

69, 1932

In the Privy Council.

No. 124 of 1931.

ON APPEAL FROM THE SUPREME COURT OF
THE ISLAND OF CEYLON.

BETWEEN

ALBERT GODAMUNE *Appellant*

AND

THE KING *Respondent.*

RECORD OF PROCEEDINGS.

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ON APPEAL FROM THE SUPREME COURT OF
THE ISLAND OF CEYLON.

BETWEEN

ALBERT GODAMUNE - - - - - *Appellant*

AND

THE KING - - - - - *Respondent.*

RECORD OF PROCEEDINGS.

No. 1.

Indictment with endorsements.

P.C. Case No. 32498, Kandy.

No. 41.

INDICTMENT.

IN THE SUPREME COURT
OF THE ISLAND OF CEYLON. } (Criminal Jurisdiction).

3rd Midland Circuit
District of Kandy. {
10 Kandy Session, 1930. { At a Session of the said Supreme Court in its
Criminal Jurisdiction for the Midland Circuit to
be holden at Kandy in the year of Our Lord One
Thousand nine hundred and thirty.

THE KING *versus* ALBERT GODAMUNE.

You are indicted at the instance of the Honourable Mr. Edward St. John Jackson, K.C., His Majesty's Attorney-General, and the charges against you are :—

20 Withdrawn by
Crown Counsel.
By Order of Court.
(Sgd.) C. STORK,
Dy. Regr.
5.1.31.

(1) That you did on a date between the 26th November 1927 and 21st January 1929, at Kandy, dishonestly misappropriate a sum of Rs. 10,000/—, the property of Mr. C. W. Peiris and others; and that you have thereby committed an offence punishable under section 386 of the Ceylon Penal Code.
(2) That at the time and place aforesaid, you did dishonestly misappropriate a sum of Rs. 10,000/—, the property of Mr. H. C. Ensor Harris; and that you have thereby committed an offence punishable under section 386 of the Ceylon Penal Code.

*In the
Supreme
Court of
Ceylon.*

No. 1.
Indictment
with en-
dorsements,
2nd October
1930.

*In the
Supreme
Court of
Ceylon.*

No. 1.
Indictment
with en-
dorsements,
2nd October
1930—con-
tinued.

Or in the
alternative.
By order of Court.
(Sgd.) C. STORK,
Dy. Registr.
5.1.31.

(1) That on a date between 30th March, 1928, and 21st January 1929, at the place aforesaid, you did dishonestly misappropriate a sum of Rs. 5000/—, the property of Mr. C. W. Peiris and others; and that you have thereby committed an offence punishable under section 386 of the Ceylon Penal Code.

(2) That at the time and place last aforesaid, you did dishonestly misappropriate a sum of Rs. 5000/— the property of Mr. H. C. Ensor Harris; and that you have thereby committed an offence punishable under section 386 of the Ceylon Penal Code. 10

(3) That on a date between the 28th August, 1928, and 21st January 1929 at the place aforesaid, you did dishonestly misappropriate a sum of Rs. 3000/—, the property of Mr. C. W. Peiris and others, and that you have thereby committed an offence punishable under section 386 of the Ceylon Penal Code. 20

Or in the
alternative.
By order of Court.
(Sgd.) C. STORK,
Dy. Registr.
5.1.31.

(4) That at the time and place last aforesaid, you did dishonestly misappropriate a sum of Rs. 3000/— the property of Mr. H. C. Ensor Harris; and that you have thereby committed an offence punishable under section 386 of the Ceylon Penal Code.

Withdrawn by
Crown Counsel.
By order of Court.
(Sgd.) C. STORK,
Dy. Registr.
5.1.31.

(7) That on a date between the 26th November, 1927, and 21st January 1929, at the place aforesaid, you did commit criminal breach of trust in respect of a sum of Rs. 10,000/— entrusted to you by Mr. P. G. Cooke on behalf of Mr. C. W. Peiris and others; and that you have thereby committed an offence punishable under section 389 of the Ceylon Penal Code. 30

The 2nd day of October 1930.

(Sgd.) J. E. M. OBEYESEKERE,
Crown Counsel,
H.B.

Kandy, 5th January, 1931.

To this Indictment the prisoner Albert Godamune pleads not guilty. 40

(Sgd.) C. STORK,
Dy. Registrar, S.C.

Kandy, 10th January 1931.

The unanimous verdict of the Jurors sworn to try the matter of accusation in this case is that the accused Albert Godamune is guilty on counts 2 and 4 of the Indictment.

(Sgd.) J. R. WALKER,
Foreman.

*In the
Supreme
Court of
Ceylon.*

No. 1.
Indictment
with en-
dorsements,
2nd October
1930—*con-
tinued.*

Kandy, the 10th day of January 1931.

On this Indictment the sentence of the Court, pronounced and published this day, is that the accused, A. Godamune should undergo rigorous imprisonment of one year on each of the counts, the sentences to run concurrently.

(Sgd.) C. ARUMUGAM,
Officiating Registrar.

A question of law having arisen upon this conviction and having been reserved for the consideration of 2 or more Judges, of the Supreme Court, it is ordered that the said accused do enter into a recognizance in the sum of Rs. 25,000/- to appear and receive sentence whenever called upon to do so.

(Sgd.) C. ARUMUGAM,
Officiating Registrar.
10.1.1931.

20

List of Productions.

(Not printed.)

List of Witnesses.

(Not printed.)

*In the
Supreme
Court of
Ceylon.*

No. 2.

Preliminary Proceedings at Trial.

S.C. No. 41.

P.C. Kandy No. 32498.

No. 2.

Preliminary
proceedings
at Trial,
5th January
1931.

REX vs. ALBERT GODAMUNE.

Date of Trial : 5th January 1931.

Charges : (1) Dishonest misappropriation—S.386.
(2) to (6) Dishonest misappropriation—C.P.C.
(7) Criminal breach of trust—S.389.

Plea : Not guilty.

J. E. M. Obeyesekera, C.C., with Loos, for the Crown.

10

Hayley, K.C. with Rajaratnam, Wijeratna and Thalgodapitiya instructed by
C. Sproule and A. C. Abeywardana for the Accused.

Mr. Hayley takes objection to the Indictment as it is framed. He submits that it is irregular and illegal in several respects. He states that the date on which this transaction is alleged to have taken place is not stated in counts 1, 2 & 7. He states that ordinarily the actual place and the date on which the offence was committed must be mentioned in the indictment. He further states that these counts are an attempt on the part of the Crown to conform with S.168 (2). Prior to the amendment of the Code every specific item of money had to be charged as a separate offence on a separate date and sub-section 2 of 168 will enable the Crown to charge as one offence over a certain period without specifying dates, but following the general scