marked D5): He undertakes to prove this document.

No. 5
Plaintiff's
Evidence.
—
Evidence of
D. A. Martensz-
Cross Examina-
tion

10 I do not remember reading D5. I remember being shown the agreement but I cannot remember going through it. I was interested in this matter. This agreement was brought to me by Mr. Thurairatnam and the defendant. Normally, I would have read it or if I was told about the terms of this agreement, I would have said "this is the end of all our troubles".

Sgd.
District Judge.
28. 9. 64.

Further hearing on 29. 9. 64.

29. 9. 64.

FURTHER HEARING

20 Same appearances as on the previous date of trial.
Parties present.

PLAINTIFF'S CASE (Contd:)

DAVID A. MAARTENSZ : Affd. Recalled.

Cross-Examination Continued:

Q. You said yesterday that Thurairatnam and the defendant saw you with the agreement D5 ?

A. Yes.

This was the agreement between Mrs. Marley and Mr. Mellaaratchy.

30 Q. At that time you were watching the interests of both Mr. and Mrs. Marley ?

A. No, of only Mr. Marley.

The contents of this agreement was explained to me by Mr. Thurairatnam. I read the document. In my view it was settled as between the two owners. Mrs. Marley had agreed to meet the liability of Mellaaratchy. Mr. Marley will hold the defendant liable for the debts due to him.

Q. Do you know now that Marley and Mrs. Marley had taken possession of the Estate ?

No. 5
Plaintiff's
Evidence.

Evidence of
D. A. Martensz-
Cross Examina-
tion

—Continued

A. I was told on that occasion that there had been some trouble on the Estate and they had taken possession of the Estate.

Q. Who is the 'they'?

A. I cannot be sure.

Q. Did you or did you not know that the Marleys, both husband and wife, were on the Estate?

A. I was told that either by Mr. Thurairatnam or the defendant. At that time I was acting for Mr. Marley.

I did not mention it to Mr Marley.

Q. You knew according to the agreement that Mrs. Marley had 10 undertaken all liabilities payable by Mr. Mellaaratchy to Mr. Marley?

A. Yes.

Q. Did you mention that to Mr. Marley?

A. I had no occasion.

I was continuing to be his Proctor.

Q. How long after the document D5 was shown to him?

A. I should say at the end of March or early April, when I heard from Mr. Marley that he had decided to appoint Julius & Creasy as his Proctors.

I cannot be sure whether I told of the arrangement between 20 Mrs. Marley and the defendant.

Q. You were acting for Mr. Marley and you were making claims for Mr. Marley against the defendant and you knew about the agreement D5 and, under the agreement, Mrs. Marley had undertaken the liabilities payable by the defendant to Mr. Marley and you say that you did not mention it to Mr. Marley?

A. I was told that at the time Mr. Marley was present. I presumed that when Mr. Marley was present he would have been aware of it.

Till about early April I was a partner of Messrs. F. J. & G de 30 Saram. I was not asked by Mr. Marley to look after the interests of Mrs. Marley.

Q. Did you ever see a letter written by the defendant to Mr. Marley with an endorsement to the effect that he was redeeming a secondary bond and he was instructing De Silva & Mendis to redeem a secondary bond?

Mr. Adv. Amerasinghe objects to this question. Counsel, he says is trying to get out first of all that there was a letter from the defendant to Mr. Marley and, he says, this is the contents of a letter He says the way has not been paved for such a question.

No. 5
Plaintiff's
Evidence.
—
Evidence of
D. A. Martensz-
Cross Examina-
tion

Mr. Adv. Thiagalingam says he is questioning whether the witness has seen such a document. He is not referring to the contents of any document.

—Continued

I disallow the question as it will amount to getting out as secondary evidence the contents of an endorsement without the endorsement
10 being produced.

Q. Did Mr. or Mrs. Marley show you any letter written by the defendant with any endorsement therein?

A. I recall such a letter but I cannot recall the contents.

Q. You recall a typed letter with a handwritten postscript?

A. Yes.

I saw this letter. I have this letter in my file.

Q. Will you produce this letter?

(Mr. Adv. Amerasinghe objects to the production of this letter)

Q. The letter is in your file in Court?

20 A. I believe so.

I have brought this file to Court.

Q. You are aware that the plaintiff has listed that letter?

A. I am not aware.

Mr. Adv. Thiagalingam - you can take it from me that the plaintiff has listed that letter.

Q. Who showed you that letter?

A. I cannot recall who showed it. I think it must be Mr. Marley

Q. Not Mrs. Marley?

30 A. The chances are that it was Mr. Marley. I have discussed these matters with Mr. Marley on many occasions.

Mr. Adv. Amerasinghe moves to mark a document at this stage from his custody.

Mr. Adv. Thiagalingam objects to the marking of any document at this stage by plaintiff's Counsel.

Mr. Adv. Amerasinghe withdraws his application to mark this document.

No. 5
Plaintiff's
Evidence
—
Evidence of
D. A. Martensz-
Cross-Examina-
tion
—Continued

Q. You obtained the file from Messrs. F. J. & G. de Saram?

A. Yes.

Q. And that file is in Court?

A. Yes.

Q. And in that file is the letter you have referred to all this time?

A. Yes.

Q. Will you produce that letter?

A. May I have that file.

(The witness calls for the file): Mr. Adv. Amerasinghe objects and asks under what procedure Mr. Thiagalingam can call for the file 10 and he cannot compel the witness to produce it.

Mr. Adv. Thiagalingam says he asks the witness for a document and he has got the document which he wants to produce. He says Counsel cannot object to the witness producing that document.

(Mr. Adv. Amerasinghe hands the letter to Mr. Thiagalingam.)

(Mr. Adv. Thiagalingam produces letter dated 12. 1. 61 marked D6 which has been taken from the custody of Mr. Adv. Amerasinghe):

Q. How did this letter get into F. J. & G. de Saram's file?

A. I cannot recall. Mr. Marley sent it to me.

Q. With a covering letter?

20

A. Yes.

Q. Will you produce that letter?

(Witness hands over this covering letter to Mr. Adv. Thiagalingam who produces it marked - D7 - dated 19. 2. 61.)

Q. Did you move in the matter in accordance with the request of Mr. Marley as contained in D7?

A. Yes. I wrote to De Silva & Mendis.

Q. And what happened. Was any mortgage given?

A. No.

Q. You moved in the matter but nothing came out of it?

30

A. Yes.

Q. Did you tell Mr. Marley about this that nothing came out of it?

A. I went abroad on leave very shortly after that and I do not think I told Mr. Marley.

Q. And nothing further took place as far as the letter (D7) was concerned?

A. My office wrote to M/s. de Silva & Mendis about this while I was away.

Q. Eventually did anything turn on this or was any mortgage given?

A. No.

Q. At the end of 1960 were you acting for the Marleys?

A. I was acting for Mr. Marley.

Q. Were you also acting for the Bank?

A. Yes.

10 Q. Were you acting for Mrs. Marley?

A. No.

(Shown letter dated 12. 1. 61 - P11):

Q. This letter is headed "Marley, Mellaaratchy Joint Account"?

A. Yes.

Q. Who is the Marley there referred to?

A. This is Mrs. Marley i. e. Eileen Marley and I know her very well.

Q. Were you acting for Mrs. Marley?

A. No. I was not acting for her.

20 Q. Did you go to the Mercantile Bank in connection with the Marley/Mellaaratchy Joint Account?

A. No.

Q. Did you request the Mercantile Bank to enclose for your perusal the Joint Account opening forms of the Marley/Mellaaratchy Joint Account?

A. Yes.

Q. Why?

A. Because on behalf of Mr. Marley I wanted to see what he had undertaken. I was told that he had signed a guarantee and I 30 wanted to see what the transaction was.

I wanted to examine the guarantee on his behalf.

Q. Did you want to examine the Joint Account opening forms of the Marley/Mellaaratchy Joint Account?

A. No.

I want to correct myself. Having been told that Mr. Marley had guaranteed a joint account, I wanted to see the nature of the transaction between Mr. Marley and Mr. Mellaaratchy, on the one hand, and on the other, to see what guarantee Mr. Marley had undertaken.

No. 5
Plaintiff's
Evidence.

—
Evidence of
D. A. Martensz-
Cross Examina-
tion

—Continued

No. 5
Plaintiff's
Evidence
—
Evidence of
D. A. Martensz-
Cross-Examina-
tion
—Continued

Q. Why did you want to see the Joint Account opening forms?

A. You must see all the documents to see what he has under-
taken.

Q. Did Mr. Marley tell you to see that?

A. I probably told him that I wanted to see that.

The date of this document P11 is 12. 1. 61. I say that I wrote to Mr. Marley on 16. 1. 61 by D.8 saying that it was disturbing to find that he had guaranteed this sum of Rs. 125,000/- and I probably said that in his interests that I would like to see the documents.

Q. Was it after 16/1 that you saw the documents? 10

A. No.

(Mr. Adv. Thiagalingam moves letter dated 16. 1. 61 - D8):

Q. In this letter you say: "It is disturbing to find that although Mellaaratchy clearly told me that he was putting up Rs. 50,000/-, he has only put up half that sum", That is correct?

A. Yes.

Q. Mellaaratchy told you so that he was going to give Rs. 50,000/-?

A. That was the original arrangement.

Q. Did Mellaaratchy tell you?

A. Yes, at the first meeting we had in our office. This was, I 20
should think, in August, 1960.

Q. Did you have a conference at Nuwara Eliya in February, 1961?

A. Yes. I remember that very well.

Q. At that conference did Mellaaratchy say that he could put in no more than Rs. 25,000/-?

A. He may have said so but I cannot recall. The transaction had already been completed.

Q. And Mellaaratchy took up the position that he could not just do anything more? 30

A. Yes. Probably.

Q. Prior to 12. 1. 61 you had gone and seen the Bank Manager personally?

A. I think I telephoned him.

Q. Was it at the request of Mr. Marley?

A. I think I did it on my own responsibility in his interests.

(Shown P11A):

Q. You see that is an application to open an account?

A. Yes.

Q. Originally the third line was left intact?

A. 'Signed by anyone of us' has been scored off and 'Jointly by both' has been typed in.

I do not know how this came to be put in. The endorsement at the bottom is in the handwriting of Mrs. Marley and I am familiar with it.

Q. Do you remember advising Mrs. Marley to make the endorsement?

A. No. I did not. I was not even aware of it.

10 (Shown part of a document. Mr. Advocate Thiagalingam says the defendant will get into the box and tell Court why only part of a letter is being produced. Mr. Advocate Thiagalingam produces this letter marked D9):

Q. Can you identify the handwriting?

A. It is Mrs. Marley's.

(Mr. Advocate Amerasinghe says that a letter written by Mrs. Marley has been identified but the facts set out have not been proved. He objects to the contents of the letter D9 being admitted.

This document is admitted subject to the objection. Witness
20 reads out this document.)

Q. Can you remember now that document being given to you by Mrs. Marley?

A. No. It was given to me by Mr. Marley.

Q. Did she bring that letter of Mr. Marley to you?

A. I cannot recall.

Q. It was in Mr. Maartensz's file and not in the file of F. J. & G. de Saram?

A. Yes.

I have not the faintest idea what she referred to in the next
30 sentence.

Q. I put it to you that it was at your request that Mrs. Marley made this endorsement on (P11A)?

A. Honestly, I do not think so.

I had nothing to do with this. They had borrowed money from the Bank against the deposit and Mr. Marley had guaranteed it. It was only after the matter was finished that I was told about it.

Q. You know nothing about this deed till the whole thing was finished?

A. From August 1960, I knew about it.

No. 5
Plaintiff's
Evidence.

—
Evidence of
D. A. Martensz-
Cross Examina-
tion

—Continued

No. 5
Plaintiff's
Evidence

Evidence of
D. A. Martensz-
Cross-Examina-
tion

--Continued

Q. You did not know what Marley had done till the whole thing was finished?

A. Yes.

Q. Why did you ask for photostat copies?

A. I asked for copies.

Q. Precisely can you think of any better reason for asking for these copies?

A. I was asked for documents relating to Mr. Marley's guarantee.

Q. Why is it headed 'Marley - Mellaaratchy Joint Account'?

A. Because I was told that Mr. Marley had guaranteed the 10 Joint Account.

I asked the Bank to send me the documents relating to the guarantee.

Q. Did you ask the Bank to let you have the Marley-Mellaaratchy Joint Account?

A. No.

Q. Have you seen these documents at the Bank before you got these photostat copies?

A. No.

Q. Your recollection; is it very fresh in your mind or is it hazy? 20

A. I referred to the file recently but so far as some of these matters are concerned, I am fairly clear.

Q. The defendant in connection with the purchase of the property called Ryegate, Nuwara Eliya, was dealing with your Firm?

A. Yes.

Q. And he would himself talk to you about his personal affairs?

A. Not his personal affairs.

Q. Could you be making a mistake when you referred to a conference where everybody was present in 1960?

A. I do not think so. 30

Q. How many conferences did you have with Mr Marley, Mrs. Marley and the defendant?

A. One major one that is at the beginning I could think of. I cannot recall any others.

Q. I put it to you the first time you really had a conference with all these three people was in February, 1961?

A. No. I was telephoned by Mrs. Marley to say that she and the defendant were going to headquarters, to their rubber estate, and she wanted to come and see me about it.

The conference was held in August 1960, and it was at this conference that the whole arrangements were discussed and I attempted to dissuade all concerned from proceeding with it.

Mrs. Eileen Marley wrote to me and I was acting for both Mr. and Mrs. Marley. Mrs. Marley rang me up and asked for an appointment. I was not acting for Mrs. Marley. I called the conference at her request. She asked me for an appointment and I asked them to come down. She, Mr. Marley and Mr. Mellaaratchy came there. This conference was not called by me at all. Mrs. Marley asked for an appointment and I gave an appointment and she brought all concerned down. I did not convene the conference. By giving an appointment for Mrs. Marley, I was acting at the request of Mr. Marley. I said that I tried to dissuade them from going ahead with the transaction. I tried to dissuade Mrs. Marley and the defendant.

At that stage, the suggestion was made of Rs. 50,000/- and that is my recollection. The defendant did not say that he could not do more than Rs. 25,000/-.

Q. Do you know now even that the Rs. 25,000/- the defendant paid was on a loan he got from the Bank of Ceylon on the guarantee by Mrs. Marley?

A. No.

Q. Till now you did not know?

A. No.

(Witness asks from Counsel for the date of the Borakanda transfer. Mr. Advocate Thiagalingam refuses to give the date.)

The conference was to discuss the question of proceeding with the purchase of Borakanda Estate. I did not keep a note of that conference. I do not think so.

Q. I put it to you the defendant tells me that he was unable to put in any money at all and that he agreed to put in Rs.25,000/- provided the Bank of Ceylon gave him a loan of Rs. 25,000/- on the guarantee of Mrs. Marley?

A. I am not aware of it.

Q. The defendant tells me that he told you at the conference?

A. I am certain it was not mentioned.

Q. Do you know now as a fact that the defendant paid Rs. 25,000/- against the consideration with monies borrowed from the Bank of Ceylon guaranteed by Mrs. Marley?

No. 5
Plaintiff's
Evidence.

—
Evidence of
D. A. Martensz-
Cross Examination

—Continued

No. 5
Plaintiff's
Evidence
—
Evidence of
D. A. Martensz-
Cross-Examina-
tion
—Continued

(Mr. Adv. Amerasinghe objects to this form of questioning). I allow the question.

A. No.

Q. Marley never told you about it?

A. No.

Q. Did Marley tell you that he had authorized the defendant alone to sign all cheques in connection with Borakanda Estate?

A. No.

Q. Did Mrs. Marley state so?

A. No.

10

Q. At the end of January Marley fell ill?

A. He was ill oft and on.

Q. You wrote on 16/1 that the Estate must be put on a proper footing and, in view of the form that the transaction had taken, it was necessary for him to alter his Will?

A. Yes.

Q. You it was who told Marley that he should alter his Last Will?

A. Yes.

Q. After this letter (D8) can you remember now the conference here in Nuwara Eliya in February?

A. Yes.

Q. Who asked you to attend that conference?

A. I think I invited myself, as far as I can remember, because I was going abroad and I thought I should see Mr. Marley before I left and I offered to come down to Nuwara Eliya.

Q. At that conference you suggested that the property should be sold?

A. That was one of my suggestions.

No, I do not think I suggested that. I think it was towards the end of the conference that Mr. Mellaaratchy said he will find a buyer.

Q. Did you make the suggestion?

A. No, I do not think. The defendant I think said that he would find a buyer to end all this unhappy situation i. e. the differences between Mrs. Marley, Mellaaratchy and Mr. Marley.

Q. The defendant took up the position that his part in the transaction was only Rs. 25,000/-?

A. No. Not even on 5/2.

Q. Did you tell Court yesterday that you knew even about the guarantee of a loan; you personally knew about Marley's guarantee to the Mercantile Bank in regard to the loan to both Eileen Marley and the defendant?

A. I became aware of it after the guarantee had been given.

Q. Was it in August 1960 - was there any suggestion that Marley was to advance any loans to the defendant?

A. In August 1960 yes.

(Witness asks to look at his file): Originally the idea of a loan was from the A. I. C. C. for 2 lakhs. Mrs. Marley was to provide Rs. 50,000/-; Mr. Mellaaratchy was to provide Rs. 50,000/- and Mr. Marley was to make a loan of one lakh of rupees. This is the copy of a letter to De Silva & Mendis. This is the copy of a letter that I wrote.

(Mr. Adv. Thiagalingam marks letter dated 9. 8. 60 marked - D10)

Q. That is all that transpired in August?

A. In August or may be at the end of July. The conference that we had in August resulted in this. This was not confirmed by anybody. I do not think so

Q. You have not noted here to whom Marley was giving this loan?

A. It may be in the rest of the letter.

(The contents of the letter is read out): This is the information that was given to me by Mr. Marley. This was the arrangement made at the conference.

Q. Do you refer here to the alleged conference in any part of the letter at all. If so, read out that sentence.

A. No. There is no reference to the conference.

Q. By that letter you were writing to the Proctors for the defendant?

A. Yes, for the defendant and Mrs. Marley. They were acting for the purchasers.

Q. And you wrote the letter on the instructions of Mr. Marley?

A. Yes.

Q. And Mr. Marley gave you all this information?

A. I said before that this was the result of the conference.

There is nothing in the letter to vouch for the conference.

Q. On the other hand, the letter says that you have given certain instructions and information to Mr. Marley?

A. Yes. The earlier para: says 'we understand so and so as a result of the conference'.

No. 5
Plaintiff's
Evidence.
—
Evidence of
D. A. Martensz-
Cross Examina-
tion

—Continued

No. 5
Plaintiff's
Evidence

Evidence of
D. A. Martensz-
Cross-Examina-
tion

--Continued

Q. And the rest was as a result of what you were told by Mr. Marley?

A. As a result of the conference.

Q. Did anyone accept the fact that the defendant was going to give Rs. 50,000/- as a result of this letter?

A. No.

Q. There was a conference in February, 1961?

A. Yes.

Q. Did Marley write a letter to you on 18. 1. 61?

A. Yes.

10

(Witness produces this letter from his file and hands it over to Mr. Adv. Thiagalingam. Mr. Thiagalingam marks letter dated 18.1.61 marked - D11):

This letter refers to a letter of mine of 16/1. I have not got a copy of the letter dated 16/1 in my file which is before me.

Q. The opening sentence in (D11) reads:

"I thank you for yours on the subject Borakanda of 16/1"?

A. Yes.

Q. You wrote on the subject of Borakanda?

A. Yes.

20

(Mr. Adv. Amerasinghe draws the attention of Mr. Adv. Thiagalingam to the fact that D11 is the same as D8):

I wrote to Mr. Marley on 16/1 and we had agreed to meet the day before but it did not take place. I told him that I would come up. I told Court that a conference was being arranged because trouble was brewing between all three people: In response to (D8) Marley wrote to me (D11). In response to D11 I wrote D12 dated 23.1.61 to Mr. Marley. (Mr. Adv. Thiagalingam marks letter dated 23. 1. 61 marked - D12): At the bottom of this there is an endorsement by Mr. Marley to Peter, the defendant.

30

Q. According to you at that conference Mellaratchy said: "let us get rid of this Estate and let us sell it"?

A. Yes.

Q. At that time the produce of the Estate was being sent to John Keell Thompson White & Co. Ltd.?

A. No.

(Witness says: May I tell something that comes to my mind. Counsel says No. answer my question.)

Q. You are making a mistake - the produce had been sent to John Keell Thompson White & Co. and they had sent a cheque to the Mercantile Bank?

A. I adhere to my previous answer.

Q. At that conference did you suggest that the produce be sold to Mackwoods?

A. I did not.

Q. Was any suggestion made that it should be sold by Mackwoods?

A. I have suggested that Mackwoods should be appointed Agents to look after the Estate, which would naturally mean they would sell the produce.

Q. The Estate belonged to whom?

A. Mrs. Marley and Mr. Marley.

Q. On whose behalf were you suggesting that Mackwoods should be appointed Agents?

A. On behalf of Mr. and Mrs. Marley.

Q. By that time both the Marleys had appointed Jaleel as their Attorney?

A. I had not seen any Power of Attorney. I knew that they had mentioned the fact that they had appointed Jaleel to look after their interests.

Q. Did not Marley tell you that he and Mrs. Marley had appointed Jaleel as their Attorney?

A. I was told that Mrs. Marley had appointed Jaleel to look after her interests but not Mr. Marley.

Q. Jaleel was the Superintendent of Mackwoods?

A. Frankly, I would not be sure.

Q. When the A. I. C. C. loan fell off, do you know that there was a suggestion that the money should be raised from the Mercantile Bank on a mortgage?

A. I think so, yes.

Q. You were acting for the Bank on that matter?

A. I do not know whether we received any specific instructions. There was a discussion. It was between Mr. Marley and Mellaaratchy, on the one hand, and the Bank on the other.

Q. You have no recollection of your having acted for the Bank in that connection?

A. I cannot remember.

No. 5
Plaintiff's
Evidence.

—
Evidence of
D. A. Martensz-
Cross Examina-
tion

—Continued

No. 5
Plaintiff's
Evidence

Evidence of
D. A. Martensz-
Cross-Examina-
tion

—Continued

Q. Do you remember calling for a fee of Rs. 2,700/- including stamps and Mr. Marley saying that was too much?

A. It may have been but I do not know.

Q. Then that was a matter which would have been ordinarily dealt by you?

A. No

(Shown letter dated 18th October, 1960--D13): This is a letter written by my Firm to the defendant. Mr. Thampoe has signed this letter. We have called for a fee in connection with a mortgage to the Mercantile Bank, including stamps, of Rs. 2700/-? 10

Q. Now you remember that you were going to draw up a bond for the Bank?

A. Yes.

Q. And you cannot tell why that scheme was abandoned?

A. No.

Q. Did Marley tell you that it was ridiculous to pay all that money to the Bank when he had monies in the Bank?

A. I do not think he did.

Q. After the conference on 5. 2. 61, did you have any other conferences with all these people? 20

A. No.

Q. When the proposed mortgage to the Mercantile Bank failed, in connection with certain preliminary work you had done, you sent a bill for Rs. 553/-?

A. Yes

Q. By whom was that paid?

A. I do not know.

(Mr. Adv. Thiagalingam produces bill dated 14. 11. 1960 marked-D14).

Q. I put it to you that it was paid by Marley?

A. It may be but I have no idea at all. 30

Q. On 5. 2. 61 did you suggest either to Mr. Marley or Mrs. Marley that they may have Jaleel as their Attorney?

A. No

(Shown letter dated 7. 1. 60 the original of which has been filed in District Court Balapitiya Case No. M-1207 under the marking D1. Mr. Adv. Thiagalingam says that he would be putting a certified copy of it which he marks as - D15):

(Shown letter D15 to the witness): The writer of this letter is Mrs. Marley.

Mr. Adv. Amerasinghe objects to the contents of the document as being proof of the facts referred to. (Witness reads out the third paragraph of this letter.)

No. 5
Plaintiff's
Evidence.

Q. Can you remember now that both the Marleys had given a Power of Attorney to Jaleel?

Evidence of
D. A. Martensz-
Cross Examination

A. No. I do not remember.

—Continued

(Mr. Advocate Amerasinghe objects to this question. He says the letter has been marked and he objects to the whole document D15 being acted upon at all by Court)

10 Q. At the interview did Mellaaratchy say that he would look for a purchaser?

A. Yes.

Q. Did you say: 'if you do not find a purchaser, Mackwoods must take over'?

A. Yes.

Q. And did Mackwoods take over?

A. No.

Q. On 15.2.61 you got a letter from the defendant?

A. Yes.

20 (Witness hands over the original of this letter from his file to Mr. Advocate Thiagalingam. Mr. Thiagalingam marks this letter dated 15.2.61 marked - D16)-

Q. You have written to the defendant on behalf of Mrs. Marley in regard to the management of Borakanda?

A. I think so.

Q. In D16 the defendant wrote to you that he had nothing to do with you, in effect?

A. No, I do not think so.

30 Q. At the date of this letter (D16) were you acting for Mrs. Marley?

A. I suppose in that context, yes.

Q. And you replied to this letter (D16) by a letter dated 18.2.61?

A. Yes.

(Mr. Advocate Thiagalingam produces letter dated 18.2.61 marked-D17): Mr. Thiagalingam reads out D17

Q. Did the defendant undertake to sell it?

A. No.

Q. You were acting for Mrs. Marley?

A. Yes.

No. 5
Plaintiff's
Evidence

Evidence of
D. A. Martensz-
Cross-Examina-
tion

—Continued

Q. This was in February, 1961?

A. Yes.

Q. This was within 3 months of the purchase of Borakanda Estate?

A. Yes.

Q. Then in March, April, May, June & July nothing happened?

A. I was out of the Island.

Q. On 8th August 1961 you wrote to the defendant calling for the accounts of Borakanda Estate?

A. Yes, in connection with Marley's Income Tax. It was not written by me. 10

(Mr. Advocate Thiagalingam produces letter dated 8. 8. 61 marked-D18) Mrs. Marley's income would be added to Mr. Marley's tax.

Q. Did not Mr. Marley ever tell you that saving of Income Tax for him and his wife would be profitable?

A. No. I did not deal with the Income Tax side of the matter.

Q. At no conference in 1960 or 1961, did he tell you?

A. No.

Q. One thing is clear that, as far as you know, Mr. Marley had got no writing from the defendant prior to November 1960, in regard to what he was going to pay for the purchase price of Borakanda? 20

A. As far as I am aware, no.

Q. The Last Will (P16A) was your draft?

A. I think so.

Q. You could not attest his signature and you sent it to Proctor Bartholomeusz?

A. Yes.

Q. It is usual for your Firm when a case is filed outside Colombo to instruct a local practitioner to appear for your client?

A. Yes. 30

Apart from filing the proxy, everything is done by our Firm.

Q. The Last Will formulates precisely the claim set out in this case?

A. I do not know what the claim set out in the case is and I will have to look at the pleadings. (Shown plaint in this case) The plaintiff claims the money on the same basis as formulated in the Last Will.

This is the Will dated 9. 10. 61.

Q. At that time you were also acting for Mrs. Marley?

A. It is difficult to say for whom I was acting for during that time. 40

Q. Mrs. Marley filed an action against the defendant in the Balapitiya Court?

A. I have heard of it. I was not concerned about it.

Q. Did your Firm or you suggest to Mr. Clarence de Silva to appear for Mrs. Marley?

A. I do not know Mr. Clarence de Silva. I may know him by sight.

Q. Within about 15 days of the Last Will you wrote the letter (PI4)?

10 A. Yes

Q. Formulating the claim set out in the Last Will?

A. Yes, formulating the facts in the claim.

Q. In this letter you start the para: with the words: "you recall the following facts"?

A. Yes.

Q. You refer to a discussion between Mrs. Marley and the defendant in your presence?

A. Yes.

20 Mr. Marley? Q. Then under bracket (2) you refer to a cheque drawn by

A. Yes.

Q. From where did you get the particulars of that cheque?

A. I believe the cheque number is referred to in one of the letters written by me to De Silva & Mendis.

Q. And then you also refer to a cheque drawn to De Silva & Mendis under bracket (3)?

A. Yes.

Q. Then the rest of the letter is only on instructions of Mr. Marley?

A. Yes.

30 Q. The rest of the letter did not refer to any arrangements arrived at your office?

A. Yes.

Mr. Marley had told me to file action. Mr. Adv. Thurairatnam knew me very well, and he saw me in this connection

Q. Thurairatnam told you what the defendant had told you?

A. Yes.

Q. And the position was that the whole thing is incorrect?

A. No.

40 Marley Q. Do you know that within 10 days of that Last Will Mrs. had sent a letter of demand to the defendant?

A. No, I do not know.

No. 5
Plaintiff's
Evidence.

—
Evidence of
D. A. Martensz-
Cross Examina-
tion

—Continued

No. 5
Plaintiff's
Evidence
—
Evidence of
D. A. Martensz-
Cross-Examina-
tion
—Continued

Q. You remember acting for Mrs. Marley?

A. It is very difficult to say acting for her. I gave her advice.

Q. Did you advise her to go into the Balapitiya Court and file action?

A. I did not advise her to do this.

Q. Did Mrs. Marley show you any letters written to her by the defendant?

(No answer.)

(Shown a document filed in Balapitiya Case No. M-1207 bearing No. (P3), a certified copy of which Mr. Adv. Thiagalingam produces 10 and marked-D19):

I identify the signature as that of the defendant written to Mr. Clarence de Silva, Proctor & Notary. Mrs. Marley did not show this letter to me.

Q. Did you know that shortly after the Last Will the defendant took up a certain position that the money was Mr. Marley's money and that he was sacrificing time and labour to do this and that he was not working for Mrs. Marley?

A. I do not know.

Q. Read the second para: aloud to Court: (Mr. Adv. Amerasinghe 20 objects to this question because the document is not in.)

This document has not yet been proved even though the defence has undertaken to call the defendant to prove this document. In the circumstances, I disallow the question.

Q. Shortly after the letter (P15) Mr. Thurairatnam telephoned you?

A. Yes. He telephoned to me sometime. I cannot say when.

(Shown letter dated 13. 11. 61 which Mr. Adv. Thiagalingam produces marked-D20):

Mr. Adv. Amerasinghe objects to the document (D19) being on the record, D19 will be on the record till it has been admitted and proved. 30

(Adjourned for lunch):

Intd:

District Judge.
29. 9. 64.

RESUMED:

DAVID A. MAARTENSZ: Affirmed. Recalled.

Cross-examination Continued

Q. P14 was followed up by P15?

A. Yes.

Q. And P15 was followed by this letter D20 dated 13. 11. 61 by you to Mr. Thurairatnam?

A. Yes.

(Witness reads out this letter).

Q. Are the contents of the letter correct?

A. Yes.

Q. Marley had asked you promptly to file action?

A. Yes.

Q. And you sent a copy of that letter to Mr. Marley?

10 A. Yes

Q. Thurairatnam saw you thereafter?

A. Yes

Q. I put it to you that Thurairatnam said the whole thing was a make-up by the Marleys?

A. No.

Q. And Thurairatnam told you that the only way to end this was by probably finding a buyer?

A. He probably said so.

20 Q. He rang you up and did you say that you were going to Nuwara Eliya?

A. I may have but I cannot remember.

Q. In point of fact, in December 1961 to January 1962, were you at Nuwara Eliya?

A. I cannot remember.

Q. You did not file the action in the month of December?

A. No.

Q. On 12. 1. 62 you wrote a letter to Thurairatnam?

A. Yes.

(Mr. Adv. Thiagalingam marks letter dated 12. 1. 62-D21);

30 Q. I am instructed that Thurairatnam rang you up and you were not in office and in reply to a message, he sent the letter (D21)?

A. I cannot recall.

Q. The next thing you knew of this matter was Thurairatnam calling on you at the end of February with the document attested by Mr. Karunaratne (D5)?

A. No. he called on me i. e. Mr. Mellaaratchy and Thurairatnam called on me on 2. 2. 62.

No. 5
Plaintiff's
Evidence

Evidence of
D. A. Martensz-
Cross-Examina-
tion

—Continued

No. 5
Plaintiff's
Evidence.
—
Evidence of
D. A. Martensz-
Cross-Examina-
tion
—Continued

I am reading from a letter I wrote to Mr. Marley. (Mr. Adv. Thiagalingam produces letter dated 3. 2. 62- D22):

This is a copy of a letter written by me to Mr. Marley.

Q. In the letter (D22) there was no indication that Mellaaratchy accepted the correctness of any claim by Mr. Marley?

A. He says that he agreed to pay.

Q. Or does this letter mean this: 'the defendant was willing to buy over the Estate and was willing to pay all amounts due to Marley'?

A. It means the same thing.

Q. Did Marley accept this proposal? 10

A. I had no reply from him.

Q. The next you knew was that on the night of 20/2 the Marleys had taken possession of the Estate?

A. I do not know the date. The day that Thurairatnam and Mellaratchy called on me and showed me the agreement D5 I knew about it. This would be at the end of February or the beginning of March.

Q. I put it to you you were expecting Thurairatnam to call on you?

A. I was expecting to be informed.

Q. Would it be that Thurairatnam saw you after 12/1 and you wrote on 3/2? 20

A. He must have seen me after the 12th and I wrote on 3/2.

Q. You told Court that either the contents were mentioned to you or you read the document D5?

A. Yes.

(Shown D5 from the record):

Q. The contents of Paras: 5 and 6 in D5 were either read by you or mentioned to you?

A. Yes.

Q. And Para: 7? 30

A. Yes.

Q. I am told by the defendant that you read the whole of that document?

A. I cannot recall having read the whole document.

Q. According to the agreement Mrs. Marley was to pay off all the liabilities due to Mr. Marley?

A. Yes.

Q. And she was also liable to pay the money due on the proposed mortgage on Borakanda Estate?

A. Yes.

Q. Theaerafter, Marley never raised the matter with you and you never raised the matter with him?

A. Yes.

Q. And, thereafter, he never wrote to you to file action against anybody?

A. No.

Q. He lived after Thurairatnam and the defendant showed you the document (D5) for well over one year and 3 months?

10 A. I do not know exactly when he died.

Q. He was alive for the whole of 1962?

A. I do not know. I just do not know when he died.

Q. Till his death he never raised the question of any action against the defendant?

A. No.

Q. Do you know that shortly prior to this agreement (D5) Mrs. Marley had filed action against the defendant in the Balapitiya Court?

20 A. I did not know till you mentioned it yesterday and I saw it in the agreement (D5).

Q. And she undertook to withdraw that action?

A. Clause 10 says it.

Q. Do you know that in spite of this Mrs. Marley obtained an Ex-Parte decree against the defendant?

(Mr. Adv. Amerasinghe objects to this question. Mr. Adv. Thiagalingam withdraws it.)

Q. In 1962 you were at Messrs. Julius & Creasy?

A. No.

Q. In April 1962?

30 A. No. I was with F J. & G. de Saram.

Q. The Executors appointed under the Last Will of Mr. Marley were the two senior partners for the time being of Messrs. Julius & Creasy?

A. I do not know.

Q. Who are the senior partners of Messrs. Julius & Creasy now?

A. They are Mr. Naidoo and Mr. A. R. M. Fonseka. Mr. Naidoo is the senior partner. He is Arelupar Naidoo.

(Shown letter dated 5. 4. 62 written by Messrs Julius & Creasy which is produced marked -D23):

No. 5
Plaintiff's
Evidence.
—
Evidence of
D. A. Martensz-
Cross-Examina-
tion
—Continued

This letter has been signed by Mr. Naidoo who is the plaintiff in this case.

Q. Have you got this file in Court?

A. No.

(Mr. Adv. Thiagalingam calls for the file from the witness who is now at Messrs. Julius & Creasy):

Q. Julius & Creasy received a reply on 10. 4. 62?

A. I do not know.

I left Messrs. F. J. & G. de Saram on 1. 8. 62 (Shown letter dated 17. 4. 62 marked - D24; Shown letter dated 18. 4. 62 marked - D25; 10 Shown letter dated 5. 6. 62 marked - D26; Shown letter dated 12. 5. 62 marked - D27; Shown letter dated 23. 5. 62 marked - D28):

Q. All these letters D24 - D28 have been signed by Mr. Naidoo, the plaintiff in this case?

A. All except D24 which has been signed by Mr. Mirando.

Q. The letters D25 - D28 have all been signed by the plaintiff in this case?

A. Yes.

(Shown a certified copy of a plaint dated 12th July 1962, filed in District Court (Colombo Case No. 1003Z by Messrs. Julius & Creasy 20 which is produced - D29)

Q. This is a plaint filed by your Firm?

A. Yes.

Q. The plaint has been settled on instructions of your Firm by Mr. K. E. S. Amerasinghe and Mr. H. W. Jayawardena Q. C. ?

A. Yes.

Q. The statement in Para: 3 that of the said consideration a sum of Rs. 275,000/- was paid and provided by the plaintiff and her husband, H. J. G. Marley. Is this correct?

A. No.

Q. And only a sum of Rs. 25,000/- was paid by Peter Mellaaratchy: Is this correct?

A. Yes.

Q. Is this statement correct: 'that a sum of Rs. 275,000/- was paid and provided for by the plaintiff and her husband Marley'?

A. That must include the Bank Guarantee money. It is partly correct and partly incorrect, because when Mrs. Marley and Mellaaratchy borrowed Rs. 125,000/- from the Bank, they are paying that Rs. 125,000/- to the Bank and when he says that Mellaaratchy provided Rs. 25,000/-, he provided Rs. 25,000/-, plus half of what he got from 40 the Bank.

Q. When you lend me money Rs. 100,000/- and I buy something, is the consideration provided by you?

A. It is provided by you but you owe me the money.

No. 5
Plaintiff's
Evidence

Evidence of
D. A. Martensz-
Cross-Examina-
tion

—Continued

RE-EXAMINED:

I have been quite frank in my evidence given in Court today. On 6. 4. 62 I handed all Mr. Marley's papers to Messrs. Julius & Creasy. I also answered learned Counsel under cross-examination that to the letter (D22) dated 3. 2. 62 to Mr. Marley I received no reply. (Shown D22): I did not receive a reply from Mr. Marley to this.

Evidence of
D. A. Martensz-
Re-Examination

10 *Q.* You were asked about the agreement (D5)?

A. Yes.

Q. Were you aware at the time of any such agreement?

A. No.

Q. Were you consulted in regard to this agreement?

A. No.

Q. After the date of (D22) did you give any advice to Mr. Marley?

A. No. I was not in touch with them at all.

(Shown D6):

Q. Your attention was drawn to this postscript?

20 *A.* Yes.

Q. In reference to this postscript did you give Mr. Marley any advice?

A. Yes.

I wrote to him that the additional sums of the stamp duty and the expenses and the guarantee must be included in the mortgage.

Q. Do you know whether Mr. Marley wrote to the defendant to that effect?

(Mr. Adv. Thiagalingam objects to this question because Mr. Amarasinghe has tried to get the contents of a letter which he has
30 denied having received.

Mr. Adv. Amarasinghe says he has tried to adduce evidence that there was such a letter.

Mr. Amarasinghe now is seeking to lead secondary evidence of the contents of a document which he had asked the defendant to produce. He says this document should have been marked in examination-in-chief and not in re-examination.

I allow this question.)

A. Yes.

No. 5
Plaintiff's
Evidence.
—
Evidence of
D. A. Martensz-
Re-Examination.
—Continued

Q. You became aware that Mr. Marley had written to Mellaaratchy regarding that?

A. Yes, because he sent me a copy of that letter

Q. Is this in your file?

A. Yes.

(Mr. Adv. Thiagalingam objects to the document being produced.

It has been stated by defendant's Counsel that no such letter as is sought to be produced has been received. It is argued, therefore, that secondary evidence of that letter cannot be led in evidence. However, it is the case for the plaintiff that this letter has been sent. 10
Mr. Amerasinghe contends that this letter does arise in cross-examination. As to whether such a letter has been sent and received by the defendant will arise, of course, later on in the case. At the moment, the question is as to whether this document should now be produced.

I allow the document to be produced.)

This is the copy of a letter that was sent on 4. 3. 61 and this is the signature of Mr. Marley.

Mr. Adv. Amerasinghe produces this copy of the letter marked P17. Mr. Adv. Amerasinghe calls for letter dated 21. 2. 61 sent by Messrs. F. J. & G. de Saram to defendant. 20

(Mr. Adv. Thiagalingam hands over letters marked - P18 - and P18A - to Mr. Adv. Amerasinghe).

Q. Did you write to the defendant's lawyers regarding this matter on 21. 2. 61?

A. Yes.

Q. Did you enclose a copy of that letter to the defendant with a covering letter dated 21. 2. 61?

A. Yes.

(Shown P18): This is the original of that letter that I sent.

Q. In this copy (P18A) you set out what has been said by Mr. Marley in P17? 30

A. Yes.

(Mr. Adv. Amerasinghe produces letter dated 28. 2. 61 in reply to P18A from Messrs. De Silva & Mendis marked - P19)

Mr. Adv. Thiagalingam says he has no objection after looking at P19.

(Mr. Adv. Amerasinghe produces copy of a letter dated 27. 2. 61 to Messrs. De Silva & Mendis which is referred to in P19 marked - P20):

Q. It is suggested that in January 1961, Mr. Marley dishonestly started claiming these monies as loans and that they were not, in fact, loans? 40

A. I would say it is nonsense.

(Shown P11A).

Q. You were shown this document and you were asked whether you got Mrs. Marley to make this endorsement. Did the original of this document come into your hands?

A. No.

Q. Did you ever see this original?

A. No.

Q. You were asked about this letter (D10) which was taken out of your file?

A. Yes.

10 *Q.* This letter sets out the proposal with regard to this purchase at the date of (D10)?

A. Yes.

Q. Did these proposals materialise?

A. No. The loan from the A. I. C. C. did not materialise.

Q. In this letter (D10) you refer on the second page to Cheque No. 591427 for Rs. 50,000/- in favour of Mellaaratchy which he has handed to you this morning?

A. Yes.

20 *Q.* Is that the cheque which Mellaaratchy brought with the letter from Mr. Marley?

A. Yes.

(Shown cheque P7) This is that Cheque No. 591427.

Q. Did Messrs. De Silva & Mendis at any time write to you repudiating the claims made in your letters?

A. No.

(Mr. Adv. Thiagalingam objects to this question):

Q. There were several Partners at F. J. & G. de Saram and they have several assistants?

A. Yes.

30 *Q.* And is your work systematically divided?

A. Yes

Q. And you have a large clientele?

A. Yes.

Q. In this instance, the Mercantile Bank Ltd. was the client of Messrs. F. J. & G. de Saram at the time and so was Mr. Marley?

A. Yes.

Mr. Tampoe attended to the mortgage matters in this Firm. This is the gentleman who wrote for me when I was in England.

Q. (D13) has been written on 18. 10. 60?

40 *A.* Yes.

No. 5
Plaintiff's
Evidence

—
Evidence of
D. A. Martensz-
Re-Examination

—Continued

No. 5
Plaintiff's
Evidence.

Evidence of
D. A. Martensz-
Re-Examination.
—Continued

This has been signed by Mr. Tampoe. I say this is by Mr. Tampoe from his initial "T/RA".

Q. You said that you ceased to have anything to do with Marleys affairs from 6. 4. 32?

A. Yes.

Q. What was Mr. Marley's interest in this transaction in which Mrs. Marley and Mr. Mellaaratchy were interested in?

A. I would call it financial.

Q. Do you personally know anything about the actions filed in the District Court of Colombo and the actions filed in the District Court of Balapitiya?

A. No.

Q. Were you at that time giving Mrs. Marley any advice on any matters?

A. No.

I was asked about the conference at Nuwara Eliya and I answered that I invited myself there. (Shown D8): This conference was held after this letter D8. In the last paragraph of (D8) I had suggested on a meeting and Mellaaratchy attended that meeting and he did not deny that these monies belonged to the Marleys. 20

(Mr. Adv. Thiagalingam says he wants to cross-examine this witness on the documents produced in re-examination from P17 onwards.

I allow the application.)

FURTHER CROSS-EXAMINED:

Evidence of
D. A. Martensz-
Further
Cross-Examina-
tion

Q. P17 contains the full signature of Marley?

A. Yes.

Q. In P17 Marley writes to the defendant: "you wrote to me on 12/1 and it instructed De Silva and Mendis to draw up a secondary mortgage in my favour". The reference is to D6? 30

A. Yes, with the postscript.

(Shown D30 which is a carbon of (D6) without the postscript.)

Q. Did anybody tell you the circumstances in which the postscript came to be made?

A. No.

Q. In (D6) there was no reference to anything except the Rs. 50,000/-?

A. Yes.

Q. In pursuance of that you wrote letter P18?

A. Yes.

Q. Marley sent this to you with a covering letter?

A. Yes.

Q. Marley sent to you (D6) with the covering letter (D7)?

A. Yes.

Q. In pursuance of D7 it was that you wrote P18 and P18A?

A. Yes.

10 on D6 is referable to D6 & D7?

A. Yes.

Q. The rest of (P18) where you refer to Rs. 17,004/-, Rs. 125,000/- and Rs. 50,000/- you did on your own?

A. Not on my own. We had to meet in early February and discuss it.

Q. You sent a letter similar in terms to P18A to Messrs. de Silva & Mendis?

A. P18A is a copy of the letter that I sent to Messrs. de Silva & Mendis?

20 Q. To P18A De Silva & Mendis wrote to you P19?

A. Yes.

Q. Did you follow it up?

A. Reminders were sent. De Silva & Mendis did not tell anything about it.

I was on leave and apart from sending reminders, nothing seems to have happened. I went to England in early March 1961, and I returned in July 1961.

Q. After you returned did you take any steps with Messrs. de Silva & Mendis in regard to the contents of P18A?

30 A. No. I took no action. I sent a letter of demand but I cannot remember the date.

Q. Only you sent the letter of demand. After the Last Will you took no further action?

A. If it is merely a question of the date, at the moment I do not know the date. If the letter is dated after the Last Will, then it is dated after the Last Will. Till the letter of demand I took no action.

(P18) was sent to Mellaaratchy and there was no acknowledgment by him.

Q. On the other hand, De Silva & Mendis wrote to you (P19)?

40 A. Yes:

No 5
Plaintiff's
Evidence
—
Evidence of
D. A. Martensz-
Further
Cross Examina-
tion
—Continued

No. 5
Plaintiff's
Evidence.
—
Evidence of
D. A. Martensz-
Further
Cross-Examina-
tion
—Continued

Q. Did you tell Mr. Marley 'nothing is coming out of this'?

A. As I said, I was away

Reminders were sent. When I came back I took no action.

Q. After you came back did you tell Mr. Marley that you wrote several times but you had received no reply?

A. I went to see Mr. Marley somewhere at the end of July and no doubt reported to him that nothing has happened. This was merely later saying that I was coming up.

Q. Did Marley not tell you to file action?

A. I think he did. 10

Q. Did you file action?

A. No. I sent a letter of demand. I did not do it in July or August.

Q. Till the Last Will came along in September you did nothing?

A. That is so.

(The letter to Mellaaratchy (P17) is read out):

I advised him that his mortgage must cover all liabilities.

Q. Till Marley died no action was filed on his behalf?

A. Yes.

Q. P17 was never sent by Marley? 20

A. I have got a copy from him.

Q. As to whether he sent it or not, you do not know?

A. I know it.

I do not know whether Marley came to Ceylon when he was 19 years of age. He was a clever business man. I do not know whether he came without a cent to this country. He was not a money lender. He invests money on mortgages. I do not know whether he lends money on promissory notes.

Q. I put it to you on receipt of your letters P18 and P18A, Peter the defendant saw Mr. Marley. Do you know that? 30

A. No.

Q. When you mentioned to Marley that nothing came out of it, Marley's only reply was 'file action'?

A. We had a discussion and, I think, it was likely he said file action, and that was in July.

Q. Did Marley at any time tell you in 1960 or 1961: 'leave the defendant alone. He will make good. Do not harass him'?

A. No.

FURTHER RE-EXAMINED:

I was asked regarding the contents of P18A where I have quoted the postscript in (D6) in P18A. The rest of P18A I denied that I did it on my own.

No 5
Plaintiff's
Evidence
—
Evidence of
D. A. Martensz-
Further
Re-Examination.

Q. On whose instructions did you write this part of the letter?

A. On Mr. Marley's instructions.

Q. Have you a personal interest in this matter apart from that of a professional man?

A. No. I was doing my duty by my client.

10

Initialled ..
District Judge.
29. 9. 64.

Further hearing on 16th, 17th & 18th November 1964.

16th November, 1964.

FURTHER HEARING.

Appearances same as on the last date.

Parties present

At Page 47, 5 lines from the top, Mr. Adv. Amerasinghe states that the answer given by Mr. Maartensz should read: "Mrs. Marley and Mr. Mellaaratchy".

Mr. Adv. Thiagalingam states that the record is correct.

Mr. Adv. Amerasinghe closes the case for the plaintiff reading in evidence P1 - P20.

Initialled.....
District Judge.
16. 11. 64.

No. 6.

Defendant's Evidence.

DEFENDANT'S CASE:

30 Mr. Adv. Thiagalingam calls.

P. M. P. NANAYAKKARA: Affirmed 58. Proctor S. C. & N P. Colombo.

(Shown Lease No. 3341 dated 20th February 1962 and marked D4 in District Court Balapitiya Case No. 1207).

I attested this lease. This is a certified copy.

No. 6
Defendant's
Evidence.
—
Evidence of
P. M. P.
Nanayakkara-
Examination

No. 6
Defendant's
Evidence.

Evidence of
P. M. P.
Nanayakkara-
Examination.
—Continued

Mr. Adv. Thiagalingam marks the certified copy of this lease—D31.

Q. Who gave you first instructions to draw up this lease?

A. The lessees.

Q. Had you known them before?

A. No.

Q. Was there anybody who knew you who came with the lessees?

A. The first witness on the lease Mr. Leslie Samaranayake was known to me. He was at one time a Member of Parliament. He saw me on the previous day to the day on which the lease was signed.

Q. When were you first given instructions regarding this lease? 10

A. The previous day to the execution of the lease he came home and gave me instructions and asked me to prepare a draft deed of lease to be approved by the lessor.

I told him that I wanted to know where the land was situated and he said that it was situated somewhere in the Galle District and he said that he would bring the schedule and the necessary papers tomorrow to be written. He said that they were dispensing with the search.

Q. The next day were you given the particulars?

A. Yes. Early in the morning I gave the draft to him and he approved it. I went with them to the Galle Face Hotel. This was on 20 the day the lease was signed.

Q. Who did you see at the Galle Face Hotel?

A. Mr. Marley and Mrs. Marley. I had not known them before.

Q. Who introduced you to them?

A. The witness Mr. Samaranayake.

Q. Did you examine title?

A. No. They gave me a dispensation certificate.

Q. Did Mr. Marley tell you anything?

A. He said the property belonged to his wife who would sign the lease. They did not tell me anything else. 30

Q. Why was this hurry about the lease?

A. They told me that someone was in possession of something or other. I was not listening to the conversation.

Q. Before the lease was signed, what did you do?

A. I read and explained the lease to the parties.

Q. Was Mr. Marley present throughout?

A. Yes.

Q. Do you know now that the property did not belong to Mrs. Marley solely?

A. Yes.

Q. Did you know it then at the time the lease was signed?

A. I did not know to whom it belonged.

Q. You were asked to bring a protocol?

A. Yes. I have brought it and it is before me.

Q. On the face of the protocol is there a dispensation from search?

A. Yes.

(Mrs. Marley is sent for):

Q. Can you recall this lady?

A. Yes.

10 Q. Has she signed this protocol?

A. Yes.

(Mr. Adv. Amerasinghe objects to this witness remaining longer in Court)

Mr. Adv. Thiagalingam states that he does not mind her being in Court.

Mrs. Marley is a witness in this case and she is asked to stand out.)

I recall the lady who was in Court and she has signed this protocol. On the top of the protocol under title examined and search dispensed with is the name written. She has signed first and the two
20 lessees have signed below.

Q. Can this protocol be left in Court?

A. Provided it is returned to me because this belongs really to the Registrar General.

(Mr. Adv. Thiagalingam marks the protocol - D32) D32 is in the custody of Court.)

Cross-Examination. Nil.

Mr. Adv. Amerasinghe submits that he is not cross-examining this witness as he states his evidence is not relevant.

At this stage, Mr. Adv. Thiagalingam moves to put one more
30 question to the witness and moves to examine this witness again.

Mr. Adv. Amerasinghe objects.

I refuse the application.

Sgd

District Judge.

16. 11. 64.

No. 6
Defendant's
Evidence.

Evidence of
P. M. P.
Nanayakkara-
Examination
—Continued

No. 6
Defendant's
Evidence.
—
Evidence of
Clarence
L. Silva-
Examination.

CLARENCE LLEWELLYN SILVA: Affirmed 54. Crown Proctor, Balapitiya. I was the Proctor for Mrs. Marley in District Court Balapitiya Case No. M-1207, a case filed against the Defendant in this case.

Q. In connection with that matter on 12th October 1961, you addressed a letter filed in that case marked (P2), to the defendant?.

A. Yes. This is a copy of that letter.

(Shown letter marked P2 in Case No. M-1207): (Mr. Adv. Thiagalingam marks a certified copy of this letter-D33):

Q. And you got a reply to that letter from the defendant dated 3rd November 1961, marked P3 in that case? 10

A. Yes.

(Mr. Adv. Thiagalingam marks a certified copy of that letter-D34):

Q. Thereafter, you wrote to the defendant a letter of the 22nd November 1961?

A. Yes.

(Mr. Adv. Thiagalingam marks a certified copy of this letter-D35):

Q. To which you received a reply dated 8th December 1961 from the defendant?

A. Yes.

(Mr. Adv. Thiagalingam marks a certified copy of this letter along with the envelope-D36): 20

Certain documents were handed by me to plaintiff's Counsel and I brought them along. I was questioned about these letters by the Plaintiff's Counsel.

Q. You filed action for Mrs. Marley on 6. 2. 1962?

A. Yes.

(Mr. Adv. Thiagalingam marks a certified copy of the plaint-D37):

Q. Summons was served in the Balapitiya case?

A. Yes.

Q. The defendant did not come on the returnable date? 30

A. No.

Q. And you led evidence ex-parte?

A. I moved for ex-parte trial.

Q. Do you now know about the existence of the Agreement (D5) between Mrs Marley and the defendant?

A. Yes.

Q. But you did not then know about the agreement attested by Mr. Karunaratne?

A. No.

Q. At the time of the ex-parte trial you did not know about the existence of the agreement (D5) attested by Mr. Karunaratne?

A. No.

Q. You did not know it at the time you moved for ex-parte trial?

A. No.

Q. Thereafter, the defendant sought to have the ex-parte order vacated?

A. Yes.

10 Q. Mr. L. W. de Silva, Q. C. appeared in that case?

A. I do not think he is a Queen's Counsel.

Q. At that inquiry where the defendant sought to vacate the Order Nisi, evidence was led, documents were marked and the decree was vacated?

A. Yes.

Q. And costs were ordered against Mrs. Marley?

A. Yes.

The case has been fixed for trial on the 14th of next month at Balapitiya and our Counsel is Mr. Adv. Amerasinghe.

Q. Do you know a man by the name of Arthur de Soyza?

A. Yes. He is a client of mine. He is a man of means.

20 Q. Does he have cases in Court there?

A. He has quite a bit of recovery cases. I know that he lends money.

Q. When there was trouble between Mrs. Marley and the defendant did Mr. Soyza have any claims against the defendant?

A. Yes. I have sued the defendant in this case.

Q. You have filed action against the defendant in this case on behalf of Soyza?

A. Yes, to recover Rs. 7,500/- on a cheque.

30 the Q. I believe the defendant was allowed to pay by instalments at rate of Rs. 250/- a month?

A. I am not sure about that but decree was entered against him.

Q. Is it right that you suggested to Mr. Soyza to file that action because of the trouble between these people?

A. No. I did not suggest it. It was not my business to do so.

Cross-examined:

Q. The answer was filed by the defendant in that case?

A. Yes, after decree nisi was vacated.

No. 6
Defendant's
Evidence.

Evidence of
Clarence
L. Silva-
Examination
—Continued

Evidence of
Clarence
L. Silva-
Cross Examination

No. 6
Defendant's
Evidence.

—
Evidence of
Clarence
L. Silva-
Cross-Examina-
tion

—Continued

(Mr. Adv. Amerasinghe moves to mark a certified copy of the answer P21 - dated 20. 2. 1964.)

Re-Examination: Nil.

Sgd

District Judge.

16. 11. 64.

Evidence of
M. A. H. de
Soyza-
Examination.

M. A. H. de SOYZA: Affirmed, 65. Retired Superintendent of Estate Colombo.

I was the Superintendant of Sir Ernest de Silva's Estates. I was for 45 years working under Sir Ernest. I am worth about a 10 lakh now. I was worth about 3 lakhs. I gave my properties to my two daughters.

Q. Were you for some time the Superintendent of Borakanda Estate?

A. Yes, till it was sold to Mrs. Marley and Mr. Mellaaratchy.

Q. Did you give any money to run that estate?

A. When I gave over Mr. Marley asked me to help him saying that he would settle me later. Mr. Marley asked me for advances of monies saying that he would settle me later. I advanced up to Rs. 7,000/- and I got a cheque for that amount. 20

Q. What happened to that Estate in 1962?

A. In 1962, I heard that there was some trouble. I happened to be in the Court house one day and Mr. Clarence de Silva told me to collect my money soon.

Q. When you heard there was trouble, did you go and see anybody on the Estate?

A. I went to see Mr. Marley when I heard that he was on the Estate. This was about 25th February, 1962.

Q. What did you ask Mr. Marley?

A. I spoke to him and I asked: 'what about my money' 30

Q. What did Mr. Marley say?

A. He said that he cannot settle me alone. Mr. Mellaaratchy would be coming on the 28th and he asked me to come on that day. I went on the 28th at about 10 or 11 o'clock.

Q. Did you meet anybody there?

A. Yes. I saw Mr. Marley, Mrs. Marley and Mr. Mellaaratchy and there was another gentleman.

Q. What did Mr. Marley tell you?

Mr. Adv. Amerasinghe objects to the contents of what Mr. Marley has said to go in. The question is withdrawn.

(Contd:) Mr. Marley spoke to Mr. Mellaaratchy and Mr. Marley told me that he had asked Mr. Mellaaratchy to check my books and receipts and to pay me and that he undertook to pay me.

Q. Did Mr. Marley say that he was buying the Estate?

A. He said that Mr. Mellaaratchy is selling the Estate and that he is buying a share from Mr. Mellaaratchy.

Mr. Mellaratchy told me that he would settle me when he gets
10 the money.

Q. How much was Mr. Mellaaratchy going to get from Mr. Marley?

A. They were talking about one lakh, and that he was going to buy a share for one lakh.

Q. Later on, when Mr. Mellaaratchy did not pay you the money what did you do?

(This question is withdrawn):

Q. Have you recovered that money?

A. I filed action through Mr. Clarence de Silva and got judgment.

20 Q. Why did you file action?

A. I waited for about 3 or 4 months and every time I saw Mr. Mellaaratchy he said: 'I did not get the money from Mr. Marley'.

Q. How much has he paid now?

A. He has paid me Rs. 5,500/- in instalments of Rs. 250/-.

Q. Did you attend a conference at Mr. Amerasinghe's Chambers in connection with Borakanda Estate?

A. Yes.

Q. Who told you to go there?

A. Mrs. Marley.

30 Q. Has Mrs. Marley written to you recently?

A. Yes.

CROSS-EXAMINATION:

I am 65 years of age. When I saw Mr. Marley he was about my age. I saw him in 1962. I saw him first in August 1960 i. e. just after Election time. That was just before he purchased Borakanda Estate and I was the Superintendent at the time under the previous owners.

Q. You will be surprised to know that Mr. Marley was 85 years of age at that time?

40 A. He appeared to be like me.

No. 6
Defendant's
Evidence.

Evidence of
M. A. H. de
Soyza-
Examination
-- Continued

Evidence of
M. A. H. de
Soyza-
Cross-Examina-
tion

No. 6
Defendant's
Evidence.

—
Evidence of
M. A. H. de
Soyza-
Cross-
Examination
—Continued

Q. You met Mr. Marley in August 1960 and, thereafter, when next did you meet him?

A. When they came to take over the Estate. By 'they' I mean Mr. Marley, Mrs. Marley and Mr. Mellaaratchy. This was to take over from the persons who sold it to them.

Q. You left the Estate at that time?

A. I left but they asked me to help their Superintendent for some time. I was on leave for 3 months and they asked me to stay there and to help their Superintendent.

Q. The new owners asked you to help them? 10

(Mr. Adv. Thiagalingam objects to this question.)

Q. The new owners being Mr. Mellaaratchy and Mrs. Marley?

(Mr. Adv. Thiagalingam objects to this question.)

(The witness is asked to stand down.)

Q. When you said 'they' in your previous answer, I suggested to you that they were the owners Mrs. Marley and Mr. Mellaaratchy?

A. Mr. Marley and Mr. Mellaaratchy spoke to me.

Mr. Marley was there and another gentleman. Mr. Marley and Mr. Mellaaratchy are the persons whom I referred to as 'they'.

Q. You helped them for about 3 months after the sale? 20

A. Yes.

Q. When did you cease to have anything to do with this Estate?

A. After 3 months I was offered another place by my previous proprietors.

This was in April 1961 and I took up my new job then.

Q. Till when did you assist in regard to Borakanda Estate?

A. From the date of the sale till about the end of March 1961.

Q. As a matter of fact, the purchasers had their own Superintendent?

A. Yes. They had a Superintendent but he could not do anything. He was one Mr. Thomas Fernando. 30

Q. Between December 1960 and March 1961, did you meet Mr. Marley?

A. In February 1961 I met him on the Estate.

Q. Why did Mr. Marley visit the Estate on that occasion?

A. They were there.

Q. In February 1961?

A. Yes (Witness is uncertain):

There was some trouble on the Estate and they were there.

Q. At this date in February when you met Mr. Marley troubles had occurred? 40

A. Earlier there were some troubles. After that I went to the Estate to see what the trouble was.

Q. You first met Mr. Marley in August 1960 before the purchase?

A. Yes.

Q. You next met Mr. Marley in December 1960 when they took over possession from your employers?

A. Yes.

Q. How long after the taking over of possession from your previous employers did you meet him?

A. Over one year.

10 Q. February 1961 would be how many months after the taking over?

A. Two months after. They took possession in December, 1959.

Q. The trouble was about one year after they bought?

A. About that much.

Q. Not a few months after?

A. That I cannot say.

Q. The property was purchased on 29th November, 1960?

A. I do not know.

Q. It was bought on 29th November 1960 and possession was taken in December, 1960?

20 A. Yes.

Q. Will you accept that it was bought in November 1960 and possession was taken in December 1960, and not in 1959?

A. It was in 1959.

(Shown a deed - P13):

Q. This is the sale of Borakanda Estate to Eileen Florence Marley and Peter Mellaaratchy?

A. Yes.

Mellaaratchy and Mrs. Marley bought a part of the Estate of which I was the Superintendent (Witness reads the date as November, 1960:)

30 The sale by my employers to Mrs. Marley and Mellaaratchy was in November, 1960. They came in August 1960, to see the property.

Q. After this deed was signed, they took possession?

A. Yes.

Q. You said that it was in the December of the year in which they bought the property?

A. Yes.

Q. You know that Peter Mellaaratchy was managing this Estate?

A. He used to visit the Estate. I do not know who was managing the Estate.

40 Q. Then troubles arose?

A. So I heard but I do not know.

No. 6
Defendant's
Evidence

Evidence of
M. A. H. de
Soyza. Cross
Examination

Continued

Q. Then one day you went there to the Estate. You went there because you heard Mr. Marley was there?

A. Yes.

Q. On that date was Mellaaratchy managing the Estate?

A. When I went there Mellaaratchy was not there. I do not know who was managing the Estate.

Q. What was the nature of the trouble you heard about?

A. I heard from Mr. Clarence de Silva that there was trouble on the Estate but I do not know what the nature of the trouble was.

Q. Then on that day, you say, that Mr Marley told you 10 something?

A. Yes, that was on the 25th of February 1961.

Q. Of that date, you are certain?

A. Yes.

On that date I met Mr. Marley. There was Mrs. Marley and there was another gentleman. I did not know him then. Now I know him He was one Mr. Jayatilleke.

Q. You never knew him before?

A. I knew him before. I knew his father very well.

Q. For how long had you known his father? 20

A. I knew him for over 20 years. His father was a Notary Public at Ambalangoda. The first day I saw him was in February, 1961.

Q. Mr. Jayatilleke and Mr. & Mrs. Marley were there on that occasion?

A. Yes.

Q. What did Mr. Marley tell you on that occasion?

A. He told me that he was expecting Mr. Mellaaratchy on the 28th and asked me to come on that day to see to my accounts and to settle me. 30

Q. Your account was about Rs. 7,000/- on this date?

A. Yes. That is all I had to get.

Q. That Rs. 7,000/- was money you had given to Mr. Mellaaratchy?

A. No. I gave Mr Fernando. There was another Superintendent on the Estate. I gave it to whoever was the Superintendent of the Estate.

Mr. Marley asked me to give on a receipt from the Superintendent.

Q. Why did you sue Mr. Mellaaratchy for this Rs. 7,000/-?

A. Because on the 28th Mr. Marley and Mr. Mellaaratchy spoke about my account and he said: "Peter, now you can settle Mr. Soyza." 40 Mr. Mellaaratchy said: "Yes, Mr. Soyza. I am selling my share and for the present I will give you a cheque."

Q. Mr. Mellaaratchy gave you a cheque?

A. Yes.

I waited for about 3 months because Mr. Marley promised to take me back. This is why I gave the money. Mr. Marley promised to give me back the job.

Q. Do you know Mr. Samaranayake?

A. No.

Q. On the 28th February you got a cheque from Mr. Mellaaratchy?

A. Yes.

10 Q. And you went away?

A. I was there for some time. I went away on the 28th itself.

Q. After that did you ever meet Mr. Marley?

A. No.

Q. So you have met Mr. Marley in your life time on three occasions only?

A. Yes.

Q. How long did you converse with him on the first occasion when he came to see the Estate?

A. I took him round the Estate.

20 Q. On the second occasion when these persons came to take over possession how long did you talk to Mr. Marley?

A. About 4 hours.

Q. What were you discussing—the management of the Estate?

A. Yes.

Q. Then you met him again on the 25th of February?

A. Yes.

Q. How long did you talk to him on that occasion?

A. Not even for one hour.

30 Q. On the 28th, the date you got the cheque from the defendant how long did you talk to him?

A. That was also for about an hour.

Q. You said that Mr. Marley said he was buying the Estate?

A. He said that he is buying Mr. Mellaaratchy's share.

Q. Why did he tell you that?

A. Because he asked Mr. Mellaaratchy to settle my sum of Rs. 7,000/-.

No. 6
Defendant's
Evidence.

Evidence of
M. A. H. de
Soyza- Cross
Examination
-- Continued

No. 6
Defendant's
Evidence.

Evidence of
M. A. H. de
Soyza-
Cross-
Examination
—Continued

Q. Because of the amount of Rs. 7,000/- due to you, that Mr. Marley said he was buying this property?

A. Not because of my Rs. 7,000/- He said that he was buying a share and he gave me the assurance that Mr. Mellaaratchy would give the Rs. 7,000/- from the purchase money.

Q. You were asked about a conference at my Chambers?

A. Yes.

Q. You know where my Chambers are?

A. Yes, in Hultsdorf.

I was asked to come to Hultsdorf to the office of Messrs Julius & Creasy. So I went to the office of Messrs Julius & Creasy and from there they took me to the Law Library. 10

Q. And there you met me?

A. I cannot remember. Only once I went there. When I said in examination-in-chief that I went to Adv. Amerasinghe's Chambers, it is a mistake.

Q. You were asked by Messrs Julius & Creasy to attend a conference regarding what case?

A. I do not know the case. It was regarding the position of Estate when I gave charge—regarding the condition of the Estate 20 when I gave charge.

Q. Were you asked to compare the condition of the Estate when you gave over to the condition of the Estate at the time you went to the office of Messrs Julius & Creasy?

(Mr. Adv. Thiagalingam objects to this question. He says Mr. Amerasinghe cannot get in an indirect way what somebody else has said.

Mr. Adv. Amerasinghe says he is asking this witness whether he was asked to compare the condition of the Estate at one time and the condition of the Estate at another time. 30

I uphold the objection.)

Q. When were you first asked to give evidence in this case in Nuwara Eliya by the defendant?

A. I got summons somewhere last week or so.

Q. Before you got summons were you told that you were going to be summoned?

A. Yes.

Q. You were told so by the defendant Mr. Mellaaratchy?

A. Yes.

Q. Where did he tell you that? 40

A. I met him at Colombo. I live at Balapitiya as well as at Colombo. I live longer at Dehiwela.

Q. Have you been to Borakanda after you left on the 28th of February, 1961?

A. I have gone to Borakanda and I have been there.

Q. Have you met the defendant Mr. Mellaaratchy there after you left on the 28th?

A. No.

Q. Then the defendant met you at Colombo one day and told you that he proposes calling you as a witness in this case?

A. Yes.

10 *Q.* How long before you received summons was that?

A. That was somewhere last month or so.

Q. You have seen the Estate several times after February, 1961?

A. Yes.

Q. What was its condition to the time at which you handed over?

(Mr. Adv. Thiagalingam objects to this question as it is irrelevant. Mr. Adv. Amerasinghe moves to withdraw this question.)

Q. I suggest to you Mr. Soyza that your story about Mr. Marley having told you that he was buying this Estate from Mr. Mellaraatchy is not true?

20 *A.* It is true.

RE-EXAMINED:

Q. You saw the plaintiff's Counsel showing you a deed and this is a deed of sale?

A. Yes.

Q. The date of this deed is 29th November 1960?

A. Yes.

Q. How long after that was it that you got this cheque from the defendant?

30 *A.* One year. I think.

Q. Within that year were there troubles on the Estate?

(Mr. Adv. Amerasinghe objects to this question because it does not arise from cross-examination. For the moment this question is withdrawn.)

Q. In 1960 the purchasers bought Borakanda Estate?

A. Yes

Q. After they bought the Estate were you living on the Estate for some time?

A. Yes, for about 3 months.

40 *Q.* After that, what did you do?

A. I came home and then I was offered a job by my previous

No. 6
Defendant's
Evidence

Evidence of
M. A. H. de
Soyza.
Cross
Examination

Continued

Evidence of
M. A. H. de
Soyza-
Re-Examination

No. 6
Defendant's
Evidence.
—
Evidence of
M. A. H. de
Soyza-
Re-Examination.
—Continued

proprietors.

Q. After you left the place and before you got that cheque, were there troubles on the Estate?

A. There were labour troubles.

Q. Before you heard from Mr. Clarence de Silva and you went to the Estate, did you know that there were any labour trouble on the Estate?

(This Question is disallowed.)

The first Superintendent of the Estate was Thomas Fernando and after that—I forget his name now. It was Mr. Weerawardena and he was the Superintendent of the Estate. 10

Q. You told plaintiff's Counsel that you got the cheque sometime in February, 1961?

A. Yes.

Q. You know, as a matter of fact, now that the sale was in 1960 December?

A. Yes.

Q. Is the date 1961 correct or is it 1962?

A. It is 1961. In 1961 February I met them on the Estate.

Q. Do you know now that the sale was in December, 1960?

A. Yes, from the deed shown to me by plaintiff's Counsel. 20

Q. February 1961 is how many months after that deed?

A. About 13 months.

Q. Who is on the Estate now?

(Mr. Adv. Amerasinghe objects to this question because it is irrelevant. I allow this question.)

Q. Who is in possession of the Estate now?

A. Mr. Jayatilleke is there.

Q. Is that the man that you saw when you spoke to Mr. Marley about the monies due? 30

A. Yes.

Q. BY COURT: How did you know that Jayatilleke was there?

A. I used to pass that way and I knew it. I have some other properties there.

Sgd
District Judge.
16, 11, 64.

(Adjourned for lunch)

RESUMED:

R. M. S. KARUNARATNE : Affirmed 43. Proctor Supreme Court, Balapitiya.

No. 6
Defendant's
Evidence.
—
Evidence of
R. M. S.
Karunaratne-
Examination

I am a Proctor and I have been practising for the last 17 years. I am practising at Balapitiya. I know Proctor Welikala and I have known him for the last about 6-8 years. Often when I have executed deeds outside my jurisdiction I have to get his help. Messrs Julius & Creasy have, in fact, sent me one case. (Shown letter dated 10. 4. 62 which is marked D38 from Mr. Welikala to Messrs Julius & Creasy. Shown letter dated 29. 4. 62 marked D39. Shown letter dated 9.5.62 marked D40. Shown letter dated 16.5.62 marked D41. Shown letter dated 5. 6. 62 marked D42 from Mr. Welikala to Messrs Julius & Creasy.) (All these letters have been handed to defendant's Counsel by the Proctor for the plaintiff)

I do not know the Firm's signature when he signs as Welikala & Fernando but I know Mr. Welikala's signature. (The documents are not identified by the witness.) Mr. P. S. Gunawardena of Messrs Julius & Creasy has been summoned to produce the documents and he hands them over. (Shown Agreement (D5) filed of record and dated 2. 3. 62): I attested this document.

Q. Had you known either of the Executants before ?

A. No.

Q. Tell Court the circumstances in which you came to attest this document ?

A. On 2. 3. 62 Mr. Welikala came to my bungalow along with Mr. Mellaaratchy. He brought a set of documents which he said was .. (Mr. Adv. Amerasinghe objects to this evidence unless Mr. Welikala is being called. Mr. Adv. Thiagalingam says that Mr. Welikala is an agent of Mr. Marley).

30 The witness is asked to stand down.

Mr. Adv. Thiagalingam says he will be leading evidence to show that Mr. Welikala was acting as an agent of Mr. Marley.

It is not necessary to frame an issue on this point. If the case for the defendant is that at the time of Mr. Welikala speaking to Mr. Karunaratne he was acting as an agent of Mr. Marley, then I am inclined to hold that this evidence is admissible. The question of agency will, of course, be a matter of proof. I, therefore, allow this evidence.

Sgd
District Judge.
16.11.64.

No. 6
Defendant's
Evidence.
—
Evidence of
R. M. S.
Karunaratne-
Examination
—Continued

R. M. S. KARUNARATNE : Affirmed Recalled.

Mr. Welikala brought four copies and he told me that he had drawn up an agreement on instructions from the Marleys and Mr. Mellaaratchy. He said that he could not attest it as the Marleys were resident outside the area where he was practising and he wanted me to attest it. By 'Marleys' I presumed that there was Mr. and Mrs. Marley. Then I invited Mr. Mellaaratchy to my bungalow and Mr. Welikala told me that the Marleys had bought an estate called Borakanda Estate and I invited Mr. Welikala to go along with me to attest the deed there. At that stage Mr. Welikala told me that Mr. Mellaaratchy and the Marleys were not on the best of terms. 10

Mr. Adv. Amerasinghe objects to this bit of evidence going in. He objects to this evidence on the ground that it is hearsay and only Mr. Welikala can give this evidence.

(Contd:) Then I attested Mr. Mellaaratchy's signature in my bungalow. The witnesses were Mr. Welikala and Mr. Samaranayake. After that I went to Borakanda Estate with Mr. Welikala to attest the signature of Mrs. Marley. Mr. Samaranayake also came along. I, Mr. Welikala and Mr. Samaranayake went and there was another gentleman called Gunasekera. They came on their own and then I went to Borakanda Estate. At Borakanda there was an armed party near the gate. We were stopped. Then some persons there recognized me. Then I told them I was going to the Estate on a particular business and I was allowed to go inside. Then at the bungalow Mr. Welikala introduced me to Mr. & Mrs. Marley. He further introduced me as Proctor Karunaratne and that I was brought to attest their signatures. Mr. Welikala told the Marleys that it was outside the area for which he had a licence to practice. 20 30

Q. Did Mr. Welikala tell the Marleys why he could not attest the deed?

A. At that stage I wanted to attest their signatures.

Q. Did Mr. Welikala explain why he could not attest the deed?

A. He told the Marleys that this was outside the area for which he had a licence to practice.

Then at that stage he said that I was brought for that purpose. We were treated to tea by Mr. Marley. After that Mr. & Mrs. Marley were in a room. There was no table there. I was taken to a table in the hall. Mr. Marley invited Mrs. Marley to come along. Mr. Marley, Mrs. Marley, Mr. Samaranayake, Mr. Welikala, Mr. Gunasekera and I sat round that table. I had four copies of the Agreement. There was the counterpart of the original also. I retained one. 40

Then I gave one to Mr. Welikala, one to Mr. Marley and one to Mrs. Marley. Then I read through the entire agreement. Then I satisfied myself that they understood the contents of the agreement. Then Mrs. Marley signed the agreement and Mr. Samaranayake and Mr. Gunasekera signed as witnesses. Mr. Welikala said that he was acting on behalf of the Marleys and that he did not want to sign as a witness.

No. 6
Defendant's
Evidence.
—
Evidence of
R. M. S.
Karunaratne-
Examination
-- Continued

Q. Thereafter, you finished your attestation and what did you do with the originals?

10 A. Mr. Welikala wanted the original sent to him because he wanted to attest the deed of transfer and I sent it to him.

Q. What was the gist of that agreement?

A. Mrs. Marley was to purchase the half share of Peter Mellaaratchy in Borakanda Estate.

(Para: 7 of the agreement is referred to. Para 7 says that all monies which had been advanced by Mr. Marley was to be borne by the purchaser Mrs. Marley):

In Para: 10 there is a reference to some proceedings. I know that that case was not withdrawn as agreed.

20 CROSS-EXAMINED:

Q. You did not have anything to do with the preparation of the Agreement (D5)?

A. No.

Q. You first heard that you were required to attest that deed how long before attesting it?

A. About one hour before.

I did two attestations - one at Ambalangoda and the other at Borakanda. I attested the first at Ambalangoda.

30 Q. Did you suggest that Mr. Welikala went along with you to Borakanda?

A. Yes.

Q. Do you as a professional man find any objection, in your view, to Mr. Welikala having attested the signature of Mrs. Marley assuming that he was the agent of Marleys?

A. I cannot see any objection.

Q. Have you attested any other deed drawn up by Mr. Welikala?

A. No.

40 This was the first and only deed that I have attested drawn up by Mr. Welikala. I said that M/s. Julius & Creasy entrusted

Evidence of
R. M. S.
Karnnaratne-
Cross-
Examination

No. 6
Defendant's
Evidence.

Evidence of
R. M. S.
Karunaratne-
Cross-
Examination
—Continued

one case to me — M 1270 Balapitiya. The parties were one D. A. Perera Vs. M. Salahudeen. I said Welikala went along with me, Samaranayake and one Gunasekera to Borakanda. I knew Samaranayake before.

Q. You had not known Gunasekera before?

A. Mr. Gunasekera is the brother-in-law of Mr. Samaranayake.

I have known them for some time and Mr. Samaranayake is, in fact, related to me. Mr. Gunasekera is married to Mr. Samaranayake's sister. I am related to Mrs. Gunasekera. Gunasekera married Samaranayake's sister about 10 years ago. Samaranayake is from Haburugala in the Bentota area and he was the Member of Parliament for that area. I am closely related to Mr. Samaranayake. I am related to Mr. Samaranayake in several ways. My wife is also related to Mr. Samaranayake. Mr. Samaranayake and myself are very close relations and intimate friends. This description also applies to Mr. Gunasekera. I would not say that I am as intimate with Mr. Gunasekera as with Mr. Samaranayake.

Q. Did you have any professional connection with Welikala prior to (D5)?

A. No.

20

Q. Is it correct to say that it was the first time that you came to know Welikala on this occasion?

A. I knew him before that as Proctor Welikala.

I have spoken to him at his office at Baillie Street. This was just a casual acquaintance. This was about 8 years ago before the attestation of D5. I used to go to Baillie Street myself and talk on other matters with Mr. Welikala.

Q. Were you selected for the attestation of this deed because you were a close relation of Mr. Samaranayake?

A. I could not say that.

30

Q. Till Welikala came to your office that day you had no prior intimation that he was coming to get your services?

A. No.

Q. When did you last meet Mr. Welikala?

A. In fact, I have not seen him afterwards except on one occasion and that was a month after (D5) was attested.

In fact, I enquired for him once and I learnt that he was leaving the Island.

Q. You said that you were in the room originally at Borakanda with Mr. & Mrs. Marley when these introductions took place?

A. Yes.

40

I was taken into the room; in the first instance, for the purpose of introducing me to the parties by Mr. Welikala.

Q. Welikala took you in keeping Mr. Samaranayake outside?

A. I have no recollection. Mr Samaranayake was also there.

Q. Mr. Samaranayake was both a relation and an intimate associate of yours?

A. Yes.

Q. Welikala you had met casually only before?

A. Yes.

10 *Q.* I suggest to you that Mr. Welikala was not present at Borakanda that day when you attested the deed (D5)?

A. I deny this.

Q. And that is why he did not attest the signature of Mrs. Marley although he attested the signature of Mr. Mellaaratchy?

A. I deny this.

Q. You had four copies of the deed?

A. Yes.

Q. When you went into that room, in the first instance, where was Mr. Marley?

20 *A.* He was seated in a chair. He was seated in a straight-backed chair.

Q. Was it a bedroom or sitting room?

A. Actually it was used as a kitchen. I saw something on a stove and tea was being prepared there.

We were all standing. Mr. Marley was seated in a chair and not near a table. At the time I went there was very little furniture. The whole place was in disorder. I said that I met an armed guard at the entrance. It was a picture of a battlefield. Round the bungalow also there were a number of people with firearms. I noticed
30 that myself. They were going about the bungalow and displaying these firearms.

Q. Was this an unusual sight for you?

A. It was.

Q. Did you have this unusual experience explained to you by anybody?

A. I knew personally because it was being talked about.

Re-examined: I had known Mr. Welikala for about 8 years. He was a friend of mine.

No. 6
Defendent's
Evidence.

Evidence of
R. M. S.
Karunaratne-
Cross-
Examination
—Continued

Evidence of
R. M. S.
Karunaratne-
Re-Examination.

Sgd
District Judge.
16.11.64.

No. 6
Defendant's
Evidence.

Evidence of
M. Santhiraj -
Examination

M. SHANTIRAJ: Affirmed 38. Clerk, Bank of Ceylon, Nuwara Eliya.

(Shown a statement for the month of August 1960 of the defendants account at the Bank of Ceylon which is marked - D43): This is a statement issued by the Bank of Ceylon.

Q. In August 1960 he started off with a balance of Rs. 47/97 ?

A. Yes.

Q. On the 9th August 1960, cash Rs. 1,000/- had been put in and withdrawn on the 10th August, 1960 ?

A. Yes.

10

Q. On the 13th August 1960, there has been a credit of Rs. 50,000/- ?

A. Yes.

Q. Apart from this, did the Bank give any loan to the defendant on a guarantee of Mrs. Marley ?

A. Yes.

Q. What are the papers in connection with this transaction ?

A. There is an application for the loan by Mr. Peter Mellaaratchy.

(Mr. Adv. Thiagalingam marks this document - D44): I have a promissory note - marked D45 - for Rs. 31,645/57 including the interest. This interest is calculated on a compound interest basis but once the loan is paid back, he is given a rebate. I have also the Guarantee Bond signed by Mrs. Marley. 20

(Mr. Adv. Thiagalingam marks this - D46): I have the receipt for Rs. 31,645/57 signed by Mr. Mellaaratchy. This is produced and marked -D47. I have the letter signed by Mr. Mellaaratchy authorising the Bank of Ceylon to grant him accommodation. (Mr. Adv. Thiagalingam marks this document - D48): I have a letter regarding the Penalty in case a person fails to pay. (This document is marked - D49): These are routine documents obtained by depositors in regard to a guarantee loan. Without these documents no loan is given, provided the security is guaranteed. This is the normal guarantee which a Bank requires before a loan is given. 30

Evidence of
M. Santhiraj -
Cross-
Examination

CROSS-EXAMINED:

I have been in the Bank of Ceylon for the last 9 years. I have only been in the Bank of Ceylon.

Q. You can only speak to the practice of the Bank of Ceylon ?

A. Yes.

Q. You cannot speak to the practice prevailing in other Banks because you have not worked in other Banks ?

40

A. The practice of banking is the same. Practice is different and procedure is different. I do not know what the other Banks do but I can only speak to the Bank of Ceylon and that is all I can speak of.

No. 6
Defendant's
Evidence.
—
Evidence of
M. Santhiraj- Cross
Examination
— Continued

RE-EXAMINATION: I got so many documents signed.

Q. Is it a legal requirement that these documents should be signed?

Evidence of
M. Santhiraj-
Re-Examination

A. I am not qualified to speak about that.

Sgd
District Judge.
16. 11. 64.

10 M. D. E. JAYAWARDENA: Affirmed 39. Chief Clerk, Securities Department, Mercantile Bank Ltd., Colombo.

Evidence of
M. D. E.
Jayawardena-
Examination

I have already been in this witness box before giving evidence at the instance of the plaintiff. (Shown D44): When an application is made for a loan we do not have a form like this. Another form has to be filled in regard to an application for a loan. I do not know whether there was a letter given to Mr. Bell. There is no application. There is a request made by the applicant for a loan in writing. There was a loan application when the loan account was opened. There is an account opened for a loan application. That is the only application in this case. In other cases, a client writes to the Bank for a loan and it comes before the Manager who approves or dis-approves. I do not know whether there is an application in writing in regard to Mrs. Marley and Mr. Mellaratchy. If departmental conditions have to be satisfied we get a promissory note signed by the borrowers. In this case, I do not know whether such a document was obtained from Mrs. Marley or the defendant.

Q. Apart from the note for departmental use, there is also a letter signed by the borrowers saying that they received the money?

A. In normal practice, Yes.

30 Q. The applicant for a loan would sign about 4 or 5 documents, in normal practice?

A. In normal practice a loan application form which is a printed form. I think Mrs. Marley and Mr. Mellaaratchy signed a loan application form.

Q. Is this the normal application for a loan made by an ordinary customer?

A. Yes.

Q. Where documentation is required for the purpose of granting a loan, do you tell Court that (P3) is the first form that is used?

40 A. Yes.

No. 6
Defendant's
Evidence.

Evidence of
M. D. E.
Jayawardena-
Examination
—Continued

Q. And you tell Court that where documentation is required, the first application is different for a loan?

A. Yes.

Q. And do you tell Court that (P3) is the form used for that purpose?

A. Yes.

Q. And in (P3) the word 'loan' has been interpolated?

A. Yes.

Q. There is no typed form asking for a loan?

A. No.

10

Q. Where documentation is required what are the other documents?

A. On demand promissory note, letter of delivery, guarantee; if a man lodges shares, then transfer forms and letters of hypothecation.

Q. In the case of the loan to Mrs. Marley and Mr. Mellaaratchy there were no other forms?

A. There was a letter signed but apart from that there were no other forms.

I was asked to bring the Suspense Account and I have got a certified copy of it. I took this from the Suspense Account Book.

(Mr. Adv. Thiagalingam marks this document D50):

20

Q. Who made the original entries in this book?

A. Somebody in the Bank. I did not see the original entries but I only copied it from the Suspense Account Book. I was asked by the Manager of the Bank to take a certified copy.

The Suspense Account Book was not called for in the summons. Only two cheques were called for. There was a letter subsequently asking us to produce the Suspense Account Book. I was asked to bring a certified copy and it is a big book and day to day entries are entered in this. Mr. Austin has certified this. The Suspense Account is not a Ledger.

30

Q. As the account stands there it has not been secured?

A. It has been secured.

Q. Under the date 15th November 1960, did you issue a cheque to the Borakanda Estate Co. Ltd.?

A. No. We did not.

Q. Is the entry right or wrong?

A. Under that date credit was entered. The cheque was issued on the 29th November, 1960.

Q. Was a cheque issued for that amount Rs. 78,250/-?

A. Yes, incorporating all these four amounts.

40

A cheque was not issued for Rs. 78,250/-, A cheque was not issued for Rs. 5000/-, but a cheque was issued for the total.

Q. When monies were given to you on 15. 11. 60, Mrs. Marley had a Bank Account?

A. I do not know.

Q. You were asked to produce a cheque for Rs. 6,000/- and the letter giving cover for that cheque?

A. Yes, in fact, the cheques are not with us and it has been cleared. This is a clearing cheque and it is not with us. This is not a cheque on our Bank.

We have the Deposit Slip with which this cheque was sent and
10 Mr. Adv. Thiagalingam marks this D51 and the Credit Slip is marked -D52. D51 is the letter that came with the cheque.

Q. Do you know who received all this cash?

A. It is paid to the Cashier in the Bank.

Q. Who received this cash on behalf of the Bank?

A. I do not know.

Q. Were receipts issued for this cash payment?

A. I do not know.

(Shown document marked D53):

I can identify the handwriting in this and there is no doubt
20 about it. This is the handwriting of the late Mr. Bell, the Manager of the Bank. This was the person with whom all these transactions were done.

(Mr. Adv. Amerasinghe objects to this document and it is marked subject to the objection).

This document indicates that he could a loan on the fixed deposit at 5 per cent; otherwise, 7 per cent will have to be paid.

CROSS-EXAMINATION: (D1 & D2 are shown to the witness):

In D1 there is a reference to the letter of the 9th instant to the defendant. (Shown letter dated 9. 9. 60): This is a letter signed by the defendant and counter-signed by Mrs. Marley.

(Mr. Adv. Amerasinghe marks this document - P22): (Shown D50):

36 Q. The amount utilised column in the different sections of D50, are the amounts credited from time to time to the Suspense Account of this transaction?

A. Yes.

Q. The aggregate of those amounts was paid out on 29. 11. 60 by one cheque issued to the Borakanda Estates Co. Ltd.?

A. Yes.

No. 6
Defendant's
Evidence.

—
Evidence of
M. D. E.
Jayawardena-
Examination
--Continued

Evidence of
M. D. E.
Jayawardena-
Cross-
Examination

No. 6
Defendant's
Evidence.
—
Evidence of
M. D. E.
Jayawardena-
Cross Examination
—Continued

This is the cheque marked (P6): (Shown P6): This is the cheque by which this payment was made in favour of the Borakanda Estates Co. Ltd., (Shown P4): The first entry in the debit column is the cheque for Rs. 125,000/-. This amount went into the Suspense Account along with another Rs. 20,000/- on 29. 11. 60. This is included in this sum of Rs. 145,000/- credited under date 29. 11. 1960 in the column of (D50):

RE-EXAMINATION: Nil.

Sgd

District Judge. 10

16. 11. 64.

Evidence of
S. S. Nathan-
Examination

S. S. NATHAN: Affirmed 40. Headquarters Inspector, Gampaha.

In February 1962 I was in charge of Ambalangoda. In connection with Borakanda Estate there was some trouble in February 1962. There was a complaint made by Mr. Weerawardena that he was forcibly ejected. This was on 21. 2. 62. The complaint by Mr. Weerawardena was on the evening of 21. 2. 62 at 4. 05 p. m. There was also a telephone message from the Dehiwela Police regarding the complaint made by Mr. Weerawardena at the Dehiwela Police Station. The complaint made by Mr. Weerawardena at the Dehiwela Police Station 20 was marked (D5) in the Balapitiya case.

(Mr. Adv. Thiagalingam marks this document - D54): D54 was the statement made by Mr. Weerawardena to the Dehiwela Police on 21. 2. 62. This was reported to me by the Dehiwela Police.

Q. The next day the defendant Mellaaratchy came along himself?

A. Yes.

Q. With whom did he come?

A. Mr. Weerawardena came with Mr. Mellaaratchy.

Q. Did Mr. Mellaaratchy come alone or with anybody else?

A. He came with an Advocate Mr. Thurairatnam and a Nuwara 30 Eliya Proctor, I am not sure of the name. I think, it was Mr David Perera.

The defendant made a statement. (Mr. Adv. Thiagalingam marks this statement - D55): The statement was made on 21. 2. 62, and the time 8. 15 a. m. The original entry was made in the Crimes Note book on 21. 2. 62 and pasted in this book on 22. 2. 62.

Q. As a result of this, what did you do?

A. I sent one of the Inspectors of the Ambalangoda Police Station to enquire about it, and three persons were arrested with guns and prohibited knives on the Estate.

Q. Did the Marleys come to you for assistance?

A. Yes.

Q. What did you do then?

A. There again I sent some Police officers to enquire about it

There was also a complaint of theft of rubber sheets from the Factory and Mr. Jayatilleke was looked for but we were not able to trace him. All this happened after the 20th. They were kept in the cell and I am not sure whether they were taken to Court or bailed out at the Station.

No. 6
Defendent's
Evidence.

Evidence of
S. S. Nathan
Examination

—Continued

10 Q. Eventually what was the sequel to all this?

A. Then both parties came to some settlement. Mrs Marley and Mr. Mellaaratchy came and made some statement at the Police Station that they had settled it.

Mr. Mellaaratchy himself made a statement on 2. 3. 1962 at 6.45 p.m. (Mr. Adv. Thiagalingam marks this statement - D56):

I refer to Para: 486. Para: 486 is referred to in the earlier complaint made by Mr. Mellaaratchy. This is the document D55. The reference there is to the earlier complaint made by Mr. Mellaaratchy. Mrs. Marley also has made a statement.

20 Q. Were you there when she came?

A. I was there when she came. She came with others. I did not see the others who came. There were several others who came with her.

Q. You know that man Weerawardena?

A. Yes.

He came and wanted to go to the Estate to take some of his belongings and we sent him with some Police officers to take his clothes and belongings. I remember Mr. Mellaaratchy also came to the Police Station and he said that he was going to the Estate. I also
30 sent some Police officers with him to the Estate.

CROSS-EXAMINATION: Nil.

Sgd ..

District Judge.

16.11.64.

V. SUBRAMANIAM : Affirmed 33. P. S. 5225, Ambalangoda Police.

Evidence of
V. Subramaniam-
Examination

I was not at the Nuwara Eliya Police Station. I went to Borakanda Estate on 21. 2. 1962. After the incident I went in search of the accused Gunadasa. I went to Borakanda Estate after the rubber was
40 stolen and there was a complaint made by Weerawardena. This complaint was made at the Dehiwala Police Station. I saw Mr. Jayatilleke, Mr. Marley,

No. 6
Defendant's
Evidence.
—
Evidence of
V. Subramaniam
Examination
—Continued

Mrs. Marley and other labourers. The watchers were there and they were armed with guns and knives. I arrested three persons. The rest ran away on seeing the Police. I brought these three people and kept them at the Police Station. These persons were bailed out at the Police Station.

Q. Do you know whether after all this trouble was over whether Mr. Peter Mellaaratchy came and made a statement?

A. Yes. I recorded his statement.

I recorded the statements of Mrs. Marley and Mr. Mellaaratchy on 2.3.62. I recorded Mr. Mellaaratchy's statement first and then 10 Mrs. Marley made her statement.

Q. Did Mrs. Marley come alone or with her husband?

A. With her husband.

They were bailed out and no case was filed against them. The guns were returned to them as they were licensed guns. Through Court the guns were returned to them.

Evidence of
V. Subramaniam-
Cross-
Examination

CROSS-EXAMINATION:

Q. Did you take any statements at the spot?

A. No. I did not record any statements at the spot.

Inspector Girihagama conducted the inquiry.

20

Q. You did not go to the Estate?

A. After that on instructions of Inspector Girihagama I went in search of the driver of the lorry. I went twice to Borakanda Estate.

I saw Mrs. Marley at the bungalow. I saw Mr. Marley also at the bungalow. I did not speak to them on either occasion. I recorded the statement of Mrs. Marley on 2.3.62 at the Ambalangoda Police Station. She came by car with Mr. Mellaaratchy, Mr. Samaranayake and Mr. Jayatilleke. I cannot remember in what car they came. I do not know in how many cars they came. They came inside the 30 room where statements are recorded. The Inspector was in his office at the Police Station at the time.

Q. He has told us a few minutes ago that he did not see Mr. Marley there that day?

(At this stage, Mr. Adv. Amerasinghe moves that Inspector Nathan be recalled):

Evidence of
V. Subramaniam-
Re-Examination.

RE-EXAMINATION:

At the Ambalangoda Police Station there is a Charge Room. It is called the Headquarters Inspector's Office room. I recorded the statement in the Crimes Branch and it is another room where the 40 Crimes work is done. I will have to come to the Charge Room to see if any cars have come. I did not see the cars in which Mrs.

Marley, Mr. Jayatilleke, Mr. Samaranayake and Mr. Mellaratchy came. Mr. Marley did not come into the Charge room and he was in the car.

No. 6
Defendant's
Evidence.

(With permission of Court, Mr. Adv. Amarasinghe asks):

Evidence of
V. Subramaniam-
Re-Examination.

I was asked earlier whether Mr. Marley also came and I replied in the affirmative.

--Continued

Q. In your first answer did you say he was in the car?

A. I was not aware where he was and, therefore, I did not say whether he was in the car.

- 10 When the cars came, I came into the Charge Room and I peeped through the door and I saw Mr. Marley. It was about 6.45 p.m. It was not dark and there was light.

Sgd

District Judge.

16.11.64

Mr. Adv. Amerasinghe moves that Inspector Nathan be recalled as he states that, according to his recollection, he had stated that he did not see Mr. Marley.

S. S. NATHAN : Affirmed Recalled.

- 20 Q. BY COURT: Did you see Mr. Marley on 2.3.62 when Mrs. Marley came to the Police Station?

Evidence of
S. S. Nathan-
Examination

A. I did not see him.

EXAMINED: By Mr. Adv. THIAGALINGAM:

I do not know Mr. Marley. Some others came with her but I do not know them. He did not come up to me and say he was Mr. Marley.

CROSS-EXAMINED: By Mr. Adv. AMERASINGHE:

Some others came into my office. The people who came with Mr. Mellaaratchy and Mrs. Marley came to my office.

Evidence of
S. S. Nathan-
Cross-
Examination

- 30 Q. It might have been Mr. Marley?

A. I cannot say.

Sgd

District Judge.

16.11.64.

Further hearing tomorrow 17.11.64.

17. 11. 64

No. 6
Defendant's
Evidence.
—
Evidence of
P. S.
Gunawardena-
Examination

Apperances some as before.

Parties present

P. S. GUNAWARDENA : Affirmed 29. Proctor Supreme Court, Messrs. Julius & Creasy, Colombo.

I am a member of the Firm of Messrs. Julius & Creasy. I produced the letters D38, D39, D40, D41 and D42 and that is how I was brought into Court. All these documents were sent by Mr. Welikala in reply to letters written to him. (Mr. Adv. Thiagalingam marks letter dated 2.6.1962 - D57 - written by Messrs. Julius & Creasy 10 to Mr. Welikala.) (Mr. Adv. Thiagalingam also marks letter dated 15. 6. 62 written by Messrs. Julius & Creasy to Mr. Mellaaratchy-D58):

This is a copy of a letter. This is signed by us.

Evidence of
P. S.
Gunawardena-
Cross
Examination

CROSS-EXAMINATION:

Q. You brought certain letters which were handed over to Counsel for the defendant yesterday?

A. Yes.

Q. You are not in a position to identify the signatures on these letters?

A. No.

20

RE-EXAMINATION: Nil.

Sgd

District Judge.

17 11.64.

Evidence of
D. P.
Mellaaratchy-
Examination

DON PETER MELLAARATCHY: Sworn. 52. Planter, Nuwara Eliya.

I am the defendant in this case.

I came to reside at Nuwara Eliya towards the end of 1956. I got to know the Marleys in 1957. I addressed Mr. Marley as 'Sir' and Mr. Marley used to address me as Peter. We were members of the Golf Club, Nuwara Eliya. In fact, he proposed my name to 30 the Golf Club. Mr. Marley had been earlier a resident of Nuwara Eliya. (Shown Agreement No. 541 of 6th August, 1955) - D59):

I am a party to this agreement.

Q. Why did you become a party to this agreement?

A. At the request of Mr. Marley.

Q. What has Mr. Marley told you?

A. Mr. Marley wanted a property by the seaside. He said he wanted it for his wife as well and he told me to go and look for a place and that he had money in the Bank and he wanted to invest his monies for his wife and he was particular that it should 40 be by the seaside.

I looked for a property and I had to go round with brokers and I had to bring them here to Mr. Marley. At the end one gentlemen found a property belonging to Sir Ernest de Silva-Borakanda Estate. The preliminary expenses were incurred by me.

Q. How was it that you yourself became a party to this agreement?

A. Mr. Marley said that he would provide the money and wanted me to manage the place and he told me that, if I managed the place and paid off his money, he would give me a half share of the properties once I paid off the debt.

No. 6
Defendant's
Evidence

Evidence of
D. P.
Mellaaratchy-
Examination
—Continued

He asked me whether I could contribute any money and I told him that I could not contribute anything and at that time I could not contribute any money. He said Mrs. Marley would guarantee a loan from the Bank of Ceylon, Nuwara Eliya, in a sum of Rs. 25,000/-.

Q. Why was it necessary for you to put in that money?

A. Mr. Marley said that I should have a stake in the thing and he also thought that if I had some money in this, I would take a special interest and work for it.

The consideration provided in (D59) was Rs. 42,500/- being 10 per cent of the total consideration. The entire consideration was Rs. 425,000/- and 10 per cent was paid at the time of the signing of (D59). I had no monies in my Bank Account at the time. I had only Rs. 40/- odd.

Q. How was then the Rs. 42,500/- paid on D59?

A. Col. F. C. de Saram was the Notary who attested the deed. Mr. Marley told me when we went into the office that he had no cheque book and he told me to give a cheque and that he would send it to the Nuwara Eliya Bank. My cheque was paid on the Agreement (D59)

I draw the attention of Court to the last para: Where it is stated that the consideration of Rs. 42,500/- was paid by my cheque.

Q. Prior to this agreement being signed, had there been any informal talk amongst you people in the presence of Mr. David Maartensz?

A. Mr. Marley told me that we should go and see Mr. Maartensz one day when we were in Colombo. So I went into Mr. Maartensz' office with Mr. and Mrs. Marley. There I was asked to contribute Rs. 50,000/- for this deed and I said that I just could not do it.

Q. Were you at that time able to contribute any money?

A. No.

Q. After the Agreement (D59) was signed, what happened?

A. I brought Mrs. Marley back to Nuwara Eliya and I had to go back because Col. F. C. de Saram wanted me to go to Balapitiya and get some plans. Then I left Nuwara Eliya the following day.

Q. Was the Rs. 50,000/- deposited by Mr. Marley?

A. Mr. Marley told me that he was depositing it and I went away expecting him to deposit the cheque.

I got back to Nuwara Eliya somewhere about the 13th. I think it was the 13th and that was the day I deposited the cheque in the Bank.

Q. When you were away from Nuwara Eliya, did you see D.L. & F. de Saram?

A. From Balapitiya I came to D. L. & F. de Saram.

Then I came running and saw Mr. Marley and I asked him why he had not deposited the cheque and he gave me the cheque and told me to go to Colombo and meet Mr. David Maartensz. I told him that Mr. Saram had already mentioned that the cheque was not deposited and I said that I would deposit the cheque and go and see Mr. Maartensz. I deposited the cheque on the 13th and went and saw Mr. David Martensz. 10

Q. Was David Maartensz aware of this agreement being signed?

A. No. When I went there I told him that we had signed the agreement at De Saram's and he was surprised and he said that he did not know anything about it.

Q. Had there been any agreement that you were to provide Rs. 50,000/- of the consideration? 20

A. No.

Q. The Rs. 50,000/- cheque given by Mr. Marley to you and which you credited to your account on the 13th, was it a loan?

A. No.

Q. Did you know of any letter written by David Maartensz to De Silva & Mendis about this time?

A. No.

Q. Who contributed the monies ultimately for the consideration of the transfer of Borakande Estate?

A. We borrowed Rs. 125,000/- from Borakanda Estates Co. Ltd., and I contributed Rs. 25,000/- from the Bank of Ceylon loan and the balance was contributed by Mr. Marley. 30

By 'we' I mean Mrs. Marley and myself. We agreed on the agreement to mortgage Borakanda Estates Co. Ltd, for Rs. 125,000/-. These were monies guaranteed by Mrs. Marley and the balance was contributed by Mr. Marley.

Q. Before the transfer was made out was there any suggestion that you should apply to the A. I. C. C for a loan?

A. It was suggested by Mr. David Maartensz that we should borrow money from the A. I. C. C. 40

We did not even apply for this loan. The application papers were signed but they were not sent up because Mr. Marley said that it would take time and it would cost money and that he had money in the Bank and that he would utilise his money. That application to the A. I. C. C. was never made.

Q. But you have with you the application which was intended to be made and signed by you and Mrs. Marley?

A. Yes.

(Mr. Adv. Thiagalingam produces this unsent application marked-D60):

Q. Thereafter, was there an attempt made to raise money to
10 mortgage this property from the Mercantile Bank?

A. We made an application to the Mercantile Bank for Rs. 125,000/-.

(Mr. Adv. Amerasinghe says that the contents of D60 cannot be used as evidence against him):

Q. You did make an application to the Mercantile Bank to get money on this property?

A. Yes.

Q. At whose request?

A. At the request of Mr. Marley.

Q. Was that loan taken from the Mercantile Bank?

20 A. No, because the lawyers of the Bank wrote a letter asking for Rs. 2,000/- odd and interest at 7 per cent and Mr. Marley said that they are paying 2½% and he turned it down.

Then Mr. Marley wanted me to go and see the Manager and find out the rates for mortgaging the property and the terms of the draft against the fixed deposit. I did this and (D.53) is the statement which Mr. Bell gave me.

Q. In connection with this money which Mr. Marley took from the Bank, did you take the Marleys to the Bank?

A. Yes. I think somewhere early in the month of November.

30 I drove Mr and Mrs. Marley to the Bank and they went inside and I do not know what happened.

Q. Did you ever ask Mr. Marley to give you any loan?

A. No.

Q. About how many days prior to the actual signing would this be?

A. It would be about three weeks.

I drove them to the Bank. They said that they wanted to go and see the Manager of the Bank to get money on the fixed deposit. By 'they' I mean, Mr. and Mrs. Marley.

(Mr. Adv. Amerasinghe objects to this evidence going in):

40 Q. Why did Mr Marley go to the Bank?

(Mr. Adv. Amerasinghe objects to this question. I allow it):

A. He said that he was going to see the Manager of the Bank to see about getting this loan for the purchase of Borakanda Estate.

Q. Then what happened the next day?

A. The next day I brought Mr. and Mrs. Marley to Nuwara Eliya and the following day Mrs. Marley went with me to Colombo because she had to take the fixed deposit receipt to the Bank.

Q. Even on the second day did you go with Mrs. Marley into the Manager's room?

A. I did not go. 10

Q. How long was Mrs. Marley in the Manager's room?

A. She was there for nearly half an hour. I went out on a little matter of my own to see my Proctor.

I would have taken about half an hour and when I returned she was there and I brought her back to Nuwara Eliya.

Q. In regard to raising those monies, was there any delay?

A. Yes.

The time provided for the Agreement (D59) had run out and we wrote another Agreement No. 532 of 12th November, 1960 which is marked D61. 20

Q. Who attested the transfer?

A. Mr. S. Gunasekera of Messrs. de Silva & Mendis.

Q. How did he come to attest the transfer?

A. Mr. Marley told me to go to Messrs. de Silva & Mendis saying that they would be cheaper than Messrs. F. J. & G. de Saram.

Q. The transfer deed (P13) of Borakanda Estate was signed on 29. 11. 60?

A. Yes.

Q. Tell us what happened on that day?

A. We went into the Mercantile Bank with the Marleys and I went into the Manager's room. 30

Then there I deposited Rs.32,500/- in cash with the Manager of the Bank. Then Mrs. Marley gave in two cheques for, I think, Rs. 100,000/-. Then we had to open two accounts, one known as the current account under the Borakanda Estate Account and a No. 2 account. The forms were given and we signed the forms and then the Manager produced a cheque leaf and told me and Mrs. Marley to sign. Mrs. Marley and I both signed. We handed the cheque to the Manager. Then cheque book was given for the current account opened under the name of Borakanda Estate. We got a cheque for Rs. 257,500/- in favour of the Borakanda Estates Co. Ltd. 40

(Shown P5): I admit my signature on this cheque.

Q. When you put your signature here, had this cheque been filled in?

A. No. It was a blank cheque.

Q. When Mrs. Marley signed it was the cheque filled in?

A. No.

(Shown P3): I have signed P3. Mrs. Marley too has signed it.

Q. Can you remember the word 'loan' being interpolated?

A. When I signed this the word 'loan' was not there.

10 The photostat copy of (P3) is (P11B.)

Q. Apart from (P3) you said you signed another form?

A. Yes, the No. 2 Account. This is the original of P11A.

P11A is a photostat of the other document I signed.

Q. When you signed the original P11A, were these words 'jointly by both; put in?'

A. No.

Q. You and Mrs. Marley signed it?

A. Yes.

20 The endorsement appearing at the bottom of P11A was not there when I signed it.

Q. Once the property was bought who entered into possession?

A. Mr. & Mrs. Marley and I went there and took possession.

Q. And who was put in charge of the property and managing the property?

A. That Mr. Marley and I agreed earlier. Mr. Marley said that I should manage the property and pay Rs. 6,000/- a month into the No. 2 Account and then once those monies are paid and the Borakanda Estates Co. Ltd. loan of Rs. 125,000/- is settled, then I would get a half share and he asked me to manage the property.

30 The current account was to be for the management of the Estate.

Q. By whom was that to be operated?

A. Either by me or Mrs. Marley

It was I who was going to operate this account, and I was placed in possession.

Q. Were you in sole charge?

A. I was put in sole charge.

On the 8th of December, 1960, Mr. Marley wrote to me a letter which is marked - D62.

40 (Shown D62): This is entirely in his handwriting. He addresses me as 'my dear Peter'. This has reference to the management of the Estate.

No. 6
Defendent's
Evidence.

Evidence of
D. P.
Mellaaratchy-
Examination
—Continued

No. 6
Defendant's
Evidence.

Evidence of
D. P.
Mellaaratchy-
Examination
—Continued

Q. To whom were you selling the produce?

A. To John Keel Thompson & White and they send the cheque direct to the Bank.

Q. Can you recall a conference held at Mr. Marley's on 5. 2. 1961?

A. Yes.

Q. You were asked to attend that Conference?

A. Yes.

Q. About that time what were the feelings between you and Mrs. Marley?

A. It was very much strained. It started with my wife first 10 and feelings were strained between my wife and myself, on one side, and Mrs. Marley on the other.

At the conference on 5. 2. 61 I brought it to the notice of Mr. Marley that Mrs. Marley had gone and instructed the Bank about signing of cheques by both of us and when I went to the Bank I could not cash a cheque that was needed for payment. Mrs. Marley said that she was not going to sign the cheques and I said that I would have to sell the rubber outside. Then Mr. Maartensz said 'why not sell this place' and I said that I would try and find a buyer. Then a suggestion was made: 'why not hand it over to 20 Mackwoods' and I agreed that letters should be written

(Shown P 18): I remember getting this letter and the enclosure (P18A):

Q. When you got this letter, what did you do?

A. When I got the enclosure I saw Mr. Marley and I told him about this mortgage and that I am prepared to give any amount of mortgages on this Estate.

Q. And did you raise the matter of any loan at one time or the other?

A. No. I went to Mr. Marley when I got this letter and I 30 asked Mr. Marley what this loan that is referred to in the letter was. Then he said: 'this is not a loan to you but this is a loan to my wife.' I was not satisfied and then I went the next day and he brought the letter of guarantee that he had given to his wife.

Q. Was this in blank?

A. Yes.

I refer to the document (D4): He gave it to me on that day and he told me that this was a guarantee to his wife.

Q. At all times were you willing to mortgage this property to anybody?

A. Yes.

Q. But were you disposed to borrow money from anybody on your personal security?

A. No.

Q. Were you interested in joining this venture?

A. No.

(Shown letter D6): In D6 there is a postscript in my hand.

Q. Why did you make this endorsement?

A. This was done at the request of Mrs. Marley. Apart from making this postscript, if the Marleys wanted me to mortgage anything I was willing to do so. I said so to Mr. Marley.

Q. What did Mr. Marley say to you?

A. Mr. Marley said: 'forget about these things and you carry on with the work'.

Q. Did you see this letter P17?

A. No.

Q. How is that letter headed?

A. It says: 'Dear Mr. Mellaaratchy'. He never addressed me like this. He writes to me: 'Dear Pater'.

20 Q. In the whole of 1961, who was in possession of the Estate?

A. I was.

Q. About the end of 1961 on behalf of Mrs. Marley, Proctor Clarence de Silva wrote to you certain letters which have been produced and Messrs. F. J. & G. de Saram also wrote to you?

A. Yes. (Shown P14):

Q. When you got P14, what did you do?

A. When I got this letter I went with it to Adv. Thurairatnam. I wanted to go and see Mr. Marley but they did not allow me to do so. Then I took this letter and went to see Adv. Thurairatnam and he told me to deny this and write a letter.

As a result of this, Mr. Thurairatnam went and saw Mr. Maartensz and I wrote a letter to Messrs. F. J. & G. de Saram saying that Adv. Thurairatnam was coming. With Mr. Thurairatnam I went and saw Mr. David Maartensz. Then we had a discussion about the Estate and I explained to him that it was a loss to work it and then they suggested to me that I should buy it and I said that I was willing to buy it. I do not accept the correctness of the letter (P14).

Q. At the end of 1961, what were you worth?

40 A. I had 350 acres of coconut in Bingiriya and two houses. I have sold a part of this Bingiriya property. I have now 130 acres.

No. 6
Defendant's
Evidence.

Evidence of
D. P.
Mellaaratchy-
Examination
-- Continued

Q. At the end of 1961, did the Bingiriya Estate carry a mortgage?

A. Yes, it carried a mortgage of Rs. 225,000/- and this has been paid off now.

Q. At the end of 1961 you had the Bingiriya Estate subject to a mortgage and, apart from that?

A. I had two houses at Nuwara Eliya and also some properties at Kandana.

Q. Were you quite prepared to buy Borakanda Estate?

A. Yes.

Q. Were you making arrangements to sell anything?

10

A. Yes, I was making arrangements to sell a part of my Estate and to buy Borakanda Estate

Q. This happened at the end of 1961?

A. Yes,

Q. Or early 1962?

A. A short time before this they took forcible possession.

Q. On 6.2.63 Mrs. Marley filed action against you in the Balapitiya Courts?

A. Yes.

Q. When did you get summons; can you remember?

20

A. I cannot remember.

Q. On 19/2 who was in possession of the Estate?

A. On the 19th I was in possession through my Superintendent Mr. Shelton Weerawardena.

Q. Before the 19th had you paid in money to the credit of that No. 2 Account at the Mercantile Bank?

A. Yes, I had paid in Rs. 6,000/-.

Q. Were there also monies in the current account?

A. Yes.

There was rubber on the Estate worth about Rs. 15,000/- and 30 coconut worth about Rs. 4,000/-. There were my personal belongings worth about Rs. 2,000/-. There was a typewriter, bicycle etc., and they were all worth about Rs. 2,000/-.

Q. Have you paid accruing interest to the original owners of Borakanda Estate?

A. Yes.

Q. And how much had you spent in running this property?

A. I had spent about Rs. 20,000/-.

Q. Were accounts kept on the Estate?

A. Yes.

40

Q. And were the books of account on the Estate?

A. Yes.

Q. On the 20th night, where were you?

A. I was at home at Nuwara Eliya.

On the 20th midnight about 11.30 or 12 o'clock I got a telephone call from Weerawardena saying that Mr. and Mrs. Marley had come and taken forcible possession of the Estate and he had gone and made a complaint to the Dehiwela Police. Then I asked him why he went to Dehiwela instead of going to the nearest Police Station and he said that he was taken between two cars and was not allowed to get out.

No. 6
Defendent's
Evidence.

Evidence of
D. P.
Mellaaratchy-
Examination
—Continued

10 Q. What did you do next?

A. Then I told Mr. Weerawardena to come to the Advocate's place at Kynsey Road about 6.30 a.m. and I started off with Mr. David Perera, Proctor.

We all went to the Ambalangoda Police Station and I made my statement.

Q. Did you go to the Estate on that date?

A. I went on the 23rd and not that day. I did not go there because they had gone and taken possession and the Police were making inquiries.

20 When we went in we saw three people in the lock-up and the Police said that they had unlicensed guns and revolvers.

Q. On the 23rd why did you go to the Estate?

A. On the 23rd I went to the Police Station and I stayed with Weerawardena. The belongings were on the Estate and he had to collect these things and I told the Inspector that he should not be sent along and he agreed to send a Police party. I told him that I would wait till he returned. Then he came running and said that Mr. Marley wanted me to come.

Q. What were your feelings towards Mr. Marley?

30 A. He was very kind to me and I respected him and he did this at the instigation of his wife.

Q. What happened at Mr. Marley's?

A. I went there and Mr. Marley was there. Mr. Marley said that it is useless to try to settle this and 'my wife wants to remain here and why not settle this'. Then we went through the accounts and the books were also there. Then I told Mr Marley the expenses that I had incurred before the purchase. Then I showed him the monies that I had borrowed from Mr. Soyza. Then I told him to pay me Rs. 125,000/- if they wanted me to give them my share
40 of the property.

No. 6
Defendant's
Evidence.

Evidence of
D. P.
Mellaaratchy-
Examination
--Continued

The Superintendent of the Estate had taken monies from Mr. Soyza off and on. I demanded Rs. 125,000/-. Mrs. Marley was all the time coming in and going out and scolding me. Mr. Marley said that he would settle me. Then he wanted me to meet his Proctor, one Mr. Welikala. I could not make up my mind because the matter was in the hands of my lawyers Mr. Adv. Thurairatnam and Mr. David Perera. Then he said I must go and see Mr. Welikala. On the 28th I spoke to Mr. Thurairatnam and told him this is what Mr. Marley is saying. On Mr. Thurairatnam's advice, I was agreeable to get rid of the bother on receipt of Rs 125,000/-. Mr Marley agreed and asked me to go and see Mr. Welikala and he wanted me to discuss the details with him, I went and saw Mr. Welikala a day or two after. Then I met him and he gave me a draft and with Proctor De Silva I went and saw Mr. Adv. Neville Samarakoon and after some corrections were made, I brought and gave it to Mr. Welikala. 10

The Agreement (D5) was signed by me. (Shown D5): The original of this document is filed in the Balapitiya case. I signed this in Notary Mr. Karunaratne's house. I had not known Mr. Karunaratne earlier.

Q. Prior to meeting Mr. Welikala at the request of Mr. Marley, had you known Mr. Welikala? 20

A. No.

Q. Why did you not go to Borakanda to sign that agreement?

A. The last time when I was there Mrs. Marley was fighting and shouting and Mr Marley himself asked me to sign it elsewhere.

Q. After signing, what did you do?

A. After it was signed Mr. Marley told me to go to the Police Station and inform the Police so that they would not take any further action on the theft of the rubber and other articles.

Q. After the agreement was signed, have you given up your claims against the Marleys? 30

A. Yes.

I paid a sum of Rs. 31,000/- along with interest.

Q. Did you agree to give any money to Soyza?

A. Yes., when we went through the account it was taken as expenses and in the Rs. 100,000/-, the Rs. 7,000/- was included.

Mr. Soyza was there on the 28th. On the night of the 20th the rubber was removed from the Estate.

Q. As a result of that agreement, have you abandoned all steps against the Marleys? 40

A. Yes.

Q. In pursuance of the agreement (D5), did you get a fragmentation Board certificate?

A. Yes.

(Mr. Adv. Thiagalingam produces this document dated 17. 4. 62 marked - D63):

No. 6
Defendant's
Evidence.

Q. In spite of the agreement (D5) did Mrs. Marley proceed with the Balapitiya case?

A. Yes.

Q. When you heard about this, what did you do?

A. I filed papers and got the decree nisi vacated.

Q. In that case you filed your answer (P21)?

A. Yes.

Evidence of
D. P.
Mellaaratchy-
Examination
-- Continued

10 This is now set up for trial. In the Balapitiya case same Counsel appeared for me. Mr. Soyza filed action against me in the Balapitiya Court for Rs. 7,000/-. The agreement (D5) has not been implemented and I have made a claim on that agreement in my answer (P21).

Q. Have you any debts today?

A. I have about Rs. 40,000/-.

Q. What are you worth today?

A. I am worth about 6 to 7 lakhs.

Q. Did you agree with Mr. Marley that you were to be discharged of all obligations in respect of this property?

20 A. Yes.

Q. Was that fully understood between Mr. Marley and you?

A. Yes.

Q. If that was not understood or agreed, would you have signed that agreement (D5)?

A. No.

Q. If Mr. Marley had not agreed to absolve you of all liabilities, would you have signed that agreement?

A. No.

30 Q. You knew that rightly or wrongly that, according to you wrongly, claims were being made against you?

A. Yes.

Q. If Mr. Marley had not agreed to relieve you of all those obligations would you have signed that agreement?

A. No. I would not have signed.

CROSS-EXAMINED:

I can write and read English fluently. I have been educated in English up to the E. S. L. C. Standard. I was educated at Maris Stella and ended up at St. Joseph's College, Colombo. I said that I came to Nuwara Eliya at the end of 1956.

Evidence of
D. P.
Mellaaratchy-
Cross-
Examination

40 I came to know the Marleys in 1957. The first time that I met Mr. Marley was in the Club. In 1957 I was looking after my properties.

Then I had 300 acres of coconut and a house at Nuwara Eliya. The 350 acres in Bingiriya I bought in 1951. There was a Mortgage of Rs. 225,000/- on this property. I paid off this balance at the time I sold this property. I settled the Rs. 225,000/- mortgage in 1964. This Rs. 225,000/- mortgage was subsisting till early this year. The purchase price of 350 acres was Rs. 450,000/-. I borrowed Rs. 225,000/- from the A. I. C. C. on this property. Then I borrowed Rs. 125,000/- from the owners and the balance Rs. 75,000/- was my money and I paid in cash. I borrowed Rs. 125,000/- from the owners and I paid this off after the sale of the property. Earlier I had paid Rs. 75,000/- and the balance I paid off when I sold the property. I paid Rs. 50,000/- to the owners and the money that I borrowed from the A. I. C. C. early in 1964. I sold about 250 acres in January this year, for this purpose.

Q. Have you on other occasions bought and sold properties?

A. No.

Q. Is that the only transaction?

A. Yes.

Q. You said that you met Mr. Marley at the Club?

A. Yes, and that is how I came to know him.

20

Q. Did you have anything to do with him apart from social meetings?

A. I used to meet him at the Club and I got very friendly with him. Then we used to go out on week-ends.

There was a big difference in age between Mr. Marley and myself. Mr. Marley was in his eighties and I was under 50 when I met him. He was well over 75 years when I met him. I went about and became very friendly with Mr. Marley.

Q. Did you render any services, in any way?

A. I drove him about in my car and he used to send me to Colombo to see his Proctor about these matters. There were people who owed him money and he got me to help him in collecting his dues

Q. How much did you help him to collect in that way?

A. These people owed him money. I never brought him the money He used to give me letters to go and see his Proctor at Colombo.

Q. Did you make those trips specially on his behalf?

A. Once or twice I did those trips specially on his behalf.

Q. You also said that you drove him about?

A. He used to drive his own car. I drove him about in my car.

40

- Q. How far have you driven him?
 A. I took him once to Akuressa to Wilpita Estate, to my brother-in-law's.
 Q. And you also, through Mr. Marley, came to know Mrs. Marley?
 A. Yes I came to know her equally well.
 Q. They came to place a lot of confidence in you?
 A. Yes, especially Mr. Marley.
 Q. You said that you were asked by Mr. Marley to find a property by the seaside?
 10 A. Yes.
 Q. When was that?
 A. That was immediately after the General Elections in 1960.
 Q. That is the March Elections or the July Elections?
 A. After the March Elections. Immediately after the Elections he asked me.
 Q. Were you not busy after the March Elections on political matters?
 A. No. I contested the March Elections and not the July Elections. I lost in the March Elections and I did not contest in July.
 Q. You knew one Mr. Samaranayake?
 20 A. I knew him because we were candidates in the same Party and I knew him as a candidate and not beyond that.
 Q. You belong to the same party i. e. the United National Party, Mr. Samaranayake and you?
 A. Yes.
 Q. Which Election did Mr. Samaranayake win?
 A. He won the March Elections.
 Q. Were you occupying any office in the United National Party?
 A. I was the Political Secretary to three Prime Ministers.
 Q. How long had Mr. Samaranayake been in the Party?
 30 A. I knew him only during the March Elections and I do not know how long he was in the Party.
 Q. Is Borakanda Estate by the seaside?
 A. It is close to the sea. It is about 4 Miles from the sea. It is 400 acres in extent.
 Q. It was you who found Borakanda Estate for the Marleys?
 A. Yes, through a broker.
 Q. When the broker notified you of that sale, what did you do?
 A. I went with Mr. Marley to the Estate to see it. I informed
 40 Mr. Marley that such an Estate was available and I took him to the Estate.
 Q. Then the question of finances cropped up for the purchase?
 A. Yes.

No. 6
 Defendant's
 Evidence.

Evidence of
 D. P.
 Mellaaratchy-
 Cross-
 Examination
 -- Continued

No. 6
Defendant's
Evidence
—
Evidence of
D. P.
Mellaaratchy-
Cross
Examination
—Continued

Q. When you informed Mr. Marley of Borakanda Estate, did you tell him that you were also interested in the property?

A. No.

Q. So your information to him was entirely because he was looking for a property?

A. In fact, I did not like the area. It is a very bad area.

Q. So Mr. Marley went to see this Estate because it was a seaside property of 400 acres?

A. The broker came and we all went there to see the place. The broker came and gave him a description and he said: "Let us 10 go and see".

Q. I suggest it to you Mr. Mellaaratchy that you wanted to purchase Borakanda Estate and you interested the Marleys in it?

A. No.

Q. I suggest to you that you persuaded Mrs. Marley to get her husband to finance this venture?

A. No.

Q. I suggest to you that this property was, in fact, purchased by you and Mrs. Marley?

A. The deed says so. 20

Q. I also say it as a fact?

A. It was purchased with Mr. Marley's money.

Q. At this date you had spent how much in looking for the property?

A. I had to pay for the Valuation Report. When we went through the accounts with Mr. Marley on the Estate, I had spent about Rs. 6,000/-. I had spent about Rs. 6,000/- prior to the taking over. I would not say it was prior to the agreement.

Q. You told us in examination-in-chief that you had incurred some preliminary expenses before the agreement to purchase was signed? 30

A. The total I had incurred was Rs. 6,000/-. I must have spent about Rs 1000/- on travelling, taking brokers, Valuation Report etc.,

Q. When was the Valuation Report taken?

A. That was before the signing of the agreement because we gave that to the Mercantile Bank.

Q. Mr. Marley told you that he wants to give you half this property?

A. Yes. i. e. after the payment of the monies provided by Mr. Marley and also the Borakanda Estate loan of Rs. 125,000/-.

Q. In other words, would it be correct to say that the purchase was to be financed by Mr. Marley and after those finances were repaid, you were to be given a half share of the property?

A. Yes.

Q. Is that correct?

A. Yes.

Q. According to that agreement, you were given a half share before the finances were repaid?

A. I was only given the management and I was not given a
 10 half share. I was only going to get that after paying off the monies. A half share was vested in me by the time of the purchase and by that agreement to purchase, it was vested in me and Mrs. Marley and I was given physical possession of the entire property and the entire management. I was to pay off Mr. Marley's money and the Borakanda Estate loan.

Q. The money was to be repaid also from the income of the property?

A. Yes.

Q. You pay income tax Mr. Mellaaratchy?

20 A. Yes.

Q. And you disclosed this half share of Borakanda Estate in your Income Tax return?

A. No income was disclosed because there was no profit.

Q. You disclosed the Estate half ownership in your Wealth Return?

A. Yes.

Q. Valued at Rs. 212,500/-?

A. Yes, I put this amount in my Wealth Tax. I think so, I cannot remember.

Q. You bought this property in 1960?

30 A. Yes.

Q. Therefore, a fair value would have been half the purchase price of your share?

A. Yes.

Q. Mr. Mellaaratchy, you had disclosed the income from this property in the Income Tax Return?

A. Yes.

Q. You would also claim any debts on the Estate of which you owned a half share?

A. Yes.

40 Q. At this date there was a debt on the Estate?

A. Yes, to Mr. Marley and the other to the vendors of Borakanda Estate,

Q. You disclosed these two debts?

A. Yes.

No. 6
 Defendant's
 Evidence.

Evidence of
 D. P.
 Mellaaratchy-
 Cross-
 Examination
 - Continued

Q. And a half share of those debts were your liability?

A. I put the contribution at Rs. 25,000/- of the balance from Mr. Marley and the Borakanda Estates Co. Ltd. This is how I put it in my return.

Q. You were a half-share owner of this property. Is that correct?

A. On the deed, yes.

Q. Therefore, you were accountable for half the nett income of the Estate as any lawful owner?

(Mr. Adv. Thiagalingam objects to this question as it is a question of law. I allow the question);

A. I had not paid any income tax.

Q. And you, therefore, did refer to this property in your income tax return?

A. Yes.

Q. But you said that you did not pay Income Tax?

A. Yes.

Q. What do you mean by that?

A. Even the Land Tax is under protest as yet. I have not paid it as yet. There was no income from this property. 20

Q. Why was there no income?

A. There was no income because we ran it at a loss.

Q. Really you spent more than what you received from the Estate by way of income?

A. Yes.

Q. This loss was being sustained from the very beginning?

A. Yes.

Q. Throughout your management it was a loss?

A. The first one or two months it was not a loss and that was why I could pay the Bank Rs. 6,000/-. Then the interference from Jaleel and Guruswamy led to disputes and from Mrs. Marley too. This is the reason why I did not pay income tax. 30

I was not assessed for Income Tax. For 3 months I showed a loss but we paid in December, January, February and March and I showed a loss. The next year working I did not show a return at all because in February 1962, I was dispossessed.

Q. You were dispossessed in February, 1961?

A. No. It was in 1962.

Q. You were dispossessed in February, 1962?

A. Yes.

Q. Before the return for the 1961/62 years became due, you had been dispossessed?

A. Yes.

Q. It was because you were going to manage this Estate that you were to be given a half share?

A. I was to manage and pay the debts.

Q. The payments of debts would be from the income realised from your management?

A. Yes.

10 Q. In this case you received payment even before the management?

A. What payment?

Q. The title to a half share was vested in you even before the management commenced?

A. Yes, but I was not getting a half share till I paid off all this.

Q. What do you mean by that?

A. The deed was written but the agreement was I had to pay off all the debts - Mr. Marley's money and the Borakanda Estates Co. Ltd., debt.

Q. What do you mean by getting a half share?

20 A. There was an agreement between Mr. Marley and myself and he wanted me to run this Estate and pay off the money due to the Borakanda Estate. To start with, the deed was there and I was not going to get it.

Q. What do you mean you were not going to get it?

A. If he told me to retransfer it, I would have had to retransfer it.

Q. If anything had happened to you, the property would have gone back to the Estate?

A. It would have been only the money that I contributed.

30 TO COURT: The deed was written for a half share. I was going to get it only if I pay off the money and that would have taken about 7 or 8 years. Before that I had to manage the place and pay off the monies. On the deed I am a half-share owner but the arrangement was that I will get that after I had paid off all the monies.

Q. Really you were prepared to do anything in regard to the property as Mr. Marley told you?

A. Yes.

Q. You did regard this half share of the property as yours at that time?

40 A. No

No. 6
Defendant's
Evidence.

—
Evidence of
D. P.
Mellaaratchy-
Cross-
Examination
- Continued

No. 6
Defendant's
Evidence
—
Evidence of
D. P.
Mellaaratchy-
Cross
Examination
—Continued

Q. What was the nett income when you first took over?

A. We took over on the 1st of December and that month we got about 10,000/- lbs. of rubber.

Q. Can you tell the nett income in money?

A. The first month the nett income would have been about Rs. 10,000/-. From the sale of rubber I got Rs. 10,000/- in that month, the nett income after deducting expenses would have been about Rs. 500/- to Rs. 600/-.

Q. You have knowledge of the value of properties?

A. Yes.

10

Q. Both rubber and coconut?

A. Yes.

Q. You looked into the crop returns before the agreement was entered into for purchase?

A. Yes.

Q. So you had very reliable information as to its income before it was bought?

A. Yes.

Q. And on that income what would have been the return on an investment of Rs. 425,000/-?

20

A. In this there was 75 acres of budded rubber that was coming into bearing after one year. We calculated the income from the figures the previous owners had under their management for a year between Rs. 12,000/- to Rs. 15,000/-. We also thought that after one year we would have got the full income from 75 acres of budded rubber. From the previous owners return we should have made about Rs. 10,000/- to Rs. 15,000/-.

It was Rs. 15,000/- an year on the Rs. 425,000/- and with another 75 acres of budded rubber, it would have brought in for an year Rs. 8,000/- to Rs. 10,000/-.

30

Q. That, of course, would have had to wait about an year after your purchase?

A. Yes.

Q. On your figures you expected to get about how much a month?

A. About a little more than Rs. 1,000/- a month.

Q. You agreed at the beginning of your management that a sum Rs. 6,000/- a month would be paid to the Bank?

A. Yes, at the beginning.

There was an income from the coconut. In this Estate there was not only rubber but coconut also. The coconut also would have brought us about Rs. 6,000/-.

40

Q. That would be Rs. 21,000/- without the 75 acres of budded rubber?

A. Yes.

Q. How were you going to pay Rs. 6,000/- a month to the Bank from the income?

A. That is how I was unable to pay. I paid only one instalment in February.

Q. My suggestion to you is that when you answered a little earlier that on the figures furnished to you, you anticipated an income of Rs. 15,000/- plus Rs. 6,000/-, your answer could not have been correct?

A. Because those were the returns we should have got on the basis of the previous owners' figures.

Q. You made an application to the Mercantile Bank for a loan of Rs. 125,000/- by offering as security the mortgage of the property by you and Mrs. Marley?

A. Yes.

(Shown P22): This is my letter and signed by me and counter signed by Mrs. Marley dated 8. 9. 1960.

Q. In this letter you set out the details with regard to the property and ask for accomodation from the Bank of Rs. 125,000/-?

A. Yes.

(The contents of the letter is read out by Mr. Adv. Amerasinghe).

Q. This letter was sent to the Mercantile Bank after the proposal to get a loan from the A. I. C. C. was dropped?

A. Yes.

Q. The Mercantile Bank's reply to your letter has been referred to as the letter of the 9th instant but it should have been the letter of the 8th instant?

A. Yes.

Q. By (D2) they have given details saying that they are ready to give you a loan of Rs. 125,000/- and setting out the various terms?

A. Yes.

Q. The proposal for mortgaging made in (D2) was not implemented you said, for what reason?

A. Because the interest was too much and the lawyers' fees was too much. The suggestion of Rs. 6,000/- was made by the Management

Q. Which you accepted?

A. Because the Manager said that he had to get permission from abroad to grant this Rs. 125,000/-.

Q. And those proposals you accepted?

A. Yes.

No. 6
Defendant's
Evidence.

—
Evidence of
D. P.
Mellaaratchy-
Cross-
Examination
— Continued

No. 6
Defendant's
Evidence.

Evidence of
D. P.
Mellaaratchy-
Cross-
Examination
—Continued

The interest suggested here was a minimum of 7 per cent. In the letter it is so stated but he said that interest should be 7 per cent.

Q. Then ultimately the Rs. 125,000/- was paid by the Mercantile Bank to both Mrs. Marley and you?

A. No. We rejected that.

Q. Was Rs. 125,000/- paid by the Mercantile Bank for the purchase of this property?

A. Yes, on Mr. Marley's account.

Q. And that was also provided at 7 per cent?

A. No. 10

Q. Since when have you had a Bank Account?

A. I have had accounts for about 25 years.

Q. Where did you first open your account?

A. I opened my first account in the former Imperial Bank and now the present State Bank.

Anywhere if I open a Bank Account I have to make an initial deposit. Different Banks have different amounts as their initial deposit. When I first opened my account, it was about Rs. 1000/-. I opened the account in the Bank of Ceylon, Nuwara Eliya, with an initial deposit of 5,000/-. I continued the State Bank Account at Colombo 20 and the People's Bank Account.

Q. Whenever you opened an account with the Bank, you had to make an initial deposit?

A. Yes.

Q. Did you at any time open an account with the Mercantile Bank?

A. No, excepting for these two accounts here. (Shown P3):

Q. What did you understand when you signed P3?

A. That day we went there with the monies and the forms were given to me to be signed and the blank cheque. I was taken there by Mr. Marley. 30

Q. What did you understand when you signed P3 that day?

A. That is to open an account.

Q. Did you make any initial deposit when opening this account (P3)?

A. No. I made no deposit.

Q. What did you think was the purpose of (P3). You said it was the opening of a current account?

A. Yes.

(Mr. Adv. Thiagalingam objects to this question of plaintiff's Counsel as it sets out a number of statements and when the witness has not finished his answer, he jumps to another question). 40

Q. You suggested in examination-in-chief that this word 'loan' in P3 has been interpolated after you signed?

A. Yes.

Q. You, therefore, signed this document because it was a current account being opened?

A. Yes.

Q. Could you say why this current account was opened without a deposit?

A. It was done by the Marleys.

10 Q. Simultaneously, a cheque leaf was given to you by the Bank and you signed it?

A. Yes.

Q. And you suggest on the cheque leaf no figure was inserted?

A. No. I deposited the money and I deposited cash Rs. 32,500/-

(Adjourned for lunch.)

District Judge.

17. 11. 64.

(Resumed):

PETER MELLAARATCHY: Affirmed, Recalled.

20 CROSS-EXAMINATION. Contd.

Q. Your case is that you did not know that (P3) was an application to open a loan account?

A. Yes.

Q. And with regard to the cheque (P5) that amount of Rs. 125,000/- was not there when you signed the cheque?

A. No.

Q. Really you signed anything that you were asked to sign?

A. I trusted the Marleys.

30 Q. In fact, they trusted you completely and you trusted them completely?

A. Yes.

Q. Did you at any time find that you had misplaced your trust in them?

A. Not Mr. Marley but Mrs. Marley. At no time did I find that I had misplaced my trust in Mr. Marley.

Q. Right throughout until his death Mr. Marley did not do anything dishonest towards you?

A. No.

No. 6
Defendant's
Evidence.

—
Evidence of
D. P.
Mellaaratchy-
Cross
Examination
—Continued

No. 6
Defendant's
Evidence.

Evidence of
D. P.
Mellaaratchy-
Cross-
Examination
—Continued

Q. You said that when you went to the Bank on the first occasion, you stayed in the car and the Marleys went inside?

A. Yes.

On the second occasion I went with Mrs. Marley and on that day also Mrs. Marley went inside.

Q. On the day you signed the Loan Account what happened?

A. I went with Mr. and Mrs. Marley and I went into the Manager's room and several papers were signed by me and Mrs. Marley. Mr. Marley did not sign anything.

Q. Did you at any time get a Statement of Account for the 10 Loan Account from the Mercantile Bank?

A. No.

Q. You now know that by (P3) you appear to have signed for the opening of a current Loan Account?

A. Yes. If I knew that it was a loan, I would never have signed it. I would have signed it for opening a current account.

I took Rs. 32,500/- that day to the Bank and deposited it and Mrs. Marley took the cheques and a cheque book was given. I signed that cheque and all three documents were signed at the same time.

Q. In the morning when I asked you about (P3), you did not 20 say that you signed it because you deposited Rs. 32,500/- that morning?

A. I trusted the Marleys and I signed it.

Q. I suggest to you that you have come here with a prepared story to say that these documents P3 & P5 have been fabricated?

A. If the word 'loan' was there, I would not have signed it.

Q. When did you first discover that Mrs. Marley and you had opened a joint Loan Account?

A. It was only in this case.

Q. Till this case you knew nothing about this account? 30

A. No.

Q. You remember receiving the letter (P14) from Mr. Maartensz?

A. Yes (Shown P14):

Q. Was that the first time that you realised that these monies were being recorded as loans to you?

A. There was another letter. A copy was sent by De Saram to De Silva & Mendis. This is P18 & P18A.

Q. At that date you realised for the first time that these monies were being recorded as loans to you?

A. Yes.

Q So that in February 1961, at the date of P18A, did you realise that there was a Joint Loan Account in the name of yourself and Mrs. Marley?

A. Yes.

(P18A is read out to the witness):

Q. Now do you admit that in P18A a reference has been made to the opening of a Joint Loan Account with the Mercantile Bank in your name and Mrs. Marley's?

A. The reference is there.

10 Q. Therefore, it is not correct for you to say that you realised that there was a Joint Loan Account only when this case arose?

A. It is not correct.

Q. What did you understand by this letter?

A. I did not sign the loan account.

Q. Did not this letter inform you that Mr. Marley had given a guarantee to the Bank in respect of a loan account in the joint name of Mrs. Marley and yourself?

20 A. The letter says so. I went and saw Mr. Marley with this letter. I showed this letter and asked him what it was. I said that I never took a loan. He said that he guaranteed this to his wife.

Only Mr Marley knows that he said such a thing and he is now dead. Another person who knows about this letter is Mr. Adv. Thurairatnam and he is also dead.

Q. You have not in any of your letters even suggested that these monies were not a loan to you?

A. There were letters written but I do not know.

Q. You have not in any of the letters written by you or by your lawyers suggested that these monies were not a loan to you. Is this correct?

30 A. It is true because I did not know it was a loan. I did not take a loan.

Q. You did not know that it was a loan?

A. Yes.

I took the letter (P14) to Mr. Adv. Thiagalingam

Q. You say that when P14 was received by you it was being alleged that this was a loan?

A. It was not a loan.

Q. In this letter (P18) is it not alleged that it was a loan to you?

40 A. This was sent to De Silva & Mendis with a copy to me.

No. 6
Defendant's
Evidence.

—
Evidence of
D. P.
Mellaaratchy-
Cross-
Examination
-- Continued

No. 6
Defendant's
Evidence.

Evidence of
D. P.
Mellaaratchy-
Cross-
Examination
—Continued

Q. When you received (P18) you realised that a false allegation was made that it was a loan to you?

A. That is why I went to see Mr. Marley. P14 was in October and therefore, in February I knew that they were making a false allegation of a loan to me. When I got the first letter I went to Mr. Marley and told him that there was no loan. I went to Mr. Marley with that letter and I told him that I got a copy of the letter to De Silva & Mendis and I told that he never gave me a loan. He showed me these documents in February.

Q. In February 1961 you saw the guarantee document that 10 Mr. Marley had signed (P1)?

A. He gave me the blank document and he told me that he had guaranteed his wife and I did not see my name there.

Q. I suggest to you that it is not correct that you did not know that Mr. Marley was alleging that these monies were loans to you?

A. No. From the beginning I did not know that it was a loan to me.

Q. Can you explain why, after you realised in February 1961 that Mr. Marley was falsely claiming it was a loan, you did not in your subsequent letters object to it? 20

(Mr. Adv. Thiagalingam objects to this question. I uphold the objection):

Q. De Silva & Mendis were acting for you in this matter?

A. Yes.

Q. And you were shown the letter (P18) which you received with the enclosure (P18 A)?

A. Yes.

Q. You knew that F. J. & G. de Saram were acting for Mr. Marley? 30

A. Yes.

Q. You had agreed to provide a secondary mortgage for Rs. 50,000/-?

A. Yes.

Q. This letter on behalf of Mr. Marley P18A says that in addition to that Rs. 50,000/- two other sums must be secured by that mortgage?

A. Yes, that is what de Saram writes to De Silva & Mendis.

Q. Before you did anything after receiving it, you realised that the Marleys' lawyers were making an allegation that these monies were a loan to you?

A. Yes. 40

Q. You then said you went and saw Mr. Marley?

A. Yes. I asked him what all this means and he gave me a copy and said that he had guaranteed his wife and said: "forget about it and carry on the work on the Estate."

Q. Why did you not reply to (P18A) or really to P18 formally setting out a denial that it was a loan?

A. They were also written. I went direct to Mr. Marley.

Q. Again on 23. 10. 61 some false claim of a loan was made in that letter (P14)?

A. Yes.

Q. And you were threatened with legal action?

A. Yes.

Q. Why did you not on receipt of P14 at the latest repudiate in writing that this was a loan?

A. I did not do it. I wanted to go again and see Mr. Marley and Mrs. Marley said that he was sick and I went to see Mr. Thurairatnam. I went with Proctor David Perera to see Mr. Thurairatnam.

Q. Why have you not, at least through Mr. Perera, repudiated in writing the allegation of a loan?

A. I told Mr. Thurairatnam to write to Mr. Marley and send a copy. Then he said it was not necessary and he said that we would go and see Mr. Maartensz and ask him what it was all about.

Q. Then you knew that this action was filed against you and you received summons?

A. Yes.

Q. You knew before you received summons that action was being filed?

A. No.

Q. When you received summons you then filed an answer?

A. Yes.

Q. Before you filed your answer, for the purpose of that answer, you gave instructions to your lawyers?

A. Yes.

Q. In fact, that answer was settled by Counsel?

A. Yes.

Q. Before you gave this evidence in the box that these monies were not a loan, could you point to any other document in which it is denied that it was a loan?

A. I did not write to anybody but I went direct to Mr. Marley and told him. There are no letters with me.

Q. I suggest to you that for the preparation of your answer you fabricated this defence of this not being a loan?

A. No.

Q. I even suggest that even in your answer you did not suggest that it was a loan?

A. No.

No. 6
Defendant's
Evidence.

—
Evidence of
D. P.
Mellaaratchy-
Cross-
Examination

—Continued

No. 6
Defendant's
Evidence.

—
Evidence of
D. P.
Mellaaratchy-
Cross-
Examination
—Continued

Q. And this story is coming out for the first time in this witness-box?

A. I told Mr. Marley and he told me that it was a loan to his wife and not to me.

Q. You paid Rs. 42,500/- as the initial deposit of 1/10th of the purchase money?

A. Yes.

Q. Rs. 21,250/- of this sum was repaid to you?

A. No.

Q. Then you said that you provided only Rs. 25,000/- for the 10 purchase of this property?

A. Yes.

Q. Then that cheque of Rs. 42,500/-, which you paid for the initial deposit?

A. Was met with Mr. Marley's cheque for Rs. 50,000/-.

Q. Really you provided that out of Mr. Marley's monies?

A. Yes.

Q. In fact, you had handed the cheque for Rs. 42,500/- for what reason?

A. Mr. Marley had not taken the cheque book on the day we 20 signed the agreement. Mr. Marley, Mrs. Marley and I went.

Q. Did Mrs. Marley repay Rs. 21,250/- to you being the half share of that Rs. 42,500/- that you paid?

A. No.

(Shown document): This is my signature. (Shown overleaf):

Q. Is that cheque for Rs. 21,250/- in your favour which has been endorsed and cashed by you?

A. Col. de Saram who attested the agreement told me: 'why are you putting this Rs. 42,500/-.' Then she had this cheque ready. One cheque I took. Then I took this cheque and cashed it and gave the 30 money to Mrs. Marley.

(Mr. Adv. Amerasinghe marks Cheque No. S-120216 of 5 September 1960-P23—for Rs. 21250/- in favour of the defendant. P23A is the endorsement on the back of P23 by the defendant):

Q. You agree that this cheque is for exactly half Rs. 42,500/-?

A. Yes.

Q. I suggest to you that you are not speaking the truth when you deny that this was not a repayment of half the initial advance?

A. I deny.

Q. I suggest it is utterly untrue that you gave back cash to 40 Mrs. Marley?

A. I deny this.

On the day they wrote the time had elapsed. We delayed to keep up to the first agreement and then they wrote to us later saying that we had defaulted and that we had forfeited the deposit. In the agreement it was my cheque for Rs. 42,500/- and the agreement was between Mrs. Marley and myself. Then the Borakanda Estate owners wrote a letter and said that, according to the agreement time had lapsed and we had forfeited the money and that they were not giving the land. Then Mrs. Marley gave a cheque and then I cashed it and gave it to her.

No. 6
Defendant's
Evidence.
—
Evidence of
D. P.
Mellaaratchy-
Cross-
Examination
- Continued

10 We were going to lose Rs. 42,500/- which we had given as a deposit. On Mr. Saram's instructions I got this cheque and I took it to Mr. de Saram and then without checking with him, they wrote a second agreement giving one month's time. Then Mrs. Marley told me to cash the cheque because it was written in my name. When I took the cheque (P23) from Mrs. Marley I do not know whether time had run out.

Q. You said that time was running out?

A. Yes.

Q. You had paid the whole 1/10th deposit?

20 A. Yes.

Q. If the transaction fell through, you would have suffered a total loss?

A. Yes.

Mrs. Marley had a cheque book and she could have given a cheque for Rs. 42,500/-. Ultimately, Mrs. Marley told me to cash the cheque and I brought the money and gave it to her. We had to pay Rs. 42,500/- for the agreement.

Q. When the first agreement was signed, you drew up a cheque for Rs. 42,500/-?

30 A. Yes.

Q. In Mr. de Saram's presence this cheque was drawn up?

A. Yes.

Q. On that occasion when this cheque P23 was drawn up, time had expired on the agreement?

A. No.

Q. Before the time expired you were asked by Mr. de Saram to get this cheque from Mrs. Marley?

A. Yes.

Q. And that was how long after the agreement?

40 A. I cannot remember. It was sometime after.

Q. Mr. de Saram was advising you in your interest on that occasion?

A. Yes.

No. 6
Defendant's
Evidence.
—
Evidence of
D. P.
Mellaaratchy-
Cross-
Examination
— Continued

Rs. 42,500/- came from my cheque and Mr. de Saram said that there should be instructions from her also. The cheque was drawn up in the interests of Mrs. Marley and it was not given to me. The cheque was signed and it was with Mrs. Marley. Mr. Saram said: 'leave this cheque and I will tell you whether we are going to draw up another agreement'. When I went a second time Mr. Saram said: 'go and give this cheque to Mrs. Marley'.

Q. On a certain occasion in Mr. de Saram's office in your presence and Mrs. Marley's presence this cheque (P23) was drawn up?

A. Yes.

10

Q. It was intended to cover the half share of the initial deposit which Mrs. Marley had to pay?

A. Yes.

Q. Before you drew the cheque for Rs. 42,500/- and subsequent to that this cheque was drawn by Mrs. Marley in Mr. de Saram's office because Mr. de Saram suggested that she also must supply some consideration to that agreement?

A. Yes.

Q. So then it was intended at the moment of signing to repay Mrs. Marley's contribution to the deposit?

20

A. Yes.

Q. Then where was this cheque kept after Mrs. Marley signed it on that day you are speaking of?

A. The cheque was with Mr. de Saram.

Q. And Mr. de Saram was really the lawyers of the vendors of the Borakanda Estate Co. Ltd.?

A. Yes.

Q. The lawyers for the purchasers — yourself and Mrs. Marley — were de Silva & Mendis?

A. Yes.

30

Q. The lawyers for Mr. Marley were Messrs. F. J. & G. de Saram?

A. Yes.

Q. Subsequent to that de Saram gave this cheque back to you?

A. Yes.

Q. When was that?

A. Must have been about a week or so after that.

Q. Why did he give it back to you?

A. I had to go there in connection with this purchase. Then he said this involves writing out some other agreement and this is not necessary. Then I 'phoned up Mrs. Marley saying that Mr. de Saram was returning this cheque and she said: 'cash the cheque and bring the money'.

40

1 'phoned from Mr. de Saram's office to Nuwara Eliya to Mr. Marley's house.

Q. These facts you can remember very clearly?

A. Yes.

Q. This was about a week after the cheque was handed to Mr. de Saram?

A. Yes.

Q. You were present when Mrs. Marley signed that cheque also?

A. Yes.

10 (Shown certified copy issued by the Bank of Mrs. Marley's account No. 3395. Mr. Adv. Amerasinghe marks this document - P24).

Q. Look at this cheque. It has been cashed on the 6th of September, the day after it was issued. Do you accept that?

A. I remember this cheque when it was shown to me. There was another cheque which was rejected by the Bank. It is dated 6th September.

Q. Has that been cashed on the 6th of September?

A. It bears the seal of 6th September. The cash seal of 6th September appears in this. I went and cashed the cheque from the Bank and it is correct. I cashed it on that date.

Q. You admit that your story that the cheque was kept by Mr. de Saram and handed back a week later is quite untrue?

A. I remember taking the cheque. One cheque was returned as the signature was not in order.

Q. From the date you took charge of this property, a sum of Rs. 6,000/- was released to the brokers and paid to the Mercantile Bank from the income?

A. Yes.

Q. Is that the only sum of money paid out of the income towards the reduction of the debt on this Estate?

A. Yes.

Q. As a result of the financial arrangements for the purchase of this property you became, on the face of the deed, the owner of a half share?

A. Yes.

Q. And you acquired from that ownership the following financial benefit (i) half of Rs. 125,000/- being what the Mercantile Bank advanced?

A. No.

Q. Out of the monies paid for the purchase of this property Rs. 25,000/- was provided by you?

A. Yes.

No. 6
Defendant's
Evidence.

Evidence of
D. P.
Mellaaratchy-
Cross-
Examination
—Continued

Q. Rs. 125,000/- by the Mercantile Bank?

A. By Mr. Marley.

Q. Mr. Marley provided that Rs. 125,000/- through the Mercantile Bank?

A. It may be. The cheque is from the Mercantile Bank and drawn by the Bank.

Q. Therefore, Rs. 125,000/- was provided by Mr. Marley through the Mercantile Bank?

A. Yes.

Q. Half of that was your liability as the owner? 10

A. No.

Q. Half of that you received the benefit of because you became the owner?

A. I got no benefit.

(Mr. Adv. Thiagalingam objects to this question because it is a legal question. I allow the question.):

Q. You have admitted that as a result of the deed you became the owner of a half share?

A. Yes.

Q. This ownership was procured by the use of these monies? 20

A. Yes. The monies were provided by Mr. Marley.

Q. The deed is in favour of you and Mrs. Marley?

A. Yes.

Q. You and Mrs. Marley have the property in your names?

A. When the property was bought in the name of Mrs. Marley and myself, Mr. Marley provided the money.

Q. Half the property was in the name of Mrs. Marley and half payment was after paying the debts?

A. Yes.

Q. The property belonged in title to you and Mrs. Marley? 30

A. Yes.

Q. The whole income of the property belonged in title to you and Mrs. Marley?

A. The deed was in our name. I was asked to pay in the income to their debt.

Q. Could that income be taken and paid to the Bank without your authority?

A. I was doing it.

Q. Why were you doing so?

A. Because I was managing the property. 40

Q. After 7 or 8 years you were to become the owner of that half share?

A. Yes.

Q. In the meantime you were managing the property?

A. Yes.

Q. And you were to be remunerated?

A. No. They told me to take the travelling expenses but I did not do so.

I was asked to take some remuneration but I did not take because I was spending my own money.

Q. What would you think was a fair remuneration for managing the property for the first few months?

A. I should have been paid about Rs. 600/- to Rs. 700/-.

10 For travelling I would have to be paid about Rs. 300/- to Rs. 400/-
Rs. 1000/- a month was a fair remuneration but I was not working for a salary.

Q. At the end of the period you would have been a full owner of a half share of this property?

A. Yes.

Q. You paid Rs. 6,000/- out of the income?

A. Yes.

Q. You will admit that half Rs. 6,000/- belongs to Mrs. Marley?

20 A. Yes, but it is from the Estate. According to the deed, Rs. 3,000/- belongs to Mrs. Marley but I was not going to get anything. Mr. and Mrs. Marley were together and I was on my own on my side. Rs. 6,000/- was from the entire Estate. I was asked to pay the monies and from the income, I was to pay the debt. I will not say this money was mine till I paid off the debt. From the income of the Estate I was to pay their money and the interest.

(Shown P10):

Q. Did you receive a copy of this account?

A. This account I received.

Q. This account was opened on November 30, 1960?

A. Yes.

30 Q. The first debit entry is November, 30th?

A. Yes.

It shows money deposited by John Keel, Thompson & White. This cheque was sent by John Keel, Thompson & White by the sale of rubber. There is another Rs. 1,000/- on July 23, 1962. I think this is the lease money. There is a credit of Rs. 1000/- in July 1962, after we were dispossessed.

Q. In your period of management the credit entry is Rs. 3,993/25 on January 12, 1961?

A. Yes.

40 Q. The amount of Rs. 3,993/25 has been deposited in January and February, 1961?

A. Yes.

No. 6
Defendant's
Evidence.

Evidence of
D. P.
Mellaaratchy-
Cross-
Examination
-- Continued

No. 6
Defendant's
Evidence.
—
Evidence of
D. P.
Mellaaratchy-
Cross-
Examination
—Continued

Q. Thereafter, you have not deposited any money in the Borakanda Estate Account?

A. I could not deposit.

Q. You have drawn out a cheque for Rs. 1,875/- on 27th March 1960?

A. Yes.

Q. What was that for?

A. I do not know. After we opened the account Mrs. Marley wrote and said that both must issue cheques and I must have signed this.

10

Rs. 1875/- may be interest.

Q. You said that you fell out with Mrs. Marley?

A. Yes.

Q. When was that?

A. This was in January, 1961.

Q. From January 1961 you were angry with her?

A. We had troubles oft and on.

Q. Since when have you broken off cordial relations with her?

A. Both of us fell out. We ceased to have anything to do with each other. I was writing to her. There was no complete breakage as such. She used to come to the Estate and I used to send letters to her but there was no friendship as formerly. It was from January 1961 that there was no friendship between us.

20

Q. One stipulation made at a certain stage was that the management of the Estate should be handed over to Mackwoods?

A. That was at the Conference with Mr. Maartensz and I disapproved of it.

Q. At that time you had fallen out with Mrs. Marley?

A. We were yet talking but we were not friends. Anything common between the two of us was this Borakanda Estate. When I came there she ordered me out.

30

Q. From the time she ordered you out there was no original friendship?

A. No, except on an official basis.

Thereafter, forcible possession of this Estate was taken over on in February, 1962.

Q. Then you told Court that as a result of a certain discussion that the agreement (D5) was signed to sell your share for Rs. 100,000/-?

A. Yes, it was signed in March.

40

Q You also said that Mr. Marley had agreed to relieve you of the monies that he had given?

A. Yes.

Q. Mr. Marley had never at any time suggested that you owed him any money?

A. Mr. Marley had spent money on the Estate. It was Mr. and Mrs. Marley who contributed that Rs. 275,000/-.

Q. You have right along maintained that Mr. Marley never said that you owed him any money?

10 (Counsel for the defendant says that Mr. Amerasinghe must not embarrass the witness by not giving him time to answer. I do not think that there was any attempt to interrupt the witness.)

A. I owed Mr. Marley his money.

Q. What is his money?

A. Rs. 275,000/-.

Q. You admit that you had to pay that to Mr. Marley?

A. Borakanda Estate had to pay that amount to Mr. Marley.

Q. And Borakanda Estate is represented by whom?

A. Mrs. Marley and myself.

20 Q. And, therefore, your share would be half that amount?

A. Yes.

Q. The agreement was signed by you to sell your half share to Mrs. Marley?

A. Yes.

Q. And before the preparation of the agreement you had the advice of both a Proctor and an Advocate?

A. Yes.

Q. You had the agreement attested by another Proctor in Ambalangoda?

30 A. Yes.

Q. Because your Proctor was not acting in that jurisdiction?

A. Mr. David Perera did not take any part in that agreement.

Q. Your Counsel Mr. Adv. Thurairatnam went along?

A. Mr. David Perera and Mr. Thurairatnam both went on the 20th to the Ambalangoda Police Station.

The agreement was signed on the 2nd of March. I took the agreement to Mr. Neville Samarakoon. Mr. Adv. Thurairatnam had then gone to Jaffna. I had given advice with regard to that agreement.

40 Welikala gave me a copy and I took a draft to Mr. Samarakoon. I gave him the agreement and I asked him to go through it and say whether it was alright. Mr. Samarakoon went through the agreement and he made certain corrections on it.

No. 6
Defendant's
Evidence.

Evidence of
D. P.
Mellaaratchy-
Cross-
Examination
-- Continued

No. 6
Defendant's
Evidence
—
Evidence of
D. P.
Mellaaratchy-
Cross
Examination
—Continued

Q. Did you tell Mr. Neville Samarakoon how this agreement came to be decided upon?

A. Yes.

Q. That you had been forcibly evicted from the property?

A. Yes.

Q. That Mr. Marley had agreed to relieve you of the monies that you owed him?

A. No. Mrs. Marley undertook to pay the monies.

Q. There was no question of Mr. Marley agreeing to relieve you of the liability? 10

A. Why not. It was because of him that I signed the agreement. Because of Mr. Marley I got into it and because of him I got out of it.

I had to pay Mr. Soyza Rs. 7,000/- and I had spent Rs. 20,000/-. Then I had to pay to the Bank Rs. 31,000/-. I wanted Rs. 125,000/- and not Rs. 100,000/. (Shown D5).

The agreement is between me and Mrs. Marley and not with Mr. Marley.

Q. Mrs. Marley is not a party to this case?

A. Why not, she is the wife of Mr. Marley.

Q. Have you got any clause anywhere that Mr. Marley has 20 undertaken to relieve you of your liability to him?

A. There was no agreement when the property was bought.

Q. If Mr. Marley, according to you, had not agreed in that way your position is that you would not have signed the agreement?

A. Yes.

The Police would have charged Mr. Marley for criminal trespass and other things because Mr. Marley went and took possession with Mrs. Marley.

(Mr. Adv. Amerasinghe says that he is not cross-examining the witness on the question of taking-over as it does not touch his case: 30

Mr. Adv. Thiagalingam states that he does not agree that it does not touch the plaintiff's case.

RE-EXAMINATION:

Q. You said just now that there was no agreement with Mr. Marley at the Estate?

(Mr. Adv. Amerasinghe objects to this question. I uphold the objection):

Q. You said that there was no agreement with Mr. Marley on the Estate?

A. Yes.

Q. You told us that you saw Mr. Marley on 23/2?

A. Yes. 40

Evidence of
D. P.
Mellaaratchy-
Re-Examination.

Q. What did Mr. Marley tell you then?

A. Mr. Marley told me about selling a half share.

Q. And you knew that certain claims were alleged against you?

A. Yes. There was money due to Mr. Marley.

Q. In regard to the alleged claims made by him in the letters, was any arrangement arrived at?

A. Mr. Marley said once you sign and give your half share, you will be free.

(D5) is between me and Mrs. Marley.

10 Q. Why did you say that there was no agreement with Mr. Marley?

A. Because the agreement was being signed between me and Mrs. Marley. Mr. Marley had got the agreement in that way through his Proctor.

There was no written agreement between me and Mr. Marley.

No time. Further hearing for 18. 11. 64.

Sgd.

District Judge.

17. 11. 64.

18. 11. 64

FURTHER HEARING.

20 Appearances same as before.

Parties present.

(Defendant's Case Continued:)

DON PETER MELLAARATCHY: Sworn. Recalled.

RE-EXAMINATION CONTINUED:

Q. Had you borrowed any money from Mr. Marley?

A. No.

Q. Had Mr. Marley lent you any money?

A. No.

30 Q. Why then did you say yesterday that you owed money to Mr. Marley?

Because Counsel for the plaintiff said that I owed money, I had undertaken to pay Mr. Marley the monies that he gave for the purchase of the Estate. I had undertaken to pay those monies from the income of the Estate.

Q. You know the date the agreement (D5) was signed?

A. Yes, it was signed on the 5th of March, I think it was on the 2nd of March.

Q. On that date, the 2nd of March, you made the entry (D5) at the Police Station?

40 A. Yes.

No. 6
Defendant's
Evidence.
—
Evidence of
D. P.
Mellaaratchy-
Re-Examination.
- Continued

No. 6
Defendant's
Evidence
—
Evidence of
D. P.
Mellaaratchy-
Re-Examination.
—Continued

Q. Why did you make this entry?

A. At the request of Mr. Marley.

Q. Where did you meet him?

A. At the Police Station.

Q. Who else was there?

A. Mrs. Marley and Mr. Welikala, and some others.

When Mr. Welikala went to sign the agreement to the Estate I was in the resthouse and Mr. Welikala came to the Resthouse. I came to the Police Station when Mr. Welikala asked me to come. I was in the Resthouse because I was asked to be there till they 10 went to the Estate and got the signature of Mrs. Marley. Mr. Marley called me and told me to inform the Police that we had settled this so that there would be no further trouble and that we had signed this agreement. I made a statement that I had no further interest in the Estate.

Q. After this did you take this agreement to anybody?

A. With Mr. Adv. Thurairatnam I wanted to go and see Mr. David Maartensz and with him I took the agreement to Mr. Maartensz.

Mr. Maartensz went through the agreement and Mr. Thurairatnam showed him the clause where Mrs. Marley had undertaken to pay him 20 all the monies and Mr. Maartensz said everything was settled. I told him precisely what had happened.

Q. If not for the agreement with Mr. Marley, would you have signed the agreement (D5)?

A. No

Q. If not for the agreement with Mr. Marley, what would you have done?

A. I would have taken action against Mr. Marley and others to take back my belongings and I would have got the Police to prosecute them for wrongful possession 30

Q. Would you have filed a civil action also to take back possession?

A. Yes. There was my money of Rs. 25,000/- which I had put at the commencement and I had spent about Rs. 25,000/-. Then there were my belongings. I had undertaken to pay Mr. Soyza Rs. 7,000/- and the Superintendent Rs. 5,000/-.

Then my things that were there including a bicycle, typewriter, my clothes, furniture, cutlery and crockery. All this came to close upon Rs. 100,000/-.

Q. Even if you had an income from this Estate and continued to possess this Estate, would you have paid Income Tax on it? 40

A. No, because it was not mine till I had paid all the monies due. It would have taken about 7 or 8 years.

Q. Did you ever take up the position that directly the deed of transfer was signed that you were a half-share owner?

A. No.

I told in answer to Counsel for the plaintiff that I was a half-share owner because he said that, according to the deed, I was a half-share owner. (Shown P22.)

Q. In P22 you give a group of figures?

A. Yes, when the Estate was with the previous owners.

Q. On those figures how much was the income for an year roughly?

10 A. Roughly it would be about Rs. 15,000/- for an year nett.

The Bank Manager said that unless we agreed to pay Rs. 6,000/- a month, we could not be given a loan.

Q. The first instalment of Rs. 6,000/- you paid against that No. 2 Account was when?

A. It was in February.

Q. They were wintering months?

A. February, March, April and half of May there was no income.

Q. You told us that when you got the letter from Messrs F. J. & G. de Saram P18 and P18A you saw Mr. Marley?

20 A. Yes.

Q. Thereafter, did you write to anybody?

A. Yes, Mr. Marley told me to inform de Silva & Mendis not to take action and to write to de Silva & Mendis in this connection.

(Mr. Adv. Thiagalingam calls for a letter dated 27.2.61 from the representative of Messrs. de Silva & Mendis. Mr. Pieris, Proctor of Messrs. de Silva & Mendis hands over this letter to Counsel for the defendant which is marked - D64:

30 Mr. Adv. Amerasinghe objects to this on the ground that the person who has handed it over should get into the witness-box and produce it. I allow the document to be produced):

(Shown D64): This is the letter that I wrote to de Silva & Mendis on 27 2.1961.

Q. Did you see de Silva & Mendis afterwards?

A. Yes. (Shown P10):

Q. You saw the item of Rs. 1,000/- in P10 on 23rd July 1962?

A. Yes.

Q. Did you make this payment?

A. No.

Q. Had you anything to do with this account after 23rd July, 1962?

40 A. No.

No. 6
Defendant's
Evidence.

Evidence of
D. P.
Mellaaratchy-
Re-Examination.
—Continued

No. 6
Defendant's
Evidence
—
Evidence of
D. P.
Mellaaratchy-
Re-Examination.
—Continued

Q. And seeing this payment of Rs. 1,000/- on 23.7.62, you said something in Court?

A. I said it may have been deposited by the lessees because the lease says Rs. 500/- per month and, therefore, I thought it was the lessees' money. I personally do not know that it was the lessees' money.

Q. This letter (D9) was written by you before or after you fell out with Mrs. Marley?

A. Afterwards.

(Mr. Adv Amerasingho objects to these questions because he says 10 he did not ask anything from the witness on (D9):

Q. Why did you tear off a portion of (D9):

A. Because she made some dirty references regarding my wife. This displeasure started in early February, 1961.

Q. When you handed this letter to your lawyers had you torn off this portion?

A. I did not want to hand over this letter which contained abuse against my wife. I have had other letters written by Mrs. Marley where she has spoken disparagingly against my wife.

Q. Did you see me this morning? 20

A. I went and saw Mr. David Perera and I went along with him to see you.

I went to see Mr. David Perera and Counsel regarding yesterday's cheque. This cheque was for a sum of Rs. 21,000/- odd.

Q. After we adjourned yesterday at 4 p.m. had you looked for any documents?

A. Yes.

Q. This cheque, do you admit, was given to you on the 5th of September? 30

A. Yes.

Q. And do you admit that you cashed it on 6th?

A. Yes.

Q. It was suggested to you here that you appropriated that money?

A. No. It is a false suggestion.

Q. Has anybody at any time ever suggested it to you before it was suggested to you in Court?

A. No, about this cheque that I had taken money.

Q. Nobody ever suggested that you had appropriated this money?

A. No. 40

Q. Prior to this cheque have you been given a similar cheque for the same amount?

A. Yes.

Q. Who gave it to you?

A. Mrs. Marley.

Q. How long before this?

A. Somewhere about a week before on the 29th.

Q. You have a diary for 1960?

A. Yes.

10 (Mr. Adv. Amerasinghe objects to the production of this diary because it is a new document and it does not necessarily mean that the witness should produce a new document. He says this is totally irrelevant, because whether an earlier cheque was honoured or dishonoured has nothing to do with this case. He says the Court should consider whether it is relevant for this evidence to go in. He says the relevancy of this evidence should be strictly examined by Court.

I allow the question. I allow the production of this diary.)

Q. When did you find this diary?

A. I found it last night.

20 I produce my diary marked D65.

(Mr. Adv. Amerasinghe says the production of this diary is not admissible as the way has not been paved for its admission):

Before the cheque (P23) I got an earlier cheque from Mrs. Marley and she wanted me to go and give this cheque to Mr. F. C. de Saram. I took this cheque to Mr. F. C. de Saram. I rang up Mr. Marley from his office and he told me to give back the cheque to Mrs. Marley and I took back the cheque to Mrs. Marley at Nuwara Eliya. Then I took the cheque to the Bank to cash it. It was returned "signature differs" and I was unable to cash it. I brought back the cheque and 30 gave it to Mrs. Marley. Mrs. Marley gave me the cheque (P23) and I cashed it and gave the money to her.

Q. Has anybody in any letter made any suggestion that you took the proceeds of this cheque (P23)?

A. No

(Shown the diary to the witness):

Q. The date that you got the first cheque is noted as 29th August, 1960?

A. Yes.

Q. The date that you got the second cheque is on 5th 40 September, 1960?

A. Yes.

No. 6
Defendant's
Evidence.

—
Evidence of
D. P.
Mellaaratchy-
Re-Examination.
- Continued

No. 6
Defendant's
Evidence.

Q. All this happened 4 years ago?

A. Yes.

Evidence of
D. P.
Mellaaratchy-
Re-Examination.
—Continued

I had at this time an account with the State Bank of India. I produce my accounts for the period September, October & November—D66. I also produce an account with the Chartered Bank of India for the months of September, October and November marked—D67. I also produce an account in the Bank of Ceylon, Chilaw, for the months of September, October and November marked D68. I also produce an account in the Bank of Ceylon, Nuwara Eliya, for the months of September, October and November marked—D69. 10

Q. Into none of these accounts have any amounts like the proceeds of this cheque P23 gone in?

A. No.

The guarantee by Mrs. Marley was in the Bank of Ceylon, Nuwara Eliya.

Q. Against the loan guaranteed by Mrs. Marley the Bank has debited you with Rs. 31,645/41?

A. Yes.

Q. And ultimately how much did you pay them?

A. I think I paid them Rs. 30,000/-. 20

(FURTHER CROSS-EXAMINATION by Mr. Adv. Amarasingho):

Evidence of
D. P.
Mellaaratchy-
Further
Cross
Examination

Q. This document (D65) does not indicate that it even belongs to you?

A. There is no name.

Q. There is on the 1st of January some reference to the days of the week and certain hours?

A. Yes.

Q. After that, right up to the month of July, there is not a single entry on any of the pages?

A. Yes. 30

Q. Which shows that the diary has not been in use?

A. There was no important thing to be entered. I did not maintain the diary and I had no transactions.

Q. The first entry is on the 6th of August?

A. Yes. I refer to the sale agreement. The first entry is on the 5th of August.

Q. Is it also with reference to this transaction with Mrs. Marley?

A. Yes, we went to Colombo on that day.

Q. The 6th also has a reference to the transaction with Mrs. Marley?

(Mr. Adv. Amerasinghe wants the Court to note the interruptions made by Counsel for the defendant. He says the witness should not answer without reading the document).

Q. After you finished the evidence here and before you saw learned Counsel in the morning, did you go to any tutoring?

A. No.

10 I tried to examine what happened before this cheque was issued which was issued 4 years ago and I went through my Bank Statement.

Q. You then discovered this diary?

A. Yes.

Q. What time in the night was this?

A. Must have been about 8 o'clock.

Q. Then you went to your Proctor the following morning and went and saw Counsel?

A. Yes.

20 Q. All the entries which you refer to now are in pencil?

A. Yes.

Q. And could have been made at any time?

A. But I entered them according to the dates on which they have been entered:

Q. I suggest to you that (D65) is a fabrication made last night?

A. I deny this.

FURTHER RE-EXAMINATION:

Q. Is this suggestion true or false?

A. It is false.

30 Q. What have you written on the 31st of March?

A. That I have gone to Kandy.

Q. On the 2nd of March what have you written?

A. I have gone to Galle.

40 Counsel for the plaintiff was turning over the pages when I was being cross-examined and that is why I say 'I went to Colombo'. (Mr. Adv. Thiagalingam turns over the pages of the diary and refers to the entries of the 5th August, 6th August, 8th August, 12th August, 14th, 15th, 16th, 17th, 29th, 30th, and 31st August, 1st Sept., 5th, 6th, 7th, 8th - 16th September, 1st October, 2nd, 3rd, 5th, 6th, 7th, 8th, 14th, 15th, 16th, 18th, 19th, and 27th October, and 5th November.)

Sgd.
District Judge
18.11.64.

No. 6
Defendant's
Evidence.

Evidence of
D. P.
Mellaaratchy-
Further
Cross
Examination
—Continued

Evidence of
D. P.
Mellaaratchy-
Further
Re-Examination.

No. 6
Defendant's
Evidence

W. H. B. PIERIS: Affirmed Proctor, Supreme Court, Messrs. De Silva & Mendis, Colombo.

Evidence of
W. H. B. Pieris
Examination

I am in the firm of Messrs. de Silva & Mendis. I have been summoned to produce certain letters. The letter (D64) which I handed to Counsel for the defendant was from my file. This is an endorsement of Mr. Abeysuriya and was directed to Mr. Bertram Fernando. I was practising at Nuwara-Eliya and I have left de Silva & Mendis recently and I do not know anything about this transaction.

Evidence of
W. H. B. Pieris
Cross
Examination

CROSS-EXAMINATION

I have one file on this matter. I do not have a letter dated 10 16.8.60. (Shown letter of 16.8.60.)

Q. Who has signed this letter by your Firm?

A. It appears to be Mr. Bertram Fernando's signature. I identify his handwriting.

(Mr. Adv. Amerasinghe marks letter dated 16.8.60 from de Silva & Mendis to Messrs. F. J. & G. de Saram-P25):

Evidence of
W. H. B. Pieris
Re-Examination.

RE-EXAMINATION

Q. You told Plaintiff's Counsel that you did not have the documents of 1960 in your file?

A. Yes.

I said that I have got the letters of 1961 onwards.

Sgd.

District Judge.

18. 11. 64.

20

Evidence of
S. Weerawar-
dena-
Examination

SHELTON WEERAWARDENA: Affirmed. 42. Superintendent Orange Hill Estate; Balangoda.

In 1961 I was working at Borakanda Estate.

Q. When did you get married?

A. On 11th December, 1961.

Q. And where were you living after that?

A. At Borakanda Estate.

Q. On the 20th February 1962, what happened?

A. I was in the rubber field between 3.30. and 4 p m. Then one of my labourers Coomarasamy came and told me something. Then I came to the bungalow and I saw Mr. and Mrs. Marley with about 70-80 people with them and they were armed with clubs and guns.

30

They immediately told me that I had no business to stay there. Mr. & Mrs. Marley asked me to go immediately out of the Estate. Then I called my wife and we were proceeding to go. Near the entrance to the gate we were stopped and I was escorted up to Dehiwela junction by two cars. My car was in the middle and there was a car in front and another in the rear. When we were going I was told not to go to any Police Station and if I loved my life not to go to a Police Station. Then I went to Dehiwela Police Station and made the entry which has been marked D54. 10 I made this entry at about 8.30 p.m. If it has been put down as 8.55 p.m. it is correct.

No. 6
Defendant's
Evidence.
—
Evidence of
S. Weerawar-
dena-
Examination
-- Continued

The certified copy of (D54) says that I got down from the car and went inside the bungalow where I met Mrs. Marley and Mrs. Marley and one Jayatilleke.

Q. Did you say Mrs. Marley and Mrs. Marley?

A. I said Mr. and Mrs. Marley.

Q. Is this an error in the original or is it an error in the certified copy?

A. It is an error in the Police entry because I said Mr. & Mrs. 20 Marley.

Q. What did you do after that?

A. Then I immediately phoned up the defendant in this case who was my manager, and told him that Mr. and Mrs. Marley had come to the Estate with a crowd and that I was driven off. He instructed me to see him the following morning at his Advocate's place at Kynsey Road, Borella. I met him the next morning and I was told to go to the Ambalangoda Police Station and lodge an entry and I made another entry.

Q. Did you at any time go to the Estate thereafter?

A. I went on the 23rd with a Police party. 30

Q. Did anybody take you near the Estate?

A. I was taken by a police party. Mr. Mellaaratchy drove me up near the Estate gate and he did not come inside.

When I went in I spoke to Mr. Marley and he asked me whether the defendant had come with me and I told him that he had come. I took the car and brought Mr. Mellaaratchy. Mr. Marley and Mr. Mellaaratchy had a conversation. I did not listen to the conversation. I was trying to get my things out of the bungalow. Some of my trousers and shirts were there and my almirah was forced 40 open and my wedding gifts and other things were missing. I suffered loss to the extent of over Rs. 5,000/-. This money has been paid to me by Mr. Mellaaratchy.

No. 6
Defendant's
Evidence
Evidence of
S. Weerawar-
dena-
Examination
—Continued

Q. After the 23rd have you been to the Estate ?

A. Yes, I went somewhere on the 30th or so. I went to bring my almira and furniture and not thereafter.

Evidence of
S. Weerawar-
dena-
Cross-
Examination

CROSS-EXAMINATION:

Q. From when were you on this Estate ?

A. From March 1961 till I was forcibly put out in February 1962.

Q. After that you did not go to the Estate till 13th of what ?

A. Till the 23rd of February, 1962.

Q. In between you did not go to the Estate ?

A. No.

10

Q. Did you say that you went on a certain date to the Police Station at Ambalangoda ?

A. It was on the 23rd. No, it was on 21. 2. 62. This was the day after I had left Borakanda Estate.

Q. You were there for about almost an year ?

A. Yes.

Q. You were the Superintendent in charge ?

A. Yes.

Q. And working under whom ?

A. Under Mr. Marley and Mr. Mellaaratchy.

20

Q. How often did the defendant come there ?

A. Every fortnight.

Q. You were responsible for the collection of the income ?

A. Yes.

Q. Roughly what was the gross income per month ?

A. About Rs. 1,000/- a month.

Q. Were there not better months ?

A. Some months we were running at a loss specially during the wintering season.

This season was from January to March or so. This season we do not do any tapping. When we start wintering we stop tapping and for about 1 1/2 or 2 months we do not tap.

Q. But coconuts go on right throughout the year ?

A. Yes.

Q. When you said Rs. 1,000/- a month you include coconuts and rubber ?

A. Yes, everything on the Estate.

Q. Apart from the wintering period you spoke of, you say that the nett profit was about Rs. 1,000/- a month ?

A. Yes.

40

RE-EXAMINATION:

Q. During the rainy season can you tap rubber?

A. No.

Q. Were there strikes and labour disputes on the Estate?

A. Yes.

Q. Were anybody else claiming to be in charge there?

A. Yes, one Guruswamy. I know a man called Jaleel and he was Mr. Marley's representative.

No. 6
Defendant's
Evidence
Evidence of
S. Weerawar-
dena-
Re-Examination

10

Sgd
District Judge.
18. 11. 64.

Defendant's case closed reading in evidence D1-D69.

Mr. Adv. Amerasinghe objects to the documents D15 and D38-D42 being read in evidence. He draws the attention of Court to D15. He also objects to (D9) where part of a letter was produced which was admitted subject to the objection. He says that D15 has also been objected to. He says D38-D42 the signatures have not been identified. The letters are being produced as admissions made by the Agent of Mr. Marley. These are all letters after 5th April, 1962.

20 It is clear that Welikala could not have been an Agent after 5th April, 1962. Assuming that Welikala was an Agent these letters are written after the agency terminated. He cites Sec. 18 of the Evidence Ordinance. After 5th April 1962 Welikala could not have the authority of the principals. He refers to (D23). All the letters D38 - D42 are written after 5th April, 1962. The statements are of persons who are not witnesses in this case and the signatures have not been identified.

30 Mr. Adv. Amerasinghe reads further in evidence P21-P24. The following 'D' documents were originals taken from the plaintiff's custody:-

D6, D7, D8 which is an office copy of our letter, D10 copy, D11 original, D12 copy, D16 original, D17 copy, D18 copy, D20 copy, D22 copy, D38 - D42 were originals handed over by us.

The plaintiff has taken from the defendant P14 and P18 and P18A.

Mr. Adv. Thiagalingam moves to address Court in reply on the next day.

Documents for 26. 11. 64. Addresses for 21. 12. 64.

40

.....
District Judge.
18.11.64.

No. 7
Addresses to Court21. 12. 64.
FURTHER HEARING.

Same appearances as before.

ADDRESSES:

Mr. Adv. Thiagalingam states that the third question at Page 151, involving two questions really, was answered thus:

“No. I do not owe him any monies. Mrs. Marley undertook to pay the monies”.

10

Mr. Adv. Amarasinghe states that, according to his recollection, this answer has been correctly recorded and he objects to any amendment.

Mr. Adv. Thiagalingam addresses Court. He says that as far as D9 and D15 are concerned they were admitted as being in the handwriting of Mrs. Marley and they were only marked with intent to get Mr. Maartensz to refresh his mind with regard to certain events and they are of no evidentiary value. D23 is referred to. Mr. Naidoo the plaintiff in the case has signed these letters except for one. Welikala has replied to this letter by D38. Julius & Creasy 20 has acknowledged this by D24 and this letter has evidently been written before the receipt of D38. Julius & Creasy writes by D25 to Welikala, and Welikala writes by D29. D26 is replied to by Welikala by D40. Julius & Creasy replies by D27 and Welikala replies to this by D41. D41 was acknowledged by D28. Welikala replied to this letter by D42. D42 was not acknowledged.

He says that as far as the case is concerned, it is purely a question of fact. This is an action by the Executor of Marley's Estate against the defendant on 3 Counts. The plaint takes up the position that Mrs. Marley and Mellaaratchy had entered into an agree- 30 ment to buy Maha Borakanda Estate on 6. 8. 60. Para 13 of the plaint is referred to. On 7. 8. 60 Marley lent to the defendant Rs. 50,000/-. This has nothing to do with the agreement and nothing to do with Borakanda Estate. Para 4 of the plaint is referred to. Both Mrs. Marley and the defendant requested Mr. Marley to provide certain monies, firstly, a sum of Rs. 125,000/- which, he says, he did. Para 6 referred to. On account of expenses for this transfer he paid Rs. 17,004/- to De Silva & Mendis and Mrs. Marley and the defendant paid in equal shares.

The defence is that this is all untrue. The defence is that Borakanda was bought in the name of the defendant and Mrs. Marley at the express request of Mr. Marley; that the defendant was prevailed upon to join in this transfer and that consideration was to be paid in respect of Rs. 25,000/- by the defendant and a sum of Rs. 125,000/- to be secured by a mortgage to the owners of Borakanda and that all the balance monies were to be provided by the Marleys. The defendant went on to say that even the Rs. 25,000/- that he was giving was to be made available to him on a loan guaranteed
10 to him by Mrs. Marley on the Bank of Ceylon. The defendant says that he undertook certain obligations in the nature of a trust and that he was to manage the property himself, pay off the loan to the owners of Borakanda and pay into an account at the Mercantile Bank called the Loan Account monies of the Marleys and, that when all that was done, he would get a beneficiary interest in a half share of the property. The defendant denies in the claim set up in the plaint.

The defendant says that he has not borrowed any monies from the Marleys. The Agreement D5 of 2. 3. 62 is referred to. By this
20 agreement and by virtue of the agreement between the defendant and Mr. Marley about that time that all the liabilities, if any, due from the defendant to Mr. Marley have been wiped out.

He proposes to deal with the defence which centres round the document (D5). He refers to letter P17 of 4. 3. 61. The receipt of this letter is denied by the defendant. He refers to Page 66 of the evidence. P17 is in reply to the letter of 12. 1. 61 marked (D13) which is also marked D6. The letter which bears the endorsement is D6 and without the endorsement it is D13. This letter is addressed: 'Dear Mr. Mellaaratchy' and from March to July nothing has been
30 done. Evidence at Page 50 is referred to. On 9. 10. 61 the Last Will was prepared by Maartensz. Maartensz had written to Marley that the Last Will had to be altered. D33 of 12. 10. 61 was sent by Mr. Clarence de Silva on behalf of Mrs. Marley to the defendant. P16A formulates this claim. This is followed by letter P14 of 23. 10. 61. (P14) is read out. This letter was sent by Mr Maartensz. Evidence at Page 114 is referred to, and also at Page 138. Maartensz said that the claims were correct and the defendant says that it is untrue. On 9. 11. 61 the defendant writes to Maartensz P15 and says that Mr. Thuraiaratnam is coming to see him. D34 written by the defendant
40 on 12. 11. 61 to Clarence de Silva is referred to. Defendant takes up the position that it is all Mr. Marley's money. D34 is the same as

—Continued

D19. D20 dated 13. 11. 61 from Maartensz to Thurairatnam negatives and contradicts Maartensz's evidence. Clarence de Silva's letter of 27. 11. 61 (D35) is referred to, and also defendant's letter D36 of 8. 12. 61. He says these documents negative Maartensz' evidence that Thurairatnam admitted the claim. D21 is the letter of 12. 1. 62 written by Maartensz to Thurairatnam and D22 of 3. 2. 62 written by Maartensz to Mr. Marley.

On 6. 2. 62 Mrs. Marley gets her lawyers to file action in the Balapitiya Court. Para 2 of D37 is referred to. D31 is the lease attested by Proctor Nanayakkara and D32 is the Protocol. Evidence 10 at Page 68 is referred to. Defendant says that he is the trustee for Mr. Marley. D55 is the statement of the defendant dated 21. 2. 62 made at 8.15 a.m. Evidence of Mr. Soyza at Page 74 is read out. As to what happened on 28/2 on the Estate is known only to Mr. Marley who is dead, Mrs Marley and the defendant. Evidence at Pages 114 - 119, 151 and 153 is referred to.

(Adjourned for lunch):

District Judge.
21. 12. 64.

RESUMED:

Mr. Adv. Thiagalingam continues his address. Evidence at Page 20 151 referred to. D56 of 2. 3. 62 is referred to. He refers to the evidence of Mr. Maartensz at Pages 29, 31, 32 and 33 and the defendant's evidence at Page 152. He says that Maartensz was not a frank witness. On 5. 4. 62 - D23 - Julius & Creasy to Welikala; D38 of 10. 4. 62 Welikala to Julius & Creasy; D24 of 17. 4. 62 Julius & Creasy to Welikala; D63 of 17. 4. 62 the Fragmentation Certificate obtained by Welikala; D25 of 18. 4. 62 Julius & Creasy to Welikala; D39 of 28. 4. 62 Welikala to Julius & Creasy and the draft transfer was sent to the defendant in this letter. D26 of 6. 5. 62 Julius & Creasy to Welikala; D40 of 9. 5. 62 Welikala to Julius & Creasy; D27 of 30 12. 5. 62 Julius & Creasy to Welikala; D41 of 16. 5. 62 Welikala to Julius & Creasy. P16B of 17. 4. 62 is the Codicil. D28 of 23 5. 62 Julius & Creasy to Welikala; D57 of 2. 6. 62 Julius & Creasy to Welikala; D42 of 5. 6. 62 Welikala to Julius & Creasy; D58 of 15.6.62 Julius & Creasy to the defendant. D29 of 12. 7. 62 the plaint by Mrs. Marley against the lessees in Colombo.

Mr. Marley died on 26. 2. 63. On 21. 11. 63 this action was filed. P16 of 8. 2. 64 the Probate in this case and P21 the answer by the defendant in the Balapitiya case. According to the agreement Welikala was to do up the draft transfer.

In this case the conduct of the plaintiff's Proctor is not all that can be desired. He acts on the instructions of Mrs. Marley. The evidence at Pages 41, 42, 104 - 107 is referred to. D43 of 13.8.63 the cheque was deposited to the defendant's account by the defendant. Maartensz was always interested in the welfare of Mr. and Mrs. Marley. D10 has nothing to do with the case as presented. Rs. 125,000/- is a joint loan to Mrs. Marley and the defendant. Pages 44 & 45 of the evidence are referred to. D60 of 9.8.60 is the application to the A. I. C. C. In D2 the Bank says that it must be repaid at Rs. 6,000,- a month. D53 is in Mr. Bell's handwriting. He says that all the documents from the Mercantile Bank are on the face of it suspicious. P1 is a guarantee with the names filled in and D4 is a copy which Mr. Marley gave to the defendant when the defendant went and spoke to Mr. Marley about the letter that Maartensz had sent to him. P1 & D4 are one and the same document. The deposit Slip P2 was endorsed the following day. P3 is the application to open a No. 2 Account. It is headed "No. 2 Joint Account" and the word 'loan' is an interpolation.

No. 7
Addresses to
Court.

—Continued

Julius & Creasy are virtually the Proctors of both Mr. and Mrs. Marley. Alongside P3 are P11A & P11B. P11B is a Photostat of P3 because the word "loan" is there. P11A also bears the same date where the words 'by either of us' have been scored off and "jointly" has been inserted. The original of P11A has not been marked. He says P11B and P3 were signed without the word loan. P1, P3, P11B and P11A are documents relating to the loan. D44-D49 are referred to. The Bank wants documents signed before they give a Bank guaranteed loan. P5 & P6 are referred to. He says documents from the Bank are ex-facie suspicious. Mr. Marley writes to the defendant D62 of 8.12.60. What made Maartensz call for P11, P11A, P11B, and P11C photostat copies from the Bank. D30 of 12.11.61 is the same as D6 without the endorsement. Maartensz writes to Mr. Marley D8 of 16.1.61. D18 of 18.1.61 Mr. Marley to Maartensz D12 of 23.1.61. Maartensz to Mr. Marley where he says he is coming. No mention has been made about the mortgage at the Conference held in N'Eliya and the endorsement on D6 was not there on 5.2.61. He says the letter D6 went before the endorsement and was with Mr. Marley until 5.2.61. The Conference of 5/2 discussed whether the Estate was to be sold and was it to be managed. D16 the defendant writes to Maartensz and takes up a definite position and this is not the conduct of a debtor. D17 is Maartensz'

letter of 18.2.61 to the defendant D7 of 19.2.61 from Marley to Maartensz. When was Marley shown the endorsement on the letter D6. D6 the endorsement was sent to Mr. Marley and 5.2.61 was the Conference. P18 and P18A are referred to. He says that Mr. Marley's letter to Maartensz D7 was written at the request of Mrs. Marley. Evidence at Pages 113, 114, and 135 - 138 are referred to.

No time. Further addresses for 22.12.64.

Sgd
District Judge.
21.12.64. 10

22.12.69

FURTHER ADDRESSES.

Same appearances as before.

Parties present.

Mr. Adv. Thiagalingam continues his address. Maartensz writes the letters P18 & P18A of 21.2.61 to the defendant. In D7 there is no reference to anything other than the Rs. 50,000/-. The evidence at Pages 113, 114, 135 - 138 is referred to.

Maartensz wrote on 27.2.61 to de Silva & Mendis. De Silva & Mendis writes letter P19 on 28.2.61. The defendant writes D64 on 27.2.61 to de Silva & Mendis. P18 has reference to D6/D30. Then 20 there is the letter P17. The reference in P17 is to D30/D6. According to Maartensz, letter D30/D6 had been sent up to him. He wrote P18 & P18A and does not tell anything to Mr. Marley. He says this letter P17 is vague and it was necessary 4 or 5 months later merely to give cover to the terms of the Last Will. The Last Will of October is almost in line with P17. Mr. Marley was ill at that time. The list 'A' commences with the document P17; the list 'B' ends up with the document P17. He says he is not dealing with the documents P23, P23A, P24, D65 & D69.

Mr. Adv. Amerasinghe is heard in reply. He says the burden of 30 proving that any document signed by a party is a fabrication and a forgery is on the party who alleges it.

He says there are 3 claims and the amount claimed is not in dispute. The defendant admits the amount claimed but denies legal liability for them. The Rs. 50,000/- claimed is by cheque P7 of 7.8.50 which has been cashed by the defendant and cash which the defendant admits he appropriated. The Rs. 17,004/- representing the legal expenses paid for this transaction, in respect of this transaction, is vouched for by cheque P8 dated 18.11.60. The Rs. 125,000/- which is vouched for by receipt P9 of 12.6.60 for Rs 136,343.69, 40 half of which is a liability of the defendant according to the plaintiff's case, and the balance half being Mrs. Marley's liability.

The defence is that there was no legal liability at all, in the first instance. He says the defences are contradictory and conflicting. The Rs. 125,000/- advance is vouched for by P1, the Letter of Guarantee, by Mr. Marley in which it is clearly stated what he wanted done. P2 is the fixed deposit receipt which has been referred to in P2. P3 is the application by both the defendant and Mrs. Marley to open a current joint Account. P4 is the joint loan account itself. P5 is the cheque for Rs. 125,000/- signed by Mrs. Marley and the defendant and drawn on the joint Loan Account. P6 is the cheque for Rs. 257,500/- which is noted in the attestation P13 as being the consideration paid before the Notary. P1 - P6 conclusively prove that Rs. 125,000/- had been advanced to the defendant and Mrs. Marley and this amount had gone for the purchase of Borakanda Estate. D59 is the agreement to purchase on the 6th August, 1960. There is reference to the defendant's cheque in D59 with regard to the Rs. 42,500/- being 1/16th the purchase price. Mr. Marley's cheque P7 for Rs. 50,000/- has gone into his Bank Account on 13th August 1960, in P43 and his cheque for Rs. 42,500/- paid on 7.8.60 at the execution of D59 has been realised on 17.8.60 with the aid of this Rs. 50,000/-. He says the defendant paid with Mr. Marley's money. P7 is dated 7.8.60. P12 Mr. Marley's letter to Maartensz is dated 7.8.60. By D10 Maartensz writes to de Silva & Mendis. The lawyers for the defendant and Mrs. Marley were De Silva & Mendis and for Mr. Marley it was Mr. Maartensz. He says that at the time this letter was written the primary mortgage bond was in favour of the A. I. C. C. De Silva & Mendis confirmed that Mr. Marley was going to lend Rs. 50,000/-. P22 dated 9.9.60 is the defendant's application to the Mercantile Bank. The Bank ultimately gave the money on the security of a cheque. A current Loan Account was opened because the liquidation of the loan has to be a monthly payment on the Borakanda Estate Account. To P22 the Bank replies by D1 and D2. D2 as well as P22 indicates that it was contemplated that there should be two accounts and one was to be the Loan Account and the other the Borakanda Estate Produce Account. D13 is referred to, the letter from F. J. & G. de Saram. D50 the Suspense Account is referred to. The Mercantile Bank was going to advance Rs. 125,000/- but they wanted to get one cheque for this amount and the balance Mrs. Marley and the defendant were going to make up. Maartensz's letter to Mr. Marley (D8) is on 16.1.61. Maartensz did not know anything about the security given for the Rs. 125,000/-. D22 of 3.2.62 is the last document which shows Maartensz acting for Mr. Marley.

No. 7
Addresses to
Court.
- Continued

(Adjourned for lunch):

Sgd
District Judge.
22. 12. 64.

No. 7
Addresses to
Court.
—Continued

RESUMED:

Mr. Adv. Amerasinghe continues his address. He says the second defence is contradictory with the first line of defence. There was no question of vesting the defendant with the ownership of this property at any time. He refers to the answer dated 20.2.64 filed of record in the Balapitya case - P21 - which must be read with D-37. He refers to Para. 3 of P21 and Paras: 4 and 5 of the answer.

Para: 7 of the answer is referred to. Rs. 125,000/- was obtained from the Mercantile Bank on the guarantee of Mr. Marley for the purchase of Borakanda Estate. The defendant was to repay this amount from the income of the Estate. The Mercantile Bank has lent and advanced to the defendant this sum which was guaranteed by Mr. Marley. The defence seeks to establish its denial by stating that the documents have been tampered with. 10

He says that Para: 13 is the only paragraph that sets out any defence in this case to this claim. In the agreement D5 there is the agreement by Mrs. Marley to relieve the defendant of all obligation. According to the agreement, Mrs. Marley has taken over the obligations of the defendant. Para: 7 of D5 is referred to. The defendant is the only person who speaks of a discharge and the others do not speak one word about a discharge. D5 has been repudiated on 15.6.52 by a formal letter by Mrs. Marley's lawyers. The question is whether Mr. Marley discharges this defendant from all liability. Evidence at Pages 113 & 114 referred to, and also at Pages 149, 150, 151 and 152. D5 was the agreement to transfer a half share and if the defendant does that he is relieved of his liability. He says the Court should refuse to act on D9 as only a part of it has been produced. He says D9 and D15 should be rejected by Court. 20

Mr. Adv. Thiagalingam in reply says that Mr. Marley agreed to release the defendant from all obligation and that the defendant was absolved from all liability. 30

Sgd
District Judge.
22.12.64.

Judgment for 29.1.1965.

Judgment of the District Court.

J U D G M E N T

The Plaintiff in this case sues the defendant for the recovery of three different sums of money based on three different causes of action.

The plaintiff's case is that the defendant and Mrs. Eileen Florence Marley by agreement No. 541 dated 6. 8. 60 agreed to purchase the estate known as Maha Borakanda Division situated at Karandeniya for Rs. 425,000/-.

10 That the defendant and the said Eileen Florence Marley requested H. J. G. Marley to provide certain monies needed by them for the completion of their aforesaid agreement to purchase and it was agreed between them and H. J. G. Marley that the said H. J. G. Marley, through his bankers the Mercantile Bank Ltd. lend and advance to the defendant and Mrs. Eileen Florence Marley the sum of Rs. 125,000/- jointly and in equal shares to be repaid by them together with interest thereon as stipulated by the said bank.

20 That the said Marley should provide by way of loan and pay on account of the defendant and the said Mrs. Eileen Florence Marley such monies as shall be required for legal and other expenses connected with the purchase of the said Estate.

That the defendant abovenamed would be liable to repay half share of the monies lent and advanced as aforesaid.

30 The Plaintiff avers that in pursuance of the said agreement and at the request of the said Marley and on the personal guarantee and security given to the said Mercantile Bank by him, the said Bank in or about November 1960 lent and advanced to the defendant and the said Mrs. Eileen Florence Marley jointly a sum of Rs. 125,000/- which was applied in part payment of the aforesaid purchase price at the execution of deed of transfer No. 1419 dated 29. 11. 60 in favour of the defendant and Eileen Florence Marley. The said sum of Rs. 125,000/- was repayable to the said bank together with interest at 5 per cent. per annum or at such rate as may from time to time be fixed or charged by the Bank. And for securing such repayment the said Marley advanced to the said Bank a sum of Rs. 150,000/- held by it in fixed deposit to the credit of the said H. J. G. Marley.

40 The Plaintiff further states that the said H. J. G. Marley in pursuance of the said agreement also paid a sum of Rs. 17,004/- on account of the legal and other expenses connected with the purchase of the estate by the defendant and the said Mrs. Eileen Florence Marley.

By reason of these facts, the Plaintiff states that the Defendant became liable to pay the said H. J. G. Marley the sum of Rs. 62,500/- together with interest thereon as stipulated and a further sum of Rs. 8,502/-.

The Plaintiff avers that the said H. J. G. Marley died leaving a Last Will which was admitted to Probate wherein the Plaintiff and H. T. Perera were nominated Executors. The said H. T. Perera having renounced his rights to claim Probate, the plaintiff has applied for Probate.

The plaintiff states that out of the sum of Rs. 150,000/- held in 10 fixed deposit the Mercantile Bank Limited appropriated a sum of Rs. 136,243/49 by way of principal and interest on account of the Rs. 125,000/- advanced by them.

Further, the Plaintiff states that on 7. 11. 60 the said H. J. G. Marley lent and advanced to the defendant and the defendant borrowed and received a sum of Rs. 50,000/- which he agreed to repay on demand with interest at 2½% per cent per annum. The plaintiff states that in view of the abovementioned facts there is now due and owing to the plaintiff:-

- (1) Rs. 68,171/84, and 20
- (2) Rs. 8,502/- which sums he seeks to recover with legal interest, and
- (3) a further sum of Rs. 52,812/50 which he seeks to recover with legal interest on Rs. 50,000/- from 7. 11. 63 till date of decree and thereafter at legal interest on the aggregate amount.

The defendant filed answer denying that the Plaintiff is the executor and trustee of the last will and codicil of H. J. G. Marley. The defendant further states that the agreement referred to was entered into by the defendant at the express request of H. J. G. Marley and 30 Mrs. Marley.

That the Estate known as Maha Borakanda Division was to be bought in the names of Mrs. Marley and the defendant each being entitled to a half share.

The defendant states that by agreement between H. J. G. Marley, Eileen Florence Marley and the defendant towards the sum of Rs. 425,000/- which was the consideration for the purchase of Maha Borakanda Division, the defendant was to contribute Rs. 25,000/- which sum he was to borrow from the Bank of Ceylon, on a guarantee of Mrs. Eileen Florence Marley. Further, the defendant and Mrs. Eileen Florence Marley 40 were to grant a mortgage of Maha Borakanda Division to Borakanda Estate Co. Ltd. to secure a payment of Rs. 125,000/- and the balance consideration was to be provided by H. J. G. Marley and Mrs. Eileen Florence Marley.

The defendant was to be in sole management of Maha Borakanda Division and to manage the same with care and diligence as though the property was his own and to apportion and pay out of the nett income the sum of Rs. 125,000/- which was to have been covered by a hypothecary bond in favour of Borakanda Estate Co. Ltd. and interest thereon and discharge the said bond.

No. 8
Judgment of the
District Court-
29. 1. 65

—Continued

The sum of Rs. 275,000/- was to be paid to H. J. G. Marley and, or, Eileen Florence Marley and payments under this head were to be credited to a separate account at the Mercantile Bank.

- 10 The defendant was to maintain a separate account under the name Borakanda Estate for such moneys as would be necessary for running the Estate.

The defendant avers that by deed of transfer No. 1419 dated 29. 11. 60 Maha Borakanda Estate Co. Ltd. transferred the said Maha Borakanda Division to Eileen Florence Marley and the defendant in equal shares and the two of them entered into an agreement No. 564 dated 29. 11. 60 with Borakanda Estate Co. Ltd. to grant a mortgage of Maha Borakanda Division to secure a sum of Rs. 125,000/-. Thereafter the defendant entered into sole management of the said
20 Maha Borakanda Division and was in sole management up to 20. 2. 62.

The defendant states that he expended a sum of Rs 20,000/- of his own money in running the Maha Borakanda Division. His personal belongings on the said estate amounted to Rs. 2000/-. He also states that he had placed to the credit of Maha Borakanda Division working account Rs. 3,993/25; that he had paid accruing interest on a sum of Rs. 125,000/- on the said agreement to mortgage Maha Borakanda Division and also paid to the credit of a separate account Rs. 6000/-.

- 30 The defendant states that contrary to the agreements referred to H. J. G. Marley and Eileen Florence Marley, along with some thugs took forcible possession of the Estate from the defendant. Also, Eileen Florence Marley, at the instigation of or with the knowledge and without protest from H. J. G. Marley, on the night of 20. 2. 62 dishonestly and fraudulently removed from the said Maha Borakanda Division, rubber to the value of Rs. 15,000/- and coconuts to the value of Rs. 400/-. The books of account have not been available to the defendant after 20. 2. 62.

The defendant avers that on the 20th day of February 1962 Eileen Florence Marley had fraudulently purported to lease the entirety of Maha Borakanda Division by indenture of lease No 3341.

- 40 Further the defendant states that he was deprived of his rightful possession of Maha Borakanda Division and of his belongings as and after 20. 2. 62 by H. J. G. Marley and Eileen Florence Marley and the defendant acting on legal advice took the necessary steps against Eileen Florence Marley to regain possession of Maha Borakanda Division, books of account, rubber and coconuts.

No. 8
Judgment of the
District Court-
29. 1. 65

—Continued

That thereupon Eileen Florence Marley with the approval, concurrence and knowledge of and together with H. J. G. Marley acting by their Proctor Mr. Welikala and others entered into negotiations with the defendant as a result whereof the defendant was discharged of all obligations to pay any moneys to H. J. G. Marley or Eileen Florence Marley and agreement No. 227 dated 2. 3. 62 was entered into between Eileen Florence Marley and the defendant. The defendant thereafter and in consequence thereof abandoned all steps taken by him and referred to earlier and gave up all claims against Eileen Florence Marley and H. G. J. Marley and was thus and otherwise absolved or released by H. J. G. Marley and Eileen Florence Marley from all or any liability to pay any sum of money to H. J. G. Marley or Eileen Florence Marley. The defendant therefore states that H. J. G. Marley was estopped and barred from making any claim and the Plaintiff has no cause of action against the defendant. 10

The case went to trial on 28. 9. 64 on the issues framed. The first witness for the Plaintiff was T. J. Jayasundera of the Mercantile Bank of India. He produced P1 the letter of guarantee signed by H. J. G. Marley. By this document Marley purports to guarantee the repayment of loan facilitated up to Rs. 125,000/-. By the same document, a fixed deposit receipt P2 for Rs. 150,000/- signed by Marley was deposited with the said bank. This receipt is renewed from year to year and overleaf the periodic renewals are set out. As a result of P1 and P2 a loan of Rs. 125,000/- was given to Mrs. Marley and the defendant. Mrs. Marley and the defendant signed the prescribed letter to the bank for opening the loan account. This is P3. This witness produced as P4 a joint loan account No. 3396 certified by their accountant. Simultaneously with the opening of this account, a cheque was drawn by the defendant and Mrs. Marley. This is P5. A cheque book was issued with the opening of this account. A cheque for Rs. 257,500/- was drawn up in favour of Borakanda Estate. This is produced marked P6. This amount of Rs. 257,500/- comprised of the loan amounting to Rs. 125,000/- and various other monies furnished by Mrs. Marley and the defendant. These monies were held in a suspense account until the payment of this cheque. This witness produced cheque No. V 591427 P7 drawn by H. J. G. Marley for Rs. 50,000/- in favour of the defendant who has endorsed it overleaf. This has been cleared through the Bank of Ceylon. 30

This witness also identified a cheque No. V. 591459 P8 drawn by H. J. G. Marley in favour of Messrs. De Silva and Mendis for Rs. 17,004/- paid to Hongkong and Shanghai Banks Corporation. He states that Mr. Marley died and the Mercantile Bank repaid itself what is due on the loan account from the fixed deposit. A receipt P9 was issued to the executors of the deceased's estate. 40

The only credit item paid by the account holders in P4 is a sum of Rs. 6000/- on 12th January 1961 by cheque from John Keel Thompson White. Credit has been given for this payment. The other entries include Debit tax and actual interest on the loan. Another account known as Borakanda Estate Account was opened with the Mercantile Bank. The defendant and Mrs. Marley were the authorised persons who could sign cheques on this account. A certified statement of the account of Borakanda Estate Account maintained by the defendant and Mrs. Marley marked P10 was produced by this witness.

No. 8
Judgment of the
District Court-
29. 1. 65.

—Continued

- 10 Mr. David Maartnsz was called as a witness for the Plaintiff. He states that he was senior partner of Messrs. F. J & G. de Saram during the years 1948 to 1962. Prior to that he was a member of this firm. He retired in 1962 and then joined Messrs. Julius & Creasy as a partner where he is now. He states that he knew Mr. and Mrs. Marley. He was Mr. Marley's lawyer in certain years. It commenced in 1960 and ceased in 1962. As a result of a telephone conversation with Mr. Marley he became aware of a proposal to purchase Borakanda Estate. At the first interview Mr. Marley, Mrs. Marley and the defendant were present. Mr. Marley was to lend
- 20 part of the purchase money to Mrs. Marley and the defendant. It was Rs. 50,000/- to each. At first the A. I. C. C. was to lend part of the purchase price. Later they were not going to do so and Mr. Marley had to guarantee a loan of Rs. 125,000/- which the Mercantile Bank lent to Mrs. Marley and the defendant. He states that Mr. Marley sent a cheque for Rs. 50,000/- in favour of the defendant and asked him to instruct Messrs De Silva and Mendis to apply this cheque as part of the purchase price of the Estate. Messrs. de Silva and Mendis were acting for Mrs. Marley and the defendant as purchasers. Later he learnt about this Rs. 125,000/- and the documents
- 30 P11B and P11C confirmed this. The sale in respect of Borakanda Estate was completed - P13 is the deed of sale. The arrangement between Mr. Marley and the defendant regarding the repayment of the monies advanced was that Rs. 50,000/- was to be a loan repayable in two or three years with interest at 2 1/2 per cent. The interest to be paid quarterly. After the transaction was completed, he came to know about the agreement regarding legal expenses.

- On 23. 10. 61 he wrote P14 to the defendant on the instructions of Mr. Marley to which the defendant replied by P15. Consequent on that Mr. Thurairatnam, advocate, contacted him. Mr Thurairatnam
- 40 did not deny any of the loans mentioned in the letter P14. Mr. Thurairatnam and the defendant met him later and they suggested

No. 8
Judgment of the
District Court-
29. 1. 65.

—Continued

that the defendant should buy Mrs. Marley's half share of the Estate in order to resolve all difficulties and repay what he owed to Mr. Marley and undertake to repay Mrs. Marley's debt to Mr. Marley. He states he informed Mr. Marley about these proposals in writing. The defendant did not deny his liability to Mr. Marley on any of these loans.

Mr. Maartensz states that Mr. Marley died leaving a last will which is produced along with the Probate.

The Plaintiff's case was closed after the cross-examination and re-examination of Mr. Maartensz. 10

The defendant began his case by calling Mr. Nanayakkara, Proctor and Notary Public who testified to the facts that he attested lease bond No. 3341 dated 20. 2. 62 on the instructions given by Leslie Samaranayake. The lease bond was signed at the Galle Face Hotel. Mrs. Marley signed the bond and so did the lessees. Search was dispensed with. Mr. Marley was also present at the hotel and he told him that the Estate belonged to Mrs. Marley.

Mr. Clarence de Silva, Crown Proctor, Balapitiya, the second witness called by the defendant states that he was Proctor for Mrs. Marley in District Court Balapitiya Case No. M1207 filed against the defendant. 20 He addressed a letter to the Defendant D33 and received a reply D34 from the defendant. Thereafter he wrote D35 and received reply D36 from the defendant. He states that he filed action for Mrs. Marley but the defendant did not appear on the summons returnable date and evidence was led exparte. He was unaware of the agreement D5 at that time. Thereafter the defendant moved to have the ex parte Order vacated and the order was vacated and the case was fixed for trial. The defendant filed answer after the decree was vacated.

Mr. Silva states that he has filed action on behalf of Arthur de Soysa against the defendant for the recovery of Rs. 7,500/- and decree 30 was entered against him.

M. A. H. de Soysa a former Superintendent of Maha Borakanda Estate states that he was Superintendent of the said Estate till it was bought by Mrs. Marley and the defendant. He states that he advanced Rs. 7000/- to Mr. Marley. In 1962 Mr. Clarence de Silva told him there was trouble on this estate and he asked Mr. Marley for his money. Mr. Marley told him that the defendant was coming on the 28th and to come on that day. On the 28th when he went, he found Mrs. Marley and the defendant also there. Mr. Marley spoke to the defendant and defendant undertook to pay him. Mr. Marley said that 40

the defendant was selling the estate and he was buying a share from the defendant. The defendant promised to settle this money due when he got the money. The talk was that Mr. Marley was going to pay about one lakh of rupees for a share. Later he filed action against the defendant and obtained judgment. The defendant was paying in instalments of Rs. 250/- a month and has now paid Rs. 5,500/-.

No. 8
Judgment of the
District Court-
29. 1. 65.

—Continued

Mr. R. M. S. Karunaratne, Proctor, the next witness for the defendant states that he attested document D5. On 2. 3. 62 Mr. Welikala, Proctor, came to his bungalow and told him he had drawn up an agreement on instructions from the Marleys and the defendant. There were four copies. He further said that the Marleys and the defendant were not on the best of terms. He then attested the defendant's signature at his bungalow. Mr. Welikala and Mr. Samaranayake were the witnesses. After that he went to Borakanda Estate. At Borakanda there was an armed party at the gate. He knew some of them and said that he was going on business to the Estate and was allowed in. At the estate bungalow he was introduced to Mr. and Mrs. Marley. Mr. Welikala said that he could not attest their signatures as it was outside the area for which he had a licence to practice. The agreement was signed by Mrs Marley. Mr. Samaranayake and Mr. Gunasekera signed as witnesses. Mr. Welikala did not want to sign as a witness as he was acting for the Marleys.

A clerk from the Bank of Ceylon, Nuwara Eliya, testified to the bank account of the defendant. He states that on 13. 8. 60 there was a credit of Rs. 50,000/-. Apart from that the bank gave the defendant a loan of Rs. 25,000/- on a guarantee by Mrs. Marley.

Inspector Nathan's evidence is that he was O. I. C. Ambalangoda in February 1962. Mr. Weerawardena complained to him on 21. 2. 62 that he was forcibly ejected from Borakanda Estate. He had also lodged an entry at Dehiwala Police station. On the next day, Mr. Weerawardena came with the defendant and a Proctor and Mr. Thurairatnam and the defendant made a statement. He states that he sent one of the Inspectors of the Ambalangoda Police to inquire into the matter and three persons were arrested with guns and knives. The Marleys also came for assistance and he sent some Police officers on enquiry. Later both parties came and informed him that they had settled the matter. The defendant made a statement.

No. 8
Judgment of the
District Court-
29. 1. 65.
—Continued

P. S. Subramaniam states that he went to Borakanda Estate on 21. 2. 62. He searched for a suspect Gunadasa. He saw Jayatilleke, Mr. Marley, Mrs. Marley and other labourers. There were watchers armed with guns and knives. He arrested three persons. The others ran away. Mrs. Marley also made a statement. Mr. Marley was in the car.

The defendant's evidence is that he came to know the Marleys in 1957. Mr. Marley addressed him as "Peter" and he addressed Mr. Marley as 'Sir'. He became a party to agreement No. 541 dated 6. 8. 60. He became a party to the agreement at the request of Mr. 10 Marley. Mr. Marley told him that he wanted a property by the sea side for himself and his wife and asked him to look for one. He then went round with brokers looking for such a property and one of them found Borakanda Estate belonging to Sir Ernest de Silva. The preliminary expenses were incurred by him. Mr. Marley told him that he would provide the money and wanted him to manage the Estate. Later when he paid off the money he would be given a half share of the property. He states that Mr. Marley asked him whether he could provide any money. He said he could not. Mr. 20 Marley then told him that Mrs. Marley would guarantee a loan from the Bank of Ceylon, Nuwara Eliya, in a sum of Rs. 25,000/-. This was because Mr. Marley wanted him to have a stake in the property so that he could have a special interest in it.

The purchase price was Rs. 425,000/- and 10% was paid at the time of signing the agreement, i. e. Rs. 42,500/-. He himself had only Rs. 40/- odd in his bank at the time. When they went into the Notary's office, Mr. Marley told him that he had not brought his Cheque Book and asked him for a cheque. The Rs. 42,500/- was paid by his cheque. Prior to this Mr. Marley told him that they should go and meet Mr. Maartensz and he went and met him in his office 30 with Mr. and Mrs. Marley. There he was asked to contribute Rs. 50,000/- and he said he could not. After the agreement was signed he brought Mrs. Marley back to Nuwara Eliya. He went to Balapitiya the following day to get some plans. From Balapitiya he came to D.L. and F. de Saram's office and he found that the cheque was not deposited. He went and met Mr. Marley. The latter gave him a cheque and asked him to meet Mr. Maartensz. He deposited the cheque on the 13th and went and met Mr. Maartensz. He was unaware of the agreement. The defendant states that there was no agreement that he was to provide Rs. 50,000/-. The cheque given by 40 Mr. Marley to him was not a loan. The consideration for the purchase of Borakanda Estate was made up of Rs. 125,000/- borrowed from Borakanda Estate Co. Ltd. He contributed Rs. 25,000/-.

The balance was supplied by Mr. Marley. Mr. Maartensz suggested that they should apply to the A.I.C.C. for a loan. Application papers were signed but they were not sent up as Mr. Marley said that it would take time and money. Thereafter application was made to the Mercantile Bank at the request of Mr. Marley. The lawyers from the bank asked for exorbitant fees and Mr. Marley refused to go through with it. Then Mr. Marley wanted him to find out the rates for mortgaging the property and the terms from the Defendant against a fixed deposit. Mr. Bell gave him D53. About 3 weeks prior to the

10 signing of the deed, he took Mr. and Mrs. Marley to the Bank. They intended to get money from the Bank on a fixed deposit. After that he brought them to Nuwara Eliya. The following day he took Mrs. Marley to Colombo because she had to take the fixed deposit receipt to the Bank. The time provided by the agreement had run out and another agreement No. 562 dated 12. 11. 60 was written. The transfer deed was attested by Mr. Gunasekera of De Silva and Mendis as Mr. Marley said that they would be cheaper. On the day of the transfer they went into the Manager's room of the Mercantile Bank. He handed over cash Rs. 32,500/- to the Manager. Mrs. Marley

20 then gave two cheques amounting to Rs. 100,000/-. Two accounts were opened, one known as the Current Account under the Borakanda Estate Account and a No. 2 Account. The forms were signed and the Manager produced a cheque leaf and told him and Mrs. Marley to sign. They signed and handed back the cheque. A cheque book was handed over for the current account. They got a cheque for Rs. 257,500/- in favour of Borakanda Estate Co. Ltd. P5 was signed in blank. When P3 was signed this word "loan" was not there. When the original of P11A was signed the words "jointly by both of us" were not there. The endorsement at the bottom was also not

30 there. After the purchase, he and Mr. and Mrs. Marley went and took possession. He was to manage the estate and pay Rs. 6000/- a month into the No. 2 account. After the monies were paid and the Borakanda Estates Co. Ltd. loan of Rs. 125,000/- was settled he was to get half share. The current account was to be for the management of the Estate. This was to be operated either by him or Mrs. Marley. On 8. 12. 60 Mr. Marley wrote D62 addressing him as "Peter". The produce was to be sold to John Keel Thompson and White and they were to send the cheques to the Bank. On 5. 2. 61 there was a conference held at Mr. Marley's. At that time feelings

40 were strained between him and Mrs. Marley. Mrs. Marley had instructed the Bank that cheques had to be signed by both of them

No. 8
Judgment of the
District Court-
29. 1. 65.

—Continued

and he could not cash a cheque as Mrs. Marley refused to sign it. He then said that he would have to sell the rubber outside. Mr. Maartnesz then suggested that they should sell the place. He also suggested that Mackwoods should handle the property. He received P18 and P18A. He then went to Mr. Marley and asked him what was meant by this "loan". Mr. Marley said it was not a loan to him but a loan to his wife. He went the next day also and Mr. Marley showed him the guarantee he had given to his wife. It was in blank. It was D4. At all times he was prepared to mortgage the property but not to borrow money on personal security. In D6 the postscript was written at the request of Mrs. Marley. Mr. Marley told him to forget about these things and go on with the work. He did not see letter P17. It begins "Dear Mellaaratchy" whereas Marley always began his letters with "Dear Peter".

During the whole of 1961 he was in possession of the Estate. About the end of 1961 Mr. Clarence de Silva wrote to him certain letters and so did Messrs. F. J. and G. de Saram. When he received P14 he went to Mr. Thurairatnam. He told him to write a letter denying the facts in P14. Mr. Thurairatnam went and saw Mr. Maartensz and he wrote to Messrs. F. J. and G. de Saram saying that Mr. Thurairatnam was coming to see them. He went with Mr. Thurairatnam to see Mr. Maartensz. They had a discussion and he explained that it was a loss to work the estate. They then suggested that he should buy the estate and he was willing to do so.

At the end of 1961 he had considerable property. He was making arrangements to sell a part of an estate and buy Borakanda Estate. A short time before that the Marleys took forcible possession of the estate. On 6. 2. 63 Mrs. Marley filed action against him in Balapitiya. Before 19. 2. 63 he had paid Rs. 6000/- to the credit of No. 2 account. There were also monies in the Current Account. There was rubber worth about Rs. 15,000/- and coconut worth Rs. 4000/-. There were also his personal belongings worth Rs. 2000/-. There were other articles worth Rs. 2000/-. He himself had spent about Rs. 20,000/- and paid accruing interest to the original owners of Borakanda. The books of account were also in the Estate.

On the 20th night he was at Nuwara Eliya. He got a telephone call from Weerawardena saying that Mr. and Mrs. Marley had taken forcible possession of the Estate and a complaint had been lodged at the Dehiwela Police Station. Weerawardena had been taken to Dehiwela escorted by two cars. He then asked Weerawardena to come to his Counsel's place at Kynsey Road and he started off with Mr. David Perera. They went to the Ambalangoda Police Station and

he made a statement. On the 23rd he went to the Estate and Mr. Marley said that it was useless trying to settle the matter. He told them he was prepared to sell his share for Rs. 125,000/-. Mr. Marley wanted him to meet Mr. Welikala. On Mr. Thurairatnam's advice he was prepared to sell his share for Rs. 125,000/-. Mr. Marley was agreeable. He later met Mr. Welikala who gave him a draft which he took to Mr. Neville Samarakoon for approval. The agreement D5 was signed by him. He signed it at Mr. Karunaratne's house. He did not sign it at Borakanda as Mrs. Marley was creating trouble.

No. 8
Judgment of the
District Court-
29. 1. 65.
—Continued

- 10 After the agreement was signed, Mr. Marley asked him to inform the Police so that they would not take further steps. After the agreement was signed, he gave up all claims against the Marleys. He has paid a sum of Rs. 31,000/- along with interest. He had to pay Soysa Rs. 7,000/-. In pursuance of the agreement he got a fragmentation board certificate. In spite of the agreement, Mrs. Marley proceeded on with the Balapitiya Case. He then filed papers and got the decree nisi vacated. He has filed answer.

He agreed with Mr. Marley that he was to be discharged of all obligations in respect of the Borakanda Estate. If that was not
20 agreed he would not have signed the agreement.

The defendant also called Mr. Peiris, Proctor of Messrs. De Silva and Mendis and Mr. Shelton Weerawardena. Mr. Weerawardena related how he was dispossessed of the Borakanda Estate when he was working on 20. 2. 62.

This case is the unhappy sequel to a project begun with a fund of good will but unfortunately culminating in bitterness and rancour on both sides.

- The plaintiff sues as executor of the Estate of Mr. H. J. G. Marley deceased. He has produced in proof of his capacity, certified
30 copies of the last will and codicil of H. J. G. Marley and the probate and therefore there is no reason to doubt his status in this case.

In proof of the fact that Mr. Marley had guaranteed loan facilities up to an amount of Rs. 125,000/- Mr. Jayawardena, an officer of the Mercantile Bank has produced P1 the letter of guarantee. According to Clause 4 of P1, Mr. Marley has deposited with the Mercantile Bank a fixed deposit receipt for Rs. 150,000/- P2. Consequent on P1 and P2 it is alleged that a joint loan account P4 was opened by the defendant and Mrs. Marley on an application form P3. Mr. Jayawardena states that with the opening of the account
40 a cheque for Rs. 125,000/- was signed by the defendant and Mrs.

Marley in favour of the Mercantile Bank. This is P5. P7 a cheque for Rs. 50,000/- drawn by Mr. H. J. G. Marley in favour of the defendant was also produced. The defendant has endorsed it P7A and it has been cleared through the Bank of Ceylon. According to P8, Mr. H. J. G. Marley has issued a cheque for Rs. 17,004/- in favour of Messrs. de Silva and Mendis and this has been paid to the Hongkong and Shanghai Banking Corporation.

According to P9 the Mercantile Bank has paid itself out of the fixed deposit note of Rs. 150,000/-. the sum of Rs. 136,343/69. Mr. Maartensz states that at the first interview at which Mr. and Mrs. 10 Marley and the defendant were present, he became aware of the proposal of Mr. Marley to lend a part of the purchase money to Mrs. Marley and the defendant. He was to lend Mrs. Marley and the defendant Rs. 50,000/- each. Mr Maartensz further states that Mr. Marley had to guarantee a loan of Rs. 125,000/- which the Mercantile Bank was to lend the defendant and Mrs. Marley. He also states that Mr. Marley sent him a cheque for Rs. 50,000/- with letter P12 asking him to instruct Messrs. De Silva and Mendis to apply it as part of the purchase price. De Silva and Mendis were lawyers 20 of the defendant and Mrs. Marley as purchasers.

Mr. Maartensz states that the Rs 50,000/- was payable in 2 or 3 years with interest at 2½%. The interest was to be paid quarterly. As regards the legal expenses he came to know this position later. He wrote P14. P14 sets out the claims by Mr. H. J. G. Marley against the defendant. The plaintiff's case therefore is supported by the evidence of Mr. Jayawardena and the documents produced and by the evidence of Mr. Maartensz. However the defendant takes up a position which reflects seriously on the good name not only of Mr. H. J. G. Marley but also on the Mercantile Bank and Mr. Maartensz.

The defendant states that he got no loan from Mr. H. J. G. Marley. 30 He states he always maintained that he had no money in the Bank. All that he agreed to contribute was Rs. 25,000/-, which was also borrowed from the Bank of Ceylon on a guarantee by Mrs. Marley. He states that Mr. Marley told him that he would provide the money and wanted him to manage the Estate and if he paid off his money he would get half share of the Estate. The consideration for the purchase of Borakanda Estate was then made up of Rs. 25,000/- which the defendant contributed, Rs. 125,000/- borrowed by him and Mrs. Marley from Borakanda Estate Co. Ltd. and the balance provided by Mr. Marley.

On 29 11. 60 when the transfer deed was signed, the defendant has stated what took place. He states that he signed cheque P5 in blank. So did Mrs. Marley. He further states that when he signed application form P3, the word "loan" was not there. He further states that when he signed the original of the photostat copy P11A, the words "jointly by both" were not there, nor was the endorsement at the bottom of P11A.

No. 8
Judgment of the
District Court-
29. 1. 65.

—Continued

The defendant admits having received P18 and the enclosure P18A and states that he went and saw Mr. Marley and told him
10 he was prepared to grant any amount of mortgages on the Estate. He states that he raised the question of the loan referred to in P18A and Mr. Marley told him it was not a loan to the defendant but to Mrs. Marley. He states he was not satisfied and on the next day Mr. Marley showed him the letter of guarantee and it was in blank. This is the document D4. The defendant admits having written the postscript D3, but states that he did so at the instance of Mrs. Marley. He however denies having received P17, a letter from Mr. H. J. G. Marley.

If therefore what the defendant states is to be accepted, he has
20 been the victim of a fraud at the hands of the Marleys to which the Mercantile Bank and Mr. Maartensz had been parties. According to the defendant, when he and Mrs. Marley signed application P3, the word 'loan' was not there. He says he would not have signed P3 if it was a loan account. Further he states that there is an interpolation in P11A.

The first question is what interest the Mercantile Bank has in this matter to sully its good name by committing a forgery. It will be seen from P4 that immediately the account was opened it has been referred to as a joint loan account. At the time these documents
30 were prepared the parties were on the best of terms.

The defendant states that a short time prior to signing the agreement he took the Marleys to the Bank and on the next day Mr. Marley. He did not go inside. Could the plot against the defendant have been hatched at that time? Further, the defendant states ~~that~~ what when he got the letter P18A he questioned Mr. Marley about the word "loan" and he said it was a loan to his wife and showed him D4 Now D4 is in blank. It is a copy of P1 the letter of guarantee without the names therein. However, Mr. Jayawardena states that when he signed P1 it was a complete document. Mr.
40 Jayawardena has no reason to give false evidence against the defendant

No. 8
Judgment of the
District Court-
29. 1. 65
—Continued

or for the plaintiff. Therefore as far back as 4th November 1960 Mr. Marley as well as the Mercantile Bank treated the Rs. 125,000/- advanced on the fixed deposit as a loan to Mrs. Marley and the defendant.

Now the defendant's position is that he had trust in Mr. Marley. He always looked up to him and addressed him as "Sir". It was he who was instrumental in finding the Estate for Mr. Marley at his request. His reply D36 to Mr. Clarence de Silva shows his attitude towards Mr. Marley. Would Mr. Marley, at that early stage, have been working against the interests of the Defendant? 10

It is argued that the interpolations in P3 and P11A have not been initialled. This is so, but I am unable to accept the proposition that the Bank has converted a loan to Mr. Marley or Mrs. Marley as a loan to Mrs. Marley and the defendant surreptitiously and without notice to Mrs. Marley and the defendant.

I am, therefore, disposed to accept the documents produced by Mr. Jayawardena in respect of the loan account. The evidence of Mr. Maartensz was also attacked as that of an interested witness. Mr. Maartensz is a senior proctor and a partner of that reputed firm of Julius and Creasy. He was at the time of negotiations to purchase Borakanda Estate a senior partner of another reputed firm of F. J. & G. de Saram. Adverse comments against any professional man must be viewed with due care and caution, more so when he is a man of the standing of Mr. Maartensz. 20

Mr. Maartensz maintains right through his evidence that the interest of Mr. H. J. G. Marley in this transaction was purely financial. His evidence is supported by document P1, P2, P3 and P4 in this case in respect of the Rs. 125,000/-. In respect of the Rs. 50,000/- there is the cheque P7 and the letter P12 and also D8 and in respect of the Rs. 17,004/- there is the cheque P8. 30

Mr. Maartensz states that he wrote letter P14 to the defendant in which the claims of Mr. H. J. G. Marley against the defendant are set out. Having been familiar with the negotiations for the purchase of Borakanda for most of the time, it is difficult to see how he could have written P14 unless he was sure of his facts. He was Mr. H. J. G. Marley's lawyer in this transaction.

It was urged that Mr. Maartensz has gone beyond his capacity as a lawyer in this matter. That in some of the letters written by Mr. Maartensz he has included certain facts beyond his instructions. It is denied that P17 was received by the defendant and as Mr. Marley always addressed the defendant as "Peter", P17 is the 40

work probably of Mr. Maartensz. D22, in which Mr. Maartensz states that he has been "trying to push Mr. Mellaaratchy into taking some kind of active step" has been referred to, and also the fact that when D5 was shown to him he said "This is the end of all our troubles". D8 also has been commented on. It would also appear that while Mr. Maartensz was away from the Island, Mr. Marley had not taken any definite steps with regard to his alleged loan until he returned. However it is difficult to see in which way Mr. Maartensz has gone beyond his instructions except that he has shown, as any responsible lawyer would, a keen interest in safeguarding the interests of his client.

I see no reason therefore to reject the evidence of Mr. Maartensz. I also accept Mr. Maartensz's evidence that the original agreement was for the defendant to deposit Rs. 50,000/-.

The defendant states that there was no question of a loan to him by Mr. Marley at all. He states that except for Rs. 25,000/- provided by him all the rest were provided by Mr. Marley. He states that he would not have signed any of the documents at the Mercantile Bank if he knew it was a loan.

The question then arises as to why Mr. Marley, who is alleged to have been anxious to buy an estate by the seaside, should not have been made a co-owner on the Deed 1419 P13 while the defendant who contributed only Rs. 25,000/- should be made half share owner. This is all the more inexplicable when the defendant states that he would have got the half share only after he had managed the Estate and paid off the debts and Mr. Marley's money.

Mr. Marley is alleged to have been a shrewd businessman. If that were so, even though he was dealing with a friend, he would certainly have had safeguarded his position if with his money mainly, the defendant was to be a half share owner of the Estate. It is also then doubtful whether Borakanda was bought at the express request of Mr. Marley. Mr. Maartensz has stated that at a conference it was agreed that Mr. Marley should lend money to the defendant and Mrs. Marley for the purpose of buying Borakanda Estate. This is supported by D10, a letter to De Silva and Mendis. D10 mentions that the Estate was being bought in equal shares by Mrs. Marley and the Defendant and Mr. Marley was to loan Rs. 100,000/-. In reply to D10, it is significant that De Silva & Mendis have by P25 stated "we think that the particulars stated in your letter are substantially correct." In fact by D60 application has been made for a loan from the A. I. C. C.

Now by P14 Mr. Maartensz has written to the defendant mentioning the two loans of Rs. 50,000/- and Rs. 17,004/- and also the guarantee of Rs. 125,000/-. Although the defendant states he questioned Mr. Marley about this there is no denial by the defendant in writing either to Mr. Marley's proctors or anyone else that there was no loan. Instead of which he has sent Mr. Thuraiatnam to discuss with Mr. Martensz and in his reply P15 he has not even mentioned casually that the contents of the letter were wrong. The defendant is a man of considerable means and has resorted to legal advice time and again. He would have known the value of a prompt denial especially as 10 matters appeared to be coming to a head.

The defendant has stated in evidence that he was going to get half share of the Estate only after he had managed the property and paid the debts. However, certain documents produced in this case appear to contradict him.

In D6 the defendant admits that he wrote the postscript. It reads "I have instructed Messrs. De Silva & Mendis to draw up the secondary mortgage for Rs. 50,000/- in your favour of my half share of the property". The defendant states that he wrote this at the instance of Mrs. Marley. Whoever may have instigated him the defendant would 20 have known the implications of such a statement.

It would appear by D1 and D2 that the defendant and Mrs. Marley sought to borrow Rs. 125,000/- from the Mercantile Bank on the footing of being joint owners of the Borakanda Estate in equal shares.

In his statement to the Police D55 the defendant refers to himself as "the co-owner of the Estate known as Borakanda". The position taken up in D16 is more that of a person with proprietary interest than a manager.

In D19 the defendant admits that Mr. Marley had made the largest contribution towards the purchase of the Estate and so also in D36. 30 But nowhere has the defendant admitted any ownership of Mr. Marley to the Estate.

In P21, the defendant's answer in case No. M/1207 District Court Balapitiya in paragraph 3 the defendant states that "the Plaintiff and Defendant purchased Maha Borakanda Estate and became entitled thereto in equal shares". Even in D5 the defendant has signed the Agreement on the footing of a half share owner. In view of the foregoing it is difficult to accept the defendant's version that he was to be the owner of half share of the Estate only after the debts were paid up.

I am disposed to hold that from the outset the defendant was to 40 be a half share owner of the Estate.

If that were so, the monies advanced by Mr. Marley both to Mrs. Marley and the defendant would necessarily have been loans. The defendant states that if he knew they were loans he would never have signed the bank forms. Under what other footing could Mr. Marley have advanced the monies?

No. 8
Judgment of the
District Court-
29. 1. 65.

-Continued

The defendant has called Mr. Soysa as a witness. He stated that he advanced Rs. 7,000/- to Mr. Marley. It later transpired that the money was given to the Superintendent. Mr. Soysa stated that he asked for the money from Mr. Marley and on the 28th Mr. Marley told him that he was buying the defendant's share of the Estate from the defendant and asked the defendant to pay that sum and the defendant agreed. He states he sued the defendant and got judgment. The defendant's share was to be bought for about a lakh of rupees. This was on the 28th of February. The defendant called other evidence to prove that the Marleys had taken possession of the Estate with the help of thugs "*vi et armis*". There is no doubt that this has been so. Mr. Karunaratne states that when he went to the Estate to get the deed of agreement D5 signed the place was like a battlefield. It is rather shocking that people from whom one would have expected a better standard of conduct should have descended to that low level reminding one of Chicago gangsterism.

The defendant states that this is the work of Mrs. Marley and even after the Estate was taken over by the Marleys he still had trust in Mr. Marley. Whatever that may be, whoever had done it would have been of a most unscrupulous nature.

The defendant has taken up the position that the Plaintiff is estopped from making any claims against him as by D5 the defendant was discharged from all obligations to pay any monies to Mr. Marley or Eileen Florence Marley and further the defendant abandoned all steps taken by him and gave up all claims against Eileen Florence Marley and H. J. G. Marley.

Now it would appear that D5 is an agreement between Mrs. Marley and the defendant only. There is no doubt credible evidence that Mr. Marley was also present at the time of execution of D5.

Mr. Karunaratne states that Mr. Marley was present at the time. The defendant states that he would not have signed the agreement if Mr. Marley was not a party to it and he was not absolved from all claims by Mr. Marley.

It is difficult to understand why it was not thought fit to make Mr. Marley also a signatory to D5. By D5 Mrs. Marley has undertaken to pay all monies advanced by Mr. Marley. One cannot, however, say

No. 8
Judgment of the
District Court-
29. 1. 65

—Continued

that Mr. Marley did not acquiesce in the transaction but why was he not made a party to it.

However, the Agreement is a conditional one as can be seen by paragraph 12 and also paragraphs 3 and 4. There is proof that Mrs. Marley did not abide by the agreement, because, despite paragraph 10 of D5, she proceeded on with the case filed against the defendant in the Balapitiya Courts-M.1207.

In the circumstances I am of opinion that the plea of estoppel must fail.

In weighing the evidence, documents D9 and D15 which were 10 objected to, were not acted upon as although they were produced through Mr. Maartensz, still the facts therein were not proved. Mr. Thiagalingam, Q. C., admitted that they were shown to Mr. Maartensz merely to refresh his memory.

Documents D38 to D42 were also objected to as the signatures therein were not identified and at the time of sending them Messrs Welikala and Fernando had ceased to be Agents for the Marleys. It was contended by the Defence that the Plaintiff's proctors had been noticed to produce them as letters written by Messrs. Welikala and Fernando and compliance with that notice must be taken as an 20 admission of the genuineness of the documents and proof of signatures.

I am unable to agree. Unless there is an admission on record, no such presumption can arise. Therefore D38 to D42 should have been proved. I therefore have rejected D38 to D42.

Document D19 was objected to but has subsequently been produced as D34 through Mr. Clarence de Silva and therefore is admitted.

I would answer the issues as follows:-

1. (a) Yes.
1. (b) Yes.
1. (c) Yes.
2. (a) Yes.
2. (b) Yes.
3. (a) Yes.
3. (b) Yes.
4. Yes.
5. (a) Yes.
- (b) Yes.
6. (a) Yes.
- (b) Yes.
7. Yes.

30

40

- 8. (a) Yes.
- (b) Yes.
- (c) Yes.
- 9. No.
- 10. (a) No-Rs. 50,000/-
- (b) Yes.
- (c) No.
- 11. (a) Yes.
- (b) (i) Yes.
- (ii) Yes.
- (iii) Yes.
- 12. Yes.
- 13. (a) Not proved
- (b) Yes.
- (c) Yes.
- (d) Yes.
- 14. Yes.
- 15. (a) Yes.
- (b) Not proved
- 16. (a) Yes
- (b) Yes.
- 17. Yes.
- 18. (a) No.
- (b) Yes.
- (c) Yes.
- 19. (a) No.
- (b) No.

No. 8
Judgment of the
District Court-
29. 1. 65
—Continued

10

20

I therefore enter judgment for Plaintiff as prayed for with costs.

Sgd.

District Judge.
29. 1. 65.

30

No. 9

Decree of the District Court

IN THE DISTRICT COURT OF NUWARA ELIYA.

J. A. Naidoo of Messrs. Julius and Creasy, Colombo
Executor of the Last Will and Codicil of H. J. G.
Marley, Deceased *Plaintiff.*

vs.

No. M5409.

D. Peter Mellaaratchy of "Reigate", Nuwara Eliya.
Defendant.

40

This action coming on for disposal before E. F. De Zilva Esquire District Judge of Nuwara Eliya on the 29th day of January 1965 in the presence of Advocates E. S. Amerasinghe and B. J. Fernando instructed by Mr. P. N. Bartholomeusz Proctor on the part of the

No. 9
Decree of the
District Court-
29. 1. 65

No. 9
Decree of the
District Court-
29. 1. 65
-Continued

Plaintiff and Advocates C. Thiagalingam Q. C., T. Parathalingam and Crosette-Thambiah instructed by Mr. D. Perera Proctor on the part of the Defendant it is ordered and decreed on evidence that the Defendant do pay the Plaintiff

- (a) A sum of Rs. 68,171/84 together with legal interest thereon from 21st November 1963 till date of decree and thereafter on the aggregate amount of the decree till payment in full;
- (b) A further sum of Rs. 8,502/- together with legal interest thereon from 21st November 1963 till date of decree and thereafter on the aggregate amount of the decree till payment in full; 10
- (c) A further sum of Rs. 52,812/50 together with interest at the rate of 2½ per centum per annum on the sum of Rs. 50,000/- from the 7th November 1963 till date of decree and thereafter with legal interest thereon on the aggregate amount of the decree till payment in full,
- (d) Costs of action as taxed by the Officer of this Court.

Sgd.

District Judge.

This 29th day of January 1965.

No. 10
Petition of
Appeal to the
Supreme Court-
1. 2. 65

No. 10

Petition of Appeal to the Supreme Court

20

IN THE DISTRICT COURT OF NUWARA ELIYA.

J. A. Naidoo of Messrs. Julius & Creasy, Colombo,
Executor of the Last Will and Codicil of H. J. G.
Marley, Deceased *Plaintiff.*

S. C. 56(F)/1965.
No. M.5409.

vs.

D. P. Mellaaratchy of "Reigate", Nuwara Eliya.
Defendant.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

D. Peter Mellaaratchy of "Reigate", Nuwara Eliya.
Defendant-Appellant. 30

vs.

J. A. Naidoo of Messrs Julius & Creasy, Colombo,
Executor of the Last Will and Codicil of H. J. Marley,
Deceased. *Plaintiff-Respondent.*

On this 1st day of February, 1965.

To: His Lordship the Honourable Chief Justice and the other Honourable Judges of of the Supreme Court of the Island of Ceylon.

The Petition of Appeal of the Defendant-Appellant abovenamed by his Proctor, David Perera, states as follows:-

1. The Plaintiff-Respondent abovenamed claimed three sums of money, namely, Rs. 68,171/84, Rs. 8,502/- and Rs. 50,000/- as being money due to the estate of H. J. G. Marley from the Defendant-Appellant on the footing that they were loans and advances by the said Marley to the Defendant-Appellant.

No. 10
Petition of
Appeal to the
Supreme Court-
1. 2. 65
—Continued

2. The defence of the Defendant-Appellant was

- (a) that the monies were not loans or advances granted to the Defendant-Appellant;
- 10 (b) that, in any event, the Defendant-Appellant was discharged by the said Marley from all obligations to pay any monies to the said Marley,
- (c) that the estate of the said H. J. G. Marley is estopped and barred from making any claims from the Defendant-Appellant.

3. The case went to trial on the following issues:-

- (1a) In or about November 1960 was it agreed that H. J. G. Marley, now deceased, should through his Bankers, the Mercantile Bank of India Ltd., lend and advance to the Defendant and Mrs. Marley jointly in equal shares the sum of Rs. 125,000/- to be repaid by them together with interest thereon as demanded and on such terms as stipulated by the said Bank?
- 20
- (1b) That the said H. J. G. Marley should by way of loan provide and pay on account of the Defendant and Mrs. Marley such monies as should be required for legal and other expenses connected with the purchase of the estate called Maha Borakanda Division?
- (1c) That the Defendant would be liable to repay one half share of the monies lent and advanced as aforesaid by the said H. J. G. Marley?
- 30 (2a) Did the Mercantile Bank Ltd., in pursuance of the said Agreement and at the request of the said Marley and upon the personal guarantee and security given to the said Bank by him in or about November 1960, lend and advance a sum of Rs. 125,000/- to the Defendant and Mrs. Marley repayable to the said Bank together with interest at 5 per cent per annum or at such or other rate as may, from time to time, be fixed or charged by the Bank?
- (2b) Did the said Marley for securing such repayment assign to the Bank a sum of Rs. 150,000/- held by it in fixed deposit to the credit of the said Marley?
- 40

No. 10
Petition of
Appeal to the
Supreme Court-
1. 2. 65
--Continued

- (3a) Did the said Marley in pursuance of the aforesaid agreement pay a sum of Rs. 17004/- on account of the legal and other expenses connected with the purchase by the Defendant and Mrs. Marley of the said Estate ?
- (3b) Did the Defendant become liable to repay to the said Marley a half share of the said amount, to wit: Rs. 8,502/- ?
- (4) On or about 7th November 1960, did the said Marley lend and advance to the Defendant and did the Defendant borrow and receive from him a sum of Rs. 50,000/- repayable on demand together with interest at 2 1/2 per cent per 10 annum ?
- (5a) Did the said Marley die in or about February 1963, leaving a Last Will and Codicil which have been duly proved in D. C. Nuwara Eliya Case No. T591 ?
- (5b) Is the Plaintiff the lawful executor of the said Last Will and Codicil ?
- (6a) As at 31st May 1963, was there due and owing to the Mercantile Bank of India Ltd. on account of the aforesaid loan of Rs. 125,000/-, a sum of Rs. 136,343/69 ?
- (6b) Did the said Bank in satisfaction of the said debt lawfully 20 appropriate an amount equivalent thereto out of the fixed deposit of the late H. J. G. Marley held by and assigned to them ?
- (7) Did the Defendant thereupon become liable to repay one half share of the said debt, to wit: Rs. 68,171/84 to the Plaintiff as Executor as aforesaid ?
- (8) Is the Plaintiff as Executor now entitled to recover from the Defendant :
- (a) the said sum of Rs. 68,171/84 with legal interest from the date of action ; 30
- (b) the said sum of Rs. 8,502/- with legal interest from the date of action; and
- (c) the said sum of Rs. 50,000/- with 2 1/2 per cent interest up to date of action and legal interest thereafter ?
- (9) Was Agreement No. 541 to buy Borakanda Estate in the names of Eileen Marley and the Defendant entered into by the Defendant at the express request of H. J. G. Marley, deceased ?
- (10) Was it agreed between Marley, the deceased, and the Defendant that the consideration for the purchase of Borakande Estate was to be provided. 40

- (a) in respect of Rs. 25,000/- by the Defendant;
- (b) in respect of Rs. 125,000/- by the grant of a mortgage for Rs. 125,000/- to Borakanda Estate Co. Ltd. the Vendors;
- (c) in respect of the balance Rs. 275,000/- by Marley the deceased and his wife Eileen Marley?

No. 10
Petition of
Appeal to the
Supreme Court-
1. 2. 65
—Continued

(11) Prior to the Deed of Transfer No. 1419 of 29th November 1960, of Borakanda Estate to the Defendant and Mrs. Marley, was it agreed between H. J. G. Marley, the deceased, and the Defendant:

- 10 (a) that the Defendant was to be in sole management of Borakanda Estate after the transfer:
- (b) that the Defendant was to manage the same and pay out the nett income therefrom:
 - (i) the sum of Rs. 125,000/-and interest thereon due to Borakanda Estate Co. Ltd. on a mortgage to be entered into in favour of the said Company;
 - (ii) the sum of Rs. 275,000/- to the said Marley, deceased, and Eileen Florence Marley by crediting the same to a separate account with the Mercantile Bank Ltd., and
 - 20 (iii) The Defendant was to maintain an account under the name "Borakanda Estate" for the purpose of running the Estate?

(12) Was the Defendant after the transfer of Borakanda Estate on 20th November, 1960, in management of same until 20th February 1962?

13. As at 20. 2. 62, had the Defendant:

- (a) expended a sum of about Rs. 20,000/- of his own money towards the running of Borakanda Estate?
- (b) placed to the credit of Borakanda Working Account a sum of Rs. 3,993/25;
- 30 (c) paid accruing interest on the sum of Rs. 125,000/- to Borakanda Estate Co. Ltd. in respect of the mortgage of Borakanda to be duly executed;
- (d) paid to the credit of a separate account called the 'Borakanda Loan Account' a sum of Rs. 6,000/- against the sum of Rs. 275,000/- referred to above?

(14) As at 20. 2. 62 were there personal belongings of the Defendant to the value of about Rs. 2,000/- on the Estate?

(15a) Did H. J. G. Marley, deceased, and his widow Eileen Florence Marley on 20. 2. 62 along with some thugs take wrongful

No. 10
Petition of
Appeal to the
Supreme Court-
1. 2. 65
-- Continued

and forcible possession of Borakanda Estate from the Defendant?
(b) Did Eileen Florence Marley at the express instigation and with the knowledge of H. J. G. Marley, deceased, remove on the night of 20. 2. 62 from Borakanda Estate, rubber to the value of Rs. 15,000/- and coconuts to the value of Rs. 4,000/- and books of account kept by and under the direction of the Defendant?

(16) Was the Defendant wrongfully deprived of the possession and management of :

(a) Borakanda Estate; and

(b) of his belongings to the value of Rs 2,000/- on 20. 2. 62 10 by Marley, deceased, and Eileen Florence Marley?

(17) Did the Defendant thereupon take necessary steps to regain possession of Borakanda Estate, the books of account, rubber, coconuts etc.?

(18) Did the deceased H. J. G. Marley thereupon agree with the Defendant whereunder :

(a) the Defendant was discharged of all obligations to pay any monies to H. J. G. Marley, deceased, or Eileen Florence Marley, his widow;

(b) Agreement No. 227 of 2. 3. 62 attested by R.M.S. Karunaratne, 20 Notary Public, was entered into between the Defendant and Eileen Florence Marley ;

(c) the Defendant abandoned all steps taken against Eileen Florence Marley and H. J. G. Marley deceased?

(19a) Has the Defendant been released and absolved from liability to pay any sum of money to H. J. G. Marley, deceased, or to Eileen Florence Marley?

(b) Is the Estate of H. J. G. Marley, deceased, estopped and barred from making any claim against the Defendant?

4. After hearing the evidence the learned District Judge 30 delivered judgment on the 29th January 1965 entering Judgment for the Plaintiff as prayed for.

5. Being aggrieved with such judgment and order the Defendant Appellant begs to appeal therefrom to Your Lordships' Court on the following among other grounds that may be urged on his behalf at the hearing of this appeal :-

(i) The said judgment is contrary to law and the weight of evidence led in the case.

(i) The learned Judge has not given due weight to the documents produced in the case and has drawn wrong inferences from 40 the evidence of the Defendant-Appellant and his witnesses.

- (iii) In particular the document D5, being an Agreement attested by R. M. S. Karunaratne, Notary Public, on the 2nd March 1962 and the events that preceded the Agreement and that followed subsequently, establish the Defendant-Appellant's case.
- (iv) The learned Judge is wrong in stating that the Agreement D5 is a conditional agreement.
- (v) The learned District Judge has wrongly rejected the documents sent by Mr. C. V. Welikala to Messrs Julius & Creasy.
- 10 (vi) Indeed the Judge says in the course of his judgment :
"One cannot, however, say that Mr. Marley did not acquiesce in the transaction but why was he not made a party to it".
The answer is Marley could not have been made a party to the agreement.
- (vii) The estate of Mr. Marley is estopped from suing the Defendant-Appellant by reason of his conduct established in the evidence accepted by the learned Judge.
- 20 (viii) Apart from this fact, there was an Agreement between Mr. Marley and the Defendant-Appellant, whereby the Defendant-Appellant was released from his obligations if any, to pay any sum of money to Mr. Marley.

Wherefore the Defendant-Appellant prays that Your Lordships' Court be pleased to set aside the judgment of the learned District Judge dated 29th January 1965 and enter judgment for the Defendant-Appellant dismissing the Plaintiff-Respondent's action with costs in both Courts, and for such other and further relief as to Your Lordships' Court shall seem meet.

Sgd. D. PERERA
Proctor for Defendant-Appellant.

30 **No. 11**
Decree of the Supreme Court

No. 11
Decree of the
Supreme Court
7.9.66.

ELIZABETH THE SECOND, QUEEN OF CEYLON AND OF HER
OTHER REALMS AND TERRITORIES, HEAD OF THE
COMMONWEALTH.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

J. A. Naidoo of Messrs Julius & Creasy Colombo,
Executor of the Last Will and Codicil of H. J. G.
Marley, Deceased. *Plaintiff.*

vs.

No. 11
Decree of the
Supreme Court
7.9.66.
—Continued

D. Peter Mellaaratchy of "Reigate," Nuwara Eliya
... .. *Defendant.*
D. Peter Mellaaratchy of "Reigate," Nuwara Eliya.
... .. *Defendant-Appellant.*
against
J. A. Naidoo of Messrs. Julius & Creasy Colombo,
Executor of the Last Will and Codicil of H. J. G.
Marley, Deceased. *Plaintiff-Respondent*

Action No. 5409/M.

District Court of Nuwara Eliya.

10

This cause coming on for hearing and determination on the 3rd, 4th and 7th September, 1966 upon an appeal preferred by the Defendant-Appellant before the Hon. Hugh Norman Gregory Fernando, Senior Puisne Justice and the Hon. Asoka Windra Hemantha Abeyesundere, Q. C., Puisne Justice of this Court, in the presence of Counsel for the Defendant-Appellant and the Plaintiff-Respondent.

It is considered and adjudged that this appeal be and the same is hereby dismissed.

It is ordered and decreed that the Defendant-Appellant do pay to the Plaintiff-Respondent the taxed costs of this appeal.

20

(copy of Reasons when delivered will be sent to you later.)

Witness the Hon. Miliani Claude Sansoni, Chief Justice at Colombo, the 10th day of September, in the year One thousand Nine hundred and Sixty Six and of Our Reign the Fifteenth.

(Seal)

Sgd: B. F. Perera
Deputy Registrar, Supreme Court.

No. 12

Reasons for Judgment of the Supreme Court.

No. 12
Reasons for
Judgment of
the Supreme
Court—
29. 9. 66.

S. C. No. 56 (F) 1965

D. C. Nuwara Eliya M. 5409 30

D. PETER MELLAARATCHY OF "REIGATE,"
NUWARA ELIYA
Defendant-Appellant

Vs.

J. A. NAIDOO OF MESSRS. JULIUS AND CREASY,
COLOMBO, EXECUTOR OF THE LAST WILL AND
CODICIL OF H. J. G. MARLEY, DECEASED. ...

... .. *Plaintiff-Respondent*

PRESENT:
COUNSEL:

H. N. G. Fernando, S. P. J., Abeyesundere, J.
C. Thiagalingam, Q. C., with T. Parthalingam for the
Defendant-Appellant.

40

E. S. Amerasinghe, with B. J. Fernando for the Plaintiff-Respondent.

ARGUED ON: 3rd, 4th and 7th September 1966.
 DECISION ON: 7th September 1966.
 REASONS ON: 29th September, 1966.

No. 12
 Reasons for
 Judgment of
 the Supreme
 Court—
 29.9.66.
 —Continued

H. N. G. FERNANDO, S. P. J.

This appeal was pressed on the ground that an issue of estoppel, which according to counsel depended on Section 115 of the Evidence Ordinance, should have been answered by the learned trial Judge in
 10 favour of the defendant (Appellant). The only issue in which there is reference to estoppel is that numbered 19(b):—

“Is the estate of H. J. G. Marley deceased estopped and barred from *making any claim* against the defendant.”

Let me say at once that the issue as framed does not accord with Section 115 of the Evidence Ordinance. That Section prevents a person from denying in evidence the truth of something which he has caused or permitted another to believe to be true; it does not prevent a person from
 20 “making any claim”—an expression which connotes the averring of a cause of action, and not the averring of a fact. From the issue as framed it was clear to us that counsel at the trial had intended to set up a plea of waiver, which is regarded as being in the nature of an estoppel, and not to rely on the rule of evidence contained in Section 115. Our view was confirmed by the terms of issue No. 18 which clearly set up a plea that the liabilities sought to be enforced against the appellant were discharged by agreement between him and Marley. Indeed the evidence of the appellant at the trial, both in answers to leading questions and otherwise, was to the effect that he and Marley agreed that he was to be (i. e. would be) discharged of all obligations if he entered into a certain
 30 transaction with Marley’s wife.

The learned trial Judge answered against the Appellant the issue 18 (a) in which was set up the plea of a discharge by agreement of the liabilities which the plaintiff now seeks to enforce. We saw no reason to disagree with that answer.

The argument on the facts which counsel invited us to uphold was that Marley’s conduct induced the Appellant to believe, not merely that Marley would discharge him from his liabilities, but that Marley had in fact no claim against the Appellant. But the Appellant did not, and could not, deny in his evidence the fact that Marley did indeed have a claim
 40 against him. He might have been induced to believe that the claim would not be enforced if he took a certain course of action, but even

No. 12
Reasons for
Judgment of
the Supreme
Court—
29.9.66.

—Continued

so, the plea available to him was one of waiver or discharge. The plea of an estoppel under Section 115 of the Evidence Ordinance, which counsel has pressed in appeal, depends on the supposition (which with respect I think is absurd) that the Appellant was induced to believe something which to his own knowledge was quite incorrect, namely that Marley had actually no claim against him.

We were in complete agreement with the trial Judge in attaching significance to the fact that Marley was not a party to the Agreement (D5) of 2nd March 1962. This Agreement (according to the Appellant) was approved by counsel of experience, who in our opinion would have advised that Marley should be a signatory to the Agreement if it was intended to operate as a discharge or waiver of Marley's rights against the Appellant. The fact that counsel gave no such advice raises the inference that he was not informed by the Appellant of any such discharge or waiver, or of even the Appellant's expectation that his own execution of the Agreement would operate to release him directly from his liabilities to Marley. 10

It is well to notice a point upon which the learned trial Judge has made no comment, namely that the Agreement (D5) was in no way disadvantageous to the Appellant in its financial implications. The interest which he thereby agreed to convey to Marley's wife had been purchased about one year earlier at a value of Rs. 212,500/- of which amount the Appellant had himself paid only Rs. 25,000/-. If the transaction went through, the appellant was to realise Rs. 100,000/- as the sale price and Mrs. Marley became liable to pay off Marley's claims against the Appellant; if the transaction fell through, the Appellant would be entitled to Rs. 100,000/- as liquidated damages, and would still remain as before, owner of the interest in the land but liable for Marley's claims against him. The Appellant stood to gain financially in either event. Even if the Appellant abandoned his intention of prosecuting the Marleys for alleged criminal trespass, he did not thereby lose anything of monetary value. Hence it is not inherently credible that the Appellant would not have signed the Agreement but for some inducement offered by Marley either expressly or by conduct. 20 30

I have stated above our reasons for dismissing the appeal with costs.

Sgd: H. N. G. Fernando
Senior Puisne Justice

Abeyesundere, J.
I agree.

Sgd: A. W. H. Abeyesundere 40
Puisne Justice.

No. 13

**Application for Conditional Leave to Appeal to the Privy Council
IN THE SUPREME COURT OF THE ISLAND OF CEYLON**

No. 13
Application for
Conditional
Leave to appeal
to the Privy
Council
29. 9. 66

Don Peter Mellaaratchy of Reigate, Nuwara Eliya
and presently of "Craigvar," Nuwara Eliya.

D. C. Nuwara
Eliya 5409/M.

Defendant - Appellant

vs

S.C.No. 56(F) 1965

J. A. Naidoo of Messrs. Julius & Creasy, Colombo-
Executor of the Last Will and Codicil of H. J. G.
Marley, deceased

Plaintiff-Respondent

10

S. C. Application
No. 382/66.

In the matter of an application for Conditional
Leave to appeal to Her Majesty the Queen in
Council under the Appeals (Privy Council) Ordinance.

Don Peter Mellaaratchy of Reigate, Nuwara Eliya
and presently of "Craigvar," Nuwara Eliya

Defendant - Appellant

vs

J. A. Naidoo of Messrs. Julius & Creasy, Colombo-
Executor of the Last Will and codicil of H. J. G.
Marley, deceased

Plaintiff - Respondent

20

To:

His Lordship the Honourable the Chief Justice and the other
Judges of the Honourable the Supreme Court of the Island of Ceylon.

On this 29th day of September 1966.

The Petition of the Defendant-Appellant above - named appearing
by Vernon Bertrand Stanislaus Abraham, Charles Joseph Oorloff,
Mahinda Abhaya Ellepola and Thomas Rhomer Pullenayegam, practi-
sing in partnership under the name style and firm of "ABRAHAMS,"

30 his Proctors, states as follows:-

1. Feeling aggrieved by the judgment and decree of the Supreme
Court pronounced in the above case on the 7th day of
September 1966, the Defendant-Appellant is desirous of appealing
therefrom to Her Majesty the Queen in Council.
2. The said judgment is a final judgment in a civil suit or
action and the matter in dispute amounts to or is of the value
of Rs. 5,000/- or upwards and the appeal involves directly or
indirectly some claim or question to or respecting property
amounting to or of the value of Five Thousand Rupees (Rs. 5000/-)
or upwards.

40

No. 13
Application for
Conditional
Leave to appeal
to the Privy
Council
29. 9. 66
—Continued

3. The Defendant-Appellant in terms of Rule 2 of the Schedule to the Appeals (Privy Council) Ordinance, has within fourteen days from the date of the above judgment duly given the Plaintiff-Respondent notice of his intended application to this Court for leave to appeal to Her Majesty in Council in the following manner:-

- (a) By registered post, under Certificate of Posting, by hand delivery and by telegram addressed to the said Plaintiff-Respondent care of Messrs Julius & Creasy, Hong Kong & Shanghai Bank Building, Colombo 1;
- (b) To the Plaintiff-Respondent's Proctor, Mr. P. N. Bartholomeusz of No. 5, Waterfield Drive, Nuwara Eliya, by registered post.

10

WHEREFORE the Defendant-Appellant prays:

- (a) For Conditional Leave to appeal to Her Majesty the Queen in Council against the judgment of this Court dated 7th September 1966;
- (b) and for such other and further relief as to Your Lordships' Court shall seem meet.

Sgd. Abrahams
Proctor for Defendant-Appellant. 20

No. 14
Minute of Order
Granting
Conditional
Leave to
Appeal to the
Privy Council-
9. 12. 66

No. 14
Minute of Order granting Conditional Leave
to Appeal to the Privy Council

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

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

S. C. Application
No. 382 of 1966.

Don Peter Mellaaratchy of Reigate, Nuwara Eliya
and presently of "Craigvar", Nuwara Eliya
.....
Defendant-Appellant
Petitioner.

30

S. C. 56(F)/1965
D. C. Nuwara Eliya
Case No. 5409/M

vs.
J. A. Naidoo of Messrs. Julius & Creasy, Colombo,
Executor of the Last Will and Codicil of H.J.G.
Marley, deceased ...
Plaintiff-Respondent
Respondent.

The application of Don Peter Mellaaratchy of Reigate, Nuwara Eliya, and presently of "Craigvar", Nuwara Eliya, for Conditional Leave 40

to Appeal to Her Majesty the Queen in Council from the Judgment and Decree of the Supreme Court of the Island of Ceylon pronounced on the 7th day of September 1966 in S. C. 56 (Final) of 1965 District Court Nuwara Eliya Case No. 5409/M, having been listed for hearing and determination before the Honourable Anthony Christopher Augustus Alles, Puisne Justice, and the Honourable Veeravagu Siva Supramaniam, Puisne Justice, in the presence of Nimal Senanayake Esquire, Advocate for the Defendant-Appellant-Petitioner and B. J. Fernando Esquire with Miss A. P. Abeyaratne, Advocates for the Plaintiff-Respondent, order has been

10 made by Their Lordships on the Ninth day of December 1966 allowing the aforementioned application for Conditional Leave to Appeal to Her Majesty the Queen in Council.

No. 14
Minute of Order
Granting
Conditional
Leave to
Appeal to the
Privy Council—
9. 12. 66
—Continued

Sgd. N. Navaratnam
Registrar of the Supreme Court

No 15

Application for Final Leave to Appeal to the Privy Council
IN THE SUPREME COURT OF THE ISLAND OF CEYLON

No. 15
Application for
Final Leave to
Appeal to the
Privy Council—
7. 1. 67

20 D. C. Nuwara Eliya
No. 5409/M. Defendant - Appellant.

vs

S. C. No. 56(F) 1965
S. C. Application
No. 382 of 1966 Plaintiff - Respondent.

S. C. Application
No. 5/67.
In the matter of an application for Final Leave under the provisions of the Appeals (Privy Council) Ordinance (Cap. 100).

30 Don Peter Mellaarachy of Reigate, Nuwara Eliya
and presently of "Craigvar," Nuwara Eliya.
. Defendant - Appellant.

vs

J. A. Naidoo of Messrs Julius & Creasy, Colombo—
Executor of the Last Will and Codicil of H. J. G.
Marley, deceased Plaintiff-Respondent.

To:

The Honourable the Chief Justice and the other Judges of the Honourable the Supreme Court of the Island of Ceylon.

On this 7th day of January 1967.

40 The humble Petition of the Defendant-Appellant abovenamed appearing by Vernon Bertrand Stanislaus Abraham, Charles Joseph

No. 15
Application for
Final Leave to
Appeal to the
Privy Council-
7. 1. 67

—Continued

Oorloff, Mahinda Abhaya Ellepola and Thomas Rhomer Pullenayegam, practising in partnership under the name style and firm of "ABRAHAMS," his Proctors, states as follows:-

1. That the Defendant-Appellant on the 9th day of December 1966, obtained Conditional Leave from this Honourable Court to appeal to Her Majesty the Queen in Council against the Judgment of this Court pronounced on the 7th day of September 1966.

2. That the Order granting Conditional Leave to Appeal was given subject to the usual conditions and no conditions were imposed under Rule 3(b) of the Schedule Rules of the Appeals (Privy Council) 10 Ordinance (Cap. 100).

3. That the Defendant-Appellant has in compliance with the said Conditions:-

- (a) On the 6th day of January 1967, deposited with the Registrar of this Court the sum of Rs. 3000/- being security for costs of Appeal under Rule 3(a) of the Schedule Rules and hypothecated the said sum of Rs. 3000/- by Bond dated the 6th day of January 1967, for the due prosecution of the Appeal and the payment of all costs that may become payable to the Plaintiff-Respondent 20 in the event of the Defendant-Appellant not obtaining an order granting him Final Leave to Appeal or of the Appeal being dismissed for non-prosecution or of Her Majesty the Queen in Council Ordering the Defendant-Appellant to pay the Plaintiff-Respondent's costs of appeal; and
- (b) On the 6th day of January 1967, deposited the sum of Rs. 300/- with the Registrar of this Court in respect of the amounts and fees required by paragraph 8(a) of the Appellate Procedure (Privy Council) Order 1921 made 30 under Section 4(1) of the aforesaid Ordinance.

WHEREFORE the Defendant-Appellant prays that he be granted Final Leave to Appeal against the said Judgment of this Court dated the 7th day of September 1966, to Her Majesty the Queen in Council.

Sgd: Abrahams
Proctors for Defendant-Appellant.

No. 16

**Minute of Order granting Final Leave to Appeal to the Privy Council
IN THE SUPREME COURT OF THE ISLAND OF CEYLON**

No. 16
Minute of Order
Granting Final
Leave to Appeal
to the
Privy Council-
8. 3. 67

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

<p>S. C. Application No. 382 of 1966. 10 (Conditional Leave) S C. No. 56(F)/1965 D. C. Nuwara Eliya Case No. 5409/M. S. C. Application No. 5/67. (Final Leave)</p>	<p>Don Peter Mellaaratchy of Reigate, Nuwara Eliya and presently of "Craigvar", Nuwara Eliya <i>Defendant-Appellant Petitioner.</i></p> <p style="text-align: center;">vs</p> <p>J. A. Naidoo of Messrs Julius & Creasy, Colombo, Executor of the Last Will and Codicil of H.J.G. Marley, deceased. <i>Plaintiff-Respondent Respondent.</i></p>
--	--

The application of Don Peter Mellaaratchy of Reigate, Nuwara Eliya, and presently of "Craigvar", Nuwara Eliya, for Final
20 Leave to Appeal to Her Majesty the Queen in Council from the Judgment and Decree of the Supreme Court of the Island of Ceylon pronounced on the 7th day of September, 1966 in S. C. 56 (Final) of 1965, District Court Nuwara Eliya Case No. 5409/M, having been listed for hearing and determination before the Honourable George Terrence Samarawickrame, Q. C., Puisne Justice, and the Honourable Victor Tennekoon, Q. C. Puisne Justice, in the presence of Nimal Senanayake Esquire, Advocate for the Defendant-Appellant-Petitioner and B. J. Fernando Esquire, Advocate for the Plaintiff-Respondent-Respondent, order has been made by Their
30 Lordships on the Eighth day of March, 1967 allowing the aforementioned application for Final Leave to Appeal to Her Majesty the Queen in Council.

Sgd: N. Navaratnam
Registrar of the Supreme Court.

PART - II
EXHIBITS.

P 2

**Fixed Deposit Receipt issued by the Mercantile Bank of India Ltd.
to H. J. G. Marley.**

P 2
Fixed Deposit
Receipt Issued
by the
Mercantile Bank
of India Ltd. to
H. J. G. Marley
7. 11. 58

10
NOT
TRANSFERABLE

DEBIT FIXED DEPOSIT a/c 31 MAY 1963
No. 174497

MERCANTILE BANK LIMITED, FORMERLY
THE MERCANTILE BANK OF INDIA LIMITED.

DEPOSIT RECEIPT FOR Rs. 150,000/00

No. 101/310 Colombo, 7th November, 1958.

Received from H. J. G. MARLEY to the sum of RUPEES
ONE HUNDRED AND FIFTY THOUSAND ONLY as a deposit
at the rate of TWO AND HALF per cent per Annum to remain
till 7TH NOVEMBER, 1959.

FOR MERCANTILE BANK LIMITED, FORMERLY
THE MERCANTILE BANK OF INDIA, LIMITED.

Sgd. (Illegibly) *Accountant.* (Sgd. Illegibly) *Manager.*
Lcd. Fol. 180

(Reverse)

12 months interest paid to 7. 11 1959 - Rs. 3750 on 16. 11. 59
20 12 months interest paid to 7. 11. 1960 - Rs. 3750 on 7. 11. 60.
12 months interest paid to 7. 11. 1961 - Rs. 3753 on 9. 11. 61.
12 months interest paid to 7. 11. 1962 - Rs. 4500 on 7. 11. 62.

N.B. No portion of the within sum can be drawn unless this
Receipt is returned with the endorsement of the Depositor named in
it. nor can the amount be drawn for in separate sums by Cheque or Draft.

Where Depositors do not attend personally to receive payment,
and desire payment to be made on presentation of the endorsed Receipt,
they must advise the Bank by letter to this effect, and payment will
be made accordingly, but in such case the Bank accepts no responsibility.

30 The Interest is payable half-yearly, and will cease at the date
on which the Deposit falls due.

The within Deposit is hereby renewed and falls due upon the
undermentioned date.

Renewed until	Interest per cent	For the Mercantile Bank of India, Limited.
102/421 November 7th 1960	2 1/2%	Sgd: illegibly
103/589 November 7th 1961	2 1/2%	Sgd: illegibly
104/746 November 7th 1962	3%	Sgd: illegibly
105/562 November 7th 1963	3%	Sgd: illegibly

40 Proceeds to Security Dept. pl. from Julius & Creasy
dated 29/5/63. 31 May 1963.

ENDORSEMENT UNDERNEATH

Sgd: (H. J. G. Marley.)
(on 10 cts stamp.) 5. 11. 60.

D 15

Letter sent by E. Marley to Fernando

D 15
Letter Sent by
E. Marley to
Fernando-
7. 1. 60

'Garoopna'
7. 1. 60

(D1)

Dear Mr. Fernando,

I am pleased you have put the labourers on alternate days as I do not know where the money has gone, I have to borrow from my husband to pay them, & Mellaaratchy is supposed to be managing, I am most worried.

We are required by law to give them four days a week work. 10

Both my husband and I are giving Mr. Jaleel our Power of Attorney to act as our Agent on Borakanda, and we both may come down on Friday.

We would sell to get clear of Mellaaratchy who has only 25,000/- in it whilst we have the three lacks.

I cannot make out where the money has gone, and we are asking our lawyer to instruct him to have nothing further to do with the management.

Please show this letter to Mr. Gurusamy.

We will not take less than 4 1/2 to 4 3/4 lacks. I know Mr. Soysa 20 is interested but it has cost us that.

Salaam
Sgd: E. Marley.

D 59
Agreement
No.541 Attested
by
F. C. De Saram,
Notary Public.
6. 8. 60

D 59

Agreement No. 541 attested by F. C. de Saram, Notary Public.

D. L. & F. De Saram
Notaries etc.
Colombo.

Drawn by us
D. L. & F. de Saram,
Notaries Public.

ORIGINAL
No. 541.

30

This Agreement is made the Sixth day of August one thousand nine hundred and sixty between BORAKANDE ESTATE COMPANY LIMITED a Company duly incorporated in Ceylon and having its registered office at Kotahena Mills Kotahena Colombo in the Island of Ceylon (hereinafter referred to as "the vendor" which term or expression as herein used where the context so requires or admits shall mean and include the said Borakande Estate Company Limited and its successors) of the ONE PART and EILEEN FLORENCE MARY MARLEY of "Garoopna" Nuwara Eliya in the said Island and DON PETER MELLAARATCHY of "Carstairs" Nuwara Eliya aforesaid (hereinafter 40

referred to as "the purchasers" which term or expression as herein used shall where the context so requires or admits mean and include the said Eileen Florence Mary Marley and Don Peter Mellawatchy and each of them and their and each of their respective heirs executors and administrators) of the OTHER PART

D59
Agreement
No.541 Attested
by
F. C. de Saram,
Notary Public-
6. 8. 60.

—Continued

WHEREAS :

1. the vendor is seized and possessed of or otherwise well and sufficiently entitled to All that and those the estate plantation and premises called and known as Maha Borakande situate in the District
10 of Galle Southern Province short particulars whereof are contained in the schedule hereto (hereinafter referred to as "the said Maha Borakande Estate")

2. the vendor has agreed to sell and the purchasers have agreed to purchase the said Maha Borakande Estate at the price and upon the terms and conditions hereinafter set forth

NOW THIS AGREEMENT WITNESSETH and it is hereby agreed as follows:-

1. the vendor will sell and the purchaser will purchase as on and from the first day of November one thousand nine hundred
20 and sixty (hereinafter referred to as "the date of sale" at or for the price or sum of four hundred and twenty five thousand rupees (Rs. 425,000/-) of lawful money of Ceylon and upon and subject to the terms and conditions hereinafter contained the said Maha Borakande Estate together with all the growing crops and produce thereof and the buildings bungalows factories labourers' lines fixed plant and machinery tools equipment and implements in use furniture (other than furniture belonging to the superintendent or members of the estate staff) cattle carts and (save as hereinafter excepted) all
30 other the live and dead stock thereon or thereto belonging and all rights ways privileges easements servitudes and appurtenances whatsoever to the said Maha Borakande Estate belonging or in anywise appertaining (all of which are hereinafter referred to as "the said Maha Borakande Estate and premises")

2 (a) There shall be excluded from the said sale:-

- (i) all rubber latex collected prior to and lying on the said Maha Borakande Estate as at midnight on the thirty first day of October one thousand nine hundred and sixty and
- (ii) all manufactured rubber and all coagulum in process of
40 manufacture into rubber on the said Maha Borakanda Estate as at midnight on the said date

D59
 Agreement
 No. 541 Attested
 by
 F. C. de Saram,
 Notary Public—
 6. 8. 60.
 —Continued

- (iii) all coconut crops that have been plucked prior to and lying on the said Maha Borakande Estate as at midnight on the said date

The foregoing shall be and remain the property of the vendor

- (b) The vendor shall have the right to complete at its own cost and expense after the first day of November one thousand nine hundred and sixty in the factory on the said Maha Borakande Estate the manufacture of the aforesaid rubber latex and coagulum and to pack and remove the manufactured rubber. The purchasers shall be bound and obliged to allow the vendor to have and exercise all such facilities in or upon the said Maha Borakande Estate as the vendor may require for such purposes. The vendor shall also have the right to remove at its own cost from the said Maha Borakande Estate all the aforesaid coconut crops. The purchasers shall be bound and obliged to allow the vendor to have and exercise all such facilities in or upon the said Maha Borakande Estate as the vendor may require for such purpose. 10

- (b) There shall be excluded from the said sale all rice grain and foodstuffs provisions and other consumable stores packing and curing materials liquid fuel acid sulphur lubricating oils hessian gunny bags coke coal firewood asbestos sheets galvanised iron sheets and piping timber unused tools and implements spare machinery parts electrical stores and building materials estate supplies and stocks of unapplied manure and all other articles generally regarded as estate stocks (all of which are hereinafter referred to as "the said estate stocks") on the said Maha Borakande Estate as at midnight on the thirty first day of October one thousand nine hundred and sixty. The said estate stocks shall be purchased by the purchasers from the vendor at the cost thereof delivered on the said Maha Borakande Estate and the purchasers shall prior to completion pay to the vendor on account and in respect thereof such sum as the vendor shall estimate as the cost of such estate stocks. The actual amount payable for such estate stocks shall be ascertained and adjusted as soon as practicable after the thirty first day of October one thousand nine hundred and sixty. 20 30

3. The sale of the said Maha Borakande Estate and premises shall be free only from mortgages and other similar charges created by the vendor but shall be subject to (a) all conditions provisions and reservations set forth and contained in the crown grants and other 40

documents of title relating to the said Maha Borakande Estate (b) all incidents of tenure tenancies rights of way water rights village settlements pending contracts leases tenancies and agreements (c) all chief quit and other rents and outgoings and all rights servitudes and easements (if any) affecting the same and (d) all such rights as the Crown may now or hereafter have or exercise with respect to all or any of the rivers streams water-courses channels roads and paths and reservations for the same in or passing through the said Maha Borakande Estate and to the water flowing in the said streams water-courses and channels The purchasers shall indemnify and keep the vendor indemnified and saved harmless in respect of the foregoing

D59
Agreement
No. 541 Attested
by
F. C. de Saram,
Notary Public—
6. 8. 60.
—Continued

10

4. The purchasers accept the title of the vendor to the said Maha Borakande Estate

20

30

5. The purchasers having inspected the said Maha Borakande Estate and premises are satisfied with the state order and condition of the said Maha Borakande Estate and premises and of the portions thereof which are planted in rubber and coconut and no objection shall be made nor shall any compensation or reduction of the purchase price be claimed by the purchasers in respect of the state order and condition thereof nor shall the vendor be liable in damages to the purchasers except for wilful waste or damage arising from gross negligence in supervision or management between the date of this agreement and delivery of possession of the said Maha Borakande Estate and premises as hereinafter provided in particular no objection shall be made nor shall any compensation or reduction in respect of the purchase price be claimed by the purchasers nor shall the vendor be liable in damages to the purchasers for any failure on the part of the vendor to maintain or cultivate the said Maha Borakande Estate and premises or any part thereof or to carry out any works thereon by reason of (a) any strike civil commotion or stoppage of works (b) the exercise by any member or members of the labour force employed on the said Maha Borakande Estate and premises of his or their rights under the provisions of notifications made under the Wages Board Ordinance and relating to annual holidays or (c) any matter beyond the control of the vendor.

40

6. Damage to or destruction by fire or otherwise of the factory machinery and buildings on the said Maha Borakande Estate and premises or any of them or of the plantations growing thereon or any part or parts thereof previous to the conveyance of the said Maha Borakande Estate and premises to the purchasers shall not entitle the purchasers to claim a rescission or cancellation or any modification whatsoever of this agreement or render the vendor liable in damages to the

D59
 Agreement
 No.541 Attested
 by
 F. C. de Saram,
 Notary Public.
 6. 8. 60.
 —Continued

purchasers notwithstanding that such damage or destruction was due to carelessness or negligence on the part of the estate staff. The purchasers shall however be entitled to their completing the purchase to receive all sums recovered under the insurances for the actual value of the property at the time the damage or destruction was caused or occurred before or prior to the execution of the conveyance in favour of the purchasers provided however that if on the due date occurs relating to the said factory machinery and buildings each such damage or destruction for completing the sale such moneys shall not have been received or recovered such completion shall not be delayed 10 on that account.

7. The said Maha Borakande Estate and premises shall be described in the deed of conveyance in favour of the purchasers according to the description contained in the title deeds in favour of the vendor (together with a description to be compiled from the estate plan should the purchasers so require it) which description shall be deemed to be correct. No objection shall be made or compensation or adjustment in the purchase price claimed by the purchasers or the vendor on account of any error in quantity (whether in respect of the planted acreage or of the acreage generally) or misdescription should such be found as this 20 agreement is for the sale of the said Maha Borakande Estate and premises ad corpus and not ad quantitatem

8. The vendor will not give an express warranty of or undertake to warrant and defend the title to the said Maha Borakande Estate and premises. Any implied obligation to warrant and defend the title shall be expressly excluded in the deed of conveyance in favour of the purchasers and the said conveyance shall not contain any covenants for title or otherwise on the part of the vendor save a covenant for further assurance

9. The purchase shall subject to the provisions of clause 20 30 hereof be completed on or before the Thirty First day of October One Thousand Nine Hundred and Sixty by the purchasers

- (a) tendering to the vendor at the office of Messrs D. L. & F. de Saram 47 Alexandra Place Colombo a deed of conveyance of the said Maha Borakande Estate and premises in favour of the purchasers prepared in accordance with the provisions of this agreement a draft of which conveyance shall have previously been submitted to and approved by the said Messrs D. L. & F. de Saram
- (b) paying to the vendor the purchase consideration of Four 40 Hundred and Twenty Five Thousand Rupees (Rs. 425,000/-) and
- (c) paying to the vendor such other sums of money, as may be due by the purchasers to the vendor in terms of this agreement

The vendor shall thereupon at the cost and expense of the purchasers execute the said conveyance

D59
Agreement
No. 541 Attested
by
F. C. de Saram,
Notary Public-
6. 8. 60.
—Continued

10. Payment of the said purchase price shall be made by means of a banker's draft or banker's cheque drawn on a Bank in Colombo in favour of the vendor.

10 11. (a) Upon the execution of the conveyance as provided in clause 9 hereof possession of the said Maha Borakande Estate and premises shall be given to the purchasers but the purchasers shall have no cause of action against the vendor whether for the recovery of damages reduction of the purchase price rescission of sale or otherwise howsoever if the vendor shall fail to place the purchasers in vacant possession of any portions of the said Maha Borakande Estate and premises which:-

- (i) are not planted in rubber or coconut
- (ii) have not been built upon
- (iii) do not consist of roads, or
- (iv) are not covered by deeds in favour of the vendor

20 30 (b) If any member or members of the labour force employed on the said Maha Borakande Estate and premises shall remain on any part of the said Maha Borakande Estate and premises after the Thirty First day of October One Thousand Nine Hundred and Sixty and shall refuse or be unwilling to be employed by the purchasers or if any members of the subordinate staff shall notwithstanding the termination of his services by the vendor remain on the said estate after the said date the purchasers shall not be entitled by reason thereof to make any claim against the vendor whether by way of damages or otherwise but shall accept delivery of possession of the remainder of the said Maha Borakande Estate and premises and the vendor shall thereupon be deemed to have fulfilled its obligation under the provisions of clause 11 (a) hereof

12. All rents rates taxes and all recurring liabilities and outgoings of the vendor in respect of the said Maha Borakande Estate and premises shall be apportioned between the vendor and the purchasers as on the Thirty First day of October One Thousand Nine Hundred and Sixty and the purchasers shall pay to the vendor their proportion thereof

40 13. (a) The purchasers shall as on and from the first day of November One Thousand Nine Hundred and Sixty take over and employ those members of the labour force employed

D59
 Agreement
 No. 541 Attested
 by
 F. C. de Saram,
 Notary Public—
 6. 8. 60.
 —Continued

on the said Maha Borakande Estate and premises as shall willing to be employed by the purchasers on terms not less favourable than those they now enjoy and shall as from the same date be liable for and pay the salaries wages and other benefits of such labourers and including holiday pay and other benefits and undertake and conform to all schemes and awards relating to their terms of employment including pensions and other schemes

The purchasers shall on the vendor paying to the purchasers or the labourers holiday pay to which such persons are entitled grant to such labourers such holidays which such labourers have earned but have not taken during their employment with the vendor 10

In respect of such labourers who have earned maternity benefits and holiday pay the vendor's obligation shall be restricted to such benefits which occur prior to the first day of November One Thousand Nine Hundred and Sixty and the purchasers shall be liable for and pay all maternity benefits and holiday pay as aforesaid in respect of all which occur or are payable on or after the first day of November One Thousand Nine Hundred and Sixty 20

The purchasers shall in respect of all the aforesaid matters in this clause specified indemnify and keep the vendor indemnified and saved harmless against all claims in respect thereof

- (b) The vendor will on or before the thirtieth day of September One Thousand Nine Hundred and Sixty notify the labour force that the vendor will cease to employ them after the thirty first day of October One Thousand Nine Hundred and Sixty and that the purchasers have agreed to employ them on the said Maha Borakande Estate and premises as on and from the first day of November One Thousand Nine Hundred and Sixty 30

14. The purchasers shall take over and fulfil all contracts relating to the said Maha Borakande Estate and premises existing or partly fulfilled on the date of sale and indemnify the vendor in respect thereof

15. The purchasers have at or before the execution of this agreement deposited with the vendor a sum of forty two thousand five hundred rupees (Rs. 42,500/-) of lawful money of Ceylon by way of deposit (the receipt whereof the vendor doth hereby admit and acknowledge) which said sum shall be applied by the vendor in part payment of 40

the purchase consideration for the said Maha Borakande Estate and premises upon the due completion of the purchase by the purchasers provided in this agreement if upon this agreement becoming unconditional the purchasers shall fail to complete the purchase as provided in clause 9 hereof then and in that event either (a) this agreement shall forthwith be deemed to be cancelled and be of no effect and the said sum of forty two thousand five hundred rupees (Rs. 42,500/-) of lawful money aforesaid deposited with the vendor by the purchasers as aforesaid shall thereupon be forfeited to the vendor or (b) the vendor shall

10 have the right (on giving to the purchasers on or before the fifteenth day of November One Thousand Nine Hundred and Sixty notice of its intention so to do) to enforce specific performance of the agreement herein entered into by the purchasers and to claim the damages (if any) suffered by the vendor by reason of failure aforesaid of the purchasers

16. If the purchasers shall have duly observed and performed the terms and conditions set forth in this agreement and on the part of the purchasers to be observed and performed but the vendor shall upon this agreement becoming unconditional have wilfully refused to

20 cause to be executed the conveyance in accordance with the provision of clause 9 hereof the vendor shall repay to the purchasers the said sum of forty two thousand five hundred rupees (Rs. 42,500/-) of lawful money aforesaid deposited as aforesaid without interest thereon and the purchasers shall be entitled either to recover from the vendor a like sum as and by way of liquidated damages and not as a penalty or to enforce the specific performance of the agreement herein entered into by the vendor and to claim the damages (if any) suffered by the purchasers by reason of the failure aforesaid of the vendor

17. If the purchasers having tendered the purchase price and

30 transfer in their favour and all moneys payable herein the vendor owing to any unforeseen circumstances shall fail to complete the sale within the time and in the manner specified hereunder the same shall not affect this Agreement or cancel the sale which shall be completed as soon as possible after such circumstances cease to obtain or apply and any such delay shall not make the vendor liable for damages interest or compensation or entitle the purchasers to a reduction in the purchase price Notwithstanding such delay the purchasers shall pay to the vendor the full purchase price on or before the thirty first day of October One Thousand Nine Hundred and Sixty and on payment

40 in full of the said purchase price and of other moneys due hereunder the vendor will give to the purchasers possession of the said

D59
Agreement
No. 541 Attested
by
F. C. de Saram,
Notary Public—
6. 8. 60.
—Continued

D59
 Agreement
 No.541 Attested
 by
 F. C. de Saram,
 Notary Public.
 6. 8. 60.
 —Continued

Maha Borakande Estate and premises on the first day of November One Thousand Nine Hundred and Sixty and shall execute the necessary deed of transfer as soon as practicable after such circumstances shall cease to obtain or to apply and the purchasers shall indemnify and keep the vendor indemnified against any claim for Income Tax Profits Tax Super Tax or other tax or levy that may be made against the vendor in respect of the profits or otherwise in respect of the said Maha Borakande Estate and premises subsequent to the first day of November One Thousand Nine Hundred and Sixty

18. All references in this agreement to the date on or before 10 which the purchase shall be completed by the purchasers shall be deemed to be of the essence of the contract for the sale of the said Maha Boakande Estate and premises and the purchasers if in default shall not be entitled to any relief whatsoever whether at law or in equity

19. This Agreement and the sale of the said Maha Borakande Estate and premises shall not be affected in any manner whatsoever by reason of any action already taken or which may hereafter be taken by the Government of Ceylon or any other authority to acquire the whole or any portion of the said Maha Borakande Estate and 20 premises The purchase shall notwithstanding such acquisition proceedings be completed in accordance with the provisions of this Agreement without any claim being made by the purchasers for compensation or an adjustment of the purchase price. Subject to completion the purchasers shall be entitled to any moneys which may be paid in respect of any acquisition and all acts which require to be done and all steps which require to be taken in such acquisition proceedings shall be done and taken at the cost and expense of the purchasers.

20. This Agreement is conditional upon the vendor on or before the thirty first day of October One Thousand Nine Hundred and 30 Sixty obtaining the consent of the Board under the Tea and Rubber Estates (Control of Fragmentation) Act No.2 of 1958 to the sale of the said Maha Borakande Estate and premises and or upon the vendor obtaining the authority in pursuance to any statute law or Act of Parliament in that behalf contained (if necessary) and upon the foregoing condition being fulfilled this Agreement shall forthwith cease to be conditional and the sale shall be completed as herein provided if the aforesaid condition shall not be fulfilled on or before the thirty first day of October One Thousand Nine Hundred and Sixty or such extended time as shall be fixed by the vendor 40

then either of the parties hereto may by seven days previous notice in writing to the other rescind this Agreement and on the expiry of such notice this Agreement shall be null and void and thereupon the vendor shall forthwith refund the said sum of forty two thousand five hundred rupees (Rs. 42,500/-) free of interest to the purchasers and subject thereto neither party shall have any claim upon the other

D59
Agreement
No. 541 Attested
by
F. C. de Saram,
Notary Public-
6. 8. 60.
—Continued

21. The purchasers shall bear and pay all stamp duties costs and expenses of and incidental to examination of title and to the preparation execution and registration of the transfer in their favour and will furnish to the vendor a certified copy of such deed of transfer all stamp duties costs and expenses of and incidental to the preparation and executions of these presents shall be borne and paid by the vendor on the one hand and the purchasers on the other hand in equal shares

22. Any notice required to be given hereunder shall be sufficiently given by sending the same by post under registered cover addressed in the case of a notice to the vendor to care of Messrs. D. L. & F. D. Saram Proctors 47 Alexandra Place Colombo and in the case of a notice to the purchasers to care of Messrs de Silva & Mendis, Proctors State Bank Buildings Colombo

In Witness whereof the vendor has caused its common seal to be affixed and the purchasers have set their respective hands to these presents and to three others of the same tenor and date at Colombo aforesaid this sixth day of August One Thousand Nine Hundred and Sixty

THE SCHEDULE ABOVE REFERRED TO

All that and those the estate plantations and premises called and known as Maha Borakande Division comprising the various allotments of lands containing in extent about three hundred and ninety nine acres two rods and twenty perches (399a-2r-20p) of Borakande Group situate in the village Karandeniya of Ambalangoda Division of the Wellaboda Pattu in the District of Galle Southern Province

The Common Seal of the said Borakande Estate Company Limited is hereto affixed in the presence of

Sgd. Ananda E. de Silva
Sgd. T. E. de Silva
Directors.

who do hereby attest the sealing thereof

Sgd. F. C. De Saram
N P.

D59
Agreement
No. 541 Attested
by
F. C. de Saram,
Notary Public-
6. 8. 60.
—Continued

WITNESSES

Sgd. H. J. G. Marley

Sgd. T. J. N. Booso

Signed by the said Eileen Florence Mary Marley
at Colombo on this Sixth day of August
One Thousand Nine Hundred and Sixty in our presence

Sgd. Eileen Marley

Sgd. H. J. G. Marley

Sgd. T. J. N. Booso

Sgd. F. C. De Saram
N. P.

Signed by the said Don Peter Mellaaratchy
at Colombo on this Sixth day of August
One Thousand Nine Hundred and Sixty in our presence

Sgd. D. P. Mellaaratchy. 10

Sgd. H. J. G. Marley

Sgd. T. J. N. Booso

Sgd. F. C. De Saram
N. P.

I, Frederic Cecil de Saram of Colombo in the Island of Ceylon
Notary Public do hereby certify and attest that the foregoing instrument
having been duly read over by Ananda Ernest de Silva and Tissa
Emmanuel de Silva both of Colombo aforesaid two of the Directors
of the withinnamed Borakande Estate Company Limited and by the 20
withinnamed Eileen Florence Mary Marley and Don Peter Mellaaratchy
and having been further read over and explained by me to them
in the presence of Hubert John Goddard Marley of "Garoopna"
Nuwara Eliya in the said Island and Tuan Jaffar Noor Booso of
No. 16 Mosque Lane Colpetty Colombo aforesaid the subscribing
witnesses thereto all of whom are known to me the common seal of
the said Borakande Estate Company Limited was affixed in the
presence of and the same was signed by the said Ananda Ernest de
Silva and Tissa Emmanuel de Silva as Directors as aforesaid and by
the said Eileen Florence Mary Marley (who signed her name as 3
"Eileen Marley") and Don Peter Mellaaratchy and also by the said
witnesses and by me the said Notary in the presence of one another
all being present at the same time at Colombo aforesaid on this
sixth day of August One Thousand Nine Hundred and Sixty

I further certify that the duplicate of this instrument bears one
stamp of ten rupees and the original a stamp of one rupee which
stamps were supplied by D. L. & F. De Saram of Colombo aforesaid

I also certify that the consideration of Rs. 42,500/- hereinmentioned
was paid this day by cheque No. A/7 330817 dated 5th August 1960
drawn on the Nuwara Eliya Branch of The Bank of Ceylon in favour 40
of the vendor by Mr. D. P. Mellaaratchy

Date of Attestation
6th August 1960.)

Which I attest

Sgd. F. C. De Saram
Notary Public.

(SEAL)

P 12
Letter sent to de Saram by
H. J. G. Marley

P12
Letter sent to
de Saram by
H. J. G. Marley-
7.8.60

Garoopna
Nuwara Eliya,
7. 8. 60.

Dear de Saram,

I am sending by Peter Mellaaratchy a cheque in his favour
50,000/- on a/c of this Borakanda affair - Will you kindly do the
10 necessary with de Silva & Mendis proctors -

Yours sincerely
Sgd. H. J. G. Marley

P 7

Mercantile Bank Cheque for Rs. 50,000/- drawn by H. J.G. Marley
in favour of the Defendant

P7
Mercantile Bank
Cheque for
Rs 50,000/-
drawn by
H. J. G. Marley
in favour of the
Defendant—
7.8.60

No. V 591427

Colombo. 7. 8. 1960

MERCANTILE BANK LIMITED FORMERLY
The Mercantile Bank of India Limited.
Colombo.

Pay D. P. Mellaaratchy or Bearer
Rupees Fifty Thousand

20 Rs. 50,000/-

Sgd. H. J. G. Marley.

P 7A

Endorsement on the reverse of the Cheque marked P7

P 7 A
Endorsement on
the reverse of
the cheque
marked P7

Please Credit my Account.

Sgd. D. P. Mellaaratchy.

Placed to payee's credit

For Bank of Ceylon.

Nuwara Eliya.

Sgd.

Manager.

D 10

D 10
Letter sent to
M/s De Silva &
Mendis—
9.8.60

Letter sent to M/s De Silva & Mendis

D: AA

9th August, 1960.

Messrs. de Silva & Mendis,
Proctors,
Colombo.
Dear Sirs,

BORAKANDA ESTATE

We understand that you have in hand a transaction relating to **10** an estate of the abovenamed which at present belongs to the estate of the late Sir Ernest de Silva. The estate is being purchased by Mrs. Eileen Marley of Garoopna, Nuwara Eliya and Mr. D. P. Mellaaratchy of Nuwara Eliya, in equal shares.

We understand that you are preparing the transfer in favour of the purchasers and also a mortgage in favour of A. I. C. C. to secure a sum of Rs. 200,000 which is being borrowed by the purchasers from that Corporation.

We further understand that the purchase price for the estate is **20** Rs. 425,000 and that it is to be provided as follows:-

Loan from A. I. C. C.	...	Rs. 200,000
To be provided by Mrs. Marley	...	Rs. 50,000
To be provided by Mr. Mellaaratchy	...	Rs. 50,000
Loan by Mr. H. J. G. Marley	...	Rs. 100,000
Total	...	Rs. 400,000

That leaves a sum of Rs. 25,000 regarding which we are told Mr. Mellaaratchy has made arrangements of some kind with the vendor.

We are writing to you under instructions from Mr. H. J. G. Marley with reference to the loan of Rs. 100,000 which is to be made by him. His instructions are that he will lend Rs. 50,000 to his wife **30** (the arrangements relative to which we shall deal with in due course) and he is lending the balance sum of Rs. 50,000 to Mr. Mellaaratchy. Mr. Marley's cheque for this sum was handed to Mr. Mellaaratchy this morning and he will endorse it and hand it to you for disposal - partly, we understand, as the 10% deposit to be paid to the vendor and the balance to be applied by you towards expenses.

Mr. Marley requests you in due course to prepare a mortgage bond in his favour to be signed by Mr. Mellaaratchy whereby the latter will mortgage his undivided half-share of the estate to Mr. **40**

Marley as security for the loan of Rs. 50,000 made to him by the cheque which he is to hand to you this morning, namely cheque number V 591427 dated the 7th August 1960 drawn by Mr. H. J. G. Marley in favour of Mr. Mellaaratchy.

D 10
Letter sent to
M/s De Silva &
Mendis—
9.8.60
—Continued

The terms of the loan are that it will carry interest at 2 1/2% payable quarterly and, provided the interest is duly paid, Mr. Marley will not demand repayment before the 31st December 1963, after which the loan will continue (subject of course to payment of interest) until payment is required.

- 10 We shall be obliged if you will let us know at your convenience the date when completion of the purchase is expected to take place so that we may arrange for Mr. Marley's loan to Mrs. Marley to be made.

Kindly in due course send us the secondary mortgage bond in favour of Mr. Marley. His full name is Herbert John Goddard Marley.

Yours faithfully,

P 25

**Letter sent to M/s. F. J. & G. de Saram
by M/s De Silva & Mendis**

- 20 De Silva & Mendis.
Colombo.

P25
Letter sent to
M/s F. J. & G.
de Saram by
M/s De Silva &
Mendis—
16.8.60

Our Ref. No. J/7609/F.

P. O. Box 884
State Bank Buildings,
Colombo.
16th August 1960.

Messrs. F. J. & G. de Saram,
Prctors,
Colombo.
Dear Sirs.

- 30 **BORAKANDE ESTATE**

We are in receipt of your letter of the 9th instant, the contents of which we note.

We have not yet received final instructions from our clients regarding the manner in which the purchase price is to be made up, but we think that the particulars stated in your letter are substantially correct. We shall, after we receive full instructions, send you a draft of the secondary bond to be signed by Mr. Mellaaratchy in favour of Mr. Marley.

Yours faithfully,

Sgd.

D60
Application to the Agricultural and Industrial Credit Corporation
of Ceylon for a Loan **Form No. 2 (1/60)**

The Agricultural and Industrial Credit Corporation of Ceylon.
INFORMATION REQUIRED FOR VALUING AGRICULTURAL
PROPERTY

*(For each land to the mortgaged please send one form. Where separate
lands now form one contiguous block one form will suffice)*

1. State name/s and: address/es	1. Mrs. Eileen Florence Mary Marley "Garoopna" Nuwara Eliya. 10 2. Don Peter Mellaaratchy "Carstairs" Nuwara Eliya.
2. (a) Name of land : (b) Is there any other name by which it is known?	Maha Borakanda Estate. No.
3. (a) State the Revenue District and the D.R.O's Division (b) State name of the Village Committee and the land tax payable annually	Wellaboda Pattu, Galle 20 Karandeniya Village Committee.
4. Names of adjoining land owners:	Provident Estate Chettinard Corporation
5. (a) Area of land and nature of the plantation (b) Please give the number and date of Survey Plan and name of Surveyor: (c) If the plantation is either rubber or tea, state the registration number of the property.	337 Acres Rubber; 58 Acres Coconuts 4 Acre paddy. No. 1576 of 6th November 1919 J. H. W. Smith 30 Rubber. Registration No. 91/E2/G50
6. (a) Nearest motorable road and distance from nearest motorable road (state from which mile post on nearest motorable road). Is road approach to the property motorable?	Ambalangoda Elpitiya Road turn Right near the 5th Mile Post. On the Estate road half mile to the office. Motorable 40

(b) Does the property abut upon a public road? If not, is there a direct right of way from a public road? Attach or draw on reverse of this form, Sketch showing approach to the property	Yes.												
10 7. Since when are you in possession? If not, state reasons.													
8. (a) State your valuation of the property: (b) What is the net annual income from the property?	Rs. 525,000/- Rs. 35,000/-												
9. Your valuation of the buildings: Are any of the buildings insured? If so, for how much?	Rs. 75,000/- Yes: Smoke House Rs. 15,000/- Rubber and Rice Store Rs. 7,000/-												
20 10. Give an account of the crop for the last 3 years and your estimate for the current year	<table border="0"> <tr> <td>Rubber</td> <td>Coconuts:</td> </tr> <tr> <td>1957/58 96827 lbs</td> <td>1957/58 103912</td> </tr> <tr> <td>1958/59 98369 lbs</td> <td>1958/59 94929</td> </tr> <tr> <td>1959/60 102451 lbs</td> <td>1959/60 85022</td> </tr> <tr> <td></td> <td>Rubber 100,000</td> </tr> <tr> <td></td> <td>Coconut 100,000</td> </tr> </table>	Rubber	Coconuts:	1957/58 96827 lbs	1957/58 103912	1958/59 98369 lbs	1958/59 94929	1959/60 102451 lbs	1959/60 85022		Rubber 100,000		Coconut 100,000
Rubber	Coconuts:												
1957/58 96827 lbs	1957/58 103912												
1958/59 98369 lbs	1958/59 94929												
1959/60 102451 lbs	1959/60 85022												
	Rubber 100,000												
	Coconut 100,000												
11. Give a complete census of trees, if the estate is a Coconut Estate, specifying (a) bearing trees: 30 (b) trees with stem and the age of remaining trees.	<table border="0"> <tr> <td colspan="2">Coconuts, Trees in bearing 3474</td> </tr> <tr> <td colspan="2">Trees in blossom 156</td> </tr> <tr> <td colspan="2">Trees in stem 264</td> </tr> <tr> <td>Young Palms 125</td> <td>4 yrs.</td> </tr> <tr> <td>Young Palms 264</td> <td>5 yrs.</td> </tr> </table>	Coconuts, Trees in bearing 3474		Trees in blossom 156		Trees in stem 264		Young Palms 125	4 yrs.	Young Palms 264	5 yrs.		
Coconuts, Trees in bearing 3474													
Trees in blossom 156													
Trees in stem 264													
Young Palms 125	4 yrs.												
Young Palms 264	5 yrs.												
12. (a) What extent of your land is in jungle or undeveloped? (b) Is your land subject to floods? If so, state extent:	Nil. No.												

D 60
Application to
the Agricultural
and Industrial
Credit
Corporation
of Ceylon for a
Loan
19.8.60
—Continued

D 60
Application to
the Agricultural
and Industrial
Credit
Corporation
of Ceylon for a
Loan
19.8.60

—Continued

I/We affirm on oath that the above statements are true and correct to the best of my/our knowledge and belief.

Date: 19th August 1960.

Sgd. Eileen Marley
Sgd. D. P. Mellaaratchy
Signature of each applicant.

Form L. A. (10/37)

THE AGRICULTURAL AND INDUSTRIAL CREDIT
CORPORATION OF CEYLON

Particulars for the Information of the Legal Advisers of the Corporation.

10

1. Full Name, address and date of birth of each applicant.	1. Mrs. Eileen Florence Mary Marley "Garoopna" Nuwara Eliya. 30th December 1899 2. Don Peter Mellaaratchy., Carstairs' Nuwara Eliya. 27th January 1912.
2. State full name, age and present address of every legal heir of each applicant mentioned in cage 1.	1. Hebert John Goddard Marley husband 83 Years. 2. Hycinth Mellaaratchy wife 29 20 years. Rita Mellaaratchy daughter 18 Yrs.
3. Give the name extent and situation of the property or properties you offer as security.	Maha Borakanda Estate, Ambalangoda Elpitiya Road near the 5th Mile Post.
4. Give the history of title or how you acquired the property or properties you offer as security	Title traceable up to the Crown Grant.
5. Give the names and addresses of the present owners in case you are not in possession of the property.	Borakanda Estate Co., Ltd. Kotahena Stores. Colombo 13. 30
6. How long have you been in possession of each land?	
7. How long have your predecessors in title been in possession of each land?	Over one hundred years.

8. Is there any mortgage of lease or any other encumbrance on the land/s mentioned in column 3 above? Give full particulars.	No.
9. Has there been or is there any litigation about the lands at any time or is there likely to be any? Give numbers of cases and state the result of each case.	No.
10 10. Are the properties in column 3 above under notice of acquisition by Government or are they likely to be acquired in the foreseeable future?	No.
11. Are you a Government debtor, or Guarantor to a Government debtor, or the Executor or Administrator of any Estate or Guardian of any minors?	No.
20 12. Has the property mentioned in cage 3 been at any time the subject matter of an application to the Debt Conciliation Board? If so, state the date of that application and its result.	No.

We affirm on oath that the above statements are true and correct to the best of our knowledge and belief.

Sgd. Eileen Marley
Sgd. D. P. Mellaaratchy
Signature of each Applicant.

30 Date 19th August 1960.

THE AGRICULTURAL AND INDUSTRIAL CREDIT CORPORATION OF CEYLON. **Form No. 1 (6/59)**

Application for a loan on the security of Agricultural property
Please give brief but complete answers to questions in each undermentioned cage. If the application is made jointly by two or more persons, the information required in cages 1, 3 and 11 must be given in respect of each applicant.

40 1. State (a) Name in full (b) Age and date of birth	1. Mrs. Eileen Florence Mary Marley, 61 Yrs. Born 30th December 1899, "Garoopna", Nuwara Eliya.
--	---

D 60
Application to
the Agricultural
and Industrial
Credit
Corporation
of Ceylon for a
Loan
19.8.60
--Continued

D 60
Application to
the Agricultural
and Industrial
Credit
Corporation
of Ceylon for a
Loan
19.8.60
—Continued

(c) Postal Address :	2. Don Peter Mellaaratchy 48 Years. Planter. Born 27th January 1912. "Carstairs" Nuwara Eliya.	
2. (d) Occupation	1. Herbert John Goddard Marley, husband, 83 years. 2. Hycinth Mellaaratchy wife 29 years, Rita Mellaaratchy, daughter, 18 years.	
3. (a) Are you a citizen of Ceylon? If so, state whether by descent or by registration; (b) If you are a citizen by descent, state the place where you and your father were born. (c) If you are citizen by registration, state number and date of certificate of registration.	1. British Subject living in Ceylon for over 20 Years. Husband living here 63 years. 2. Citizen of Ceylon by Descent, My father and I were both born in Kandana Colombo District.	10
4. Amount of loan and the purpose for which it is required. Please give full details.	Rs. 250000/- To complete the purchase.	20
5. What is the property offered as Security? In respect of each land offered as security, mention its name, extent, situation and nature of its plantation. The route by road to each property must also be described, giving the name of the nearest Provincial Town and distance therefrom.	Maha Borakanda Estate 399 Acres Ambalangoda Elpitiya Road 5th Mile Post. Rubber; Coconuts and Paddy 5 Miles from Ambalangoda.	30
6. (a) Has the property been to your personal knowledge, or is it now, the subject matter of any litigation? If so, give full details. (b) Are there any encumbrances on any one or all the properties offered as security? If so, give details of every such mortgage, lease or other lien.	No. No.	40

7.	Was an application for this loan on the same security made to the State Mortgage Bank? If so, with what results?	No.
10	8. Have you previously applied to the Corporation? If so, state the date of each such application and the result. If you have been granted financial assistance, state the loan number, the amount granted and the amount now due	Loan No. 1002 amount granted Rs. 225,000/- Balance due now Rs. 125,925.88
	9. How long have you and your predecessors in title been in possession of each property mentioned in cage 4?	Since 1844 by Crown Grant.
	10. State period required for repayment if a loan is granted	20 Years.
	11. Do you pay Income tax in Ceylon	

D 60
Application to
the Agricultural
and Industrial
Credit
Corporation
of Ceylon for a
Loan
19.8.60
—Continued

20 I/WE AFFIRM ON OATH THAT THE ABOVE STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY/OUR KNOWLEDGE AND BELIEF.

Date 19th August 1960.

1. Sgd. Eileen Marley,
2. Sgd. D. P. Mellaaratchy.
Signature of each Applicant.

The Manager,
A. I. C. C. of Ceylon,
Colombo.
Dear Sir.

“GAROOPNA”
Nuwara Eliya.

30 I have in The Mercantile Bank Rs. 42,330.80; In Shares I have Rs. 22,940/- and I have no debts. My husband is an Income Tax Payer and his Estate in Ceylon is worth Rs. 1,000,000/- If any particulars are needed on this please contact Mr. David E. Maartensz of Messrs F. J. & G. De Saram Proctors Colombo.

Yours faithfully,
Sgd. Eileen Marley.

D43

**Bank of Ceylon Statement for August 1960 in respect of
Defendant's Account No. 1001.**

D43
Bank of Ceylon
Statement for
August 1960 in
respect of
Defendant's
Account
No. 1001.

D. P. Mellaaratchy Esq.,
"Riegato",
Church Road,
Nuwara Eliya.

1001 Nuwara Eliya
Jt. A/C.

In Account with
Bank of Ceylon.

Date 1960	B/F	Particulars	Withdrawals Rs. cts.	Deposits Rs. cts.	Balance Rs. cts.	
Aug.		BF			47 . 77	
9		Cash		1000.	1047 . 77	
10	815		1000 .		47 . 77	
11	D Tax		. 53		47 . 24	
13	Tfr.			50,000.	50,047 . 24	
16	818		25 .			
	819		300 .		49722 . 24	
17	817		42500 .		7222 . 24	
19	822		1000 .			20
	820		160 . 20		6062 . 04	
20	823		175 .		5887 . 04	
21	824		315 .		5572 . 04	
22	801		200 .		5372 . 04	
23	825		90 .		5282 . 04	
24	Chq. Bk.		1 . 50		5280 . 54	
25	821		96 . 88			
	802		271 . 70			
	807		99 . 05			
	805		34 . 04		4778 . 87	30
26	803		1038 . 74		3740 . 13	
27	806		24 .		3716 . 13	
29	810		200 .		3516 . 13	

P 24

Copy of Current Account of Mrs. E. F. M. Marley for the period
31. 8. 60 to 31. 12. 60

Mercantile Bank Limited.
Colombo.

In Account Current with

Mrs. E. F. M. Marley 3395

P24
Copy of Current
Account of Mrs.
E. F. M. Marley
for the period
31. 8. 60 to
31. 12. 60.

Dr.				1960		1960	Cr.
10	Sept. 6	To D. P. Mellaratchy	216	21250.	Agst. 31	By Balance	25990.13
	Oct. 10	Cash	217	1000.	Sept. 2	Amt. Trans-	
						ferred from	
						saving A/C	21540.52
	26	D/Tax		21.25	12	Cheque	4455.—
	Nov. 4	o/a Stamp affixed letter & of Guarantee & of Hypothecation		6.	Oct. 7	D. W. Walker & Greig.	48.25
	16	Mercantile Bank Ltd.	219	28750.	Dec. 29	Brown	144.
					31	Balance	5290.93
20	25	D/Tax.		1.02			
	26	D. L. & F. de Saram	220	3380.45			
	29	Cash	221	2000.			
	Dec. 21	D/Tax		34.14			
		Cash	222	1000.			
	30	To Interest		25.97			
				<u>57468.83</u>			<u>57468.83</u>
	1960						
	Dec. 31	To Balance		5290.93			

I, certify that the statement of account contained in the page
30 represents a true copy of the entries taken from the ledger containing
particulars of the current account of Mrs. E. F. M. Marley that such
entries are contained in one of the ledger (being one of the ordinary
books of the Bank) kept by the Bank and were made in the usual
and ordinary course of business and that such ledger is still in the
custody of the Bank.

Sgd
Manager.

P 23
 Mercantile
 Bank of India
 Cheque for
 Rs. 21,250/-
 drawn by
 Eileen Marley
 in favour of the
 Defendant-
 5. 9. 60

P23

**Mercantile Bank of India Cheque for Rs. 21,250/- drawn by
 Eileen Marley in favour of the Defendant**

No. S 120216

Colombo Sept 5th 1960

**THE MERCANTILE BANK OF INDIA LIMITED.
 COLOMBO**

Pay D. P. Mellaaratchy...

Rupees Twenty One Thousand Two Hundred and Fifty only.

Sgd. Eileen Marley

Rs. 21,250/-

10

(Reverse) P23A.

D. P. Mellaaratchy

Sgd. D. P. Mellaaratchy

P22
 Letter Sent to
 Mercantile
 Bank Ltd. by the
 Defendant-
 8. 9. 60.

P22

**Letter Sent to Mercantile Bank Ltd.
 by the Defendant.**

“Garoopna”
 Nuwara Eliya,
 8th September, 1960.

20

The Manager,
 Mercantile Bank Ltd.,
 Queen Street,
 Colombo 1.

Dear Sir,

LOAN ON MAHA BORAKANDA ESTATE.

After the interview the undersigned had with your goodself the proposals were discussed with Mr. and Mrs. Marley and now we have decided to send the details.

The above estate is situated on the Ambalangoda Elpitiya Road, near the 5th. mile post. The extent is about 399 Acres.

30

	A.	R	P.	
Seedling Rubber	93	1	08	giving over 400 lbs per acre.
Budded Rubber in tapping	62	0	33	giving over 1000 lbs per acre.
Immature Budded Rubber replanted in				
" " " " "			1956	75. 1. 27
" " " " "			1957	14. 2. 02
" " " " "			1958	25. 3. 27
" " " " "			1959	18. 0. 00
" " " " "			1960	48. 0. 00

40

The Rubber Crop for	1957/58	96827	lbs.
.. ..	1958/59	98369	..
.. ..	1959/60	102451	..
58 Acres of coconut and the balance	5 Acres	paddy.	
The coconut crop for	1957/58	103912	Nuts.
.. ..	1958/59	94929	..
.. ..	1959/60	85022	..

P22
Letter Sent to
Mercantile
Bank Ltd by the
Defendant-
8. 9. 60.
—Continued

The estate has all the necessary buildings and its well roaded.
The price we are paying is Rs. 425000/-.

- 10 We really need a Rs. 125,000/- to complete the purchase and if you are prepared to accommodate us Mrs. Marley and I are prepared to give you a mortgage of the property as we would be owning the property in equal shares. We are also prepared to send all our produce to Mr. Armitage of Messrs. John Keel, Thomson White Ltd. and from the proceeds of sales for us to draw the minimum as working expenses and the balance to be sent into your Bank or as an alternative for them to send all proceeds of sales to the Bank and for us to draw from the bank an amount fixed upon monthly for the working expenses. As we are anxious to complete the
- 20 purchase without delay we would very much appreciate an early reply.

Thanking you.

I consent
Sgd: Eileen Marley.

Yours faithfully,
Sgd. D. P. Mellaaratchy.

D 1

Letter sent to the Defendant by the Mercantile Bank Ltd.

MERCANTILE BANK LIMITED.

Colombo, 19th Sept. 1960.
Dept. S/M.

D1
Letter sent to
the Defendant
by the
Mercantile
Bank Ltd.
19. 9. 60.

Confidential.

- 30 D. P. Mellaaratchy, Esqr.,
"Garoopna",
Nuwara Eliya.

Dear Sir,

With reference to your letter of 9th instant and subsequent interview, we are pleased to advise that we have submitted your request for a loan of Rs. 125,000 to assist you and Mrs. E. Marley in the purchase of Maha Borakanda Estate to our Head Office.

Their reply will be sent by telegram and will, we hope, be communicated to you by the end of this week.

Yours faithfully,
Sgd ...
Manager.

D2

D2
Letter sent to
the Defendant
By the
Mercantile
Bank Ltd.-
30. 9. 60

Letter sent to the Defendant by the Mercantile Bank Ltd.

MERCANTILE BANK LIMITED.

Colombo, 30th September, 1960.
Dept. S/M.

Confidential.

D. P. Mellaaratchy Esqr.,
"Garoopna",
Nuwara Eliya

Dear Sir,

10

With reference to our letter of 19th September 1960, we are pleased to advise that your application for a loan of Rs. 125,000 has been sanctioned by our Head Office. The terms of the Limit are as follows:-

"A limit of Rs 125,000 for advances on a separate loan account repayable on demand, secured by a first legal mortgage of freehold land beneficially owned in equal shares by Mrs. E. Marley and Mr. D. P. Mellaaratchy, comprising of Maha Borakande Estate being a rubber estate of 399 acres, with various estate buildings, situated near 20
Ambalangoda in Galle District, to be shortly occupied by the borrowers and valued by Mr. A. A. Jayasinha, Court Valuer & Auctioneer, at Rs. 480,400.

INSURANCE

Insurance policy issued by an approved company in the name of the Bank as Mortgagees to be deposited covering certain buildings only against loss or damage by fire for an amount of Rs. 75,000.

REPAYMENT OF ADVANCES

By monthly instalments of Rs. 6,000 to be paid direct to the 30
Bank by Messrs John, Keell, Thompson, White Ltd. from whom a letter will be obtained undertaking to pay to the Bank the proceeds of all produce sold by them on account of the estate.

Interest at 3% over Central Bank rate, minimum 7%."

We shall be grateful if you will now write to Messrs John, Keell, Thompson, White Limited instructing them to pay the proceeds of all produce sold by them on your behalf to this Bank for credit of your account. Such payments will be credited to a general account to be opened in the name of the Estate and the sum of 40
Rs. 6,000 will be transferred monthly from the general account to the loan account.

We shall be grateful if you will also arrange for the title deeds of the Estate to be forwarded to our solicitors, Messrs. F. J. & G. de Saram, as soon as possible in order that they may prepare the mortgage bond. Please advise us when the title deeds may be expected by them.

D2
Letter sent to
the Defendant
By the
Mercantile
Bank Ltd.-
30. 9. 60
—Continued

Yours faithfully,
Sgd
Manager.

Copy to:-
Mrs. E. F. M. Marley,
"Garoopna",
Nuwara Eliya.

10

D3

Letter sent to the Defendant by the Mercantile Bank Ltd.
MERCANTILE BANK LIMITED

G. P. O. Box No 98.
Colombo 11th October 1960.

D3
Letter sent to
the Defendant
by the
Mercantile
Bank Ltd.
-11. 10. 60.

Dept. Security

CONFIDENTIAL
D. P. Mellaaratchy Esq.,
"Garoopna",
Nuwara Eliya.

20 Dear Sir,

OVERDRAFT Rs. 125,000 - MAHA BORAKANDE ESTATE.

We instructed our Solicitors, Messrs. F. J. & G. De Saram, on the 30th ultimo to draw up the necessary mortgage bond in respect of the above loan and informed them that we had requested you to arrange for the title deeds of the above property to be forwarded to them as soon as possible.

They have now written to us under date the 10th instant as follows:-

30

"We have so far not received the title deeds and other relevant documents relating to Maha Borakanda Estate to enable us to proceed with our examination of the title and we suggest that you should remind the parties that the deeds and documents should be sent to us without loss of time. The mortgage of Maha Borakanda Estate may also involve the obtaining of sanction of the Tea & Rubber Estates (Control of Fragmentation) Board, and it is all the more necessary that no time should be lost if the parties have in view the early completion of the transaction."

We shall be glad if you will arrange for the deeds and other relevant documents to be forwarded to our Solicitors as early as possible.

Copy to:-
Mrs. E. F. M. Marley,
"Garoopna", Nuwara Eliya.

Yours faithfully,
Sgd
Manager.

D13

D13
Letter sent to
the Defendant
by M/s. F. J. &
G. de Saram-
18. 10. 60.

Letter sent to the Defendant by M/s F. J. & de Saram

F. J. & G. De Saram,

P. O. Box No. 212.
Colombo, 18th October, 1960.

Our Ref T/RA

D. P. Mellaaratchy Esq.,
‘Carstairs’ Nuwara Eliya.
Dear Sir,

**MAHA BORAKANDE ESTATE - MORTGAGE
TO MERCANTILE BANK LTD.**

10

With reference to your call on us yesterday when you handed us certain title deeds and registration extracts of encumbrances and a plan of Borakande Group made in 1919 by J. H. W. Smith, Surveyor, we have written to our clients, Mercantile Bank Limited, setting out the position and we are awaiting their instructions.

Meanwhile, we confirm having handed you a list of the further documents which we require, to enable us to complete our examination of the deeds and to make our report thereon to the Bank. Item 7 you have already given us, but items 1-6 are urgently required.

Depending on the instructions we receive from the Bank, we shall let you know whether it will be possible to complete this transaction before the end of this month.

The stamp duty on the bond will be approximately Rs. 1025/- and we shall be glad if you will kindly send us a cheque for Rs. 2,750/- to cover the stamp duty on the bond, our professional charges and incidental expenses.

Yours faithfully,
Sgd. F. J. & G. de Saram

D 66

D66
Bank Statements
(State Bank of
India) in respect
of Defendant's
Account for
September,
October,
& November,
1960.

**30 Bank Statements (State Bank of India) in respect of Defendant's
Account for September, October & November 1960.**

D. P. Mellaaratchy Esq.,
‘Carstairs’,
Nuwara Eliya.

Date	Particulars	Withdrawals	Deposits	Dr. or Balance Cr.
1960				
Sept. 1	BF B.P.O	1466 . 46 26 .	2258 . 18	Cr. 791 . 72

Date	Particulars	Withdrawals	Deposits	Dr. or Cr.	Balance
	20 Chq.		249 . 37		
	Debit Tax	03			1015 . 06
Oct. 1	B/F	1492 . 49	2507 . 55	Cr.	1015 . 06
3	U.N.P.	26 .			
5	Ch. Book	1 . 20			
6	258563	600 .			
10 8	561	123 .			
10	562	30 .			
15	Chq.		249 . 38		
17	564	125 .			
18	565	50 .			
21	566	40 .			
24	567	183 . 75			
	Debit Tax	. 03			
27	569	30 .			55 . 46
Nov. 1	BF	2701 . 47	2756 . 93	Cr.	55 . 46
20	U.N.P	26 .			
16	Chq.		249 . 37		
26	568	100 .			
	Debit Tax	1 . 21			
28	571	30 .			Cr. 147 . 62

D66
Bank Statements
(State Bank of
India) in respect
of Defendant's
Account for
September,
October,
& November,
1960.

—Continued

D 67

Bank Statements (The Chartered Bank) in respect of Defendant's Account for September, October & November 1960.

IN ACCOUNT WITH

The Chartered Bank
Colombo.

30

D. P. Mellaaratchy Esq.,
"Carstairs",
Nuwara Eliya.

D67
Bank Statements
(The Chartered
Bank) in
respect of
Defendant's
Account for
September,
October,
& November,
1960.

Date	Particulars	Withdrawals	Deposits	Balance
30 Sept. 60	BF	1 . 406 . 63		1 . 406 . 63 OD
31 Oct. 60	ON O.D.	7 . 75		1 . 414 . 38 OD
16 Nov. 60	BDT	. 01		1 . 414 . 39 OD

D67 Bank Statements (The Chartered Bank) in respect of Defendant's Account for September, October, & November, 1960. —Continued	21 Nov. 60	Amount Pd. To G. P. O. o/a letter recd. unstamped	. 20		1 . 414 . 59 OD	
	28 Nov. 60	Com.	1 . 25			
	28 Nov. 60	Tfr.		500 . 00	915 . 84 OD	
	30 Nov. 60	INT ON O.D.	7 . 40		923 . 24 OD	
					923 . 24	
	14 Dec. 60	B DT	. 01		923 . 25 OD	
	29 Dec. 60	INT OD	5 . 10		928 . 35 OD	10

Please detach and sign this confirmation slip at your earliest convenience and thereafter return it to us.

The Chartered Bank
P. O. Box 27, Colombo 1.
Dear Sirs,

The Debit balance of my/our current account at 31st December of Rs. 928/35 as shown in the statement is correct.

D68

D68 Bank Statements (Bank of Ceylon Chilaw) in respect of Defendant's Account for September, October and November, 1960	Bank Statements (Bank of Ceylon, Chilaw) in respect of Defendant's Account for September, October & November 1960				20	
	D. P. Mellaaratchy Esq., "Carstairs", Nuwara Eliya.			In Account with Bank of Ceylon Chilaw.		
	Date	Particulars	Withdrawals	Deposits	Dr. Balance	
					Cr.	
					Rs.	cts.
	1st. Sept. 1960				29	12
	6	By Cheq. To Com.	1 . 25	500 . 00	527	87
	8	" 232 By C/B	225 .			58
	10	To 233	250 .		302	87
	16	DT	1 . 98		52	87
30	Q. Com.	6 . 03		50	89	
1st Oct. 15	By balance DT			44	86	
		. 48		44	38	
1st Nov. 22	By Ch. To Com.		500 . 00	44	38	
		1 . 25		543	13	
23	" 234	225 .		318	13	
25	235	235 .		83	13	

D69

**Bank Statements (Bank of Ceylon, Nuwara Eliya) in respect of
Defendant's Account for September, October & November 1960.**

1001.

In Account with
Bank of Ceylon.
Nuwara Eliya.

D69
Bank Statements
(Bank of Ceylon
Nuwara Eliya)
in respect of
Defendant's
Account for
September,
October &
November, 1960

D. P. Mellaaratchy Esqr.,
"Carstairs"
Nuwara Eliya.

	10	Particulars	Withdrawals	Deposits	Dr. Cr.	Balance
		Balance				3516 . 13
	6	809	500 .			3016 . 13
	6	812	100 .			2916 . 13
		811	1000 .			1916 . 13
	7	813	500 .			
		808	25 .			1391 . 13
	10	815	727 . 50			
		804	41 .			622 . 63
	14	Dr. Tax	47 . 53			575 . 10
20	21	814	250 .			325 . 10
	29	Qr. Com.	8 . 40			316 . 70
	1 Oct. 1960	By Bal.				316 . 70
	6	817	300 .			16 . 70
	8	819	150 .			133 . 30
	12	821	225 .			
		Cheq.		1000		641 . 70
	14	816	500 .			141 . 70
	15	818	57 . 20			84 . 50
		Tax	3 . 15			81 . 35
30	21	820	67 . 48			13 . 87
		822	20 .			6 . 13
	28	824	250 .			256 . 13
	29	823	250 .			506 . 13
	Nov. 1	Bal.			Dr.	506 . 13
	4	Temp. O.D. Com.	2 .			508 . 13
	14	Cheq.		5821 . 55		
		B.P. Com.	14 . 55			
		854	100 .			
		Cheq. Bk.	1 . 50			5197 . 37
40	16	851	300 .			4897 . 37
	18	Dr. Tax.	1 . 82			4895 . 55
		861	96 . 73			4798 . 82
		857	500 .			
		862	200 .			4098 . 82

D69 Bank Statements (Bank of Ceylon Nuwara Eliya) in respect of Defendant's Account for September, October & November, 1960 —Continued	Date	Particulars	Withdrawals	Deposits	Dr. Cr.	Balance
	19	859	30 .			
		855	50 .			
		858	672 . 70			3346 . 12
	23	863	500 .			
		852	200 .			2646 . 12
	24	856	62 . 88			2583 . 24
	25	Legal Fees	52 . 50			2530 . 74
		860	28 . 65			2502 . 09
	26	864	1250 . 62			
		853	21 .			1230 . 47
	28	Loan		31645 . 57		
		869	6645 . 57			26230 . 47
		870	26000 .			230 . 47
	30	867	100 .			130 . 47

P1
Letter of
Guarantee
Given by
H. J. G. Marley
to the
Mercantile Bank-
4. 11. 60.

P 1
Letter of Guarantee given by
H. J. G. Marley to the Mercantile Bank

(Cancelled)
(Seal)

Garoopna, 20
Nuwara Eliya,
4th November, 1960.

To
Mercantile Bank Limited,
Colombo.

In consideration of your making or continuing to make advances or otherwise affording banking facilities to MRS. EILEEN MARLEY AND MR. DON PETER MELLAARATCHY, "Loan Account" of BORAKANDA ESTATE, MAHAEDANDA (hereinafter referred to as "the debtor") I the undersigned Herbert John Goddard Marley of 30 Garoopna, Nuwara Eliya, do hereby guarantee to pay to you in Colombo on demand all and every sums and sum of money which may now be and which shall at any time and from time to time be or become due or owing and remain unpaid to you anywhere by the debtor upon or in respect of any current or loan or other account whether resulting from any overdraft or advance or arising on any Bill of Exchange or Promissory Note or transaction of any kind whatsoever between the debtor and you together with interest discounts bankers' charges and expenses of every description all in accordance with your usual course of 40 business (interest to be calculated at 5 per centum per annum or at such rate as may from time to time be fixed or charged by the Bank and also all legal and other charges whether taxable or not occasioned by or incidental to all or any of the forgoing or by or to the enforcement of this or any other security for the same or recovery thereof (all of which are hereinafter referred to as "interest and charges as aforesaid")

(1) The limit of my liability hereunder shall not exceed the sum of Rupees One Hundred and Twenty Five Thousand only (Rs. 125,000/-) and interest and charges as aforesaid.

(2) My obligations hereunder shall not be released or be deemed to be released if at any time or from time to time the total indebtedness of the debtor to you shall exceed the said sum of Rupees One Hundred and Twenty Five Thousand only (Rs. 125,000/-)

(3) This guarantee shall not be considered as satisfied by any intermediate payment or satisfaction by the debtor or any other person of all or any part of the moneys aforesaid but my liability hereunder shall continue unaffected thereby and shall extend to and
10 cover any sum of money which shall for the time being and from time to time constitute the ultimate balance up to the limit aforesaid and all interest and charges as aforesaid.

(4) I have delivered to and deposited with you the Fixed Deposit Receipt bearing No. 102/421 dated 16th November 1959 for Rs 150,000/- duly endorsed in blank by me to the intent that all moneys due thereunder (including all interest due and to become due thereunder) shall be appropriated and set off against all sums of money which
20 may be due or become due and payable by me under and by virtue of this guarantee as hereinafter provided.

(5) In consideration of your affording facilities as aforesaid to the debtor I hereby expressly agree that you shall be entitled and authorise you at any time and without any notice to me to uplift all moneys payable on and represented by the said Fixed Deposit Receipt or every renewal or extension thereof and to appropriate and apply the same in satisfaction or part satisfaction (as the case may be) of my liability to you hereunder. So far as such authority may be required, I do hereby
30 appoint each and every person for the time being in Ceylon who holds a general Power of Attorney from you in connection with the business of the Bank as my agent or attorney for the purpose of uplifting the moneys payable on and represented by the said Fixed Deposit Receipt and every renewal or extension thereof and for that purpose to do and sign on my behalf and in my name all acts matters receipts discharges and things.

(6) Any admission or acknowledgment in writing by the debtor or by any person expressly or impliedly authorised by the debtor of the amount of the moneys owing by the debtor or any judgment recovered by you against the debtor in respect thereof or any state-
40 ment of account in writing the correctness of which is certified by the Manager, Sub-Manager or Accountant of the Bank for the time being at Colombo shall be sufficient at law and binding on and conclusive proof against me without any other document or voucher to support the same.

P1
Letter of
Guarantee
Given by
H. J. G. Marley
to the
Mercantile Bank-
4. 11. 60.
—Continued

P1
 Letter of
 Guarantee
 Given by
 H. J. G. Marley
 to the
 Mercantile Bank-
 4. 11. 60.
 — Continued

(7) You shall be at liberty without affecting any of your rights hereunder at any time to determine enlarge or vary any credit to the debtor to vary exchange or release any other securities held or to be held by you for or on account of moneys the payment whereof is hereby guaranteed or any part thereof to renew bills and promissory notes in any manner and to compound with give time for payment to accept compositions from and make any other arrangements with the debtor or any persons liable on bills, notes or other securities held or to be held by you from the debtor or any other person for or in respect of the said moneys.

10

(8) Any payment or composition which you may receive from the debtor or any other person whomsoever whether in consequence of liquidation bankruptcy winding up or liquidation by arrangement or composition with creditors or otherwise howsoever shall be taken and applied as payment in gross without any right on my part to stand in your place in respect of or to claim the benefit of any such composition or payment or any security held by you until you shall have received the full amount of all the moneys hereby guaranteed and shall not prejudice your right to recover from me to the full extent of this guarantee.

20

(9) No assurance or security given to you which may be avoided and no payment made to you which may be recoverable under any law for the time being in force and no release settlement or discharge which may have been given or made on the faith of such assurance security or payment shall prejudice or affect your rights of recovery from me to the full extent of this guarantee and I hereby declare that this guarantee shall be in addition to and shall not in any way be prejudiced or affected by any collateral or other security now or hereafter held by you for all or any part of the moneys herein mentioned nor shall such collateral or other security or any lien to which you may be otherwise entitled or the liability of any person not party hereto for all or any part of the moneys herein mentioned be in any wise prejudiced or affected by this guarantee.

30

(10) This guarantee shall remain in force and binding on me notwithstanding my death or disability until the expiration of one calendar month after you shall have received notice in writing from me.

(11) I specifically agree that you shall be at liberty either in one action to sue the debtors and me or any surety or sureties and also any other person or persons all jointly and severally or to proceed in the first instance against me only and further that I do hereby renounce the right to claim that the debtors should be excused or proceeded against by action in the first instance and the right to claim that you should divide your claim and bring actions against me or any other person or persons whomsoever each for his

.0

portion pro-rata and the right to claim in any action brought against me that you should recover from me a pro-rata share of the amount claimed and all other rights benefits and privileges to which I may be entitled in law. It being agreed that I shall be liable in all respects hereunder as principal debtor to the extent aforementioned including the liability to be sued before recourse is had against the debtors.

P1
Letter of
Guarantee
Given by
H. J. G. Marley
to the
Mercantile Bank-
4. 11. 60.
—Continued

10 (13) I hereby expressly agree and declare that the guarantee hereby given being in consideration of your affording facilities as aforesaid to the debtors and being coupled with an interest all powers and authorities herein contained are irrevocable.

Sgd. H. J. G. Marley

Signed by the abovenamed
Herbert John Geddard Marley:-

in the

presence of:-

Sgd. Illegibly
Sgd. Illegibly

D4

20

**Copy of the Letter of Guarantee given by
H. J. G. Marley (P1)**

To
Mercantile Bank Limited,
Colombo.

Garoopna,
Nuwara Eliya.
4th November, 1960.

D4
Copy of the
Letter of
Guarantee
Given by
H. J. G. Marley
(P1)-
4. 11. 60.

30 In consideration of your making or continuing to make advances or otherwise affording banking facilities to of (hereinafter referred to as "the debtor") I the undersigned Herbert John Geddard Marley of Garoopna, Nuwara-Eliya, do hereby guarantee to pay to you in Colombo on demand all and every sums and sum of money which may now be and which shall at any time and from time to time be or become due or owing and remain unpaid to you anywhere by the debtor upon or in respect of any current or loan or other account whether resulting from any overdraft or advance or arising on any Bill of Exchange or Promissory Note or transaction of any kind whatsoever between the debtor and you together with interest discounts bankers' charges and expenses of every description all in accordance with your usual course of business (interest to be calculated at 5 per centum per annum or at such rate as may from

D4
 Copy of the
 Letter of
 Guarantee
 Given by
 H. J. G. Marley
 (Pl)-
 4. 11. 60.
 —Continued

time to time be fixed or charged by the Bank and also all legal and other charges whether taxable or not occasioned by or incidental to all or any of the foregoing or by or to the enforcement of this or any other security for the same or recovery thereof (all of which are hereinafter referred to as "interest and charges as aforesaid")

(1) The limit of my liability hereunder shall not exceed the sum of Rupees One Hundred & Twenty Five Thousand only (Rs. 125,000/-) and interest and charges as aforesaid.

(2) My obligations hereunder shall not be released or be deemed to be released if at any time or from time to time the total indebtedness of the debtor to you shall exceed the said sum of Rupees One Hundred and Twenty Five Thousand only (Rs. 125,000/-) 10

(3) This guarantee shall not be considered as satisfied by any intermediate payment or satisfaction by the debtor or any other person of all or any part of the moneys aforesaid but my liability hereunder shall continue unaffected thereby and shall extend to and cover any sum of money which shall for the time being and from time to time constitute the ultimate balance up to the limit aforesaid and all interest and charges as aforesaid.

(4) I have delivered to and deposited with you the Fixed Deposit Receipt bearing No. 102/421 dated 16th November 1959 for Rs. 150,000/- duly endorsed in blank by me to the intent that all moneys due thereunder (including all interest due and to become due thereunder) shall be appropriated and set off against all sums of money which may be due or become due and payable by me under and by virtue of this guarantee as hereinafter provided. 20

(5) In consideration of your affording facilities as aforesaid to the debtor I hereby expressly agree that you shall be entitled and authorise you at any time and without any notice to me to uplift all moneys payable on and represented by the said Fixed Deposit Receipt or every renewal or extension thereof, and to appropriate and apply the same in satisfaction or part satisfaction (as the case may be) of my liability to you hereunder. So far as such authority may be required, I do hereby appoint each and every person for the time being in Ceylon who holds a general Power of Attorney from you in connection with the business of the Bank as my agent or attorney for the purpose of uplifting the moneys payable on and represented by the said Fixed Deposit Receipt and every renewal or extension thereof and for that purpose to do and sign on my behalf and in my name all acts matters receipts discharges and things. 30 40

(6) Any admission or acknowledgement in writing by the debtor or by any person expressly or impliedly authorised by the debtor of the amount of the moneys owing by the debtor or any judgment recovered by you against the debtor in respect thereof or any statement of account in writing the correctness of which is certified by the Manager, Sub-Manager or Accountant of the Bank for the time being at Colombo shall be sufficient at law and binding on and conclusive proof against me without any other document or voucher to support the same.

10 (7) You shall be at liberty without affecting any of your rights hereunder at any time to determine enlarge or vary any credit to the debtor to vary exchange or release any other securities held or to be held by you for or on account of moneys the payment whereof is hereby guaranteed or any part thereof to renew bills and promissory notes in any manner and to compound with give time for payment to accept compositions from and make any other arrangements with the debtor or any persons liable on bills, notes or other securities held or to be held by you from the debtor or any other person for or in respect of the said moneys.

20 (8) Any payment or composition which you may receive from the debtor or any other person whomsoever whether in consequence of liquidation bankruptcy winding up or liquidation by arrangement or composition with creditors or otherwise howsoever shall be taken and applied as payment in gross without any right on my part to stand in your place in respect of or to claim the benefit of any such composition or payment or any security held by you until you shall have received the full amount of all the moneys hereby guaranteed and shall not prejudice your right to recover from me to the full extent of this guarantee.

30 (9) No assurance or security given to you which may be avoided and no payment made to you which may be recoverable under any law for the time being in force and no release settlement or discharge which may have been given or made on the faith of such assurance security or payment shall prejudice or affect your rights of recovery from me to the full extent of this guarantee and I hereby declare that this guarantee shall be in addition to and shall not in any way be prejudiced or affected by any collateral or other security now or hereafter held by you for all or any part of the moneys herein mentioned nor shall such collateral or other security
 40 or any lien to which you may be otherwise entitled or the liability of any person not party hereto for all or any part of the moneys herein mentioned be in any wise prejudiced or affected by this guarantee.

D4
Copy of the
Letter of
Guarantee
Given by
H. J. G. Marley
(Pl)-
4. 11. 60.
—Continued

(11) This guarantee shall remain in force and binding on me notwithstanding my death or disability until the expiration of one calendar month after you shall have received notice in writing from me.

(12) I specifically agree that you shall be at liberty either in one action to sue the debtors and me or any surety or sureties and also any other person or persons all jointly and severally or to proceed in the first instance against me only and further that I do hereby renounce the right to claim that the debtors should be excused or proceeded against by action in the first instance and the right to claim that you should divide your claim and bring 10 actions against me or any other person or persons whomsoever each for his portion pro rata and the right to claim in any action brought against me that you should recover from me a pro rata share of the amount claimed and all other rights benefits and privileges to which I may be entitled in law. It being agreed that I shall be liable in all respects hereunder as principal debtor to the extent aforementioned including the liability to be sued before recourse is had against the debtors.

(13) I hereby expressly agree and declare that the guarantee hereby given being in consideration of your affording facilities as 20 aforesaid to the debtors and being coupled with an interest all powers and authorities herein contained are irrevocable.

Signed by the abovenamed

presence of :-

- 1. in the
- 2.

D61
Agreement
No. 562
Attested by
F. C. de Saram
Notary Public-
12. 11. 60.

D61
Agreement No. 562 Attested by F. C. de Saram, Notary Public

DATED 12th NOVEMBER 1960
AGREEMENT

30

FROM
BORAKANDE ESTATE CO. LTD.
TO
EILEEN FLORENCE MARY MARLEY
AND
DON PETER MELLAARATCHY
OF

THE SALE AND PURCHASE OF THE ESTATE PLANTATION AND PREMISES CALLED AND KNOWN AS MAHABORAKANDA SHALL TAKE EFFECT SHALL BE THE FIRST DAY OF DECEMBER 1960 40 AND ACCORDINGLY THAT THE TERMS AND CONDITIONS OF THE SAID AGREEMENT No. 541 DATED 6. 8. 60) ATTESTED BY F. C. de SARAM N. P.

D. L. & F. De Saram,
Notaries Etc.,
Colombo.

D61
Agreement
No. 562
Attested by
F. C. de Saram
Notary Public—
12. 11. 60.
—Continued

Drawn by us
Sgd. D. L. & F. De Saram
Notaries Public

ORIGINAL.

No. 562.

This Agreement is made the Twelfth day of November One
10 Thousand Nine Hundred and Sixty between Borakande Estate Company
Limited a Company duly incorporated in Ceylon and having its registered
office at Kotahena Mills Kotahena Colombo in the Island of Ceylon
(Hereinafter referred to as "the vendor" which term or expression as
herein used where the context so requires or admits shall mean and
include the said Borakande Estate Company Limited and its assigns)
of the one part and Eileen Florence Mary Marley of "Garoopna"
Nuwara Eliya in the said Island and Don Peter Mellaaratchy of
"Carstairs" Nuwara Eliya aforesaid (hereinafter referred to as "the
20 purchasers" which term or expression as herein used shall where
the context so requires or admits mean and include the said Eileen
Florence Mary Marley and Don Peter Mellaaratchy and each of them
and their and each of theirs respective heirs executors and administrators)
of the other part

WHEREAS:

1. in and by an agreement No. 541 dated 6th August 1960 attested
by F. C. de Saram of Colombo Notary Public the vendor agreed to
sell and the purchasers agreed to purchase all that and those the
estate plantation and premises called and known as Mahaborakande
short particulars whereof are contained in the schedule to the said
30 agreement No. 541 and in the schedule hereto at the price and upon
the terms and conditions therein set forth with effect from the first
day of November One Thousand Nine Hundred and Sixty

2. the purchasers have requested the vendor to grant the purchasers
time till the thirtieth day of November One Thousand Nine Hundred
and Sixty to complete the purchase of the said Mahaborakande Estate
which the vendor has agreed to do upon the purchasers entering into
and executing these presents

NOW THIS AGREEMENT WITNESSETH and it is hereby agreed
as follows:—

D61
 Agreement
 No. 562
 Attested by
 F. C. de Saram
 Notary Public-
 12. 11. 60.
 —Continued

1. that in consideration of the premises and pursuant to the said agreement the vendor and the purchasers hereby agree that the date from which the sale and purchase of the said estate plantation and premises called and known as Mahaborakande shall take effect shall be the first day of December One thousand Nine Hundred and Sixty and accordingly that the terms and conditions of the said agreement No. 541 shall be read and construed and shall take effect as if (a) "the thirtieth day of November One Thousand Nine Hundred and Sixty" had been substituted for "the thirty first day of October one thousand nine hundred and sixty" (b) "the first day of November One Thousand 10
 Nine Hundred and Sixty" had been substituted for "the first day of November One Thousand Nine Hundred and Sixty" and (c) "the fifteenth day of December One thousand Nine Hundred and Sixty" had been substituted for "the fifteenth day of November One Thousand Nine Hundred and Sixty" wherever these dates appear in the said agreement No. 541.

2 That the said agreement No. 541 modified as aforesaid shall continue to be in full force and effect and binding on the parties hereto

IN WITNESS WHEREOF the vendor has caused its common seal to be affixed and the purchasers have set their respective hands to these presents and to three others of the same tenor and date at Colombo 20
 aforesaid on this Twelfth day of November One Thousand Nine Hundred and Sixty

THE SCHEDULE ABOVE REFERRED TO

All that and these the estate plantations and premises called and known as Maha Borakande Division comprising the various allotments of land containing in extent about three hundred and ninety nine acres two rods and twenty perches - (399a-2r-20p) of Borakande Group situate in the village Karandeniya of Ambalangoda Division of the Wellaboda pattu in the District of Galle Southern Province.

The Common Seal of the said BORAKANDE
 ESTATE COMPANY LIMITED is hereto affixed
 at Colombo on this Twelfth day of November
 one thousand nine hundred and sixty in
 the presence of

30

Sgd. Evadne de Silva
 Sgd. Ananda E. de Silva
Directors.

Sgd. F. C. de Saram
N. P.

who do hereby attest the sealing thereof

40

WITNESSES

Sgd. T. J. N. Booso)
 Sgd. E. M. A. Edirisinghe)
 Signed by the said Eileen)
 Florence Mary Marley at)
 Colombo on this Twelfth day of November)
 One Thousand Nine Hundred and Sixty in)
 our presence.)

Sgd. Eileen Marley

Sgd. F. C. de Saram
N. P.

D61
 Agreement
 No. 562
 Attested by
 F. C. de Saram
 Notary Public-
 12. 11. 60.
 -Continued

10 Sgd. T. J. N. Booso)
 Sgd. E. M. A. Edirisinghe)
 Signed by the said Don Peter Mellaaratchy)
 at Colombo on this)
 Twelfth day of November one thousand nine)
 hundred and sixty in our presence.)

Sgd. D. P. Mellaaratchy

Sgd. T. J. N. Booso
 Sgd. E. M. A. Edirisinghe

Sgd. F. C. de Saram
N. P.

20 I, Frederick Cecil de Saram of Colombo in the Island of Ceylon
 Notary Public do hereby certify and attest that the foregoing
 instrument having been duly read over by Lady Evadne Lakshminie
 de Silva of "Sirimathipaya" Sir Albert Ernest de Silva Mawatha
 Colombo aforesaid and Ananda Ernest de Silva of Inner Flower
 Road Colombo aforesaid two of the Directors of the withinnamed
 Borakande Estate Company Limited and by the withinnamed Eileen
 Florence Mary Marley and Don Peter Mellaaratchy in my presence and in
 the presence of Tuan Jaffeer Noor Booso of No. 16 Mosque Lane
 Colpetty Colombo aforesaid and Edirisinghe Mudiyansele Ariyadasa
 Edirisinghe of "Singha Villa" Kadawata in the said Island the
 30 subscribing witnesses thereto all of whom are known to me the
 Common Seal of the said Borakande Estate Company Limited was
 affixed in the presence of and the same was signed by the said
 Lady Evadne Lakshminie de Silva (who signed her name as "Evadne
 de Silva") and Ananda Ernest de Silva as Directors as aforesaid and
 by the said Eileen Florence Mary Marley (who signed her name as
 "Eileen Marley") and Don Peter Mellaaratchy and also by the said
 witnesses and by me the said Notary in the presence of one another
 all being present at the same time at Colombo aforesaid on this
 twelfth day of November one thousand nine hundred and sixty

40 I further certify that the duplicate of this instrument bears one
 stamp of ten rupees and the original a stamp of one rupee which
 stamps were supplied by D. L. & F. de Saram of Colombo - aforesaid.

Date of Attestation)
 12th November 1960)

Which I Attest
 Sgd. F. C. de Saram
Notary Public

D 50
Copy of
Surpense
Account issued
by the
Mercantile Bank
Ltd.

D 50

Copy of Suspense Account issued by the Mercantile Bank Ltd.

IN

SUSPENSE ACCOUNT

OUT

Date	No.	By whom lodged	On whose Account Lodged	Details	Inits.	Amount Lodged	Date	Amount Utilised	To which A/c credited For what purpose
15th November 60		Mrs. E. Marley	Borakanda Estate Co. Limited.	Pending Further payments		78,750.00	29-Nov-60	78,750.00	Cheque issued to Borakanda Estate Co. Limited.
29th November 60		Cash lodged by Mrs. E. Marley and D.P. Mellaarachy	Borakanda Estate Co. Limited.	Pending issue of cheque to Borakanda Estate		5,000.00	29-Nov-60	5,000.00	Cheque to Borakanda Estate Co. Limited.
29th November 60		Cash lodged by Mrs. E. Marley and D.P. Mellaarachy	Borakanda Estate Co. Limited.	Pending issue of cheque to Borakanda Estate		28,750.00	29-Nov-60	28,750.00	Cheque issued to Borakanda Estate Co. Limited.
29th November 60		Amt. lodged by Mrs. E. Marley and D.P. Mellaarachy	Borakanda Estate Co. Limited.	Pending issue of cheque to Borakanda Estate		145,000.00	29-Nov-60	145,000.00	Cheque issued to Borakanda Estate Co. Limited.

230

FOR MERCANTILE BANK LIMITED.

CERTIFIED TRUE COPY

Sgd/
Manager Colombo

To Bank of Ceylon

I/We apply for accommodation by way of loan of a sum of Rupees Thirty one Thousand six hundred and fortyfive and cents fiftyseven only

Rs. 31,645/57 against the security of.
(figures)

Pronote for Rs. 31,645.57

Receipt for Rs. 31,645.57

Guarantee of Mrs. E. F. M. Marley for Rs. 31,645.57

10 Letter re proceeds

Letter re penalty

Assignment of Colombo Life Assurance Limited Policy No. 5133 for Rs. 25,000.00 under Three Year Term Assurance.

Loan granted in terms of A.G.M's
P & C 35/60 of 18. 11. 60.

Sgd
Manager.

The loan is required for the purpose of purchase of shares of Borakanda Estate.

20 And I/We agree to abide by the following terms;-

1. Loan repayable by me/us without previous notice to the Bank, or at any time as demanded by the Bank
2. Subject to the operation of Clause I above the amount to be repaid in equal monthly instalments of Rs. 879/04 commencing on 28th December 1960 and continuing to be paid on the 28th of each subsequent month, with one final instalment of Rs. 879/17 to be paid on the 28th day of November 1963.

30 I/We authorise the Bank to debit my/our Current account on the due dates as agreed above

I/We confirm that there are no other obligations due to the Bank by me/us either individually or as partner(s) or Director(s) of any other firm or company.

Date of final payment

Approved by G. M. Sgd

Sgd. D. P. Mellaaratchy

Passed by Board

Signature of Applicant

Record Department

Entd. Intld. Date 30. 11. 60

D44
Loan Application
for Rs. 31,645/57
made by the
Defendant to
the Bank fo
Ceylon-
18. 11. 60.
-Continued

D45
Promissory Note
for Rs. 31,645/57
Given by the
Defendant to the
Bank of Ceylon-
28. II. 60.

D45
**Promissory Note for Rs. 31,645/57 given by the Defendant
to the Bank of Ceylon.**

Bank of Ceylon.
Nuwara Eliya.
28th November 1960

Rs. 31,645/57

- | | | |
|---|---|----|
| 1. Capital sum
borrowed
Rs. 31,645/57. | On Demand, I the undersigned Don Peter Mellaaratchy
of "Carstairs", Nuwara Eliya promise to pay to
Mrs. Eileen Florence Mary Marley of "Garoopna", | |
| 2. Interest premium
charges deducted
or paid in advance
Rs. 6,645/57 | Nuwara Eliya or order at the office of the Bank
of Ceylon the sum of Rupees Thirtyone thousand
six hundred and forty five and cents fiftyseven
only. | 10 |
| 3. Rate of interest
per centum per
annum 7% | Currency for value received with interest thereon
at the rate of seven per centum per annum from
the date hereof. | |

Witnesses.

Intld. D. P. M

Sgd

Sgd

Sgd.

(on 10 cts. Stamp) 20
D. P. Mellaaratchy

D46
Guarantee
Signed by
Eileen Marley-
28. II. 60

D46
Guarantee Signed by Eileen Marley
GUARANTEE

TO THE BANK OF CEYLON.

1. For the purposes of this guarantee, it is hereby agreed that:-
 - (i) the term "the debtor" shall mean.
Don Peter Mellaaratchy of
"Carstairs", Nuwara Eliya.
 - (ii) If it shall so happen that the name of the debtor inserted 30
in sub-clause (1) shall be that of a firm or of a limited company
or other corporation or of a society or of any committee or association
or other unincorporated body, any of the provisions of this guarantee
which shall be primarily and literally applicable to the case of a single
and individual debtor only shall be construed and take effect so as to give
the Bank hereunder a guarantee, for the moneys herein mentioned owing to
such firm and every member thereof or by such limited company
or corporation or by such society or committee or association or
other unincorporated body, as identical or analogous as may be with 40
or to that which would have been given for the moneys owing by
a single individual if the debtor had been a single individual.

(iii) If it shall so happen that the name of the debtor inserted in sub-clause (1) shall be that of a firm this guarantee shall be deemed to be a continuing guarantee for all moneys herein mentioned owing by the firm whether under its present or any other name or by the persons or person carrying on business in the name of or in succession to the firm or by any one or more of such persons, although by death retirement or admission of partners or other causes the constitution of the firm may have been in part or wholly varied, and this guarantee shall extend to all moneys herein mentioned
10 owing by any company one of whose principal objects is to take over the business of the firm however named or constituted.

(iv) If it shall so happen that the name of the debtor inserted in sub clause (i) shall be that of a limited company or other corporation, this guarantee shall be deemed to be a continuing guarantee for all moneys herein mentioned owing by the company or other corporation notwithstanding any change in its name style or constitution whether upon or by absorption amalgamation reconstruction or otherwise, and this guarantee shall extend to all moneys herein mentioned owing by any company corporation or concern resulting
20 from such change.

(v) If it shall so happen that the name of the debtor inserted in sub-clause (i) shall be that of a society or committee or association or other unincorporated body, this guarantee shall be deemed to be a continuing guarantee for all moneys herein mentioned owing by the society committee association or unincorporated body notwithstanding any change in its name style or constitution or in the constitution of its members, and this guarantee shall extend to all moneys herein mentioned owing by any society committee association or unincorporated body resulting from such change.

30 (vi) If it shall so happen that the name of the debtor inserted in sub-clause (i) shall be that of a limited company or other corporation or of a society or committee or association or other unincorporated body, any reference in this guarantee to insolvency shall be deemed to be a reference to winding up or other analogous proceeding.

(vii) (a) The term "the Bank" shall mean the BANK OF CEYLON its successors and assigns.

(b) The word "person" shall, where the context so requires or admits, include a firm, company or corporation.

40 (b) The singular shall include the plural.

(viii) The term "moneys herein mentioned" shall mean all and every the sums and sums of money (if any) which may now be and which shall at any time and from time to time become due or owing and remain unpaid to the Bank anywhere by the debtor, whether solely or jointly/or jointly and severally with any other person firm

D46
Guarantee
Signed by
Eileen Marley-
28. II. 60

—Continued

company corporation society or unincorporated body, whether upon current or loan account or by way of advances or overdraft, whether upon notes or bills discounted or paid or credits made or opened to or by or for the accomodation or at the request of the debtor, or upon any transaction of any kind whatsoever between the debtor and the Bank including every renewal or extension of any of the foregoing kinds of transaction, whether any such renewal or extension be made or effected with or without my/our consent or notice to me/us. TOGETHER with all interest discounts bankers' charges and expenses of every discription, in accordance with the Bank's usual 10 course of business, and all legal and other costs charges and expenses (whether taxable or not) occasioned by or incidental to this or any other security held by or offered to the Bank as security for the same indebtedness or by or to the enforcement of any such security.

(ix) Any moneys herein mentioned shall be deemed to be owing notwithstanding any incapacity of or limitation upon the debtor or any person acting or purporting to act on behalf or in the name of the debtor with respect to borrowing or of or upon the Bank or any person acting or purporting to act on behalf or in the name 20 of the Bank with respect to lending, or any defect or insufficiency in the borrowing powers of the debtor or any such person aforesaid or in the lending powers of the Bank or any such person aforesaid, or in the exercise thereof respectively, which might be a defence as between the debtor and the Bank. This guarantee shall extend to and include all moneys herein mentioned lent paid or advanced by the Bank in any way for or on account of or apparently for the purposes of the debtor, or arising from any arrangement whatsoever made with or purporting to be made on behalf of the debtor, at the request of or by honouring cheques drafts bills or notes of or signed by or by carrying out the request or directions of the debtor 30 or any person being or appearing to be or acting or purporting to act as a partner director manager officer or office-bearer (as the case may be) of the debtor or a person authorised by the debtor, notwithstanding any defect or irregularity in his appointment and notwithstanding any want of authority on the part of such partner director manager officer office-bearer or person to bind or to act on behalf or in the name of the debtor. Nor shall this guarantee be or become in any way prejudiced affected or unenforceable, either wholly or in part, by reason of any fact matter or circumstance concerning 40 the debtor or any other person or concerning the account or conduct or any transaction of or with the debtor or any other person whether such fact matter or circumstance be known to or at any time come to the knowledge of the Bank or not, and whether or not the same be disclosed by the Bank to me/us or any of us.

(x) If this guarantee shall be given by more than one person, the liability of such persons and all covenants on their part herein contained shall in all respects be and be deemed to be joint and several.

D46
Guarantee
Signed by
Eileen Marley-
28. II. 60
—Continued

2. IN CONSIDERATION of the Bank at my/our request agreeing not to require immediate payment of such of the moneys herein mentioned as may be now due and/or in consideration of any moneys herein mentioned which the Bank may hereinafter advance or pay or which may hereinafter become due, I/we the undersigned

- 10 (a) Mrs. Eileen Florence Mary Marley
of Garoopna" Nuwara Eliya
(b)
of
(c)
of
(d)
of

heroby agree to pay to the Bank in Nuwara Eliya the moneys herein mentioned ten days after demand PROVIDED ALWAYS that the
20 total liability ultimately enforceable against me/us under this guarantee shall not exceed the sum of Rupæes Thirtyone thousand six hundred and forty five and cents fifty seven (Rs. 31,645/57) together with all interest thereon and such further sums by way of bankers' charges and expenses as shall accrue all in accordance with the Bank's usual course of business, and also all legal costs charges and expenses incurred by the Bank.

3. guarantee shall not be considered as satisfied by any intermediate payment of satisfaction of the whole or any part of the moneys herein mentioned but shall be a continuing security and shall extend to
30 cover any sum of money which shall for the time being and from time to time constitute the ultimate balance due by the debtor to the Bank in respect of the moneys herein mentioned, up to the limit aforesaid.

4. This guarantee shall be binding as a continuing security on me and on my executor or administrators and my legal representatives until the expiration of one calendar month after I or in case of my dying or becoming under disability my executors or administrators or my legal representatives shall have given to the Bank notice in writing to discontinue and determine the same. AND in the case of this
40 being a joint and several guarantee the same shall remain in force and binding as a continuing security as against (a) each of us and the estate of each of us notwithstanding the death or disability of us or either or any of us until the expiration of one calendar month after the Bank shall have received notice in writing to discontinue and determine the

D46
Guarantee
Signed by
Eileen Marley-
28. II. 60

—Continued

same, from us or from the survivors or survivor of us and the executors or administrators or the legal representatives of such of us as may have died or become under disability (b) each of us and his/her estate until the expiration of one calendar month after the Bank shall have received such notice as aforesaid from him/her or his/her aforesaid, and (c) such of us as shall not have given such notice as aforesaid and as against the estate or respective estates of such of us as shall not have given such notice as aforesaid notwithstanding that it may have ceased to be binding on any other or others of us by reason of any such notice having been given. 10

5. In the event of this guarantee ceasing from any cause whatsoever to be binding on me or my executors or administrators or my legal representatives (or as the case may be on us and each or any of us and the executors or administrators or the legal representatives of us and of each or of any of us), the Bank shall be at liberty without thereby affecting its rights hereunder to open a fresh account or to continue any then existing account with the debtor and no moneys paid from time to time into any such account by or on behalf of the debtor and subsequently drawn out by the debtor shall on settlement of any claim in respect of this 20 guarantee be appropriated towards or have the effect of payment of any part of the moneys herein mentioned due from the debtor at the time of this guarantee ceasing to be so binding or of the interest thereon, unless the person paying in such moneys shall at the time in writing direct the Bank specially to appropriate the same to that purpose.

6. Any admission or acknowledgement in writing by the debtor or by any person being or appearing to be or acting or purporting to act as a partner director manager officer or office-bearer (as the case may be) of the debtor or by a person expressly or impliedly 30 authorised by the debtor, of the amount of the moneys herein mentioned owing by the debtor to the bank and any judgment recovered by the Bank against the debtor in respect thereof shall be binding and conclusive on and against me my executors or administrators or my legal representatives (or as the case may be on and against us and each of us and the executors or administrators or the legal representatives of us and of each of us) in all course of law and elsewhere.

7. The Bank is at liberty (without the consent of or notice to me/us or any of us or the executors administrators or legal representatives of me/us or any of us) without thereby affecting its rights hereunder, at any time and from time to time, to renew or extend any obligation liability or transaction of any kind of or with the debtor, to substitute in place thereof any new or alternative obligation, liability or transaction, to add to vary or alter the terms and conditions thereof or of any new or alternative obligation, liability or transaction respectively, to determine or vary any credit
 10 to the debtor to vary exchange abstain from perfecting or release in whole or in part, any guarantee or security received taken or held or to be received taken or held by the Bank from or on behalf or on account of the debtor or me/us or any of us or any other person, in respect of the moneys herein mentioned or any part thereof, to renew bills or promissory notes in any manner, and to compound with give time for payment or other indulgence to, accept compositions from and make any other arrangements with, the debtor or me or my aforewritten (or as the case may be us or any or either of us or the aforewritten of us or any or either of us) or
 20 any person liable for the moneys herein mentioned or liable on any bill note guarantee or security received taken or held or to be received taken or held by the Bank.

8. Any dividend composition and payment the Bank may receive from the debtor or me/us or any of us or from any other person, or from the estates of the debtor or of me/us or any of us or of any other person, whether in or in consequence of liquidation bankruptcy liquidation by arrangement or composition with creditors or otherwise howsoever shall be taken and applied as payments in gross, without any right on the part of me or my aforewritten (or as the case
 30 may be us or any or either of us or the aforewritten of us or any or either of us) to stand in the place of the Bank in respect of or to claim the benefit of any such dividend composition or payment or any security held by the Bank until the Bank shall have received the full amount of all the moneys herein mentioned, and shall not prejudice the Bank's right to recover from me or my aforewritten (or as the case may be us and each of us and the aforewritten of us and of each of us) to the full extent of this guarantee.

9. Although my/our ultimate liability hereunder cannot exceed the limit hereinbefore mentioned, yet this present guarantee shall be
 40 construed and take effect as a guarantee of the whole and every part of the moneys herein mentioned and accordingly I am/we and each of us are not and is not to be entitled as against the Bank to any right of proof in the insolvency of the debtor or other right of a surety discharging his liability in respect of the principal debt, unless and until the whole of the moneys herein mentioned including interest and charges as aforesaid shall have first been completely

D46
 Guarantee
 Signed by
 Eileen Marley-
 28. 11. 60
 —Continued

D46
 Guarantee
 Signed by
 Eileen Marley-
 28. 11. 60
 —Continued

discharged and satisfied. And further, for the purpose of enabling the Bank to sue the debtor or prove against the estate of the debtor for the whole of the moneys herein mentioned or to preserve intact the liability of the debtor or of any other person, the Bank may at any time and from time to time place and keep for such time as they may think prudent any moneys received recovered or realised hereunder to and at a separate or suspense account to the credit either of me/us or any of us or of such other person or transaction if any as they shall think fit, without any intermediate obligation on the part of the Bank to apply the same or any part thereof in 10 or towards the discharge of the moneys herein mentioned or any intermediate right on my/our part to sue the debtor or prove against his estate in competition with or so as to diminish any dividend or other advantage that would or might come to the Bank or to treat the liability of the debtor as diminished.

10. No assurance or security given to the Bank which may be avoided, and no payment made to the Bank which may be recoverable, under any law for the time being in force relating to bankruptcy or insolvency or to limited liability companies, and no release settlement or discharge which may have been given or made on 20 the faith of any such assurance security or payment shall prejudice or affect the Bank's right for recovery from me/us and each of us to the full extent of this guarantee.

11. I/we and each of us have not/has not taken in respect of the liability hereby undertaken by me/us and each of us, and I/we and each of us will not take from the debtor, either directly or indirectly without the consent of the Bank, any sum of money or promissory note bill of exchange mortgage charge or other security, whether merely personal or involving a charge on any property whatsoever of the debtor, whereby I/we or any of us or any person 30 claiming through me/us or any of us by endorsement assignment or otherwise would or might on the bankruptcy or insolvency of the debtor and to the prejudice of the Bank increase the proof in such bankruptcy or insolvency or diminish the property distributable amongst the creditors of the debtor. And as regards any such security as aforesaid which I/we or any of us may have taken or may take with such consent as aforesaid, the same shall be a security to the Bank for the fulfilment of my/our and each of our obligations hereunder and shall be forthwith deposited with the Bank for that purpose by me or such of us who may have taken or may take 40 the same.

12. The liability of me/us and each of us hereunder shall not be affected by any failure on the part of the Bank to take any security or by any invalidity or insufficiency of any security taken, or by any existing or future agreement by the Bank as to the application of any advances made or to be made to the debtor, or in the event of this guarantee proving not to be binding on me/us or any of us for any reason whatsoever. And this guarantee shall be in addition to and shall not in any way be prejudiced or affected by any collateral or other security now or hereafter held by the

10 Bank for all or any part of the moneys herein mentioned, nor shall such collateral or other security or any lien to which the Bank may be otherwise entitled or the liability of any person not party hereto for all or any part of the moneys herein mentioned be in anywise prejudiced or affected by this present guarantee.

D46
Guarantee
Signed by
Eileen Marley-
28. 11. 60
—Continued

13. The Bank shall so long as any moneys remain owing hereunder have a lien therefor on all moneys now or hereafter standing to the credit of me (or, as the case may be, of each of us) with the Bank whether on any current or other account.

14. I/we and each of us specifically agree that the Bank shall

20 be at liberty, either in one action to sue the debtor and me/us and each or any of us jointly and severally, or to proceed in the first instance against me/us and each or any of us only, and further that I/we and each of us hereby renounce the right to claim that the debtor should be excused or proceeded against by action in the first instance, and (where this guarantee is given by more than one person) the right to claim that the Bank should divide its claim against us and bring actions against us, each for his portion pro rata, and the right to claim in any action brought against all of us that the Bank should only recover from each of us a pro rata share

30 of the amount claimed in that action, and all other rights and benefits to which sureties are or may be by law entitled IT BEING AGREED that I/we and each of us am/are and is liable in all respects hereunder as principal debtor/principal debtors jointly and severally, to the extent aforementioned, including the liability to be sued before recourse is had against the debtor.

Signed by the abovenamed)
at Nuwara Eliya this)
28th day of November 1930)

Sgd; Eileen Marley.

in the presence of :

40 Sgd: Illegibly.

D 47
Receipt for
Rs. 31,645/57
given by the
Defendant
to the Bank of
Ceylon--
28. 11. 60

D47
**Receipt for Rs. 31,645/57 given by the Defendant to the
Bank of Ceylon.**

Nuwara Eliya
28. 11. 60

To:

The Manager
Bank of Ceylon
Nuwara Eliya.

I hereby acknowledge to have received from you an advance of 10 Rs. 31,645/57 (say rupees thirtyone thousand six hundred & fortyfive and cents fiftyseven only.)

Sgd. (on 10 cts stamp)
D. P. Mellaaratchy

D 48
Letter sent to
Bank of Ceylon
Nuwara Eliya
by the Defendant
28. 11. 60

D48
**Letter sent to Bank of Ceylon, Nuwara Eliya,
by the Defendant**

Nuwara Eliya
28. 11. 60

The Manager
Bank of Ceylon
Nuwara Eliya.
Dear Sir,

20

I hereby authorise you to make available the accommodation granted to me by way of loan at the account styled "D. P. Mellaaratchy" at Bank of Ceylon, Nuwara Eliya Branch and bearing account No. 1001.

Yours faithfully,
Sgd. D. P. Mellaaratchy

D 49
Letter sent to
Bank of Ceylon
Nuwara Eliya
by the Defendant
28. 11 60

D49
**Letter sent to Bank of Ceylon, Nuwara Eliya,
by the Defendant.**

30

Nuwara Eliya
28. 11. 60.

The Manager
Bank of Ceylon
Nuwara Eliya.
Dear Sir,

In connection with the loan of Rs. 31,645/57 granted to me, I hereby solemnly undertake to repay the said loan by 35 instalments 40

of Rs. 879.04 each and one instalment of Rs 879/17 which will be paid on the 28th day of each month commencing from December 1960.

Should I fail to provide funds in my account or to send you a remittance on the due date of each monthly instalment, I hereby agree that a penalty charge will be paid by me to cover additional expenses that will be incurred by you.

Yours faithfully,
Sgd. D. P. Mellaaratchy

D 49
Letter sent to
Bank of Ceylon
Nuwara Eliya
by the Defendant
28. 11 60
- Continued

P3

10 Application to open a Joint Current Loan Account at the
Mercantile Bank of India Ltd. by Eileen Marley
and the Defendant

P 3
Application to
open a Joint
Current Loan
Account at the
Mercantile Bank
of India Ltd.
by Eileen Marley
and the
Defendant-

No. 2 (Joint Account)

103 D.

The Manager,
The Mercantile Bank of India Ltd.
Colombo.

300 Intld

Dear Sir,

20 We hand you herewith Rs ... with which kindly open a Current Loan Account in our names in the books of the Bank. Cheques on this account will be signed by any one of us and, in the event of the decease of any of us, the balance at the credit of the account will be payable to the survivor or survivors.

We also authorise and request you to accept the signature(s) of Eileen Florence Mary Marley, Don Peter Mellaaratchy, on orders for the withdrawal of any securities, deed or articles at any time held by you for us and notices for the withdrawal of and discharges for any moneys held on any deposit account with you in our joint names.

30 We also agree that should you permit the account to be overdrawn we are and shall be jointly and severally liable to you for repayment of such overdrafts.

We agree to comply with, and to be bound by, the Bank's rules for the time being for the conduct of such accounts.

Please furnish us with a pass-book and a book of ... Cheque forms and note our signatures as under

Signature: Eileen Marley

Yours faithfully,
Signature: D. P. Mellaaratchy

1960				1961		
<u>Dec.</u>	31	To Balance	125,657.53	<u>Jan. 12</u>	By Cheque	6,000.00
					J. K.T.W. & Co.	
				June 30	To Balance	123,562.00
1961						
<u>Jan.</u>	28	To Debit Tax	.66			
<u>Mar.</u>	30	To Interest	1,931.30			
<u>May.</u>	25	To Debit tax	1.93			
<u>June</u>	29	To Interest	1,970.58			
			<u>129,562.00</u>	1961		<u>129,562.00</u>
10	June 30	To Balance	123,562.00	Dec. 31	to Balance	125,746.94
	July 29	To Debit Tax	1.97			
	Sept. 30	To Interest	2,180.79			
	Oct. 25	To Debit Tax	2.18			
			<u>125,746.94</u>	1962		<u>125,746.94</u>
	<u>Dec.</u>	31 To Balance	125,746.94	June 30	to Balance	132,423.87
	1962					
	<u>Jan.</u>	4 To Interest	2,217.84			
	<u>May</u>	21 To Debit Tax	2.22			
	<u>June</u>	4 To Interest	2,944.43			
20	28	To Interest	1,512.44			
			<u>132,423.87</u>			<u>132,423.87</u>
	1962.					
	<u>June</u>	30 To Balance	132,423.87	1962		
	<u>July</u>	26 To Debit Tax	4.46	<u>July 31</u>	to Balance	132,428.33
			<u>132,428.33</u>			<u>132,428.33</u>
	1962			1962		
	<u>July</u>	31 To Balance	132,428.33	<u>Dec. 31</u>	To Balance	134,766.71
	<u>Sept.</u>	28 To Interest	2,336.04			
	<u>Oct.</u>	17 To debit Tax	2.34			
30			<u>134,766.71</u>			<u>134,766.71</u>
	1962			1963		
	<u>Dec.</u>	31 To Balance	134,766.71	<u>May 31</u>	By Final-	
			<u>134,766.71</u>		repayment	134,766.71
						<u>134,766.71</u>

P 4
Copy of Joint
Current Loan
Account of Mrs.
E F M Marley
and the
Defendant
with the
Mercantile Bank
Ltd.

—Continued

I certify that the statement of account contained in the page represents a true copy of the entries taken from the ledger containing particulars of the current Joint Loan Account of Mrs. E.F.M. Marley and D. P. Mellaaratchy that such entries are contained in one of the ledger sheets (being one of the ordinary books of the Bank) kept by the Bank and were made in the usual and ordinary course of business and that such ledger sheet is still in the custody of the Bank.

MERCANTILE BANK LIMITED.
Sgd.

Accountant
(G. C. MORRIS)

Colombo.
25/9/1964.

245

P 6

P 6
Mercantile Bank
Cheque for
Rs. 257,500/-
drawn by the
Bank in favour
of Borakande
Estate Co. Ltd.-
29. 11. 60

**Mercantile Bank Cheque for Rs. 257,500/-
drawn by the Bank in favour of
Borakande Estate Co. Ltd.**

No. W032104

Colombo 29 Nov. 1960.

MERCANTILE BANK LIMITED, COLOMBO

Pay Borakande Estate Co. Ltd. or Order

Rupees Two hundred and fifty seven thousand five hundred only.

Mercantile Bank Limited

Sgd..... 10
Manager

Rs. 257500/-

Sgd.. ...
Accountant

(Reverse)

BORAKANDA ESTATE CO. LTD.

Sgd. **Ananda E. De Silva**
Director

Pay Commissioner of Inland Revenue.

BORAKANDA ESTATE CO. LTD.,

Sgd. **Ananda E de Silva**
Director

20

CREDIT CEYLON GOVT. Account
For Commissioner of Inland Revenue
Sgd. illegibly

... ..
Staff Officer, Collection Branch

P 13

**Deed of Transfer No. 1419 attested
by S. Gunasekera Notary Public**

P 13
Deed of
Transfer
No. 1419
attested
by S. Gunasekera
Notary Public
29. 11. 60,

Prior Registration:
Galle - Parts of F.145/145:
Now at Balapitiya Land Registry.

Drawn by us

Sgd: Illegibly.
Notaries Public

10 No. 1419

This indenture made and entered into at Colombo on this twenty ninth day of November one thousand nine hundred and sixty between Borakanda Estate Company Limited a Company duly incorporated in Ceylon and having its registered office at Kotahena Mills, Kotahena Colombo in the Island of Ceylon (hereinafter referred to as "the Vendor" which term or expression as herein used shall where the context so requires or admits mean and include the said Borakanda Estate Company Limited and its successors) of the one part and Eileen Florence Mary Marley of "Garoopna" Nuwara Eliya in the said Island and Don Peter Mellaaratchy of "Carstairs" Nuwara Eliya aforesaid (hereinafter referred to as "the Purchasers" which term or expression as herein used shall where the context so requires or admits mean and include the said Eileen Florence Mary Marley and Don Peter Mellaaratchy and each of them and their and each of their respective heirs executors administrators and assigns) of the other part.

WHEREAS the Vendor is seized and possessed of and well and sufficiently entitled to all that Estate called and known as Maha Borakande (formerly called KARANDENIYA ESTATE) situated at Karandeniya in the first schedule hereto fully described.

30 AND WHEREAS the Vendor had by Agreement No. 541 dated 6th August, 1960 as amended by deed No. 562 dated 12th November, 1960 both attested by F.C. de Saram of Colombo Notary Public agreed to sell MAHA BORAKANDE DIVISION of the said Maha Borakanda Estate to the Purchasers at or for the price or sum of RUPEES FOUR HUNDRED AND TWENTY-FIVE THOUSAND (Rs. 425,000/-) subject to the terms and conditions contained in the said Agreement No. 541 as amended by the said deed No. 562.

40 AND WHEREAS by its Certificate No. 476 dated 5th September 1960 the Tea and Rubber Estates (Control of Fragmentation) Board in terms of Section 14 of the Tea and Rubber Estates (Control of Fragmentation)

P 13
Deed of
Transfer
No. 1419
attested
by S. Gunasekera
Notary Public
29. 11. 60,
—Continued

Act No. 2 of 1958 authorised the Vendor to transfer the ownership of the said Maha Borakanda Division to the Purchasers.

NOW THIS INDENTURE WITNESSETH that the Vendor in pursuance of the said agreement and in consideration of the said sum of Rupees Four hundred and twenty-five thousand (Rs. 425,000/-) of lawful money of Ceylon well and truly paid by the Purchasers to the Vendor at or before the execution of these presents as directed in the said Agreement No. 541 as amended by the said deed No. 562 (the receipt whereof the Vendor doth hereby expressly admit and acknowledge) doth hereby grant convey sell transfer assign set over and assure unto the Purchasers 10
All that estate plantation and premises called and known as Maha Borakande Division (described in the second schedule hereto and hereinafter called "the said premises", together with all the growing crops and produce thereon and the buildings bungalows labourers lines fixed plant and machinery tools implements in use furniture (other than furniture belonging to the superintendent or members of the estate staff) cattle carts and all other the live stock thereon or thereto belonging (save as excepted by the said Agreement No. 541 as amended by the said deed No. 562) and all rights ways privileges easements servitudes and appurtenances whatsoever thereto belonging or in anywise appertaining thereto or held used or enjoyed therewith or reputed or known 20
as part and parcel thereof and all the estate right title interest property claim and demand whatsoever of the Vendor in to out of or upon the same.

TO HAVE AND TO HOLD the said premises described in the second schedule hereto together with all and singular the appurtenances thereto belonging unto the Purchasers as and from the First day of December One thousand nine hundred and sixty subject to the provisions contained in the said Agreement No. 541 as amended by the said deed No. 562 but otherwise absolutely for ever 30

AND THIS INDENTURE FURTHER WITNESSETH that the sale hereby effected is a sale *ad corpus* and not *ad quantitatem* and that the extent and description of the said Maha Borakande Division as set out in the said second schedule hereto are believed and shall be deemed to be correct and no error omission mis-statement or misdescription therein or otherwise shall invalidate the sale or be made the subject of any claim for compensation by the Vendor or the Purchasers or for an increase or reduction in the purchase price.

AND the Vendor doth hereby covenant and declare with and to the Purchasers that the said premises described in the said second 40

schedule hereto are free from any mortgages and other similar charges created by the Vendor and that the Vendor shall and will at all times hereafter at the request cost and expense of the purchasers do and execute or cause to be done and executed all such further and other acts deeds matters assurances and things for the better and more perfectly and effectually conveying and assuring the said premises or any part or portion thereof to the Purchasers as by the Purchasers shall or may be reasonably required but the Vendor doth not further or otherwise howsoever warrant and defend or undertake to warrant and defend the
 10 title to the said premises or to any part or portion thereof and any implied obligation on its part to do so is hereby expressly excluded.

IN WITNESS WHEREOF the Vendor has caused its Common Seal to be affixed and the Purchasers have set their respective hands to these presents and to two others of the same tenor and date at Colombo aforesaid on this twenty ninth day of November One thousand nine hundred and sixty.

THE FIRST SCHEDULE ABOVE REFERRED TO

All that Estate Plantation and premises called and known as Maha Borakande (formerly called Karandeniya Estate) situated in the Village
 20 Karandeniya of Ambalangoda Division of the Wellaboda Pattu in the District of Galle Southern Province in the Island of Ceylon bounded on the North by lands of Simaris de Silva, Suwaneris, Suwandahakuru Gaidirise, Thommayakuru Agoris, Colombage Lamaneris, Hewakuru Sandoris, Hewakuru Podisa and Balanahakuru Baisa, Fields of Ambalangoda People and Cecilino Aratchi, Kosatu Oya, Crown field, Cart Road, Diviangewela, Puwakgahawela, Kolluwella, and Kaluwala on the East by the Crown Field, Fields of Ambalangoda People, Sawaneris, Hewahakuru Babanisha and Endoris Kankanama, Lands of Suwaneris, Thommayahakuru Agoris, Hewahakuru Podise, Balanahakuru Baiso,
 30 Suduhakuru Odonisa, Suduhakuru Jando, Hewahakuru Soido and others, Kaluhakuru Guneris deceased, Munugodahakuru Carolis, Jandoris Silva and several others and Nandorisa and others Diviangewela claimed by Sidorisa and others, Kolluwela, Kosatu Oya, Kirinugewela, Crown land and Fields, Owitas and Highlands claimed by Villagers, on the South by the lands of Balanahakuru Baiso, Suduhakuru Odorisa, Suduhakuru Jando, Hewahakuru Soido and others, Munugodahakuru Carolis, Kaluhakuru Agenis Diyonis, Kirinugewela, Owita Highlands and Fields claimed by Villagers, Crown land, Fields and Highlands of Kalupabanage Jandoris Silva and several others, Fields of Endoris Kankanama and
 40 Denis Silva, Egodawelawatta of Semaneris Mudalali and Igalanaidegewela

P 13
 Deed of
 Transfer
 No. 1419
 attested
 by S. Gunasekera
 Notary Public
 29. 11. 60,
 —Continued

P 13
Deed of
Transfer
No. 1419
attested
by S. Gunasekera
Notary Public
29. 11. 60.
—Continued

of Kaluhakuru Inguwa deceased and on the West by the Fields of Endoris Kankanama, Denis Silva, Egodawelawatta of Semaneris Mudalali, Lands of Hendrick Singho and others, Balasuriya and Kaluhakuru Sinerisa, Pedrohakuru Gomisa, Kaluhakuru Jeda and others Kaluahakuru Agenis, Dyonis and Simaris de Silva, Kosgahaduwa of Kaluhakuru Sainerisa and Pedrohakuru Supina, Igalanaidegewela of Kaluhakuru Inguwa deceased, Delgahawatte Kumbura of W. Danoris and the Cart Road containing in extent four hundred and ninety one acres one rood and twenty eight perches (491A. 1R 28P) according to Plan No. 1576 dated 6th November 1919 made by J.H.W. Smith, Licensed Surveyor. 10

THE SECOND SCHEDULE ABOVE REFERRED TO:

All that estate plantation and premises called MAHA BORAKANDE DIVISION lying to the South of the Government High Road from Ambalangoda to Elpitiya being a portion of Maha Borakande Estate described in the first schedule hereto and depicted in the said Survey Plan No. 1576 situated at Karadeniya aforesaid and containing in extent three hundred and ninety nine acres two roods and twenty perches (399A. 2R. 20P) inclusive of the estate road and is comprised of :-

- (a) All that portion marked Lots PF (14 markings), B1, C, 16, 17¹, 17², D, NC (2 markings), F1, F2, G1, G2, 18, E, 19, 21, 20¹, 20², 22, B¹, 23, Cinnamon Blocks, A and C, 24¹ Jungle, 25, 24² Jungle, 26, Cinnamon Blocks B and D, 27¹, 27², 27³, 28 and Bungalow premises in the said Survey Plan No. 1576 and situated at Karadeniya aforesaid and bounded on the North by land of Simaris de Silva, Field of Ambalangoda People, Kosatu Oya, Field of Ambalangoda People, Crown Field, Road leading to the Government High Road from Ambalangoda to Elpitiya, Field of Cecilino Aratchi, Field of Ambalangoda People, Field of Suwaneris, Owita Land of Suwaneris, Diviangewela claimed by Sidorisa, Garden claimed by Thommayhakuru Agoris, Garden of Dambutuge Agan, Garden of Hewahakuru Saidoris, Garden of Hewahakuru Laida, Garden of Suwandahakuru Gaidirise, Road leading to the Government High Road from Ambalangoda to Elpitiya, Garden of Thommayahakuru Agoris, Garden of Colombage Lamaneris and and Garden of Hewahakuru Sandoris, on the East by Puwakgahawela 30

of Thommayhakuru Elise and Liyanchi, Owita Land of Ilandaridewa Jano, Estate Road, Portion of the same land (Kirinuge) Highlands claimed by Villagers, Highlands of Kalupahanage Jandoris Silva and several others, Crown Land Fields and Highlands of Kalupahanage Jandoris Silva and several others, Fields and Highlands claimed by Villagers and Highlands of Nandorisa and others, on the South by Highlands claimed by Villagers, Fields claimed by Villagers, Highlands of Kalupahanage Jandoris Silva and several others, Fields and Highlands of Kalupahanage Jandoris Silva and several others, Highlands of Nandorisa and others, Fields of Endoris Kankanama and Fields of Denis Silva and on the West by Fields claimed by Villagers, Egodawelawatta of Səmaneris Mudalali, Lands of Hendrick Singho and others, Highlands of Balasuriya, Owita of Kaluhakuru Sinorisa, Kosgahaduwa of Kaluahakuru Sainereisa and of Pedrohakuru Supina, Ikalanaidegewela of Kaluahakuru Inguwa deceased and Lands of Pedrohakuru Gomisa, Kaluahakuru Jeda and others, Delgahawatta Kumbura of W. Danoris Lands of Kaluahakuru Agenis and Diyonis and containing in extent three hundred and ninety eight acres and thirty perches (398A. OR. 30P) according to the said Plan No. 1576.

P 13
Deed of
Transfer
No. 1419
attested
by S. Gunasekera
Notary Public
29. 11. 60,
—Continued

10

20

30

- (b) All that portion marked NC in the said Survey Plan No. 1576 and lying between the Government High Road to Ambalangoda and the Kosatu Oya marked in the said Plan and situated at Karandeniya aforesaid bounded on the North, East and South by land belonging to the Government and on the West by Road leading to the Government High Road from Ambalangoda to Elpitiya and containing in extent one acre and sixteen perches (1A. OR. 16P) according to the said Survey Plan No. 1576 and
- (c) All that portion marked PF and lying to the North of Lot 21 in the said Survey Plan No. 1576 situated at Karandeniya aforesaid and bounded on the North,

P 13
Deed of
Transfer
No. 1419
attested
by S. Gunasekera
Notary Public
29. 11. 60,
—Continued

East, South and West by fields claimed by villagers and containing in extent one rood and fourteen perches (O.A. IR. 14P) according to the said Survey Plan No. 1576.

The Common Seal of the said Borakande Estate Company Ltd. was hereto affixed in the presence of

Sgd. Ananda E. de Silva

Sgd. T. E. de Silva Directors.

Who do hereby attest sealing thereof in the presence of:...

10

Sgd. F. C. de Saram

Sgd. Illegibly

Signed by the said Eileen Florence Mary Marley and Don Peter Mellaaratchy in the presence of:

Sgd. Eileen Marley,

Sgd. F. C. de Saram

Ssd. D. P. Mellaaratchy.

Sgd. Illegibly.

Sgd: Illegibly.

I Sugathadasa Gunasekera of Colombo in the Island of Ceylon Notary Public do hereby certify and attest that the foregoing instrument having been duly read over by Ananda Ernest de Silva and Tissa Emmanuel de Silva both Directors of Borakande Estate Company Limited (who have signed as "Ananda E. de Silva and "T. E. de Silva") and Eileen Florence Mary Marley and Don Peter Mellaaratchy (who have signed as "Eileen Marley" and "D. P. Mellaaratchy") in the presence of the subscribing witnesses hereto Frederick Cecil de Saram, Proctor of Colombo and Juan Jaffeer Noor Booso of 16 Mosque Lane, Colpetty, Colombo (who have signed as "F. C. de Saram" and "T. Jafeer") all of whom are known to me, the Common Seal of the said Borakanda Estate Company Limited was hereto affixed in the presence of the said Ananda Ernest de Silva and Tissa Emmanuel de Silva (who signed the same in the attestation of the sealing thereof as Directors of the said Company) and also signed by the said Eileen Florence Mary Marley and Don

20

30

Peter Mellaaratchy and 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 aforesaid this Twenty ninth day of November One thousand nine hundred and sixty.

P 13
Deed of
Transfer
No. 1419
attested
by S. Gunasekera
Notary Public
29. 11. 60,
—Continued

I further certify and attest that the consideration herein mentioned was paid as follows:-

(1) A sum of Rs. 42,500/- was paid at the execution of the deed of Agreement No. 562 dated 12th November 1960 and attested by F. C. de Saram, Notary Public.

10 (2) A sum of Rs. 257,500/- was paid by cheque No. 032134 dated 29th November 1960 drawn by the Mercantile Bank in favour of the Vendor Company and

(3) the balance sum of Rs. 125,000/- was paid by cheque No. C-644518 dated 29th November 1960 drawn on the Bank of Ceylon by Borakande Estate Co. Ltd. in favour of the Purchasers and duly endorsed by them in favour of the Vendor Company and that seventeen stamps of the value of Rs. 12,752 were impressed on the Duplicate of this instrument and one stamp of the value of Re. 1/- on the Original.

20 I lastly certify that the consent for the sale of the said Maha Borakande Estate was duly obtained on the 5th day of September 1960 from the Secretary, Tea and Rubber Estate (Control of Fragmentation) Board bearing No. 476.

Which I Attest

Sgd: Illegibly
Notary Public.

Date of Attestation)
29th November 1960.)

I, J. D. D. Piyadasa, Registrar of Lands do hereby certify the
30 foregoing is a true copy by mechanical process of duplicate of deed No. 1419 dated 29/11/1960 attested by Notary S. Gunasekera filed in this action and is issued on the application of V. A. P. Nanayakkara of Colombo.

20/2/62

Sgd. J. D. D. Piyadasa
Registrar.

P10

P 10
Copy of
Borakanda
Estate Current
Account for the
period 30. 11. 60
to 31. 7. 62

**Copy of Borakanda Estate Current Account for the
period 30.11.60 to 31. 7. 62.**

MERCANTILE BANK LIMITED COLOMBO.

In Account Current with
Borakanda Estate (1408 7165)

Dr.		Cr.
1960	1960	
Nov. 30 To c/o CB	3.	Dec. 31 To Balance
	<u>3.</u>	3.
		<u>3.</u> 10
<u>1960</u>		1961
Dec. 31 To Balance	3.	Jan. 12 By Cheque
<u>1961</u>		J K T & W
Feb. 15 Com. Galle Cheque	1.49	Feb. 17 Cheque Galle
Mar. 27 517051	1875.00	2811.85
May 24 Tax	1.88	1181.40
June 30 Balance	2111.88	
	<u>3993.25</u>	<u>3993.25</u>
<u>1961</u>		1961
Dec. 31 To Balance	2111.88	June 30 By Balance
	<u>2111.88</u>	2111.88
		<u>2111.88</u>
<u>1962</u>		1961
June 30 Balance	2111.88	Dec. 31 By Balance
	<u>2111.88</u>	2111.88
		<u>2111.88</u>
<u>1962</u>		1962
July 31 Balance	3111.88	June 30 By Balance
	<u>3111.88</u>	2111.88
		July 23 Cheque
		1000.00
		<u>3111.88</u>
		1962
		July 31 by Balance
		3111.88
		30

For Mercantile Bank Limited

Sgd. . . .
Manager Colombo.

I certify that the statement of account contained in the page represents a true copy of the entries taken from the ledger containing particulars of the current account of Borakande Estate that such entries are contained in one of the ledger sheets (being one of the ordinary books of the Bank) kept by the Bank and were made in the usual and ordinary course of business and that such ledger sheet is still in the custody of the Bank.

P10
Copy of
Borakande
Estate Current
Account for the
period 30.11.60
to 31.7.62
—Continued

Sgd
Manager.

10

D62

Letter sent to the Defendant by H. J. G. Marley

Garoopna,
8th Dec.

D 62
Letter sent to
the Defendant by
H. J. G. Marley
8. 12. 60

My Dear Peter,

Thank you for your report of 6th. Things are not going badly and I am glad to see a smooth beginning. I have to be in Colombo on 15th inst. but dont you bother to come up unless you would like to - I have to be at G.O.H. on afternoon of 15th and spend all the 16th at 4 meetings returning to Nuwara Eliya Saturday 17th
20 I'll postpone visit to B.K. for another month or so. If you want to get up I'll wait and go down with you. If not I'll get another car on my own - let me have a reply by return post.

Sgd. H. J. G. Marley

Salaams to both of you.

D51

**Memorandum from John Keell Thompson, White Ltd.
to Mercantile Bank Ltd. enclosing cheque for No. 2811/85.**

MEMORANDUM

National Mutual Building,
P. O. Box No. 76.
Colombo, 11th January 1961.

D 51
Memorandum
from
John Keell,
Thompson-
White Ltd. to
Mercantile Bank
Ltd.
enclosing cheque
for Rs. 2811/85-
11. 1. 61

30

From

John, Keell, Thompson, White Ltd.

To the Manager,

Mercantile Bank Ltd.
Colombo.

Dear Sir,

Please place proceeds of enclosed Cheque for Rs. 2811/85 to

D 51
Memorandum
from
John Keell,
Thompson-
White Ltd. to
Mercantile Bank
Ltd.
enclosing cheque
for Rs. 2811/85-
11. 1. 61
—Continued

credit of Borakanda Estate account and advise Mr. D. P. Mellaaratchy as usual.

Yours faithfully,
John, Keell, Thompson, White Ltd.

Sgd
For Accountant.

P 11
Letter sent to
M/s F. J. & G. de
Saram by the
Mercantile Bank
Ltd.--
12. 1. 61

P11
Letter sent to M/s F. J. & G. de Saram, by the
Mercantile Bank Ltd.

MERCANTILE BANK LIMITED.

10

G. P. O. Box No. 98,
Colombo 12th January, 1961.
Dept C/D.

FOR THE ATTENTION OF Mr. D. MARTENSZ

Messrs. F. J. & G. de Saram,
Colombo.

Dear Sirs,

MARLEY - MELLAARATCHY JOINT ACCOUNTS

As requested we enclose for your perusal copies of the Joint Account Opening forms of the 2 accounts held by us and a 20 guarantee bond signed by Mr. H. J. G. Marley.

We regret that no trace of a written undertaking by Messrs John, Keell, Thompson White Ltd., to pay any sum to us monthly, appears to be in our possession.

Yours faithfully,
Sgd.
Manager.

P11A

**Photostat copy of Application made by Eileen Marley and the
Defendant to the Mercantile Bank of India Ltd. to open a Joint
Current Account**

D. 5005 2807

P11A
Photostat copy
of application
made by Eileen-
Marley and the
Defendant to
the Mercantile
Bank of India Ltd.
to open a joint
Current Account

No. 2 (Joint Account)

The Manager,

The Mercantile Bank of India Ltd.,
Colombo.

Dear Sir,

- 10 We hand you herewithRs ...with which kindly open a Current Account in our names in the books of the Bank. Cheques on this account will be signed jointly by both of us and, in the event of the decease of any of us, the balance at the credit of the account will be payable to the survivor or survivors.

We also authorise and request you to accept the signature(s) of both of us jointly on orders for the withdrawal of any securities, deed or articles at any time held by you for us and notices for the withdrawal of and discharges for any moneys held on any deposit account with you in our joint names.

- 20 We also agree that should you permit the account to be overdrawn we are and shall be jointly and severally liable to you for repayment of such overdrafts.

We agree to comply with, and to be bound by, the Bank's rules for the time being for the conduct of such accounts.

Please furnish us with a pass-book and a book of
Cheque forms and note our signatures as under.

Signature: D. P. Mellaaratchy
D. P. Mellaaratchy

Yours faithfully,
Signature: Eileen Marley
Garoopna
Nuwara Eliya.

- 30 Names Mrs. Eileen Marley, Sgd. Eileen Florence Mary Marley
in full: Garoopna, Nuwara Eliya.
Occupation Don Peter Mellaaratchy.
and Address Borakanda Estate, Maha Edanda.

Introduced by:

Dear Sir,

The Borakande Estate Cheques must be signed by the both of us.

Sgd. Eileen Marley

D6
 Typed Letter
 with Postscript
 (hand-written)--
 12. 1. 61.

D 6
Typed Letter with Postscript (handwritten)

Borakanda Estate,
 Maha Edanda 12th Jan. 61.

My Dear Sir,

I hope that you had a good rest at your grand-sons place. I hope to go to Colombo tomorrow and then get back here on Saturday as I want to get to Nuwara Eliya at least by Monday. As I was not able to come up there when the Japanese people called me up I have lost this months rent. I couldn't leave the estate as Mr. Fernando was away. Our Brokers have sent in to the Bank Rs. 8811.85. I am 10 happy that I was able to catch the top market of Rs. 1.01. Our total production for the month of December was 13056 lbs. of sheet rubber and 1261 lbs of scrap. We tapped the full 31 days. This months expences have gone more than my expectations as we had to buy certain things and so on. I am almost certain that we will be able to bring down the expenses this month. In certain areas the leaves are already falling and I think our crop will go down this month. The Union has sent us a few demands and because of that Mr. Fernando likes me to be here for some time till we are able to give them at least some of the demands. I explained to him that I was going up just for a day 20 or two. To be frank Sir if I dont come over and hand over the house as promised I might even loose them. Our first crop is being picked in the coconut section and I hope to get a better crop than what they have got. I also must tell you that they have never got this amount of rubber in this section. Hoping to see you on Monday.

With our Best wishes and kind regards to you and Mrs. Marley
 Very Sincerely Yours,
 Sgd. Peter

P. S.

I have instructed M/s de Silva & Mendis to clear up the 30 secondary mortgage for Rs. 50,000/- in your favour of my half share of the property.

D 30

Carbon copy of the letter marked D 6 without the Postscript

D30
 Carbon copy of
 the letter
 marked D6
 without the
 Postscript--
 12. 1. 61.

Borakanda Estate,
 Maha Edanda 12th Jan. 61.

My Dear Sir,

I hope that you had a good rest at your grand-sons place. I hope to go to Colombo tomorrow and then get back here on Saturday as I want to get to Nuwara Eliya at least by Monday. As I was not able to come up there when the Japanese people called me up I have 40 lost this months rent. I couldn't leave the estate as Mr. Fernando was away. Our Brokers have sent into the Bank Rs. 8811.85. I am happy that I was able to catch the top Market of Rs. 1.01. Our total

Production for the month of December was 13056 of sheet rubber and 1261 lbs of scrap. We tapped the full 31 days. This months expenses have gone more than my expectations as we had to buy certain things and so on. I am almost certain that we will be able to bring down the expenses this month. In certain areas the leaves are already falling and I think our crop will go down this month. The Union has sent us a few demands and because of that Mr. Fernando likes me to be here for some time till we are able to give them at least some of the demands. I explained to him that I was going up just for a day or two. To be frank Sir if I don't come over and hand over the house as promised I might even loose them. Our first crop is being picked in the coconut section and I hope to get a better crop than what they have got. I also must tell you that they have never got this amount of rubber in this section. Hoping to see you on Monday. With our Best wishes and kind regards to you and Mrs. Marley.

Very Sincerely Yours,

D 30
Carbon copy of
the letter
marked D6
without the
Postscript-
12. 1. 61
—Continued

D 52
Mercantile Bank Credit Account Slip for Rs. 6000/-
JOURNAL

D 52
Mercantile Bank
Credit Account
Slip for Rs 6000/-
12. 1. 61

20

MERCANTILE BANK LTD.

Rs. 6000/-

Colombo 12. 1. 1961

Credit A/c	D. P. Mellaaratchy Jt. Loan a/c		
	No. 02969	6000	
	John Keell Thompson White Ltd.		
Receipt issued	Intld.	Total Rupees	6000
Acknow- ledged	Intld.	Asst./Acct.	Intld

D 8
Letter sent to
H. J. G. Marley
by David
Martensz -
16. 1. 61

D8

Letter sent to H. J. G. Marley by David Martensz.

David Martensz,

c/o

H. J. G. Marley. Esq.,

Garoopna,

Nuwara Eliya.

My dear Mr. Marley,

D: AW

16th January 1961.

BORAKANDE

I am sorry that it did not prove possible for the suggested 10
meeting to take place yesterday. I am particularly sorry because (a) I
do feel that the management of the estate must be put on a proper
footing and I am sure you will agree with that; and (b) in view
of the form which the transaction has taken, it is necessary for you
to alter your will and I wanted to discuss this with you.

To me it is disturbing to find that, although Mellaaratchy
clearly told me that he was putting up Rs. 50,000 in cash, he has
only put up half that sum. It is equally disturbing to find that,
as you have guaranteed the loan of Rs. 125,000 made by the Bank,
the nett result is that you have financed the purchase of the 20
estate to the extent of Rs. 2 lacs, which is very different from the
plan originally arranged. Next, Mrs. Marley tells me that she understood
from Mellaaratchy that de Silva and Mendis were holding Rs. 25,000
on his behalf - when I enquired from them, they told me they have
no money of his. And now, I understand, Mellaaratchy is residing
on the estate which was never suggested previously.

I enclose copy of a letter dated the 12th instant received from
D. L. & F. de Saram. Please note what they say.

Naturally, decisions on all these matters must rest with you and
Mrs. Marley, but they are quite clearly a very bad start. My advice 30
is that you and Mrs. Marley should take a firm stand now and make
it quite clear that the estate must be conducted on the normal lines
which I suggested to you at the time - namely that Mackwoods should
be appointed agents and have complete control over management.
Unless this is done the situation will get out of hand. Employing
agents does mean extra expense but it would be worth it.

I again ask that you should arrange a meeting with Mellaaratchy
but it will have to be on a Sunday as I cannot get away during
the week. Not this coming Sunday the 22nd but any Sunday after 40
that. I will come up by the Saturday night mail and return by
the Sunday down night mail. It would however be useless for me
to come up unless Mellaaratchy is going to be there.

In the meantime, I shall draft a fresh will for you.

Yours sincerely,

D11**Letter sent to David Martensz by H. J. G. Marley**

H. J. G. Marley

Garoopna,
Nuwara Eliya.
18th Jan.D 11
Letter sent to
David Martensz
by H. J. G.
Marley-
18. 1. 61

My dear Mr. Martensz,

Thank you for yours on the subject of Borakande dated 16th inst. We will expect you on Saturday 4th night at Garoopna, and Mellaaratchy will be here on Sunday morning the 5th Feb.

10

Yours,

Sgd. H. J. G. Marley

D12**Letter sent to H. J. G. Marley by David Martensz.**David Martensz,
C/o. F. J. & G. De Saram

Colombo

D 12
Letter sent to
H. J. G. Marley
by David
Martensz -
23. 1. 61

D: AW

23rd January 1961.

H. J. G. Marley, Esqr.,

20 Garoopna,

Nuwara Eliya.

My dear Mr. Marley.

Thank you for your letter of the 18th instant from which I note that Mr. Mellaaratchy will be at Garoopna on Sunday morning the 5th February. I shall come up by night mail on the 4th, arriving at Nanuoya at about 6.30 a.m. on the 5th. I shall doubtless be able to get a taxi to take me up to Garoopna. You must on no account come down to meet me; I shall catch the night mail down on Sunday evening. Although the 4th will be a holiday I am afraid I need to
30 be in Colombo on that day.

Yours sincerely,

Sgd. David Martensz

(endorsement in handwriting)

To Peter

This is to show you arrangements. Just rec wire from Superintendent saying he is desperate for money for cooly pay. What about the proceeds old rubber sold.

Intld. H. J. G. M.

D 16
Letter sent to
M/s F. J. & G. de
Saram by the
Defendant--
15. 2. 61

D16**Letter Sent to M/s F. J. & G. de Saram by the Defendant**

Borakanda Estate,
Maha Edanda,
15th February, 1961.

M/s F. J. & G. de Saram,
Proctors,
Colombo.

Dear Sirs,

With reference to your letter of the 10th. February addressed to me to Nuwara Eliya I wish to inform you that in view of the fact that Mrs. Marley has appointed Mr. Jaleel as her agent in respect of her interest in Borakanda Estate I am unable to accede to your request that Messers Mackwoods be appointed to manage the estate. I am forced to take up this position for the reason that Mr. Jaleel is Superintendent of Orion Estate Gampola which is under the management of M/s. Mackwoods. I must further state that Mr. Jaleel's interest in the said estate has been and will be adverse to mine.

Yours Faithfully
Sgd. D. P. Mellaaratchy 20

D 17
Letter sent to
the Defendant
by M/s F. J. & G.
de Saram
18. 2. 61

D 17
Letter sent to the Defendant by
M/s F. J. & G. de Saram

F. J. & G. de Saram.

Colombo,
18th February 1961

D. P. Mellaaratchy Esq.,
'Carstairs',
Nuwara Eliya.

Dear Sir,

30

We are in receipt of your letter of the 15th instant, written from Borakanda estate, and its contents are noted.

You say nothing however about the plan for selling the estate--regarding which, you will remember, you told the writer that you would send interested parties (of whom you were aware) to call and see us.

Are we to understand that you have now decided not to sell the estate--if so, the question of Mrs. Marley selling her half share will need to be considered.

Please let us hear from you early on this subject.

Yours faithfully,
Sgd. F. J. & G. de Saram

40

D 7

Letter sent to Martensz by H. J. G. Marley

D7
Letter sent to
Martensz by
H. J. G. Marley-
19. 2. 61.

Gareppna,
Nuwara Eliya
19th Feb.

My dear Martensz

I enclose a letter from Mellaaratchy in which he says he has instructed Silva & Mendis to fix a mortgage to me for 50,000/-. He has always promised this. Please move in the matter-ask Mendis & de Silva.

Yours Sincerely
Sgd: H. J. G. Marley

Sorry I cannot write better.

P 18

Letter sent to the Defendant by M/s F. J. & G. de Saram

P18
Letter sent to
the Defendant
by M/s F. J. &
G. de Saram-
21. 2. 61

F. J. & G. de Saram,

Colombo.
Ceylon.

Our Ref. D: A.W.

21st. February 1961.

20
D. P. Mellaaratchy, Esq.,
"Carstairs",
Nuwara Eliya.

Dear Sir,

BORAKANDE ESTATE

We enclose herewith a copy of our letter of date to Messrs. de Silva and Mendis and perhaps you will be good enough to confirm to them that the mortgage is to be drawn on the lines therein mentioned.

Your faithfully,
Sgd. F. J. & G. de Saram

P18A
Letter Sent to
M/s De Silva &
Mendis by
M/s F. J. &
G. de Saram-
21. 2. 61.

P18A
Letter Sent to M/s De Silva & Mendis
by M/s F. J. & G. D. Saram
D: A W.

F. J. & G. De Saram.

21st February 1961.

Messrs. de Silva & Mendis,
Proctors,
Colombo.

Dear Sirs,

BORAKANDE ESTATE.

10

Mr. D. P. Mellaaratchy has written to Mr. Marley as follows:-

"I have instructed Messrs. de Silva and Mendis to clear up the secondary mortgage for Rs. 50,000 in your favour of my half share of the property".

In view of the fact, in addition to the loan of Rs. 50,000, Mr. Marley has also (a) paid a sum of Rr. 17,004 for legal expenses and (b) given a guarantee to the Bank in respect of a loan account in the joint names of Mrs. Marley and Mr. Mellaaratchy for a sum of Rs. 125,000, it will be necessary for Mr. Mellaaratchy to secure not only the sum of Rs. 50,000 but also a half share of (a) and (b) above. 20

We shall be obliged if you will let us know when we may expect to receive a draft of the mortgage for approval on behalf of Mr Marley. A copy of this tetter is being sent to Mr. Mellaaratchy.

Yours faithfully,

Sgd. F. J. & G. de Saram.

P20
Letter sent to
M/s De Silva &
Mendis by
M/s F. J. &
G. de Saram-
27. 2. 61

P 20
Letter sent to M/s De Silva & Mendis by
M/s F. J. & G. de Saram

D: A W.
J/7609/F.

27th February 1931

39

Messrs. De Silva and Mendis,
Proctors,
Colombo.

Dear Sirs,

BORAKANDE ESTATE.

For your ready reference we enclose a copy of our letter to you of the 21st February and shall be much obliged if you will let us hear from you on the subject urgently as Mr. Marley is anxious to have the mortgage bond completed.

Yours faithfully, 40

D 64

Letter sent to M/s De Silva & Mendis by the Defendant

Borakanda Estate.
Maha-Edanda.
27-2-1961

D 64
Letter sent to
M/s De Silva &
Mendis by the
Defendant -
27. 2. 61

M/s. de Silva & Mendis
Proctors
Colombo.

Dear Sir,

10 Messrs F J. & G. de Saram have sent me a copy of the letter written to you by them on the 21st February. Please don't take any action in the matter till I see you.

Thanking you

Yours faithfully

Sgd D. P. Mellaaratchy

P 19

**Letter sent to M/s F. J. & G. de Saram
by M/s De Silva & Mendis**

Your Ref. No. D:AW
Our REF. No. J/7609/G

P 19
Letter sent to
M/s F. J. & G. de
Saram by M/s De-
Silva & Mendis
28. 2. 61

20

Colombo.
28th February. 1961.

Messes. F. J. & G. de Saram.
Proctors,
Colombo.

Dear Sirs,

BORAKANDE ESTATE.

30 With reference to your letters of the 21st and 27th instant, we write to inform you that we are in communication with our client, Mr. Mellaaratchy, and on hearing from him a further communication will follow.

Yours faithfully,

Sgd. De Silva & Mendis

D 9
Part of a Letter
signed by
E. Marley -
3. 3. 61

D9

Part of a Letter signed by E. Marley

We have kept every letter you have written since these discussions began, one admitting your willingness to take out a mortgage for 50,000/- in favour of H. J. G. Marley with Silva & Mendis it is in Mr. Martensz file.

My diplomatic stroke

How I sympathise with the Buddhists if this is the Catholic way of doing things you are always prating about having a God, I'm afraid he is made of plaster, try God in Heaven for a change' 10

Yours faithfully,
Sgd. E. Marley.

P. S.

Please address all further communications to Mr. Jaleel or the Lawyers.

3. 3. 61.

P 17
Letter sent to
the Defendant
by H.J.G. Marley
4. 3. 61

P17

Letter sent to the Defendant by H. J. G. Marley

Garoopna,
Nuwara Eliya. 20
March 4th 1961

P. Mellaaratchy Esq.,
Borakande Estate,
Maha Edanda.

Dear Mr. Mellaaratchy,

You wrote to me on the 12th January that you had instructed de Silva and Mendis to draw up the secondary mortgage in my favour. Mr. Martensz tells me that the mortgage must be for Rs. 50,000/- plus half of the legal expenses, Rs. 17,004/- and half of my guarantee on the loan account for Rs. 125,000/-. Please make sure 30 to instruct de Silva and Mendis accordingly as I am sure you will understand that I am anxious to have the mortgage signed without delay. Also kindly ask de Silva and Mendis to send F. J. & G. de Saram's a draft of the mortgage bond.

Yours Sincerely,
Sgd. H. J. G. Marley.

D18**Letter sent to the Defendant by M/s F. J. & G. de Saram**

Our Ref. VGC/DS.

Colombo,
8th August, 1961.**D 18**
Letter sent to
the Defendant
by M/s. F. J. &
G. de Saram -
8. 8. 61P. Mellaaratchy Esq.,
Borakande Estate,
Mahaedanda.

Dear Sir,

10

Mr. H. J. G. MARLEY**YEAR OF ASSESSMENT - 1961/62.**

We shall be glad if you will please send us, as early as conveniently possible, working account of Borakande Estate showing Mrs. Marley's half share of the profit or loss for the period 1st April 1960 to 31st March 1961. Please also let us have particulars as regards the acreages. Please also send us particulars of income of Mrs. Marley's half share of the amount realised on paddy.

Yours faithfully,
Sgd. F. J. & G. de Saram

20

D33**Letter sent to the Defendant by Clarence****L. de Silva****REGISTERED**

Clarence L. De Silva J.P.U.M.

12th October 1961.

Don Peter Mellaaratchy Esq.,
Maha Borakanda Estate,
Maha Edanda,
Ambalangoda.**D 33**
Letter sent to
the Defendant
by Clarence
L. de Silva
12. 10. 61

30 Dear Sir,

BORAKANDA.

I am instructed by my client Mrs. E. F. M. Marley of "Garoopna," Nuwara Eliya, who, on deed No. 1419 of 29th November, 1960 attested by Sugathadasa Gunasekera, Notary Public, became with you joint purchaser of the estate described, in the said deed, to request you to give over to her, as early as possible, the management of the said estate on a date which may be arranged to suit the convenience of yourself and my client.

D 33
Letter sent to
the Defendant
by Clarence L.
de Silva -
12. 10. 61
—Continued

I am also instructed to inquire (a) why you have cut, without my client's consent, several valuable trees on the said estate (b) what you have done with the trees you have cut, (c) whether you have sent the produce from the said estate to the brokers Messrs John, Keell, Thompson, White Ltd; requiring them to pay the proceeds of sale of all produce to the Mercantile Bank Ltd; Colombo, to be credited to a general account in the name of the estate in terms of your agreement. Please furnish all particulars.

I am further instructed to demand from you a true and full account of all income, expenditure etc, pertaining to the said estate, 10 to be furnished by you within fourteen days from today. Although you are in possession and management of the entire estate from the time of purchase you have so far failed and neglected to render to my client any kind of account or to pay any sum of money as you are legally bound to do.

Yours faithfully,
Sgd. C. L. de Silva

P 14
Letter sent to
the Defendant
by M/s F. J. &
G. de Saram -
23. 10. 61

P14
Letter sent to the Defendant by M/s F. J. & G. de Saram

F. J. & G. De Saram

P. O. Box No. 212. 20
Colombo,
Ceylon,
23rd October, 1961.

Our Ref. D: ED.

D. P. Mellaaratchy, Esq.,
"Carstairs",
Nuwara Eliya.
Dear Sir,

We write under instructions from Mr. H. J. G. Marley of Nuwara Eliya.

You will recall the following facts:

- (1) when arrangements for the purchase of Borakande estate by Mrs. Marley and yourself were discussed at our office in your presence it was arranged that Mr. Marley would lend you a sum of Rs. 50,000/- and that you were to pay interest thereon at 2 1/2% per annum;
- (2) by cheque No. V-591427 dated 7th August, 1960 drawn in your favour and credited to your Account at the Bank of Ceylon, Nuwara Eliya, Mr. Marley lent you the abovementioned sum of Rs. 50,000/- and interest thereon became payable as from that date;

30

40

- (3) at the request of Mrs. Marley and yourself, Mr. Marley drew a further cheque No. V-591459 on the 18th November, 1960 for Rs. 17004/- in favour of Messrs. De Silva & Mendis, being legal expenses involved for the purpose of the completion of the purchase of Borakande estate. The understanding was that this loan would also carry interest at 2 1/2% per annum in so far as your half share of the loan was concerned,

10 We are instructed by Mr. Marley that you have paid no interest on the sums of Rs. 50,000/- and Rs. 8,502/- respectively (the latter sum being half of the legal expenses above referred to).

Accordingly we are now instructed to call upon you to repay the two principal sums of Rs. 50,000/- and Rs. 8,502/- respectively together with interest at 2 1/2% from the respective dates of the cheques above referred to. In the event of your failure to make payment forthwith, our instructions are to institute legal proceedings against you.

20 We are further instructed that, to enable the purchase of the estate to be completed, it was arranged for the Mercantile Bank Limited to lend Mrs. Marley and you on a joint loan account a sum of Rs. 125,000/- with interest as charged by the Bank. This the Bank did against the guarantee of Mr. Marley. It was part of the arrangement between Mrs. Marley and yourself that repayment to the Bank would be made at the rate of at least Rs. 6,000/- per month. Mr. Marley understands that only one such repayment was made and, as far as he knows, you have made no further payments to the Bank in fulfilment of the arrangement above referred to. Interest is thus accumulating and this is against the interests of Mr. Marley. He therefore instructs us to require you forthwith to pay to the Bank all instalments not
30 already paid. Please let us hear from you when you have complied with this requirement.

Yours faithfully,
Sgd. F. J. & G. de Saram.

P 15

Letter sent to M/s F. J. & G. de Saram by the Defendant

M/s. F. J. & G. de Saram,
Proctors,
Colombo.

40 Dear Sirs,

Borakanda Estate,
Maha Edanda 9.11.61

P 15
Letter sent to
M/s F. J. & G. de
Saram by the
Defendant-
9. 11. 61

YOUR REF. D:ED

With reference to your letter of 23rd October I wish to inform you that I have asked Mr. J. C. Thurairatnam Advocate to meet Mr. David Martensz of your Firm in connection with the matter contained therein.

P14
Letter sent to
the Defendant
by M/s. F. J. &
G. de Saram-
23. 10. 61
—Continued

P 15
Letter sent to
M/s F. J. & G. de
Saram by the
Defendant -
9. 11. 61
—Continued

Mr. Thuraiatnam informs me that he is in consultation with Mr. David Martensz and I shall write to you after the discussions with these two gentlemen are concluded.

Yours faithfully,
Sgd. D. P. Mellaratchy

D 19
Letter sent to
Clarence L. de
Silva, Crown
Proctor, Amba-
langoda, by the
Defendant
12. 11. 61

D 19
Letter sent to Clarence L. de Silva, Crown Proctor Ambalangoda,
by the Defendant

(P3)

Clarence L. de Silva Esq; J.P.U.M.
Solicitor,
Crown Proctor & Notary,
Ambalangoda,

Dear Sir,

BORAKANDA ESTATE.

Your letter dated 12th October 1961 comes as a complete surprise to me, but nevertheless fortifies me in my belief that your client is suffering from a total loss of memory as a result of which she is giving you wrong instructions. 20

Your client is well aware that Mr. Marley, who had made the largest cash contribution towards the purchase of the Estate, had made it an Express Condition precedent before the purchase of the Estate that I should give up all other work of any kind in order to devote my Entire time and Energy towards the management of the Estate. Your client had agreed and accordingly I had given up all other work and I am managing the Estate. Your Client's request that the management of the Estate be handed over to her cannot be considered in any circumstances. 30

In respect of the other queries contained in your letter I am under no obligation to answer them as long as her lawfully appointed Agent and Attorney Mr. Jaleel continues to act on her behalf in respect of her half share Mrs. Marley has written to me on several occasions not to have any direct communications with her but to have all dealings with the said Mr Jaleel, which I am doing. You will appreciate that till such time as there is a lawful renunciation of the appointment of Mr. Jaleel as Agent and Attorney I am accountable to nobody else.

I am compelled to take up this position because I have documentary proof that a certain Mr. Payoe is going about the country stating that he has taken over the Management of the Estate. He has also gone to Galle, Balapitiya Courts, the Bankers and to the Rubber Control Office Colombo and made defamatory statements concerning me. These are in the hands of my lawyers who are considering taking legal action against Mrs. Marley and this man Payoe for damages.

D 19
Letter sent to
Clarence L. de
Silva,
Crown Proctor,
Ambalangoda,
by the Defendant
12. 11. 61
—Continued

In view of all that I have stated above I shall consider replying to your several queries if your instructions come from Mr. Jaleel and
10 not from Mrs. Marley.

Your faithfully,
Sgd. D. P. Mellaaratchy
Managing Partner.

Compared by:- Intld.

I, D. A. Kumarasiri, Secretary, District Court, Balapitiya do hereby certify that the foregoing is a Certified Copy of the Documents (D1A, D2 and D3 not printed) in D. C. Balapitiya Case No. M/1207.

Sgd ..
Secretary, District Court,
Balapitiya.

20
10th November, 1964.

D 20

Letter sent to Advocate J.C. Thurairatnam by David Martenz

David Martenz
F. J. & G de Saram

D 20
Letter sent to
Advocate J. C.
Thurairatnam by
David Martenz
13. 11. 61

Our Ref D/dr.
Colombo

13th November, 1961

J. C. Thurairatnam, Esq., Advocate,
30 Law Library,
Colombo.

Dear Mr. Thurairatnam,

Referring to your recent call on the telephone, I look forward to the personal visit which you promised to make with regard to Mr Marley and Mr. Mellaaratchy. I have this morning had a letter urging me to

D 20
Letter sent to
Advocate J. C.
Thuraiatnam by
David Martensz
13. 11. 61
—Continued

file action immediately for the recovery of the monies owing to Mr. Marley, and he will be very annoyed if I do not do so immediately. In fact it is possible that he may instruct me to send the papers up to Nuwara Eliya at once for action to be filed this week.

I do hope therefore that you will make a point of coming to see me sometime within the next day of two.

Yours sincerely,
Sgd. David Martensz

P. S. Copy of this goes to Mr. Marley.

Intld. D. M.

10

D 35

D 35
Letter sent to
the Defendant
by Clarence L.
de Silva -
22. 11. 61

Letter sent to the Defendant by Clarence L. de Silva

Registered Post.

“Jayanthi”
Ranombe,
Ambalangoda.

22nd November 1961.

Don Peter Mallaaratchy Esq.,
Borakanda Estate,
Maha Edanda.
Ambalangoda.

20

Dear sir,

BORAKANDA ESTATE

With reference to your letter dated 12th November 1961, I am instructed by my client Mrs. E. F. M. Marley to state that the allegations contained therein are unfounded and false and have been made in the hope that she would acquiesce in the colossal fraud you have perpetrated on her. For the present, my client notes your refusal to comply with the lawful requests contained in my letter of 12th October 1961.

Since you have contributed only Rs. 25,000/- out of the consideration of Rs. 425,000/- for the purchase of the estate, I suggest that you sell 30 your interests to my client, or that you purchase her interests if you are in a position to do so.

Yours faithfully,
Sgd. C. L. de Silva

Letter sent to Clarence L. de Silva by the Defendant (with envelope)

D 36
 Letter sent to
 Clarence L. de
 Silva by the
 Defendant (with
 envelope)
 8. 12. 61

Borakanda Estate,
 Maha Edanda,
 8th. December, 1961

Clarence L. de Silva J.P., U.M.
 Solicitor,
 Crown Proctor, & Notary,
 10 Ambalangoda,

Dear Sir,

BORAKANDA ESTATE.

With reference to your letter dated 22nd November 1961 I have to reiterate that all the allegations contained in my letter dated 12th. November 1961 are well-founded and true. If you are interested you may, after prior notice, peruse the documentary proof I have of every allegation I had made.

Your client is obviously smarting under the fact that I have refused to be a party to her attempt "to rob her elderly husband for her gain".
 20 She seems to have forgotten the numerous letters she has written to me towards that end.

Please ask your client what her contribution was towards the consideration of Rs. 425,000/- for the purchase of the estate?

Mr. Marley had, in consideration of the faith and affection he had in me, made the largest contribution towards the purchase of the estate and insisted that I should be in complete charge of the Management. Under no circumstances would I be a party to the betrayal of this trust and I would request you to instruct your client accordingly.

With regard to your suggestion that I sell my interest to your
 30 client, I would refer you to previous correspondence I had with your client on this subject.

Yours Faithfully,

Sgd...
 (D. P. Mellaaratchy)

D 36
Letter sent to
Clarence L. de
Silva by the
Defendant (with
envelope)
8. 12. 61
—Continued

(Envelope)

Ambalangoda
R 6675

Per Registered Post

Clarence L. De Silva Esq. J.P..U.M.
Solicitor
Crown Proctor & Notary,
"Jayanthi"
Randombe,
Ambalangoda.

10

from:-

Peter Mallaaratchy
Borakanda Estate,
Maha Edanda.

D 21
Letter sent to
Advocate J. C.
Thurairatnam by
David Martensz
12. 1. 62

D 21

Letter sent to Advocate J. C. Thurairatnam by David Martensz

F. J. & G. de Saram

Colombo,
12 Jan. 1962.

Dear Mr. Thurairatnam,

20

I am going to Nuwara Eliya on 19- January and will be seeing the Marleys.- Please let me know before then full details of any proposals. This is urgent.

Yours. . .
Sgd. D. E. Martensz

D 22
Letter sent to
H. J. G. Marley
by David
Martensz
3. 2. 62

D22

Letter sent to H. J. G. Marley by David Martensz

David Martensz

D/dr.

3rd February, 1962. 30

H. J. G. Marley Esquire,
"Garoopna".
Nuwara Eliya.
Dear Mr. Marley,

I have been trying to push Mr. Mellaaratchy into taking some kind of active step and eventually I had a call from his lawyer and him yesterday

You will remember that when we all met at your house in February of last year, I advised you and Mrs. Marley and told Mr. Mellaaratchy that the most sensible plan would be for him to buy Mrs. Marley's half share and thus put an end to the present intolerable situation.

D. 22
Letter sent to
H. J. G. Marley
by David
Martensz
3. 2. 62
—Continued

When they called on me yesterday they told me that they have now come to the same conclusion and that Mr. Mellaaratchy is now arranging to sell some other property of his and is willing to buy Mrs. Marley's half share. For this purpose, he will pay off the
10 bank, he will re-pay the money lent by you, he will re-pay the Rs. 50,000/- provided by Mrs. Marley, he will pay the Rs. 17,000/- odd paid by you on account of legal expenses and he will take over the responsibility of the mortgage to Mr. de Silva.

My very strong advice is that you and Mrs. Marley should agree to this proposal. I am well aware that you may both feel that Mrs. Marley should be entitled to half share of the profits from the estate since date of purchase—this I will of course try to extract from Mr. Mellaaratchy. It is my definite opinion however that you would both be far wiser to forego any such profit if you can only
20 get your capital back and be quit of a hopelessly unsatisfactory state of affairs. I repeat that this is my advice and I must very seriously warn you both that, if you can be re-paid on the lines abovementioned, you are going to be jolly lucky - you will be saved a lot of legal expense and you will also be saved all the worry and anxiety which you have been experiencing.

I again say - get your capital back and do not worry about minor details, even if you lose a bit of money. There are many occasions when it is far wiser to cut one's loss and be free from anxiety.

30 The matter is urgent it will take time to complete the details—and, if Mr. Mellaaratchy's sale of his other land materialises, we must go straight ahead without losing time. Please therefore send me a telegram on receipt of this letter, telling me whether or not you agree to the above proposal.

Your sincerely,

D 37
 Plaintiff in District
 Court, Balapitiya
 Case No. M/1207
 6. 2. 62

D37

Plaint in District Court, Balapitiya Case No. M/1207.

In the District Court of Balapitiya.

Eileen Florence Mary Marley of "Garoopna" Nuwara
 Eliya, *...Plaintiff.*

No. M-1207.

vs.

Don Peter Mellaaratchy of Borakanda Estate, Maha
 Edanda, Karandeniya, Ambalangoda. *Defendant.*

The 6th day of February, 1962.

The plaintiff of the abovenamed plaintiff appearing by her Proctor 10
 Clarence L. de Silva states as follows:-

1. The defendant resides at the abovementioned place and the land which is the subject matter of this action is situated within the local limits of this Court.
2. On the Deed No. 1419 dated 29th November 1930, attested by S. Gunasekera Notary Public the plaintiff and the defendant became the purchasers of the estate, plantation and premises called and known as Maha Borakanda Division in extent 399 Acres 2 Roods and 20 Perches morefully described in the second schedule of the said deed and in the schedule annexed hereto for a sum of 20 Rs. 425,000 of which consideration the defendant paid only a sum of Rs. 25,000/-.
3. To the best of the plaintiff's knowledge and information the aforesaid estate has, inter alia,
 - (a) A coconut plantation spread over an area of about 59 Acres and other trees of value;
 - (b) A cultivation of paddy within an area of about 5 acres.
 - (c) A rubber plantation on an extent of over 300 Acres,

In addition to the above there are on the said estate several buildings, bungalows, a rubber factory, machinery and other equipment. 30

4. FIRST: FOR A FIRST CAUSE OF ACTION

The defendant agreed with the plaintiff to manage the said estate and render true accounts to her, and send the produce derived from the property to the brokers Messrs John Keel Thompson White

Ltd., at Colombo, requiring them to pay the proceeds of sale of all produce to the Mercantile Bank Ltd., Colombo to be credited to a general account in the name of the said estate for the benefit of the plaintiff and the defendant.

D 37
Plaint in District
Court, Balapitiya
Case No. M/1207
6. 2. 62
—Continued

5. The defendant has failed and neglected to render to the plaintiff an account of the income derived from the said estate, and of the expenditure, if any, incurred thereon and to adhere to the terms of the agreement referred to in the preceding paragraph. The plaintiff estimates her half share of the nett income from the coconut, paddy and rubber at Rs. 32,500/- as from 1st December, 1960 up to date.

6. A cause of action has arisen to the plaintiff to sue the defendant for an accounting and to claim from him the sum of Rs. 32,500/- with legal interest thereon, and the plaintiff claims the said amount of such other sums as may be found by the Court to be justly due to the plaintiff from the defendant.

7. SECOND. AND FOR A SECOND CAUSE OF ACTION: The defendant has since November 1960 unlawfully tapped immature rubber trees standing on an extent of about 25 acres and slashed the barks of several well-grown budded rubber trees standing on the said estate, and has caused loss and damage to the property. The plaintiff estimates her damage to Rs. 10,000/-.

A Cause of action has arisen to the plaintiff to claim from the defendant the said sum of Rs. 10,000/- with legal interest thereon and the plaintiff claims the said amount or such other sum as may be found by the Court to be justly due to the plaintiff from the defendant.

8. THIRD. AND FOR A THIRD CAUSE OF ACTION. The defendant without the consent of the plaintiff has cut three valuable jak trees standing on the said estate and has thereby caused damage. The plaintiff assesses her damage at Rs. 500/-. A cause of action has arisen to the plaintiff to claim from the defendant the said sum of Rs. 500/- with legal interest thereon, and the plaintiff claims the said amount or such other sum as may be found by the Court to be justly due to the plaintiff from the defendant.

9. The defendant has failed and neglected to meet the plaintiff's claims and has wrongfully refused to give information on the matters and things herein averred or to give over the management of the

D 37
 Plaintiff in District
 Court, Balapitiya
 Case No: M/1207
 6. 2. 62
 —Continued

said estate to the plaintiff.

10. FOURTH. AND FOR A FOURTH CAUSE OF ACTION. The defendant has neglected a cultivation of about 24 Acres of budded rubber trees planted in or about the year 1959, rendering the said cultivation useless by such neglect. The defendant has also failed and neglected to manure the rubber plantations on the property herein described and to sulphur dust them, with the result that the plantations have deteriorated, and the yield from the tappable trees has been considerably diminished. The plaintiff estimates her damage at Rs. 13,000/-. A cause of action has arisen to the plaintiff to claim 10 from the defendant the said sum of Rs. 13,000/- with legal interest thereon, and the plaintiff claims the said amount or such other sum as may be found by Court to be justly due to the plaintiff from the defendant.

11. FIFTH. AND FOR A FIFTH CAUSE OF ACTION. The plaintiff has from time to time advanced to the defendant a sum aggregating about Rs. 11,523/27 on the faith of his representations that he was short of funds for the purpose of managing the said estate. The defendant has failed and neglected to account to the plaintiff or to refund to her the money so advanced. A cause of 20 action has arisen to the plaintiff to claim from the defendant the said amount with legal interest thereon, and the plaintiff claims the said amount of Rs. 11,523/27 or such other sum as may be found by the Court to be justly due to the plaintiff from the defendant.

12. By reason of the facts and circumstances herein set out, it has become necessary to appoint a Receiver for the preservation or better custody or management of the said property and to remove the defendant from the possession or custody hereof till the final determination of this action.

Wherefore the plaintiff prays for

- (a) An order on the defendant for an accounting;
- (b) Judgment against the defendant in the sum of Rs. 67,523/27 with legal interest thereon;
- (c) The appointment of a Receiver in terms of Section 671 of the Civil Procedure Code (Cap. 101)
- (d) Costs;
- (e) Such other or other relief as to the Court shall seem meet.

Sgd. C. L. de Silva
 Proctor for Plaintiff. 40

THE SECOND SCHEDULE ABOVE REFERRED TO:

All that estate plantation and premises called Maha Borakanda Divison lying to the South of the Government High Road from Ambalangoda to Elpitiya being a portion of Maha Borakanda Estate described in the first Schedule hereto and depicted in the said survey plan No. 1576 situated at Karandeniya aforesaid and containing in extent three hundred and ninety nine Acres two roods and twenty Perches (399a-2R-20P) inclusive of the estate road and is comprised of :—

- 10 (a) All that portion marked Lots PF (14 markings) B1, C 16, 17, 17¹, 17², D, NC (2 markings) F1, F2, G1, G2, 18, E, 19, 21, 20², 20¹, 22 B², 23 Cinnamon blocks A and C, 24¹ Jungle, 25, 24² Jungle 26, Cinnamon Blocks B and D, 27¹, 27², 27³, 28 and bungalow premises in the said survey plan No. 1576 and situated at Karandeniya aforesaid and bounded on the North by land of Simaris de Silva, Field of Ambalangoda People, Kosatu Oya, Field of Ambalangoda People, Crown Field, Road, leading to Government High Road from, Ambalangoda to Elpitiya, Field of Cecilino Aratchi, Field of Ambalangoda People, Field of Suwaneris, Owita land of Suwaneris, Diviangewela
20 claimed by Sidorisa, Garden claimed by Thommayahakuru Agoris, Garden of Dambuluge Agan, Garden of Hewahakuru Saidoris, Garden of Hewahakuru Laida, Garden of Suwandahakuru Gaidirise, Road leading to the Government high Road from Ambalangoda to Elpitiya, Garden of Thommayahakuru Agoris, Garden of Colombage Lamaneris and garden of Hewahakuru Sandoris, on the East by Puwakgahawela of Thommayahakuru Elise and Diyanchi, Owita land of Illandaridewa Jano, Estate Road, Portion of the same land (Kirinuge) Highlands claimed by villagers, Fields and Highlands of Kalupahanage Jandoris Silva and several others, Crown Land, Fields and High lands
30 claimed by Villagers and Highlands of Nandorisa and others, on the South by Highlands claimed by Villagers, Fields claimed by Villagers, Highlands of Kalupahanage Jandoris Silva and several others; Fields and Highlands of Kalupahanage Jandoris and several others, Highlands of Nandorisa and others, Fields of Endoris Kankanama and fields of Denis Silva and on the West by Fields claimed by villagers, Egodawelawatta of Semaneris Mudalally, lands of Hendrick Singho and others, Highlands of Balasuriya, Owita of Kaluhakuru Saineris, Kcsgahaduwa of Kaluwahakuru Sainerisa and Peduruwahakuru Supina
40 Igalanadegewela of Kaluwahakuru Inguwa deceased and lands of Peduruwahakuru Gomisa, Kaluwahakuru Jedo and others, Delgahawatta

D 37
Plaint in District
Court, Balapitiya
Case No. M/1207
6. 2. 62
—Continued

D 37
Plaint in District
Court, Balapitiya
Case No. M/1207
6. 2. 62
—Continued

Kumbura of W. Dancris, lands of Kaluwehakuru Agenis and Deonis and cantaining in extent Three Hundred aad Ninety eight Acres and Thirty Perches (C98A - OR - 30P). according to said Plan No. 1576.

- (b) All that portion marked NC in the said Survey plan No. 1576 and lying between the Government High Road, to Ambalangoda and Kosatu Oya marked in the said plan and situated at Karandeniya aforesaid and bounded on the North, East and South by land belonging to the Government and on the West by Road leading to the Government High Road from Ambalangoda to Elpitiya 10 and containing in extent One Acre and Sixteen Perches (1A - OR - 16P) according to the said survey plan No. 1576 and
- (c) All that portion marked PF and lying to the North of Lot 21 in the said Survey Plan No. 1576 situated at Karandeniya aforesaid and bounded on the North, East, South and West by Fields claimed by Villagers and containing in extent One Rood and Fourteen Perches (OA - 1R - 14P) according to the said Survey Plan No. 1576.

20

Sgd. C. L. de Silva
Proctor for Plaintiff.

P 21

Answer Filed in District Court, Balapitiya, case No. M/1207

P 21
Answer Filed in
District Court,
Balapitiya, Case
No. M/1207
20. 2. 64

In the District Court of Balapitiya.

Mrs. E. F. M. Marley of "Garoopna" Nuwara Eliya.
..... *Plaintiff.*

No. M/1207

Vs.

D. P. Mellaaratchy of Borakanda Estate Maha Edanda Karandeniya, Ambalangoda... *Defendant* 30

On this 20th day of February, 1964.

The answer of the defendant abovenamed appearing by Miss H. S. Seneviratne his Proctors states as follows:-

1. This defendant admits the jurisdiction of this Court to hear and determine this action and also averments in paragraphs 1, 2 and 3 of the plaint subject to the express denial of the allegation in paragraphs 1 in regard to the defendant's residence.

P 21
Answer Filed in
District Court,
Balapitiya, Case
No. M 1207
20. 2. 64.
—Continued

2. The defendant denies paragraphs 4, 5, 6, 7, 8, 9, 10, 11 and 12 of the plaint subject to the express admissions contained therein.

3. The plaintiff and the defendant purchased Maha Borakanda Estate and became entitled thereto in equal shares. By Agreement the defendant was in sole management thereof until about the 20th
10 February 1962.

4. On the 20th February 1962 the plaintiff and her husband along with some thugs wrongfully took forcible possession of the said estate from the defendant. Also the plaintiff on the night of the 20th February 1962 dishonestly and fraudulently removed from the said Estate rubber of the approximate value of Rs. 15,000/- and coconuts of the approximate value of Rs. 4000/-. The books of accounts kept under the directions of the defendant were on the estate at all relevant times and have not been available to the defendant after the 20th February 1962.

5. As at the 20th February 1962 the defendant had expended a
20 sum of about 20,000/- of his own money in running the estate and the defendant's personal belongings on the said estate was of the value of Rs. 2000/-.

6. On the 20th February 1962 the plaintiff had fraudulently purported to lease the entirety of the said Estate by indenture of lease No. 3341 attested by V. A. P. Nanayakkara Notary Public.

7. On and after the 20th February 1962 the defendant wrongfully deprived of his rightful possession of the said estate and of his belongings; and the defendant acting on legal advice initiated the necessary steps to prosecute the plaintiff criminally and regain possession
30 of the estate, books of accounts, the rubber and coconuts referred to above and his belongings.

8. Thereafter the plaintiff acting by her Proctor Mr. Welikala and others entered into negotiations with the defendant as a result whereof agreement No. 227 dated 2nd March 1962 by R. M. S. Karunaratne Notary Public was entered into by the parties to this action. The said Indenture of agreement is annexed herewith marked "A" and pleaded as part and parcel of this answer. The defendant thereafter and in consequence

P 21
 Answer Filed in
 District Court,
 Balapitiya, Case
 No. M. 1207
 20. 2. 64

thereby abandoned all steps initiated by him in terms of paragraph 7 above and gave up all claims the defendant had against the plaintiff. The Plaintiff is barred and estopped from resiling from such agreement.

9. By the said agreement the plaintiff agreed inter alia to withdraw this action. Thus the defendant is entitled to have this action dismissed even without going into the merits thereof.

FOR A CLAIM IN RECONVENTION.

10. Under and by virtue of the agreement No 227 aforesaid the plaintiff agreed to purchase the undivided one half share of the Maha Borakanda Estate belonging to the defendant for a sum of Rs. 100,000/- 10 in the event of the defendant obtaining the Certificate of consent to transfer his ownership of Maha Borakanda Estate in terms of the Tea and Rubber Estate (Control of Fragmentation) Act 2 of 1958 to the plaintiff.

11. The defendant had duly obtained certificate No. 974 dated 9th April 1962 from the Tea and Rubber Estate Control of Fragmentation Board.

12. In breach of the agreement the plaintiff has failed and neglected to pay to the defendant the purchase price of Rs. 100,000/- and failed to tender duly to the defendant for execution of deed of transfer for 20 the undivided one half share of Maha Borakanda Estate in favour of the plaintiff as provided for in clause 4 of the said agreement. Also on the 15th June 1962 the plaintiff unlawfully and fraudulently has sought to repudiate the said agreement No. 227.

13. In accord with the terms of Clause 12 of the said agreement the plaintiff has now become liable to pay to the said defendant a sum of Rs. 100,000/- as liquidated damages.

14. There is now due and owing to the defendant from the plaintiff the said sum of Rs. 100,000/- and the defendant by way of a claim in reconvention is entitled to Judgment in a sum of Rs. 100,000/- 30 with legal interest at 5% per annum from 15th June 1962.

Wherefore the defendant prays:-

- (a) that the plaintiff's action be dismissed.
- (b) for judgment against the plaintiff in a sum of Rs. 100,000/- with legal interest at 5% per annum from the 15th June 1962 till payment in full;
- (c) for costs and
- (d) for such other and further relief as to this Court shall seem meet.

Sgd. H. S. Senoviratne 40
Proctor for Defendant

Settled by:-

Mr. Norman Waidyaratne

Mr. J. C. Thurairatnam

Mr. C. Thiagalingam Q.C.

Advocates.

P 21
Answer Filed in
District Court
Balapitiya, Case
No. M/1207
20. 2. 64
—Continued

Compared by:- Intld.

I. D. A. Kumarasiri, Secretary, District Court, Balapitiya do hereby certify that the foregoing is a Certified Copy of the Answer in D. C. Balapitiya Case No. M/1207.

10

Sgd

Secretary, District Court.
Balapitiya, 26. 11. 64.

D 31

**Deed of Lease No. 3341 attested by V. A. P. Nanayakkara,
Notary Public**

D 31
Deed of Lease
No. 3341 attes-
ted by V. A. P.
Nanayakkara,
Notary Public
20. 2. 62

Victor A. P. Nanayakkara.

Proctor S. C. & Notary Public.

Prior Registration:- Galle

20 Parts of F. 145/145 now at
Balapitiya Land Registry.
LEASE

No. 3341

THIS INDENTURE of lease made and entered into at Colombo on this Twentieth day of February, One Thousand Nine Hundred and Sixty Two Between Mrs. Eileen Florence Mary Marley of Garoopna, Nuwara Eliya, presently at the Galle Face Hotel, Colombo (hereinafter called and referred to as the Lessor of the one part and Gamini Abeysinghe Wijesekera Jayatilleke of "Guruwatte Wallauwa" Meetiyagoda and Danapala Gunasekera of No. 85, Subadrarama Road, Nugegoda
30 (hereinafter called and referred to as the Lessee) of the other part.

Witnesseth

That for and in consideration of the sum of Rupees Five Hundred (Rs. 500/-) lawful money of Ceylon being rent for the first month of the term hereof (the receipt whereof the said Lessor hereby admit and

D31
Deed of Lease
No. 3341 attes-
ted by V. A. P.
Nanayakkara,
Not ry Public
20. 2. 62.

—Continued

acknowledge) and of the further rents to be paid by the said Lessees their heirs executors administrators and assigns as hereinafter provided unto the Lessor her heirs executors administrators or assigns and in consideration of the covenants provisions and agreements hereinafter contained on the part and on behalf of the Lessees and their aforewritten to be paid observed and performed the said Lessor doth hereby let, lease and demise unto the said Lessees their heirs executors administrators and assigns all that and those the premises fully described in the Schedule hereto. Together with all and singular the rights, privileges, easements, servitudes and appurtenances whatsoever to the said premises belonging 10 or used enjoyed therewith or reputed or known as part and parcel thereof and all the estate right title interest claim and demand whatsoever of the lessor in to out of or upon the same.

To Hold the said premises hereby demised with all and singular the rights and appurtenances thereto belonging unto the Lessees their heirs executors administrators and assigns for and during the term or period of five years commencing from the Twenty Second day of February One Thousand Nine Hundred and Sixty Two fully to be completed and ended YIELDING AND PAYING therefor during the said term unto the Lessor her heirs executors administrators or assigns the 20 clear sum of Rupees Thirty Thousand (Rs 30,000/-) to be paid monthly at the rate of Rs. 500/- per mensem commencing from the 22nd day of March 1962.

And the said Lessees hereby for themselves their heirs executors administrators covenant with the Lessor her heirs executors administrators and assigns that the Lessees or their aforewritten shall and will during the continuance of this Lease, pay the said rent hereby reserved in manner and on the days and dates hereinbefore provided and appointed for the payment of the same and shall and will hold the said lease subject to the following obligations on the part of the Lessor 30 and the Lessees respectively to be observed and performed viz:—

1. The Lessees undertake to keep the premises in good and condition
2. The Lessees undertake to pay all charges rates acreage taxes and other charges due on the leased premises and keep the Lessor indemnified against all prosecutions arising out of the non-payment of the said taxes or rates or charges and keep the Lessor indemnified.

3. The Lessees will possess and enjoy the leased premises and pay the Lessor one fourth (1/4) share of the nett income after deducting all the working expenses which will be set for the lease rents provided however the Lessees will be entitled to pay either the monthly rental or the one fourth share of the net income whichever is less and such payment be set off against the rents due under these presents.

D31
Deed of Lease
No. 3341 attes-
ted by V. A. P.
Nanayakkara,
Notary Public
20. 2. 62.
—Continued

And lastly the Lessee shall and Will, at the expiration or other
10 sooner determination of the said term peaceably and quietly deliver
up and surrender the said demised premises unto the Lessor or her
aforewritten, in good order and condition, reasonable wear and tear
excepted: Provided always and it is hereby declared that if the said
rent hereby reserved or any part thereof shall be in arrears and
unpaid for the space of three months after any of the days or
dates on which the same ought to be paid us aforesaid, whether
the same shall or shall not have been legally demanded it shall be
lawful for the Lessor or her aforewritten thereupon or at any time
thereafter, into and upon the said demised premises or any part
20 thereof in the name of the whole, to re-enter and the same to have
again repossess and enjoy as in and for her first or former estate
and possession and thereby determine this demise.

And lastly the Lessor doth hereby for herself her heirs executors
and administrators, covenant with the Lessees their heirs, executors,
administrators and assigns, that the Lessee, duly paying the rent
hereby reserved, and observing and performing the covenants and
conditions herein contained on her part to be observed and performed shall
and may peaceably and quietly possess and enjoy the said permises hereby
dimised, during the said term hereby granted without any lawful
interruption from or by the Lessor or any person rightfully claiming
30 from or under

In witness whereof the said Lessor and the said Lessee have
hereunto and to two others of the same tenor and date as these
presents set their hands at the place and on the date aforewritten

THE SCHEDULE ABOVE REFERRED TO:

All that Estate plantations and premises called Mahaborakanda
Division lying to the south of the Government High Road from
Ambalangoda to Elpitiya being a portion of Maha Borakanda Estate

D 31
Deed of Lease
No. 3341 attes-
ted by V. A. P.
Nanayakkara,
Notary Public
20. 2. 62

—Continued

depicted in Survey Plan No. 1576 dated 6th November, 1919 made by J.H.W. Smith Licensed Surveyor situated at Karandenia of Ambalangoda Division of Wellaboda Pattu in the District of Galle Southern Province and containing in extent Three hundred and ninety nine acres two roods and Twenty Perches (A 399 - R2 - P20) inclusive of the estate Road, and is comprised of:-

- (a) All that portion marked Lots PF (14 markings) B1, C, 16, 17, 17², D NC (2 markings) F1, F2, G1, G2, L8, E, 19, 21, 20², 20¹, 22, B², 23, Cinnamon Blocks A and C 24 jungle, 25, 24², jungle 26 Cinnamon Blocks B and D27¹, 10 27², 28 and bungalow premises in the said Survey Plan No. 1576 and situated at Karandeniya aforesaid and bounded on the North by land of Simaris de Silva, field of Ambalangoda people, Kosatu Oya, field of Ambalangoda people, Crown field, road leading to Government High Road from Ambalangoda to Elpitiya, field of Celino Arachchi, field of Ambalangoda people, field of Suwaneris, Owita land of Suwaneris, Diviangewela claimed by Sidorisa, garden of Thomaya Hakuru Agiris, garden of Dombuluge Agan, garden of Hewahakuruge 20 Siyadoris, garden of Hewahakuruge Laida, garden of Sivandahakuruge Gaigorisa, road leading from Ambalangoda to Elpitiya, garden of Thomayahakuruge Agoris, garden of Kolombage Lamaneris, and garden of Hewahakuruge Sundoris, on the East by Puwakhawela of Thomayahakuruge Elisa. Liyanchi Owita land of Ilandari-dewage Jano, Estate Road, portion of same land (Kirinuge) High lands claimed by Villagers, high lands of Kalupahanage Janoris Silva and several others, Crown land, fields and high lands of Kalupahanage Jandiris Silva 30 and several others, fields and high lands claimed by villagers and high lands of Nandoris Silva and others on the South by high lands claimed by villagers, high lands of Kalupahanage Silva and several others, high lands of Andoris and others, fields of Endoris Kankanama and field of Denis Silva and on the West by fields claimed by villagers, Egodawelawatte of Semaneris Mudalali; lands of Hendrick Singho and others high lands of Balasuriya Owita of Kularachchige Seneris Kosgahaduwa of Halukuruge Seneris and Peduru Hakuru Supina, 40

Kaluhakuruge Unguwa deceased and lands of Peduru-hakuruge Gomisa, Kaluhakuruge Jeda and others Delgahawatte Kumbura of W. Danoris, lands of Kaluhakuru Agiris and Diyonis containing in extent three hundred and ninety eight acres and thirty perches (A398-RO-P30) according to the said Plan No. 1576.

D 31
Deed of Lease
No. 3341 attes-
ted by V. A. P.
Nanayakkara,
Notary Public
20. 2. 62
—Continued

- 10 (b) All that portion of land marked NC in the said Plan No. 1676 and lying between the high road to Ambalangoda and the Kosatu Oya marked in the said Plan and situated at Karandeniya aforesaid and bounded on the North, East and South by lands belonging to Government on the West by High Road leading to the Government High Road from Ambalangoda to Elpitiya containing in extent one acre sixteen perches (A1-RO-P16).
- (c) All that portion of land marked PF Lot 21 in the said Plan No. 1576 situated at Karandeniya aforesaid bounded on the North, East, South and West by fields claimed by Villagers containing in extent one rood and fourteen Perches (AO - R1 - P14).

20 Witnesses who aver and declare that they are well acquainted with the executants and know their proper names, occupations and residences.

Sgd. Eileen Marley,
Sgd. G. A. Jayatilleke,
Sgd. D. Gunasekera.

Sgd. R. G. Samaranayake.
Sgd. N. Jayawardene.

Sgd. Victor A. P. Nanayakkara.
Notary Public.

I, Victor Austin Perera Nanayakkara of Colombo in the Island of Sri Lanka do hereby certify and attest that the foregoing
30 Instrument having been duly read over and explained by me the said Notary to Mrs. Eileen Florence Mary Marley who signed as "Eileen Marley", to Gamini Aboyesinghe Wijesinghe Jayatilleke who signed as "G. A. Jayatilleke", and to Danapala Gunasekera who signed as "D. Gunasekera" the within named executants all of whom are not known to me, in the presence of Richard Gregory Samaranayake of No. 26, Peters Lane, Dehiwala who signed as "R. G. Samaranayake" and Nalanda Jayawardene of Gimaralanda Estate Baddegama who signed as "N. Jayawardene" the subscribing witnesses thereto both of whom are known
40 to me, the same was signed by the said executants and also by the said witnesses and by me the said Notary in my presence and in the presence of one another all being present at the same time at the Galle Face Hotel in Colombo on this Twentieth day of February One Thousand Nine Hundred and Sixty Two.

D 31
Deed of Lease
No. 3341 attes-
ted by V. A. P.
Nanayakkara,
Notary Public
20. 2. 62
—Continued

And I further certify and attest that no consideration was paid in my presence and that the Duplicate of this Instrument bears six stamps of the value of Rs. 244/- and the original a stamp of One Rupee (Re. 1/-).

Date of attestation)
20th February, 1962.)

Sgd. Victor A. P. Nanayakkara.
Notary Public.

True Copy.

Sgd. Victor A. P. Nanayakkara
Notary Public

10

D 32
Protocol of
Deed of Lease
No. 3341 attes-
ted by V. A. P.
Nanayakkara,
Notary Public
20. 2. 62

D 32
Protocol of Deed of Lease No. 3341 attested by V. A. P. Nanayakkara,
Notary Public

Search and Examination
of Title dispensed with

Sgd. Eileen Marley,
Sgd. (Illegibly)
Sgd. (Illegibly)

Prior Registration: Galle
Parts of F145/145 Now at
Balapitiya Land Registry
Lease

20

No. 3341.

This indenture of lease made and entered into at Colombo on this Twentieth day of February One Thousand Nine Hundred and Sixty Two Between Mrs. Eileen Florence Mary Marley of "Garoopna" Nuwara Eliya presently at Galle Face Hotel, Colombo (hereinafter called and referred to as the Lessor) of the one part And Gamini Abeyesinghe Wijesekera Jayatilleke of "Guruwatta Wallauwa" Meetiyyagoda and Danapala Gunasekera of No. 85 Subadrama Road, Nugegoda (hereinafter called and referred to as the Lessees) of the other part

30

WITNESSETH

That for and in consideration of the sum of Rupees Five Hundred (Rs. 500/-) lawful money of Ceylon being rent for the first month of the term hereof (the receipt whereof the said Lessor hereby admit and acknowledge) and of the further rents to be paid by the said Lessees their heirs executors administrators and assigns as hereinafter

provided unto the Lessor her heirs executors administrators or assigns and in consideration of the covenants provisions and agreements hereinafter contained on the part and on behalf of the Lessee and their aforewritten to be paid observed and performed the said Lessor hereby let, lease and demise unto the said Lessee their heirs executors administrators and assigns all that and those the premises fully described in the Schedule hereto together with all and singular the rights, privileges, easements, servitudes and appurtenances whatsoever to the said premises belonging or used enjoyed therewith or reputed or known as part and
 10 parcel thereof and all the estate right title interest claim and demand whatsoever of the lessor in to out of or upon the same.

To hold the said premises hereby demised with all and singular the rights and appurtenances thereto belonging unto the Lessee their heirs executors administrators and assigns for and during the term or period of five (5) years commencing from the twenty second day of February One Thousand Nine Hundred and Sixty Two fully to be completed and ended Yielding and paying therefor during the said term unto the Lessor: her heirs executors administrators or assigns the clear sum of Rupees Thirty Thousand (Rs. 30,000/-) to be paid
 20 monthly at the rate of Rs. 500/- per mensem Commencing from the 22 day of March 1962.

And the said Lessees hereby for themselves their heirs executors administrators covenant with the Lessor, her heirs executors administrators and assigns that the Lessee or their aforewritten shall and will during the continuance of this Lease, pay the said rent hereby reserved in manner and on the days and dates hereinbefore provided and appointed for the payment of the same and shall and will hold the said lease subject to the following obligations on the part of the Lessor and the Lessee respectively to be observed and performed viz:-

- 30
- (1) The Lessees undertake to keep the lease premises in good order condition.
 - (2) The Lessees undertakes to pay all charges rates acreage taxes and other charges due on the leased premises and keep the Lessor indemnified against all prosecutions arising out of the non payment of the said taxes or rates or charges, and keep the Lessor indemnified.
 - (3) The Lessees will possess and enjoy the leased premises and pay the Lessor one fourth share of the net income after deducting all the working expenses, which

D 32
 Protocol of
 Deed of Lease
 No. 3341 attes-
 ted by V. A. P.
 Nanayakkara,
 Notary Public
 20. 2. 62

—Continued

D 32
 Protocol of
 Deed of Lease
 No. 3341 attes-
 ted by V. A. P.
 Nanayakkara,
 Notary Public
 20. 2. 62
 —Continued

will be set off for the lease rents provided however that the Lessees will be entitled to pay either the monthly lease rents or one fourth share of the net income which ever is less and such payment will be a set off for the lease rent due under These Present.

And lastly the Lessee shall and will, at the expiration or other sooner determination of the said term peaceably and quietly deliver up and surrender the said demised premises unto the Lessor or her aforewritten, in good order and condition, reasonable wear and tear excepted: Provided always and it is hereby declared that if the said rent hereby reserved or any part thereof shall bein arrears and unpaid for the space of three months after any of the days or dates on which the same ought to be paid as aforesaid, whether the same shall or shall not have been legally demanded it shall be lawful for the Lessor or her aforewritten thereupon or at any time thereafter, into and upon the said demised premises or any part thereof in the name of the whole, to re-enter and the same to have again repossess and enjoy do in and for her first or former estate and possession and thereby setermine this demise. 10

And lastly the Lessor hereby for herself her heirs executors and administrators, covenant with the Lessee their heirs, executors, administrators and assigns, that the Lessee, duly paying the rent hereby reserved, and observing and performing the covenants and conditions herein contained on part to be observed and performed shall and may peaceably and quietly possess and enjoy the said premises hereby demised, during the said term hereby granted without any lawful interruption from or by the Lessor or any person rightfully claiming from or under 20

In Witness whereof the said Lessor and the said Lessees have hereunto and to two others of the same tenor and date as these presents set their hands at the place and on the date aforewritten 30

THE SCHEDULE ABOVE REFERRED TO:

All that estate plantation and premises called Maha Borakanda Division lying to the south of the Government High Road from Ambalangoda to Elpitiya being a portion of Mahaborakanda Estate depicted in Survey Plan No. 1576 dated 6th November, 1919 made by J. H. W. Smith Licensed Surveyor situated at Karandeniya of Ambalangoda Division of Wellaboda Pattuwa in the District of Galle Southern Province and containing in extent Three hundred and ninety nine acres two roods and twenty perches (A399/R-2-P20) inclusive of the estate road and is comprised of:- 40

- (a) All that portion marked lots PF (14 markings), B1, C, 16, 17, 17² D, N¹ (2 markings) F1, F², G1, G², 18, E, 19, 21, 20² 20¹ 22, B² 23. Cinnamon Blocks A and C, 24. Jungle, 25, 24² Jungle. 26. Cinnamon Blocks B and D 27¹, 27², 27³, 28, and bungalow premises in the said Survey Plan No. 1576 and situated at Karandeniya aforesaid and bounded on the North by land of Simaris de Silva, field of Ambalangoda people, Kosatu Oya, field of Ambalangoda people, Crown field, road leading to the Government High road from Ambalangoda to Elpitiya, field of Cecilino Aratchy, field of Ambalangoda people, field of Suwaneris, owita land of Suwaneris, Diviyangewela claimed by Sidorisa, garden claimed by Thomaya Hakuru Agiris, garden of Dambuluge Agan, garden of Hewahakuru Siyadoris, garden of Hewahakuru Laida, garden of Sevendahakuru Gaigorise, road leading from Ambalangoda to Elpitiya, garden of Thomayahakuru Agoris, garden of Kolambage Lamaneris, and garden of Hewahakuru Sundoris on the East by Pawakgahawela of Thommayahakuru Elise, Liyanchi owita land of Illandaridewejano, Estate road, portion of same land (Kirinuge) high lands claimed by villagers, high lands of Kalupahanage Jandoris Silva and several others, Crown land, fields, and high lands of Kalupahanage Jandiris Silva and several others, fields and high lands claimed by villagers and high lands of Nandoris Silva and others on the South by high lands claimed by villagers, fields claimed by villagers, high lands of Kalupahanage Jandoris Silva and several others, highlands of Nandoris and others, fields of Endoris Kankanama, and fields of Denis Silva and on the West by fields claimed by villagers, Egodawelawatte of Semanoris Mudalali, lands of Hendrick Singho and others, high lands of Balasuriya, owita of Kaluaratchige Seneris Kosgahaduwa of Kaluhakuruge Sineris and Pedura Hakuru Supina.

D 32
Protocol of
Deed of Lease
No. 3341 attes-
ted by V. A. P.
Nanayakkara,
Notary Public
20. 2. 62

—Continued

10

20

30

40

Kaluhakuruge Unguwa, deceased and lands of Peduru Hakuru Gomisa, Kaluhakuru Jeda and others, Delgahawatte Kumbura of W. Danoris, lands of Kaluhakuru Agiris and Diyonis containing in extent Three hundred and ninety eight acres and thirty perches (A398-RO-P30) according to the said Plan No. 1576.

D 32
 Protocol of
 Deed of Lease
 No. 3341 attes-
 ted by V. A. P.
 Nanayakkara,
 Notary Public
 20. 2. 62
 —Continued

- (b) All that portion of land marked NC in the said Survey Plan No. 1576 and lying between the high road to Ambalangoda and the Kosatu Oya marked in the said Plan and situated at Karandeniya aforesaid and bounded on the North, East and South by lands belonging to Government on the West by the road leading to the Government high road from Ambalangoda to Elpitiya containing in extent one acre and sixteen perches (A1-RO-P16).
- (c) All that portion of land marked PF lot 21 in the said Plan No. 1576 situated at Karandeniya aforesaid bounded on the North, East, South and West by fields claimed by villagers containing in extent one rood and fourteen perches (AO-R1-P14). 10

Witnesses who aver and declare that they are well acquainted with the executants and know their proper names occupations and residences.

Sgd. Eileen Marley
 Sgd (Illegibly)
 Sgd (Illegibly)

Sgd R. G. Samaranayake
 Sgd N. Jayawardena

Sgd. Victor A. P. Nanayakkara 20

I Victor Austin Perera Nanayakkara of Colombo in the Island of Sri Lanka do hereby certify and attest that the foregoing Instrument having been duly read over and explained by me the said Notary to Mrs. Eileen Florence Mary Marley who signed as "Eileen Marley", to Gamini Abeysinghe Wijesekera Jayatilleke who signed as "G. A Jayatilleke", and to Danapala Gunasekera who signed as "D. Gunasekera" the within named executants all of whom are not known to me in the presence of Richard Gregory Samaranayake of No. 26 Peters Lane Dehiwala who signed as "R. G. Samaranayake" and Nalanda Jayawardene of Gimaralanda Estate Baddegama who signed as "N. Jayawardene" 30 the subscribing witnesses thereto both of whom are known to me, the same was signed by the said Executants, and also by the said witnesses and by me the said Notary in my presence and in the presence of one another all being present at the same time at the Galle Face Hotel in Colombo on this Twentieth day of February One Thousand Nine Hundred and Sixty Two.

And I further certify and attest that no consideration was paid in my presence and that the Duplicate of this Instrument bears Six Stamps of the value of Rs. 244/- and the original a stamp of One Re 1/-.

Sgd. Victor A. P. Nanayakkara 40
Notary Public

Date of Attestation
 20 February 1962.

D54**Statement made to Dehiwala Police by S. Weerawardena.**

EXTRACT TAKEN FROM THE M. O. I. B. OF DEHIWALA POLICE

Date:- 20. 2. 62 Time 8.55 p.m. Page 319 Para 377

COMPLAINT OF THREAT.

Mr. SHELTON WEERAWARDANA, Age 29 yrs. Planter of Borakanda Estate, Maha Edanda.

Residing at above address appeared at the Charge Room and complains thus:-

- 10 Today on 20. 2. 62 at about 4.20 pm. Kumarasingha one of my labourers came running to the rubber field where I was inspecting the work and told me that a party of about 50 armed with guns have come to the Bungalow and they are awaiting for you to harm you. He also said it is not advisable to be here now and to get a car to take my Mrs. home. I immediately went to a friend of mine and got a car and came aback to the Bungalow. When I came to the Bungalow I saw about 80 to 90 people, men and women round my bungalow. Before I got down from the car about 30 men armed with guns and swords came near the car and told me to
- 20 leave the Estate immediately. If I dont leave that they will kill me and my wife. One of them pointed a revolver and said "if you love a life do according to what we said." I got down from the car and went inside the Bungalow where I met Mrs. Marley Mrs. Marley, one Jayatillake whom I met earlier and two other guests. Then Mrs. Marley came up to me and said that I have taken in charge of this Estate and you are not wanted here from now on. If you want employment you must take my side and give evidence in my case which I have filed at Balapitiya Court. I didn't tell her anything and went to my wife and told her to get ready to go
- 30 home. She immediately got into my car and came with me up to the office. There I met Kumarasinghe and David. These two labourers told me that they also want to go with us and they have been assaulted and not safe. From the office we were escorted to the entrance of the gate in two other cars. There we were asked to stop one chap got down from one of the cars and told me not to go to the Police Station to record my statement. If you go we will shoot you and your wife. From the Estate gate we were escorted up to Dehiwala round about in two cars one in front and the other in the rear. My car was in the middle. I stopped my car at

D 54
Statement, made
to Dehiwala'
Police by
S. Weerawardena
20. 2. 62.
—Continued

D 54
Statement, made
to Dehiwala
Police by
S. Weerawardena
20. 2. 62.
—Continued

Dehiwala junction and told them that we have to go along High Street to my wife's place. Then they said now we are not coming with you, you can go alone but do not go to the Police Station. I saw 4 to 5 guns inside the rear car which was Morris Minor. The people who came to my Bungalow had about 20 to 25 guns. After they went off I came to make statement. Signed in English. Read over admitted to be correct. Signed P. C. 6428 Wijeratna

I certify that the above extract taken by me correctly;

Sgd. A. Wijesekera P. C. 2749.

P. C. 2749 A. Wijesekera. 10

The above is a True copy of documents of which the original is in my custody.

Sgd...
The Inspector of Police
Police Station Dehiwala 17.8.62.

Sgd....
Asst. Supdt. of Police Mt. Lavinia 18.9.63.

D 55
Statement
made to Ambalangoda Police
by the Defendant
22. 2. 62

D55

Statement made to Ambalangoda Police by the Defendant.

EXTRACT FROM THE G. C. I. B. OF AMBALANGODA POLICE 20

Date. 22.2.63. Time 8.15 a.m. Page 341. Para 498.

DON PETER MELLAARATCHI Age 50 Yrs. Planter residing at Rugate Nuwara Eliya. present and states

I am the co-owner of the estate known Borakanda Estate. I have been the Manager from the time of its purchase. Mr. Weerawardena had been the Superintendent of this estate for 11 months. Last night at about 12.15 a.m. I got a telephone call from Mr. Weerawardena. He stated that he was forcefully thrown out of the estate by Mrs. Marley, Jayatillake and others. He said that he had to drive his car with wife while a car went ahead of him and another followed him. He said that he informed the Dehiwala Police. I asked him to come to Mr. Thurairatnam's house Kingsly Rd. Then I started off for Colombo met Weerawardena and instructed him to go to Ambalangoda Police and make a complaint as the extract from Dehiwala Complaint might get late. Mrs. Marley the other co-owner had filed an action in Balapitiya District Court re-garding this estate. The case I understand is for tomorrow. The Case No. is 1207. There she clearly states that I am the Managing Partner. This is all Read over and explained Sgd. I. P. Girigahama 30

True extract taken by me.

Sgd. P. S. 5225 Subramaniam 40

Sgd. on Rupee Stamp.

D5

Agreement No. 227 attested by R.M.S. Karunarante Notary Public.

Prior Registration
 Galle-Parts of F. 145/145.
 Now at Balapitiya Land Registry.
 True Copy,
 Sgd. R. M. S. Karunaratne
Notary Public.

Regd. A38/293-295
 Balapitiya 5. 3. 62.
 Sgd.

R. L.

D 5
 Agreement
 No. 277 attested
 by R.M.S. Karu-
 naratne, Notary
 Public-
 2. 3. 62

No. 227

This Agreement entered into at Ambalangoda on this 2nd Day of March One Thousand Nine Hundred and Sixty Two by and
 10 between Don Peter Mellaaratchy presently of "Reigate" Nuwara Eliya (hereinafter sometimes called and referred to as "the vendor" which term or expression where the context so required or admits shall mean and include the said Don Peter Mellaaratchy his heirs executors and administrators) of the one part And Eileen Florence Mary Marley presently of "Borakanda Estate", Karandeniya (hereinafter sometimes called and referred to as "the purchaser" which term or expression where the context so required or admits shall mean and include the said Eileen Florence Mary Marley her heirs executors administrators and assigns) of the other part.

20 Whereas by virtue of Deed No. 1419 dated 29th November 1960 attested by Sugathadasa Gunasekera of Colombo Notary Public the vendor is seized and possessed of and is well and sufficiently entitled to an undivided one half of all that Estate plantation and premises called and known as Maha Borakanda Division fully described in the Second Schedule hereto and hereinafter called "the said premises" being a portion of Maha Borakande Estate "formerly called Karandeniya Estate" fully described in the First Schedule hereto.

30 And Whereas the Vendor has agreed to sell and the purchase has agreed to purchase the undivided one half share of said premises at or for the price and upon the terms and conditions hereinafter set out and contained.

Now This Agreement Witnesseth as follows:-

1. The vendor will sell and the purchaser shall purchase within such time as hereinafter set out at the price and upon the terms and conditions herein contained an undivided one half share of the said premises fully described in the Second Schedule hereto together with all the growing crops and produce thereon and the buildings bungalows labourers' lines fixed plant and machinery tools implements

D5
 Agreement
 No. 227 attested
 by R. M. S.
 Karunaratne,
 Notary Public-
 2. 3. 62

—Continued

in use cattle carts and all other the livestock thereon or thereto belonging and all rights ways privileges easements servitudes and appurtenances whatsoever thereto belonging or in any wise appertaining thereto (all of which are comprised in the said term "the said premises")

2. The purchase price of the said premises shall be the sum of Rs. 100,000/- of lawful money of Ceylon to be paid and satisfied in the manner hereinafter provided.

3. The vendor shall forthwith upon the execution of this Agreement apply at his cost and expenses to the Tea and Rubber Estates (Control of Fragmentation) Board for Authority to transfer his ownership of the said premises in terms of the Tea and Rubber Estates (Control of Fragmentation) Act No. 2 of 1958 to the purchaser and shall take all such steps with reasonable diligence as may be necessary to obtain the authority of the Board as aforesaid but the Vendor shall not be liable in any way if the said Board shall refuse such permission. 10

4. In the event of the said permission being granted the purchase shall be completed by the purchaser within a period of two weeks from the date of grant of the Tea and Rubber Estates (Control of Fragmentation) Board's Authority to transfer the ownership of the said premises by:- 20

(a) paying to the vendor the purchase price of Rs. 100,000/- and

(b) Tendering to the vendor for execution at the Office of M/s. Welikala & Fernando, Bailie Street, Colomb, a Transfer of an undivided one half share of the said premises in favour of the purchaser in the customary form which shall have been previously approved by the vendor. 30

5. The purchaser shall be entitled to the vacant possession of the said premises hereby sold and the entirety of the profits and income thereof and shall pay to the vendor interest at 8% per cent per annum payable quarterly or in default at 10% per annum as aforesaid from the date of execution of this Agreement.

6. That upon the Grant of the Authority of the Tea and Rubber Estates (Control of Fragmentation) Board in terms of paragraph 3 hereof the purchaser shall forthwith Mortgage and hypothecate the entirety of the said premises to and with the vendor for the sum of Rs. 100,000/- together with interest thereon at 8% per annum payable quarterly or in default of any payment thereof at 10% per annum and that upon the execution of the said mortgage the interest payable by the purchaser under paragraph 5 hereof shall thereupon cease. 40

7. That all outstanding debts and liabilities accruing in respect of moneys advanced by Herbert Goddard Marley for the purchase of the said premises shall be borne by the purchaser, who shall also be solely liable for the payment of the sum of Rs. 125,000/- which may become due upon an Agreement to Mortgage executed by the vendor and the purchaser and the said mortgage in respect of the said sum of Rs. 125,000/- shall be executed in favour of the Borakanda Estate Company Limited by the vendor and the purchaser before the execution of the transfer herein mentioned.

D5
Agreement
No. 227 attested
by R. M. S.
Karunaratne,
Notary Public-
2. 3. 62
—Continued

10 8. The purchaser shall be solely entitled to all sums due or hereafter to be paid by the Rubber Controller by way of subsidies in respect of the said premises.

9. That all sums due and owing to Shelton Weerawardena former Superintendent of the said premises in respect of his employment inclusive of all payments due to his Provident Fund shall be paid and borne by the vendor.

10. The purchaser shall withdraw all proceedings and suits filed against the vendor in the District Court of Balapitiya in respect of the said premises.

20 11. The vendor declares the said premises to be free from mortgages and other charges created by the vendor save and except the agreement to Mortgage and the Mortgage referred to in paragraph 7 hereof.

12. If the purchaser shall fail to complete the purchase as provided in Clause 4 hereof, then in that event this Agreement shall forthwith be deemed to be cancelled and of no effect and thereupon the purchaser shall become liable to pay forthwith to the vendor a sum of Rs. 100,000/- as liquidated damages and not by way of penalty, subject however to the conditions that the Tea and Rubber Estates
30 (Control of Fragmentation) Board has granted its Authority for a sale of the said premises in terms of paragraph 3 hereof.

13. If the purchaser shall in terms of paragraph 4 hereof tender to the vendor the purchase price of Rs. 100,000/- and a Transfer of an undivided one half share of the said premises as aforesaid, and the vendor shall fail and neglect to execute the Transfer in favour of the purchaser the purchaser shall be entitled forthwith to enforce the specific performance of the terms covenants and conditions by the vendor to exe-

D 5
 Agreement
 No. 277 attested
 by R.M.S. Karu-
 naratne, Notary
 Public-
 2. 3. 62
 —Continued

cute the Deed of Transfer in favour of the purchaser and also to claim from the vendor damages on account of the said default subject however to the condition that the Tea and Rubber Estates (Control of Fragmentation) Board has granted its Authority for a sale of the said premises in terms of paragraph 3 hereof.

FIRST SCHEDULE ABOVE REFERRED TO:

All that Estate plantation and premises called and known as Maha Borakande (formerly called Karandeniya Estate) situated in the village Karandeniya of Ambalangoda Divison of the Wellaboda Pattu in the District of Galle Southern Province in The Island of Ceylon bounded 10
 on the North by Lands of Simaris de Silva, Suwaneris, Suwandahakuru Gaidiris, Thommayakur Agoris, Colcembage Lamaneris, Hewakuru Sandoris, Hewakuru Podisa and Balanahakuru Baisa, Fields of Ambalangoda people and Cecilino Aratchi, Kosatu Oya, Crown Fields, Cart Road, Diviangewela, Puwakgahawela, Kolluwella and Kalu Wala on the East by the Crown Field, Fields of Ambalangoda people, Suwaneris, Hewa Hakuru Babanisha and Endoris Kankanama, Lands of Suwaneris, Thommayahakuru Agoris, Hewahakuru Podisa, Balanahakuru Baiso, Suduhakuru Odonisa, Suduhakuru Jando, Hewahakuru Soido and others. Kaluhakuru Guneris deceased, Munugodahakuru Carolis, Jandoris Silva 20
 and several others and Nandorisa and others Diviangewela claimed by Sidorisa and others. Kolluwela, Kosatu Oya, Kirinugawela, Crown Land and fields, Owitas and Highlands claimed by villagers, on the South by the lands of Balanahakuru Baiso, Suduhakuru Cdorissa, Suduhakuru Jando, Hewahakuru Saido and others, Munugodahakuru Carolis, Kaluhakuru Agenis Dyonis, Kirinugawela, Owitas highlands and Fields claimed by villagers, Crown Land, Fields and Highlands of Kalupahanage Jandoris Silva and several others, Fields of Endoris Kankanama and Denis Silva, Egodawelawatta of Semaneris Mudalali and Igalanaidegewela of Kaluhakuru Inguwa deceased and on the West by the Fields of Endoris 30
 Kankanama, Denis Silva, Egodawelawatte of Semaneris Mudalali, Lands of Hendrick Singho and others, Balasuriya and Kaluhakuru Senerisa, Pedrohakuru Gomisa, Kaluhakuru Jeda and others Kaluhakuru Agenis, Dyonis and Simaris de Silva, Kosgahaduwa of Kaluhakuru Sainerisa and Pedrohakuru Supina, Igalanaidegewela of Kaluhakuru Inguwa deceased, Delgahawatta Kumbura of W. Dinoris and the Cart Road containing in extent Four hundred and ninety one Acres one Rood and twenty eight Perches (491 A. 1R. 28P.) according to Plan No. 1576 dated 6th November 1919 made by J. H. W. Smith, Licensed Surveyor.

SECOND SCHEDULE ABOVE REFERRED TO:

All that estate plantation and premises called Maha Borakanda Divison lying to the South of The Government High Road from Ambalangoda to Elpitiya being a portion of Maha Borakande Estate described in the First Schedule hereto and depicted in the said Survey Plan No. 1576 situated at Karandeniya aforesaid and containing in extent three hundred and ninety nine Acres Two Roods and Twenty Perches (399A. 2R. 20P.) inclusive of the Estate Road and is comprised of:-

D 5
Agreement
No. 227 attested
by R.M.S. Karu-
naratne, Notary
Public -
2. 3. 62...
—Continued

- 10 (a) All that portion marked Lots PF (14 Markings) B1, C, 16, 17¹, 17², D, NC (2 Markings) F1, F2, G1, G2, 18, E, 19, 21, 20², 20¹, 22, B², 23, Cinnamon Blocks A and C, 24¹, Jungle, 25, 24², Jungle 26, Cinnamon Blocks B and D, 27¹, 27², 28^a, 28 and Bunglow premises in the said Survey Plan, No. 1576 and situated at Karandeniya aforesaid and bounded on the North by Land of Simaris de Silva, Field of Ambalangoda People, Kosatu Oya, Field of Ambalangoda People, Crown Fields, Road leading to the Government High Road from Ambalangoda to Elpitiya, Field of Suwaneris, Owita Land of Suwaneris, Diviangewela claimed by Sidorisa, Garden claimed by Thommayahakuru Agoris, Garden of Dembuluge Agan, Garden of Hewahakuru Saidoris, Garden of Hewahakuru Laida, Garden of Suwandahakuru Gaidirise, Road leading to the Government High Road from Ambalangoda to Elpitiya, Garden of Thommayahakuru Agoris Garden of Colombage Lamaneris and Garden of Hewahakuru Sandoris, on the East by Puwakgahawela of Thommaya Hakuru Elise, and Liynachi, Owita Land of Illandaridewa Sano, Estate Road, portion of the same Land Thommayahakuru Elise and Liyanachi, Owita Land of Illandaridewa Jano., Estate Road, portion of the same land (Kirinuge) High Lands claimed by villagers, Highlands of Kalupahanage Jandoris Silva and several others, Crown Land south by fields and Highlands of Kalupahanage Jandoris Silva and several others, Fields and High Lands of Kalupahanage Jandoris Silva and several others, High Lands of Nandorisa and others, Fields of Endoris Kankanama and
- 20
- 30

D5
 Agreement
 No. 227 attested
 by R. M. S.
 Karunaratne,
 Notary Public-
 2. 3. 62

—Continued

fields of Denis Silva and on the West by fields claimed by villagers, Egodawelawatta of Semaneris Mudalali Lands of Hendrick Singho and others, High Lands of Balasuriya, Owita of Kaluhakuru Sinerisa, Kosgaha-
 iuwa of Kaluwahakuru Sainerisa and of Pedro-
 hakuru Supina, Igalanaidegewela of Kaluhakuru
 Inguwa deceased and Lands of Pedrohakuru Gomisa,
 Kaluhakuru Jeda and others, Delgahawatta Kumbura
 of W. Danoris Lands of Kaluhakuru Agenis and
 Diyonis and containing in extent three hundred and 10
 ninety eight Acres and thirty Perches (398A. OR.
 30P) according to the said Plan No. 1576.

- (b) All that portion marked NC in the said Survey Plan No. 1576 and lying between the Government High Road to Ambalangoda and the Kosatu Oya marked in the said Plan and situated at Karandeniya aforesaid bounded on the North, East and South by Land belonging to to the Government and on the West by Road leading to the Government High Road from Ambalangoda to Elpitiya and containing in extent one Acre and sixteen 20
 perches (1A.OR.16P.) according to the said Survey Plan No. 1576 and
- (c) All that portion marked PF and lying to the North of Lot 21 in the said Survey Plan No. 1576 situated at Karandeniya aforesaid and bounded on The North, East, South and West by fields claimed by villagers and containing in extent one Rood and fourteen Perches (OA. 1R. 14P) according to the said Survey Plan No. 1576.

In Witness Whereof the vendor and the Purchaser do hereunto 30
 and to three others of the same tenor and date as these presents set their respective hands on the day month and year at the beginning hereof written, at Ambalangoda and at Borakanda respectively.

Witnesses hereto do declare hereby that we are well acquainted with the within named executants and known their proper names occupation and residence.

Sgd. 1. Sgd. C. V. Welikela
 Sgd. 2. Sgd. R. G. Samaranayake

Sgd. D.P. Mollaaratchy

Sgd. R. M. S. Karunaratne
 Notary Public 40

Witnesses:—

1. R. G. Samaranayake
 2. D. Gunasekera

Sgd. Eileen Marley
 Sgd. R. M. S. Karunaratne
 Notary Public.

I, Reginald Mervyn Samarasekera Karunaratne of Ambalangoda in the Island of Ceylon, Notary Public do hereby certify and attest that the foregoing instrument having been read over and explained by me the said Notary to the said Don Peter Mellaaratchy who is not known to me and who has signed this Instrument as "D. P. Mellaaratchy" in the presence of Clarence Valentine Welikela of No. 16 Baillie Street, Colombo and Leslie Richard Gregory Samaranayake of No. 26 Peter's Lane Dehiwala who have signed as 'C. V. Welikela' and 'R. G. Samaranayake' respectively the subscribing witnesses hereto both of whom
 10 are known to me the same was signed by the said Don Peter Mellaaratchy and also by the said witnesses and by me the said Notary in my presence and in the presence of one another all being present at the same time at Ambalangoda on this Second day of March One Thousand Nine Hundred and Sixty Two (1962).

And I further certify and attest that in both the original and the duplicate hereof in line 14 of Page 2 the words 'on the' were scored off; in line 21 of Page 2 the word 'default' was typed on erasure; in line 16 of page 3 the word 'said' was typed on erasure; In line 16 of page 3 the word 'Field' was typed on erasure; in line 46 of
 20 page 3 the word 'portion' was typed on erasure line 3 of page 4 the word 'Highlands' was typed on erasure in line 4 of page 4 the words 'South by' were interpolated in ink; in line 15 of page 4 of the words 'thirty' was typed over, in line 17 and 24 of page 4 the word 'portion' was typed on erasure before the foregoing was read over and explained by me and as aforesaid; that no consideration passed in my presence; that the original of this instrument bears one stamp of the value of Rupees One and the duplicate bears two stamps of the value of Rupees Ten.

Which I attest.

Sgd. R. M. S. Karunaratne
 Notary Public

30

(SEAL)

Date of Attestation

This 2nd day of March 1962.

I Reginald Mervyn Srmarasekera Karunaratne of Ambalangoda in the Island of Ceylon Notary Public. do hereby certify and attest that the foregoing instrument was red over and explained by me to Eileen Florence Mary Marley who is not known to me and who has signed this instrument as 'Eileen Marley' in the presence of Leslie Richard Gregory Samaranayake of 26, Peter's Lane Dehiwala and Dhanapala

D5
 Agreement
 No. 227 attested
 by R. M. S.
 Karunaratne,
 Notary Public-
 2. 3. 62

—Continued

D 5
Agreement
No. 227 attested
by R.M.S. Karu-
naratne, Notary
Public -
2. 3. 62
—Continued

Gunasekera of 85, Subadrarama Road, Nugegoda who have signed as 'R. G. Samaranayake' and 'D. Gunasekera' respectively the subscribing witnesses hereto both of whom are known to me same was signed by the said executant and by the said witnesses and by me the said Notary in my presence and in the presence of one another, all being present at the same time at Borakanda on this Second day of March One Thousand Nine Hundred and Sixty Two (1962).

Which I Attest.

(Seal)

Sgd. R. M. S. Karunaratne
Notary Public 10

Date of Attestation

This 2nd day of March 1962.

D 56

Statement made to Ambalangoda Police by the Defendant

(D 7)

D 56
Statement made
to Ambalangoda
Police by the
Defendant -
2. 3. 62.

EXTRACT TAKEN FROM THE G. C. I. B. OF AMBALANGODA
POLICE STATION.

Date :- 2.3.62.

Time 6.45 p. m. Page 50 Para 37

FURTHER STATEMENT OF THE SUPDT.

Vide para 483 Mr. Mellowarachchi appeared at station to make further 20 statement. I now proceed to record his statement.

DON PETER MELLAWAARACHCHI, Age 50 Yrs. Planter residing at Reigate Nuwara Eliya states:- I have today on agreement No. 227 of 2.3.63 attested by Mr. R. M. S. Karunaratne Notary Public agree to sell my half share of Borakanda Estate to Mrs. Eileen Marley, therefore I have no interest in the property therefore I will not go there. This is all. Read over. Admitted. Correct. Sgd. P. S. 5225 Subramaniam

True Extract taken by me.

Sgd.
P. S. 5225 Subramaniam 20

(D 8)

EXTRACT FROM THE G.C.I.B. OF AMBALANGODA POLICE STATION

Date :- 2.3.62

Time 7.10 p. m Page 50 Para 38.

STATEMENT OF OWNER OF BORAKANDA ESTATE.

EILEEN MARLEY, Age 64 Yrs. Wife of Mr. H. J. G. Marley residing at Nuwara Eliya states.

I was the half share owner of the Borakanda Estate. I have now entered into an agreement with the half share owner Mr. P. Mallawaratchchi by agreement No. 227 of 2.3.62 attested by R. M. S. Karunaratne Notary Public. I do not expect any trouble from Mallawaratchchi now onwards. Mr. Gamini Jayatillake sold the rubber on my request and I have given him authority to do so. He will be the Superintendent of Borakanda Estate in future. I am the sole owner of Borakanda Estate. This is all. Read over and admitted correct. Sgd. P. S. 5225 Subramaniam.

True extract taken by me.
Sgd. on a Rupee Stamp.

Sgd.
P. S. 5225 Subramaniam

Compared by:- Intld.

20 I, D. A. Kumarasiri, Secretary, District Court Balapitiya do hereby certify that the foregoing is a Certified Copy of the documents :- *D1, D2, D3, D5, D^k, D5, D7 and D8 filed in D. C. Balapitiya Case No. M/1207.

Sgd.
Secretary District Court,
Balapitiya.

22nd September, 1964.

*(D1-D5 not printed)

D 23

Letter sent to M/s Welikala & Fernando by M/s Julius & Creasy

30 Julius & Creasy

P. O. Box. No. 154
Colombo.

N/NT.

5th April, 1962.

Messrs. Welikala & Fernando,
Proctors,
16, Baillie Street,
COLOMBO 1.

Dear Sirs,

40 BORAKANDA ESTATE - MRS. H. J. G. MARLEY.:

We have been consulted by Mrs. H. J. G. Marley of "Garoopna" Nuwara Eliya in connection with Borakanda Estate of which she is a co-owner.

D 56
Statement made
to Ambalangoda
Police by the
Defendant -
2. 3. 62.
—Continued

D 23
Letter sent to
M/s Welikala &
Fernando by M/s
Julius & Creasy
5. 4. 62.

D 23
Letter sent to
M/s Welikala &
Fernando by M/s
Julius & Creasy
5. 4. 62.
—Continued

We understand that recently you prepared lease whereby Mrs. Marley leased an undivided portion of the above Estate to a client of yours. As we have received instructions from Mrs. Marley to act for her in this connection we shall be glad if you will be good enough to let us have a copy of this Lease and also a report from you on the present negotiations which we understand will lead to Mrs. Marley becoming the sole owner of this property. The matter is of some urgency and we shall be grateful if you will let us have a copy of the lease as soon as possible.

Yours faithfully, 10
Sgd. Julius & Creasy.

D 38
Letter sent to
M/s Julius &
Creasy by M/s
Welikala &
Fernando -
10. 4. 62

D 38

Letter sent to M/s Julius & Creasy by M/s Welikala & Fernando

Welikala & Fernando.

16, Baillie Street,
Colombo.

Your Ref. No. N/NT 215

10th April 1962

Messrs. Julius & Creasy,
Proctors,
P. O. Box No. 154,
Colombo.
Dear Sirs,

20

BORAKANDA ESTATE—MRS. MARLEY

We refer to your letter of the 5th inst. and write to inform you that we are unaware of the lease referred to therein.

We have prepared an Agreement whereby, inter alia, Mr. D. P. Mellaaratchy the owner of a half share of Mahaborakanda Division of the above Estate has agreed to convey his entire interests to Mrs. E. F. M. Marley. This Agreement has been attested by Mr. R. Karunaratna, Proctor S. C. and N. P., Balapitiya, and as we have already mentioned to your Mr. Naidoo, we wish that you obtained a certified copy of the Agreement from the attesting Notary, if you desire to have one, in view of the many alterations appearing on our copy. 30

An application has already been made to obtain the sanction of the Fragmentation Board for the transfer in terms of the Agreement, and now that Mrs. Marley has consulted you, we shall forward to you for approval a draft of the proposed Transfer.

Yours faithfully,
Sgd. Welikala & Fernando

304

D 24

Letter sent to M/s Welikala & Fernando by M/s Julius & Creasy
Julius & Creasy,

D 24
Letter sent to
M/s Welikala &
Fernando by M/s
Julius & Creasy
17. 4. 62

P. O. Box No. 154
Colombo.

RM/NT. 730

17th April, 1962

Messrs. Welikala & Fernando,
Proctors,
10 16, Baillie Street,
COLOMBO 1.

Dear Sirs,

BORAKANDA ESTATE – MRS. H. J. G. MARLEY

We refer to our letter of the 5th instant in which we requested you on instructions received from Mrs. Marley, to let us have a copy of the Lease of an undivided portion of the above Estate to a client of yours and also a note from you on the present negotiations which would lead to Mrs. Marley becoming the sole owner of this Estate.

We shall be obliged if you will kindly give this matter your very
20 early attention.

Yours faithfully,
Sgd. Julius & Creasy

D 63

Certificate issued by the Tea and Rubber Estate
(Control of Fragmentation) Board

D 63
Certificate
issued by the
Tea and
Rubber Estates
(Control of
Fragmentation)
Board- 17.4.62

Certificate No. 974.

THE TEA AND RUBBER ESTATES (CONTROL OF
FRAGMENTATION) ACT, NO. 2 OF 1958

Certificate of Consent to transfer of ownership of Maha Borakanda
30 Division of Maha Borakanda Estate.

D 63
Certificate
issued by the
Tea and
Rubber Estates
(Control of
Fragmentation)
Board- 17.4.62

In terms of Section (14) of the Tea and Rubber Estate (Control of Fragmentation) Act, No. 2 of 1958, Mr Don Peter Mellaaratchy of "Reigate" Nuwara Eliya is hereby authorised to transfer ownership of his undivided half share of Mahaborakanda Div. of Mahaborakanda Estate in extent 399 A. 2 R 20 P situated at Karandeniya, Ambalangoda in Galle District, as indicated hereunder.

Name and address of person or person to whom ownership of the estate may be transferred	Acreage in respect of which ownership may be transferred	
Eileen Florence Mary Marley "Garoopna", Nuwara Eliya.	A. R. P. undivided 1/2 (half) share of 399. 2. 20.	10

This Certificate is issued subject to the following conditions:-

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.

Sgd
Secretary

Sgd
Member

Tea and Rubber Estate (Control of fragmentation) Board.
Date: April 17, 1962.

D25
Letter sent to
M/s Welikala &
Fernando by M/s
Julius & Creasy
18. 4. 62.

D 25

**Letter sent to M/s Welikala & Fernando
by M/s Julius & Creasy**

Julius & Creasy.

N/NT.826.

P. O. Box No. 154
Colombo
18th April, 1962.

Messrs. Welikala & Fernando,
Proctors,
16, Baillie Street,
Fort,
COLOMBO 1.

Dear Sirs,

BORAKANDE ESTATE - MRS. H. J. G. MARLEY

We are in receipt of your letter of the 10th instant and have written to Mr. R. Karunaratne, Proctor, Balapitiya for a certified copy of the Agreement.

Yours faithfully,
Sgd. Julius & Creasy

D 39

**Letter sent to M/s Julius & Creasy
by M/s Welikala & Fernando**

Welikala & Fernando

16, Baillie Street,
Fort,
Colombo.

D 39
Letter sent to
M/s Julius &
Creasy by M/s
Welikala &
Fernando -
28. 4. 62

Your Ref: N/T 826.

April 28, 1962.

MAHABORAKANDA DIVISION - MRS. E. F. M. MARLEY.

10 Messrs. Julius & Creasy,
Proctors,
P. O. Box 154, Colombo.
Dear Sirs,

We forward herewith for your approval a draft of the proposed Deed of Transfer in favour of Mrs. E. F. M. Marley and shall be obliged if you will kindly treat this matter as urgent and let us have your reply as soon as possible in order that the Deed may be executed early. The Fragmentation Board has granted its consent to the Transfer.

Your faithfully,

Sgd. Welikala & Fernando

20

D 26

**Letter sent to M/s Welikala & Fernando
by M/s Julius & Creasy**

URGENT.

Julius & Creasy.

P. O. Box. No. 154,
Colombo.
Ceylon.

D26
Letter sent to
M/s Welikala &
Fernando by M/s
Julius & Creasy-
5. 5. 62

N/NT. 167

5th May, 1962.

30 Messrs. Welikala & Fernando,
Proctors & Notaries,
16, Baillie Street,
Fort,
COLOMBO.
Dear Sir,

MRS. E. F. M. MARLEY - BORAKANDE ESTATE.

We received on the 30th ultimo your letter to us of the 28th ultimo with the draft transfer by Mr. D. P. Mollaaratchy in favour
40 of Mrs. E. F. M. Marley of an undivided half share of Borakanda

D 26
Letter sent to
M/s Welikala &
Fernando by M/s
Julius & Creasy
5. 5. 62.
—Continued .

Estate the purchase price being Rs. 162,500/-. Will you please let us know how you arrived at this consideration of Rs. 162,500/- as our instructions are that the agreed purchase price was Rs. 100,000/-. Will you please also let us know the date of Fragmentation Board Consent. We are also advised that in terms of the Agreement between the Vendor and Mrs. Marley the purchase had to be completed within a period of two weeks from the date of the Fragmentation Consent. This seems to us an unreasonably short period and we shall be glad if you will kindly arrange for the date of completion to be extended until the end of this month without prejudice to either party particularly as you have not made available to us the copy of the Sale Agreement and it was only a few days ago that we were able to obtain a copy and we are seeking instructions on the terms of that Sale Agreement. 10

Yours faithfully,
Sgd. Julius & Creasy

D40

D 40
Letter sent to
M/s Julius &
Creasy by M/s
Welikala &
Fernando
9.5.62

Letter sent to M/s Julius & Creasy by M/s. Welikala & Fernando
Welikala & Fernando

16, Baillio Street,
Colombo. 20

Your Ref. N/NT 167

9th May 1962.

Messrs. Julius & Creasy,
Proctors,
P. O. Box No. 154,
Colombo.

Mrs. E. F. M. MARLEY - BORAKANDA

Dear Sirs,

With reference to your letter of the 5th inst., the suggestion to have the consideration at Rs. 152,500/- was on the footing that it would reflect the real value of the 1/2 share of Borakanda Estate which is to be sold viz: it would include a half share of the debt of Rs. 125,000/- (i. e. Rs. 62,500/-) which may become due upon an Agreement to Mortgage, according to our instructions. You will recall that Mrs. Marley and Mr. Mellaaratchy purchased the entire estate in November 1960 for Rs. 425,000/- and the value of Mr. Mellaaratchy's share on this basis would be Rs. 212,500/-. It was not intended that 30

Mrs. Marley should pay an extra Rs. 62,500/-, but it should be set-off against the indential sum due from Mr. Mellaaratchy. If however you desire to have the Sale Consideration at Rs. 100,000/-, we shall accept that position.

D 40
Letter sent to
M/s Julius &
Creasy by M/s
Welikala &
Fernando-
9.5.62
—Continued

The Date of Consent of the Fragmentation Board is 17 - 4 - 1962, but it was forwarded to us only on 27-4-1962 along with the Board's letter. We have no objection to an extension of time for the completion of sale without prejudice to all the parties, provided the matter is completed expeditiously.

10 Will you therefore be good enough to let us have an early reply.

Yours faithfully,
Sgd. Welikala & Fernando.

D27

Letter sent to M/s. Welikala & Fernando
by M/s Julius & Creasy.

Julius & Creasy.

D 27
Letter sent to
M/s Welikala &
Fernando by M/s
Julius & Creasy-
12. 5. 62

P. O. Box 154,
Colombo,
Ceylon.

20 N/NT. 492.

12th May, 1962.

WITHOUT PREJUDICE

Messrs. Welikala & Fernando,
Proctors & Notaries,
16, Baillie Street,
Fort, Colombo.
Dear Sirs,

MRS. E. F. M. MARLEY

30 We are in receipt of your letter of the 9th instant the contents of which we have noted. We shall be glad if you will be good enough to let us know for whom you are acting in connection with the transfer of the half share of Borakande Estate to Mrs. Marley. We shall be grateful of an early reply.

Yours faithfully,
Sgd. Julius & Creasy.

D 41
Letter sent to
M/s Julius &
Creasy by M/s
Welikala &
Fernando-
16.5.62

D41
Letter sent to M/s Julius & Creasy by M/s Welikala & Fernando.
Welikala & Fernando

16, Baillie Street,
Fort, Colombo.

Your Ref. N/NT 492.

Messrs Julius & Creasy,
Proctors,
P. O. Box No. 154,
Colombo.
Dear Sirs,

May 16, 1962.

MRS. E. F. M. MARLEY

10

With reference to your letter of the 12th inst., we write to inform you that we acted for Mrs. Marley in preparing the Sale Agreement which was signed by her at Balapitiya and attested by Mr. R. Karunaratna, Proctor S. C. and Notary Public, Balapitiya. In pursuance of its provisions we prepared a draft Transfer and have sent it to the vendor, Mr. D. P. Mellaaratchy, for his approval, and when on the 5th ultimo you intimated to us, inter alia, that Mrs. Marley has consulted you, we informed you of all the steps which we have taken besides forwarding to you a copy of the draft Transfer. You are no doubt aware of paragraph 4 (B) of the Sale Agreement regulating the completion of the purchase. 20

Mr. Mellaaratchy has seen us today and informed us that he wishes the purchase consideration in the proposed Deed of Transfer to be Rs. 100,000/- in accordance with the Sale Agreement.

Yours faithfully,
Sgd. Welikala & Fernando.

D 28
Letter sent to
M/s Welikala &
Fernando by M/s
Julius & Creasy-
23. 5. 62

D28
Letter sent to M/s Welikala & Fernando by M/s Julius & Creasy.
Julius & Creasy.

P. O. Box No. 154, 30
Colombo.

N/RM/NT. 922.

Messrs. Welikala & Fernando,
Proctors & Notaries
16, Baillie Street,
Colombo 1.

23rd May, 1962,

Dear Sirs,

MRS. E. F. M. MARLEY

We thank you for your letter of the 16th instant, the contents of which we have noted and in particular that you acted for Mrs. Marley in the preparation of the Sale Agreement. 40

We shall be grateful if you will be good enough to confirm that Mrs. Marley gave you instructions in regard to the terms of her purchase and that a draft of the Sale Agreement in accordance with those instructions was sent to Mrs. Marley for approval prior to execution by her in Balapitiya as your letter of the 9th instant rather indicates that you had acted for the Vendor, Mr. Mellaaratchy. We regret that we have no record of your advising us what steps you had taken on behalf of Mrs. Marley apart from your letter of the 10th April in reply to our letter of the 5th of that month.

D 28
Letter sent to
M/s Welikala &
Fernando by M/s
Julius & Creasy
23. 5. 62
—Continued

10

Yours faithfully,
Sgd. Julius & Creasy.

D57

Letter sent to M/s Welikala & Fernando
by M/s Julius & Creasy.

Julius & Creasy.

D 57
Letter sent to
M/s Welikala &
Fernando by M/s
Julius & Creasy-
2. 6. 62.

P. O. Box No. 154,
Colombo.

No. RM/NT. 33

2nd June, 1962,

20 Messrs. Welikala & Fernando,
Proctors & Notaries,
16, Baillie Street,
Colombo 1.

Dear Sirs,

MRS. E. F. M. MARLEY

We write to draw your kind attention to our letter of the 23rd ultimo.

Yours faithfully,
Sgd. Julius & Creasy

D 42
Letter sent to
M/s Julius &
Creasy by M/s
Welikala &
Fernando-
5. 6. 62

D42

Letter sent to M/s Julius & Creasy
by M/s Welikala & Fernando.

Welikala & Fernando

16, Baillie Street,
Fort, Colombo.

Your Ref. N/RM/NT 922

June 5, 1962.

Messrs. Julius & Creasy,
Proctors,
P. O. Box 154,
Colombo.

10

MRS. E F. M. MARLEY

Dear Sirs,

We refer to your letter of the 23rd ultimo in reply to our letter of the 16th ultimo. We are of the view that we have sufficiently clarified our position in this matter by our letter of the 16th ultimo and see no reason to add to it.

We however wish to refer to a matter which you have omitted to deal with in your letter under reference viz: paragraph 4 (B) of the Sale Agreement. Your assumption, for we take it from your letter under reference that it is only an assumption, that we had acted for the Vendor Mr. Mellaaratchy is unfounded. Mr. Mellaaratchy had and was advised by his own lawyers at every stage in this matter where we were concerned. We have to remind you that you are referring to events which took place before Mrs. Marley consulted you, and then on 5th April last you informed us that Mrs. Marley had consulted you, the resulting position was that the only interest left remaining to us was perhaps that we might yet complete the Deed of Transfer, which is after all in accordance with paragraph 4 (B) of the Sale Agreement.

30

We would have appreciated it if you had informed us that you were unable to advise Mrs. Marley that the Transfer Deed should be done by us even after its perusal and any amendments thereof considered necessary by you, or even that Mrs. Marley was unwilling that the Deed of Transfer should be done by us

If this position had been put to us, we would without hesitation have acquiesced in the waiver of paragraph 4 (B) of the Sale Agreement, as indeed we do now in view of the terms of your letter under reference. But we however deplore the circumstances under which we have done so.

We might add off the record that Mrs. Marley expressed her satisfaction that evening even to the extent of considering giving us some of her other work as well at Borakanda Estate Bungalow immediately after the signing of the Sale Agreement.

Yours faithfully,
Sgd. Welikala & Fernando

D-58

Letter sent to the Defendant by M/s Julius & Creasy

REGISTERED POST

Julius & Creasy

P. O. Box No. 154
Colombo.
Ceylon.

RM/NT. 779.

15th June, 1962.

D 58
Letter sent to
the Defendant
by M/s Julius
& Creasy - C
15.6.62

D. Peter Mellaaratchy, Esq.,

10 "Reigate",
Nuwara Eliya.

Dear Sir,

BORAKANDA ESTATE, AMBALANGODA.

We write to you on the instructions of Mrs. H. J. G. Marley of Nuwara Eliya in connection with certain transactions relating to the above Estate which was purchased by you and her from the Borakanda Estate Co. Ltd. on Deed of Transfer No. 1419 dated the 29th November 1960 attested by S. Gunasekera of Colombo Notary Public. You have since the date of purchase been in sole charge of the property and

20 have appropriated the entire profits therefrom without payment of any share whatsoever to our client despite the fact that you had not even paid your due share of the purchase price.

You will recall that the purchase price of the Estate was Rs.425,000/- of which Rs. 300,000/- was paid before and at the execution of the Deed of Transfer. Of this sum of Rs. 300,000/- only Rs. 25,000/- was contributed by you. In regard to the balance of Rs. 125,000/- due to the Vendor Company this sum it was agreed should be secured by a Mortgage of the Estate in favour of the Company by yourself and our client.

30 In February 1962 Messrs. R. G. Samaranayake, G. A. W. Jayatilleke and N. Jayawardena met our client in Nuwara Eliya and volunteered to help her to gain control of the Estate of which you were exclusively in possession and for this purpose persuaded her to execute a Deed of Lease No. 3241 dated 20th February 1962 attested by V. A. P. Nanayakkara, Notary Public, in favour of Mr. Jayatilleka and Mr. Gunasekera. Thereafter she was induced to sign a Deed of Agreement No. 227 dated 2nd March 1962 and attested by Mr. R. M. S. Karunaratne, Notary Public, whereby she purported to agree to purchase your share of the Estate on certain terms and conditions. Our client had not been given copies of either of these

D 58
Letter sent to
the Defendant
by M/s Julius
& Creasy -
15. 6. 62
—Continued

documents nor had she ever met you and discussed any of the terms or conditions embodied in the Agreement. She in fact learnt of the real contents of these two documents only after she informed us of her strange and unusual experience on the Estate and we obtained copies of the documents upon her instructions. Our client wishes us to inform you that it is now clear that she has been the victim of a conspiracy. These matters and incidents are now being investigated by the appropriate authorities but we are at present concerned with the civil aspects of the transaction and propose taking steps to secure to our client her interest in this property free from any encumbrances effected by 10 the above documents. We have therefore been instructed to call upon you to take immediate steps to have the above Agreement cancelled and discharged. In default of your so doing, we have further instructions to take you to law.

Yours faithfully,
Sgd. Julius & Creasy

D 29
Plaint in District
Court, Colombo,
Case No 1003/ZL
12. 7. 62

D 29
Plaint in District Court, Colombo, Case No. 1003/ZL

IN THE DISTRICT COURT OF COLOMBO.

20

No. 1003/ZL

Class - V

Amount - Rs. 30,000/-

Nature - Money

Procedure - Regular.

Eileen Florence Mary Marley of
"Garoopna" in Nuwara Eliya.

Plaintiff.

Vs.

1. Gamini Abeysinghe Wijesekera Jayatilleke of "Guruwatte Walauwa" in Meetiyagoda.
2. Danapala Gunasekera of No. 65. Subadrarama Road, 30 Nugegoda.
3. Richard Gregory Samaranayake of No. 26, Peters Lane, Dehiwala.
4. Nalanda Jayawardene of Ginaralanda Estate, Baddegama.

Defendants.

On this 12th day of July, 1962.

The plaint of the Plaintiff abovenamed appearing by Henric Theodore Perera, James Arelupar Naidoo, Alexander Richard Neville De Fonseka, John Claude Byrnell, Lena Charlotte Fernando and Reginald Fredrick Miranda carrying on business in partnership in Colombo under the name style and firm of Julius & Creasy and their Assistants: Francis Luke Theodore Martyn, Rex Herbert Sebastian Philips, John Ajasath Rancoth Woerasinghe, Bertram Manson Amarasekera, Gerald Ebenezer Abeynaike, Justin Mervyn Canagaratna, James Orlando De Saa Bandaranaike, Shelton Vernon Perera, Nadarasa Rathinasabapathy, Raja-
10 retnam Senathi Rajah, Saravanamuttu Kugaperumal, Hermon Annesley Fernando, Prasanna Stanislaus Goonewardene and Nihal Hubert Gunaratne, her Proctors, states as follows:

1. That the cause of action hereinafter set forth arose at Colombo within the local limits of the jurisdiction of this Court.

2. That prior to the dates material to this action the Borakande Estate Company Limited was the owner and seised and possessed of all that estate, plantations and premises called and known as "Maha Borakande Division", inter alia, situate at Karandeniya and in the Schedule hereto fully described.

20 3. That the said Borakande Estate Company Limited by Deed No. 1419 dated 29th November 1960 attested by S. Gunasekera of Colombo, Notary Public, transferred the said property to the Plaintiff and one Don Peter Mellaaratchy for the sum of Rs. 425,000/-. That of the said consideration, a sum of Rs. 275,000/- was paid and provided by the Plaintiff and her husband H. J. G. Marley. And a sum of Rs. 25,000/- only was paid by the said Don Peter Mellaaratchy, while the balance sum of Rs. 125,000/- was paid with a loan from the Vendor Company, which it was agreed should be secured by a mortgage of the said property by the transferees.

30 4. That the Vendor Company delivered possession of the said estate as on and from the 1st day of December 1960 and the said Don Peter Mellaaratchy took possession and was placed in charge of the same as on and from the said date for himself and on behalf of the Plaintiff.

5. That the main plantation on the said Estate consists of 62 acres of budded rubber, 93 acres of old seedling rubber and 58 acres of coconut and the nett income is approximately Rs. 5,000/- per mensem.

D 29
 Plaint In District
 Court, Colombo,
 Case No. 1003/ZL
 12.7.62
 -Continued

6. That at the dates material to this action the said Don Peter Mellaaratchy had totally failed and neglected to pay to the Plaintiff any part of her due share of the income and profits from the said Estate, nor had he paid up his share of the said purchase price, save for the aforesaid Rs. 25,000/- and he was dishonestly and wrongfully excluding the Plaintiff from any participation in the management of and benefit from the said estate.

7. That on or about the 14th day of February 1962 the 1st, 3rd and 4th Defendants abovenamed, who were previously not known to the Plaintiff called on and represented to the Plaintiff in the circumstances more fully set out in paragraphs 15, 16 and 17 herein that the were ready, able and willing to help her to obtain possession of the said Estate from the said Don Peter Mellaaratchy and for that purpose that she should grant to the 1st and 3rd Defendants a lease of her half share of the said estate for a period of three years in consideration of their paying to her a one-half share of the nett profits from her said share. That believing that the said Defendants were genuinely interested on her behalf and trusting in their good faith the Plaintiff agreed to the granting of a lease to the 1st and 3rd Defendants on the aforementioned terms.

8. That thereafter on the 19th day of February 1962 the 1st, 3rd and 4th Defendants together with Notary V. A. P. Nanayakkara met the Plaintiff and in the circumstances hereinafter set out procured her signature at Colombo to a document of lease, which said document they assured the Plaintiff was in terms of the agreement hereinbefore pleaded. A true copy of the said Indenture of Lease bearing No. 3341 and dated the 20th day of February 1962 and attested by V. A. P. Nanayakkara of Colombo, Notary Public, is herewith filed marked "A" and pleaded as part and parcel of this Plaint.

9. The Plaintiff states that accepting the assurance aforesaid the 1st, 3rd and 4th Defendants as regards the contents of the said document she signed the same in belief that the same had been drawn in accordance with the aforesaid agreement.

10. The Plaintiff states that she subsequently discovered that the said Indenture of Lease No. 3341 purports to be in favour of the 1st Defendant and the 2nd Defendant abovenamed with whom she had made no agreement whatsoever; and further that the 1st, 3rd and 4th Defendants acting in concert had made false and fraudulent misrepresentations as to the contents of the said document on the following specific matters to wit:

- (i) that the lease was in favour of the 1st and 3rd Defendants, whereas it purports to be in favour of the 1st and 2nd Defendants;
- (ii) that the lease was of a one-half share, whereas it purports to be a lease of the entire estate;
- (iii) that the lease was for a term of three years, whereas it purports to be for a term of five years; and
- 10 (iv) that the consideration for the lease was the payment to the lessor of a one half share of the nett profits of her half share of the estate, whereas it purports to provide for the payment of a monthly rental of Rs. 500/- or one-fourth share of the profits which ever is less.

11. The Plaintiff specially complains that that 1st, 3rd and 4th Defendants acting in concert by means of the false and fraudulent misrepresentations aforesaid as to the contents of the said Indenture of Lease No. 3341 induced her to execute the said Indenture and that in the premises the said Indenture of Lease bearing No. 3341 is not her act and deed.

20 12. That the 2nd Defendant has been acting in concert and collusion with the other Defendants and / or as the nominee of one or more at all of them.

13. That under and by virtue of the said Indenture of Lease the Defendants entered into possession of the said Estate on or about the 21st day of February 1962 and are now in full possession and control of the said estate.

FOR A FIRST CAUSE OF AUCTION.

30 14. That by reason of the facts averred in the preceding paragraphs a cause of action has thereby accrued to the Plaintiff to sue the Defendants abovenamed for a declaration that the said Indenture of Lease bearing No. 3341 is void *ab initio*; or, in the alternative, for a rescission or cancellation of the said Indenture of Lease No. 3341 as from such date as the Court shall determine; and for recovery of possession and damages jointly and severally against all the Defendants which damages the Plaintiff assesses at Rs. 2,500/- per mensem.

D 29
 Plaint in District
 Court, Colombo,
 Case No. 1003 ZL
 12. 7. 62
 --Continued

15. That the Plaintiff at the date of execution as aforesaid of the said Indenture of Lease No. 3341 was about 65 years of age, and was living with her husband, who is 85 years of age and feeble and infirm. That they both lived alone at Nuwara Eliya and had no one to assist or advice them in the management of their personal affairs. That the Plaintiff was mentally distressed over the dishonest conduct of the said Don Peter Mellaaratchy and knew of no person who could help her in the circumstances.

16. The 1st 3rd and 4th Defendants abovenamed, having become aware of her trouble and her helplessness on or about the 14th day 10 of February 1962 volunteered to befriend her and protect her interests; and by their representations and conduct persuaded the plaintiff to accept them as her agents, advisers and protectors and to repose her confidence in them; and the Plaintiff having accepted them as such agreed to the proposal of the said Defendants that she should grant the 1st and 3rd Defendants a lease in the circumstances and manner set out in paragraph 7 above.

17. That in the special circumstances set out in paragraphs 15 and 16 hereof the Plaintiff, trusting in the good faith of the 1st, 3rd and 4th Defendants and believing their assurance as aforesaid as regards 20 the contents of the said documents pleaded in paragraph 8 hereof, executed the said Indenture of Lease bearing No. 3341 on the 19th of February 1962.

FOR A SECOND OR ALTERNATIVE CAUSE OF ACTION.

18. That by reason of the facts and circumstances set out in the preceding paragraphs hereof the 1st, 3rd and 4th Defendants abovenamed had constituted themselves the agents, advisers and protectors of the Plaintiff and were legally obliged thereby to safeguard her interests in the transaction.

19. That the said Notary V A. P. Nanayakkara was not known to 30 the Plaintiff and had been selected by the Defendants or some of them on behalf of the others; and that the Plaintiff placing her trust in the 1st, 3rd and 4th Defendants did not seek say advice from any other persons, nor did she in the course of this transaction or at or before the execution of the said Indenture of Lease have the benefit of any independent advice.

20. That subject to and in addition to the averments in paragraph 14 above the Plaintiff alleges that on the 19th day of February 1962 the 1st, 3rd and 4th Defendants abovenamed acting in concert and

in breach of the duty owed to the Plaintiff by them in the special circumstances hereinbefore pleaded procured from the Plaintiff by undue influence the said Indenture of Lease bearing No. 3341 and dated 20th day of February 1962 and thereby derived an unfair advantage to the prejudice of the Plaintiff.

D 29
Plaint in Distict
Court, Colombo
Case No.1003/ZL
12. 7. 62
—Continued

21. The Plaintiff states that in the transaction referred to in the foregoing paragraphs the 2nd Defendant has been acting in concert and collusion with the other Defendants and/or as the nominee of one or more or all of them.

10 22. That by reason of the averments contained in paragraphs 13 to 18 hereof a cause of action has accrued to the Plaintiff to have the said Indenture of Lease No. 3341 dated the 20th day of February 1962 set aside on the ground of undue influence on the part of the Defendants and to recover possession of the said estate and for damages, which the Plaintiff assesses at the said rate of Rs. 2,500/- per mensem.

23. That under the provisions of the said Indenture of Lease bearing No. 3341 the total rental payable for the whole term of five years is the sum of Rs. 30,000/- and represents the value of the subject matter of this action.

20

WHEREFORE THE PLAINTIFF PRAYS:

- (a) that the said Indenture of Lease bearing No. 3341 dated the 20th day of February 1962 and attested by V. A. P.-Nanayakkara of Colombo, Notary Public, be declared null and void *ab initio*;
- (b) in the alternative, that the said indenture of Lease bearing No. 3341 be rescinded or cancelled, or
- (c) that the said Indenture of Lease No. 3341 be set aside on the ground of undue influence as aforesaid; and
- (d) that the 1st and 2nd Defendants be ordered and decreed to restore the Plaintiff to the quiet possession of her said one - half share of the said Borakande Estate in the Schedule hereto fully described, and that the Plaintiff be placed in possession thereof, and
- (e) that the Defendants jointly and severally be ordered and decreed to pay to the Plaintiff damages at the rate of Rs. 2,500/- per mensem from the 1st day of March 1962 upto date of decree and continuing damages

30

D 29
 Plaint in District
 Court, Colombo,
 Case No. 1003/ZL
 12. 7. 62

—Continued

thereafter at the same rate until the Plaintiff is restored to quiet possession of her one-half share of the said Estate:

- (f) for costs; and
- (g) for such other and further relief in the premises as to this Court shall seem meet.

Sgd. Julius & Creasy,
Proctors for Plaintiff.

THE SCHEDULE ABOVE REFERRED TO:

All that estate plantations and premises called Mahaborakanda 10
 Division lying to the South of the Government High Road from
 Ambalangoda to Elpitiya being a portion of Mahaborakanda Estate
 depicted in Survey Plan No. 1576 dated 6th November 1919 made by
 J. H. W. Smith, Licensed Surveyor, situated at Karandeniya of Amba-
 langoda Division of Wellabeda Pattuwa in the District of Galle Southern
 Province and containing in extent three hundred and ninety nine acres
 two roods and 20 perches (A399-R2-P20) inclusive of the estate road
 and is comprised of:

- (a) All that portion marked Lots PF (14 markings) B1,
 C, 16, 17, 17², D, NC (2 markings), F1, F2, G1, G2, 20
 18, E, 19, 21, 20² 20¹, 22, B², 23, Cinnamon Blocks A
 and C 24, jungle, 25, 24², jungle 26 Cinnamon Blocks
 B and D 27¹, 27², 27³, 28, and bungalow pre-
 mises in the said Survey Plan No. 1576 and situated
 at Karandeniya aforesaid containing in extent three
 hundred and ninety eight acres and thirty perches
 (A398-RO-P30) according to the said Plan No. 1576.
 Registered A 38/293 in the Balapitiya District Land 30
 Registry Office,
- (b) All that portion of land marked NC in the said Survey
 Plan No. 1576 and lying between the High Road to
 Ambalangoda and the Kosatu Oya marked in the said
 Plan and situated at Karandeniya aforesaid containing
 in extent one acre and sixteen perches (A1-RO-PI6)
 Registered A 38/294 in the Balapitiya District Land
 Registry Office.
- (c) All that portion of land marked PF Lot 21 in the
 said Plan No. 1576 situated at Karandeniya aforesaid 40
 containing in extent one rood and fourteen perches
 (AO-R1-P14) Registered A 38/295 in the Balapitiya
 District Land Registry Office.

Sgd. Julius & Creasy
Proctors for Plaintiff

DOCUMENTS FILED WITH THE PLAINT.

True copy of Indenture of Lease No. 3341 dated the 20th day of February 1962 attested by V. A. P. Nanayakkara of Colombo, Notary Public marked "A".

D 29
Plaint in District
Court, Colombo
Case No. 1003/ZL
12. 7. 62

—Continued

Sgd. Julius & Creasy
Proctors for Plaintiff

DOCUMENTS RELIED ON:

Correspondence.

Sgd. Julius & Creasy
Proctors for Plaintiff

10

Settled by,
E. S. Amerasinghe,
H. W. Jayewardene, q.c.,
Advocates.

True copy of Plaintiff in D.C. Colombo Case No. 1003/ZL (Pages 1-7)

20

Sgd.
Assistant Secretary
District Court, Colombo
21st September 1964.

P 9
Receipt issued by
the Mercantile
Bank Ltd., for
Rs. 136,343/69.
12. 6. 63

P9

Receipt issued by the Mercantile Bank Ltd.
for Rs. 136,343/69

MERCANTILE BANK LIMITED.

G. P. O. Box No. 98,
Colombo, 12th June, 1963.
Department Security.

30

Received the sum of Rs. 136,343/69 in settlement of the loan granted to Mrs. E. Marley and Mr. D. P. Mellaaratchy at the request and on the guarantee of the late Mr. H. J. G. Marley dated 4th November 1960 by application of the proceeds of the Fixed Deposit Receipt No. 102/421 in the name of the late Mr. H. J. G. Marley

P 9
Receipt issued by
the Mercantile
Bank Ltd., for
Rs. 136,343.69.
12. 6. 63
—Continued

endorsed and delivered to us by him as security, which has now been uplifted at the request of the Proctors for his executor and the said sum of Rs. 150,000/- applied in settlement of the loan account leaving a balance available in respect of the Fixed Deposit of Rs. 16,183/71 now paid to the Proctors for the Executor at their request.

Mercantile Bank Limited.
Sgd.....
Manager.

P 16
Probate in
District Court,
Nuwara Eliya,
Testamentary
Case No. 591
8/12. 2. 64.

P16

10

**Probate in District Court, Nuwara Eliya, Testamentary case No. 591
(together with last will (P16A) & Codicil (P16B)).**

Julius & Creasy

Net value of Estate,
Rs. 1,084,240/74.
Estate Duty, Rs.245.095/-
Interest Rs. Nil.

PROBATE

In the District Court of Nuwara Eliya.

Testamentary)
) No. 591.
Jurisdiction)

20

In the matter of the estate of the late Herbert John Goddard Marley of "Garoopna" Nuwara Eliya in the Island of Ceylon who died on the 26th day of February, 1963 at "Garoopna", Nuwara Eliya aforesaid domiciled in Ceylon.

Be it known to all men that on the 29th day of August 1963, the Last Will and Testament and Codicil of Herbert John Goddard Marley, deceased, copies of which are hereunto annexed, were exhibited read, and proved before this Court, and administration of all the property and estate, rights and credits, of the deceased was and is hereby 30 committed to James Arelupar Naidoo of Colombo one of the two Senior Partners of the firm of Julius & Creasy resident in Ceylon at the time of his death and as such one of the Executors named in the Codicil, power being reserved to Henric Theodore Perera the other Executor named in the Codicil to prove, the said James Arelupar Naidoo being first sworn faithfully to execute the said Will and

Codicil by paying the debts and legacies of the deceased Testator as far as the property will extend and the law will bind, and also to exhibit into this Court a true, full, and perfect inventory of the said property on or before the 30th day of April 1964, and to file a true and just account of his executorship on or before the 30th day of April 1964.

P 16
Probate in
District Court,
Nuwara Eliya,
Testamentary
Case No. 591
8 12. 2. 64.

—Continued

And it is hereby certified that the Declaration and Statement of Property under the Estate Duty Ordinance have been delivered, and that the value of the said estate on which estate duty is payable, as **10** provisionally assessed by the Commissioner of Inland Revenue, amounts to Rs. 1,084,238/-

And it is further certified that it appears by a Provisional certificate granted by the Commissioner of Inland Revenue, and dated the 3rd day of February 1964 that Rs. 245,095/- on account of estate duty has been paid.

Given under my hand and the Seal of the Court this 8th/12 day of February 1964.

Sgd. B. E. de Silva
District Judge.

(Seal)

P16 A

20 Last Will of H. J. G. Marley (No. 459) attested by
P. N. Bartholomeuz, Notary Public.

Julius and Creasy,
Colombo.

Drawn by us
Sgd. F. J. & G. de Saram,
Notaries Public.

F. J. & G. de Saram,
Notaries, & C.
Colombo.

P16A
Last will of
H. J. G. Marley
(No. 459)-attested
by P. N.
Bartholomeuz
Notary Public
9. 10. 61

No. 459.

30 This is the Last Will and Testament of me Herbert John Goddard Marley of Garoopna Nuwara Eliya in the Island of Ceylon.

1. I hereby revoke all Wills Codicils and other Testamentary writings or dispositions heretofore made or executed by me and declare this to be my Last Will and Testament.

2. I hereby declare that I was born in Somerset in England in the year One thousand eight hundred and seventy seven that I came to Ceylon in the year one thousand eight hundred and ninety six and thereupon commenced a career as a tea-planter that I retired from active life as a planter in the year One thousand nine hundred

P16A
Last will of
H.J.G. Marley
(No. 459)-attested
by P. N.
Bartholomeusz
Notary Public
9. 10. 61

—Continued

and thirty that I built a home for myself in Nuwara Eliya and have lived therein since my retirement from planting and that it has for many years been and still is my intention to make Ceylon my permanent home for the remainder of my life.

3. I hereby appoint David Ernest Martensz and Victor Gnana-ratnam Cooke both of Messrs. F. J. & G. de Saram of Colombo to be the executors and Trustees of this my Will.

4. Whereas on or about the 20th day of May 1957 I provided Messrs. F. J. & G. de Saram of Colombo with a sum of twelve thousand Rupees (Rs. 12,000/-) and by a writing bearing the said date I 10 instructed them to utilise the same in the event of my death for the purpose of running my house and grounds called "Garoopna" in Nuwara Eliya (hereinafter called "my said house") and for the living expenses of my wife Eileen until she makes her own plans and Whereas the said sum is still held by Messrs. F. J. & G. de Saram on my behalf subject to the said instructions Now I do hereby cancel the said instructions and in lieu thereof I do hereby Direct the said Messrs. F. J. & G. de Saram after my death to pay out of the said sum of twelve thousand Rupees (Rs. 12,000/-) and any interest which 20 may from time to time after my death be received by them thereon or on any part thereof (less any income tax payable in respect of such interest) unto my said wife Eileen monthly or at such other intervals as may be found convenient or practicable a sum of or calculated at the rate of One thousand Rupees (Rs. 1,000/-) per mensem for her own use and to enable her to meet her living expenses while she resides in my said house including in such expenses all household liabilities for the period commencing on the first day of the month succeeding that in which I die and ending on the date on which she vacates my said house All such liabilities for the period up to 30 the last day of the month in which I die and all such liabilities as from the date on which my said wife vacates my said house being payable by my executors and trustees at the expense of my residuary estate and any apportionable items being apportioned at the discretion of my executors and trustees as between them and my said wife respectively and if at the date on which my said wife vacates my said house and intimates to my executors and trustees in writing her intention not to return any part of the said sum of twelve thousand Rupees (Rs. 12,000/-) and interest remains in the hands of Messrs F. J. & G. de Saram without having been applied as hereinbefore provided I direct 40 them to pay such unapplied part to my said wife for her use absolutely and I declare that the term "household liabilities" used in this clause of my Will shall mean servants wages electricity and fuel bills telephone bills and the like in respect of or connected with my said house and the normal running thereof by my said wife but shall not include cost of repairs or insurance or rates and taxes all of which shall be payable by my executors and trustees at the expense of my residuary estate or otherwise as hereinafter provided until sale of my said house.

5. With respect to my household and personal effects I direct my executors first to permit my said wife within two months of the date of my death to select such articles thereof as she may care to have and to notify my executors in writing of the selection so made by her and secondly after my wife has made her selection to permit each of my children within four months of the date of my death to select such articles thereof as he or she may care to have
 10 (if necessary by mutual agreement between them so as to avoid an article being selected by more than one child) and to notify my executors in writing of the selection so made by him or her and I give and bequeath unto my said wife and to each such child respectively all articles selected and notified by her or as the case may be by such child and I declare that the term "household and personal effects" used in this clause of my will shall include (a) personal jewellery silverware platedware glassware cutlery crockery linen photographs ornaments books other than books of account (b) my wife's bedroom furniture and (c) such other articles as my executors after consultation
 20 with my wife may decide to include therein but shall not include any other household furniture and effects.

6. I give devise and bequeath unto my executors and trustees my said house and grounds called "Garoopna" and all my household and personal effects therein not included in the definition of that term in clause 5 of this my will contained or where so included not selected and notified by my said wife or by my children in pursuance of clause 5 of this will and all other furniture in my said house Upon Trust to sell and convert into money the same at
 30 such time or times as they may in their absolute discretion think fit with all the powers conferred by law on trustees and with power to my executors and trustees to postpone the sale of all or any part of the same for such period as to them may seem proper without being responsible to any person benefitting under this my will for or in respect of consequent loss of any kind whatsoever and without being responsible to my wife for or in respect of loss or diminution of income consequent on sale and with further power until such sale (a) to permit my said wife free of rent to reside in the said house for such period not exceeding one year from the date of my death as she may think fit and during such residence to
 40 have the use of the said household and personal effects and furniture without liability for loss or wear and tear in the ordinary course of use (b) to let or lease the said house and grounds together with such furniture therein as they may think appropriate at such rent for such period and on such terms as my executors and trustees may in their absolute discretion think fit and (c) to pay to my said wife the nett rent received in respect of any such letting or leasing after deducting therefrom the cost of current repairs and insurance all rates and taxes and any

P16A
 Last will of
 H. J. G. Marley
 (No. 459) attested by P. N
 Bartholomeusz
 Notary Public
 9. 10. 61

—Continued

P16A
 Last will of
 H. J. G. Marley
 (No. 459) attes-
 ted by P. N.
 Bartholomeusz
 Notary Public
 9. 10. 61
 —Continued

other charges or outgoings in respect of or connected with my said house which my executors and trustees at their like discretion may consider should properly be charged against the said rent and upon the sale and conversion of my said house and the said household and personal effects and furniture my executors and trustees shall hold the nett proceeds thereof in trust for distribution in accordance with the provisions of clause 9 of this my will as though such nett proceeds formed part of my residuary estate and were included in the provisions of that clause.

7. Whereas it was at one time my intention to bequeath to my said wife Eileen by my Last will a sum of One hundred and thirty five thousand lawful money of Ceylon but I have since altered such my intention and now desire to make provision for benefitting my said wife to the extent of One hundred and seventy five thousand Rupees (Rs. 175,000-) of lawful money of Ceylon and to give effect to such my altered intention in manner hereinafter in this my Will appearing and Whereas my said wife having towards the end of last year expressed the desire to join Peter Mellaaratchy of Nuwara Eliya in purchasing in equal undivided half shares a rubber estate called Borakanda it became necessary for me to provide financial assistance to enable the said purchase to be completed which I did in manner following that is to say (a) I lent to my said wife a sum of Fifty Thousand Rupees (Rs. 50,000/-) free of interest (b) I paid on behalf and at the request of my said wife and the said Peter Mellaaratchy legal and other expenses connected with the completion of the said purchase amounting to Seventeen thousand and four Rupees (Rs. 17,004/-) and with respect to the liability of my said wife to me for half the said sum the same was to be free of interests (c) I lent to the said Peter Mellaaratchy a sum of fifty thousand Rupees (Rs. 50,000/-) on which he was to pay interest at two and one half per cent per annum and (d) I gave to the Mercantile Bank Limited a guarantee in respect of a sum of One hundred and twenty five Thousand Rupees (Rs. 125,000/-) lent by the said Bank to my said wife and the said Peter Mellaaratchy on a joint loan account and whereas taking into consideration the financial assistance thus provided by me as hereinbefore recited I now desire to make provision designed towards giving effect to my said altered intention of benefitting my said wife to the extent of the said sum of One hundred and seventy five thousand Rupees (Rs. 175,000/-) Now I do hereby:-

- (i) forgive and release unto my said wife free of all duties all sums which at my death may be owing by her to me whether in respect of the said sum of fifty thousand Rupees (Rs. 50,000/-) lent by me to her or in respect of the sum of Eight thousand five hundred and two Rupees (Rs. 8,502/-) being one half of the said Legal and other expenses paid by me as aforesaid and I direct that any document or security signed by my

wife relating to the said sums owing by my said wife to me which may be found among my papers at my death shall be cancelled and returned to her

P16A
Last will of
H.J.G. Marley
(No. 459)-attested by P. N.
Bartholomeusz
Notary Public
9. 10. 61

—Continued

10 (ii) direct my executors out of my estate to pay to the said Mercantile Bank Limited the sum which at the time of such payment shall be found to be owing to the said Bank for principal and interest upon the joint loan account in the name of my said wife and the said Peter Mellaaratchy and on such payment I direct my executors at the expense of my estate to obtain from the Bank an assignment cession or other appropriate document in consequence of such payment having been made under or in respect of my hereinbefore recited guarantee.

20 (iii) forgive and release unto my said wife free of all duties and I direct my executors to waive all my rights as against her in respect of one half of the sum paid to the said Bank consequent upon the fulfilment of the directions set forth in the foregoing sub-clause (ii) of this clause of my will

30 (iv) give and bequeath to my said wife free of all duties a sum equivalent to the difference between a sum of One hundred and seventy five thousand Rupees (Rs. 175,000/-) and the aggregate of the following sums to wit (a) the sum of fifty thousand Rupees (Rs. 50,000/-) being the principal sum lent by me to my said wife and released by the foregoing sub-clause (i) of this clause of my will (b) the sum of Eight thousand five hundred and two Rupees (Rs. 8,502/-) being half of the said legal and other expenses released by the foregoing sub-clause (i) of this clause of my will and (c) so much of one half of the sum paid by my executors to the said Bank in accordance with the direction contained in the foregoing sub-clause (ii) of this clause of my will which half is released by the foregoing sub-clause (iii) of this clause of my will as represents half the sum owing to the said Bank on the said loan account as at the date of my death including interest calculated up to that date.

P16A
Last will of
H.J.G.Marley
(No.459)-attested by P. N
Bartholomeusz
Notary Public
9. 10. 61
—Continued

- (v) direct my executors to demand payment of all moneys owing to me by the said Peter Mellaaratchy and my executors shall take all steps as may be necessary for the recovery of the moneys owing by him to me and shall hold the moneys so recovered or any property purchased by my said executors in execution of any decree obtained by them against him as part of my residuary estate and to be dealt with or disposed of as devolving therewith.

8. I give and bequeath free of all duties to each of my children hereunder mentioned the sum of One thousand Pounds (£1,000) Sterling of lawful money of Great Britain namely:-

- (a) my son the said Ronald John Marley
(b) my son the said Donald Leslie Marley
(c) my daughter Lucy Constance Mary Gascoyne

9. All the rest and residue of my property estate and effects whether real or immovable or personal or movable of whatsoever kind and wheresoever situate and whether in possession expectancy reversion remainder or otherwise (after payment thereof of all my just debts and funeral and testamentary expenses) I give devise and bequeath in equal proportions unto my grandchildren whose names and addresses are as follows:-

FULL NAME OF GRANDCHILD	PRESENT ADDRESS	
(a) Christopher John Marley	c/o African Highlands Tea Co., Ltd., Kericho, Kenya.	
(b) Richard David Marley	c/o B. S. A. Police, Post Box 96, Shabani, S. Rhodesia.	
(c) Philip Donald Marley	Gallbedde Estate Galboda, Ceylon.	30
(d) Christine Susan Marley	Merrifield, Aviemore Road, Crowborough, Sussex, England.	
(e) John Michael Whitehead Gascoyne	Ochiltree, Mayfield, Sussex, England.	
(f) Rosemary Anne Oswell	Venture Group, Norwood, Ceylon.	40

Provided that if any of my said grandchildren shall predecease me leaving any child or children him or her surviving the share in my residuary estate to which such predeceasing grandchild would have been entitled had such grandchild survived me (hereinafter referred to as "a grandchild's trust share") shall be held by my executors upon trust for the child or children of such grandchild living or en ventre sa mere at the date of my death and if more than one in equal proportions to vest in a son on his attaining the age of twenty one years and in a daughter on her attaining that age or earlier marriage With Power to my executors as such trustees to retain any investments representing or included in a grandchild's trust share in the form in which the same shall be at the date of my death or to sell or join any other person in selling any of the said investments and to invest moneys resulting from any such sale or otherwise included in a grandchild's trust share and any unapplied income of that share on such forms of investment as my executors as such trustees may think fit as if they were the beneficial owners thereof

P16A
 Last will of
 H. J. G. Marley
 (No. 459) attested by P. N. Bartholomeusz
 Notary Public
 9. 10. 61
 —Continued

10. I declare that the said David Ernest Martensz and Victor Gnanaratnam Cooke and any other executor or trustee for the time being of this my will being a proctor or other person engaged in any profession or business may charge retain and be paid all usual professional or other charges for business done by them or him or his firm in relation to the proving of this my will and the administration of my estate and otherwise in relation to the trusts hereof and also their or his reasonable charges in addition to disbursements for all other work and business done and all time spent by them or him or his firm in connection with matters arising under this my will including matters which might or should have been attended to in person by a trustee not being a proctor or other professional person but which such trustee might reasonably require to be done by a proctor or other professional person.

In Witness Whereof I the said Herbert John Goddard Marley have set my hand to this my Last Will and Testament at Nuwara Eliya in the said Island this ninth day of October One Thousand Nine Hundred and Sixty One.

Signed published and declared by the)
 said Herbert John Goddard Marley the)
 within named Testator as and for his Last)
 Will and Testament in the Presence of us)
 present at the same time who in his presence)
 and at his request and in the presence of)
 each other hereunto subscribe our names)
 as witnesses)

Sgd. H. J. G. Marley

Sgd. V. C. Medder
 Sgd. S. Basian.

Sgd. P. Neville Bartholomeusz,
 Notary Public.

P16A
Last will of
H. J. G. Marley
(No. 459) attes-
ted by P. N.
Bartholomeusz
Notary Public
9. 10. 61

—Continued

I, Percival Neville Bartholomeusz of Nuwara Eliya in the Island of Ceylon Notary Public do hereby certify and attest that the foregoing Last Will having been read over by the thereinnamed Testator Herbert John Goddard Marley in the presence of Vivian Carl Modder and Saverinayagam Bastian both of Nuwara Eliya aforesaid (the subscribing witnesses thereto) all of whom are known to me the same was signed by the said Herbert John Goddard Marley (signing as "H. J. G. Marley") and by the said witnesses (signing as "V. C. Modder" and "S. Bastian" respectively) and by me the said Notary in the presence of one another all being present at the same time at Nuwara Eliya aforesaid on this 10
ninth day of October One Thousand Nine Hundred and Sixty One

Date of Attestation)
9th October, 1961.)

Which I Attest
Sgd. P. Neville Bartholomeuz
Notary Public.

(Seal).

P16B
First Codicil of
H. J. G. Marley
(No. 479-attes-
ted by P. N.
Bartholomeusz,
Notary Public)
17. 5. 62

P16B
First Codicil of H. J. G. Marley
(No. 479-attested by P. N. Bartholomeuz, Notary Public)

Julius & Creasy
Colombo.

20

Drawn by us
Sgd. Julius & Creasy
Notaries Public.

No. 479.

I, Herbert John Goddard Marley of Garoopna Nuwara Eliya in the Island of Ceylon declare that this is a First Codicil to my Last Will and Testament bearing Number 459 dated the ninth day of October One Thousand Nine Hundred and Sixty One attested by Percival Neville Bartholomeusz of Nuwara Eliya aforesaid Notary Public (hereinafter referred to as "my said Will No. 459").

30

WHEREAS:

1. By Clause 3 of my said Will No. 459 I appointed David Ernest Martensz and Victor Gnanaratnam Cooke both of the firm of Messrs. F. J. & G. de Saram Proctors and Notaries Public Colombo in the said Island of Ceylon to be the Executors and Trustees thereof

2. By clause 4 of my said Will No. 459 I directed the said Messrs. F. J. & G. de Saram to effect certain payments upon the terms therein set out out of the sum of Rupees twelve thousand (Rs. 12,000/-) held by them on my account and any interest which may from time to time be received by them thereon or on any part thereof less any 40
Income Tax payable in respect of such interest.

3. I have made arrangements for the said sum of Rupees twelve thousand (Rs. 12,000/-) and any interest accrued thereon to be transferred to the firm of Messrs. Julius and Creasy Solicitors Proctors and Notaries Public of Colombo aforesaid and am now desirous of appointing the two Senior Partners resident in Ceylon at the time of my death of the said firm of Messrs. Julius and Creasy to be the Executors and Trustees of my said Will No. 459 in place of the said David Ernest Martensz and the said Victor Gnanaratnam Cooke.

P16B
First Codicil of
H. J. G. Marley
(No. 479-attested
by P. N.
Bartholomeusz,
Notary Public)
17. 5. 62

—Continued

NOW THEREFORE I HEREBY:

10 1. Appoint the two Senior Partners resident in Ceylon at the time of my death of the said firm of Messrs. Julius and Creasy Solicitors Proctors and Notaries Public to be the Executors and Trustees of my said Will No. 459 in place of the said David Ernest Martensz and the said Victor Gnanaratnam Cooke and I declare that my said Will No. 459 shall be construed as if the said two Senior Partners resident in Ceylon at the time of my death of the said firm of Messrs. Julius and Creasy were substituted therein as Executors and Trustees thereof for the names of the said David Ernest Martensz and the said Victor Gnanaratnam Cooke and that the expressions
20 "my Executors and Trustees" and "my Executors" as therein used shall mean and include the said two Senior Partners resident in Ceylon at the time of my death of the said firm of Messrs. Julius and Creasy and the Executors and Trustees or Executor and Trustee for the time being thereof whether original or substituted and

2. Direct and declare that the said sum of Rupees twelve thousand (Rs. 12,000/-) paid or to be paid to the said Messrs. Julius and Creasy as aforesaid shall be held by them upon the same terms as set out and contained in clause 4 of my said will No. 459 and I declare that the said Clause shall be construed as if the name of "Messrs. Julius and
30 Creasy" was substituted therein for the name of "Messrs. F. J. & G. de Saram"

In all other respects I confirm my said Will bearing Number 459 dated the ninth day of October One thousand nine hundred and sixty one attested by the said Percival Neville Bartholomeusz Notary Public.

In Witness whereof I have hereunto set my hand at Nuwara Eliya this seventeenth day of May One thousand nine hundred and sixty two.

Signed and Declared by the said Herbert John)
Goddard Marley as and for a First Codicil to his)
Last will and Testament in the presence of us who)
at his request in his presence and in the presence) Sgd/H. J. G. Marley.
40 of one another all being present at the same time)
have hereunto subscribed our names as Witnesses.)

Sgd/Douglas Swaris
Sgd/V. C. Modder.

Sgd/.P. Neville Bartholomeusz
Notary Public.

P16B
First Codicil of
H. J. G. Marley
(No. 479-attested
by P. N.
Bartholomeusz,
Notary Public)
17. 5. 62

—Continued

I, Percival Neville Bartholomeusz of Nuwara Eliya in the Island of Ceylon Notary Public do hereby certify and attest that the foregoing Codicil having been read over by the thereinnamed Herbert John Goddard Marley in the presence of Doctor Douglas Edwin Swaris and Vivian Carl Modder both of Nuwara Eliya aforesaid the subscribing witnesses thereto and all of whom are known to me the same was signed by the said Herbert John Goddard Marley (signing as "H. J. G. Marley") and by the said witnesses (signing respectively as "Douglas Swaris" and "V. C. Modder") and by me the said Notary in my presence and in the presence of one another all being present at the same time at Nuwara Eliya this seventeenth day of May One Thousand nine Hundred and Sixty Two. 10

I further certify and attest that in the Original on page 2 in line 28 the word "In" was typed after an erasure before the said Codicil was read over and signed as aforesaid.

Date of Attestation)
17th May 1962.)

Which I Attest
Sgd. P. Neville Bartholomeusz.
Notary Public.

(Seal)

The foregoing is a true copy of the Probate, Last Will and Codicil filed of record in D. C. Nuwara Eliya Testamentary Case No. 591 T. (Tendered Copy) 20

Sgd. Secretary.

25th Feby. 1964.

District Court Nuwara Eliya.

IN THE DISTRICT COURT OF COLOMBO
CERTIFIED COPY

Probate of the Will and Codicil of Herbert John Goddard Marley Deceased Net Value of Estate, Rs. 1,084,240/74. Dated 8th/12 February 1964. 30

Julius & Creasy
Solicitors, Proctors & Notary Public
Colombo.

D 53
Notes Written
in Pencil

D 53

Notes written in Pencil

MAHA BORAKANDE ESTATE.

Security : F/D. Rs. 150,000 to be endorsed.
Letter of Set - off (Stamp duty Rs. 5.50)
F/D 2 1/2% per annum 40
Loan with cost 5% per annum
on diminishing balance.

Present loan secured by Mortgage would cost 7% per annum on diminishing balance Mortgage bond would have to be stamped on ad Valorem basis.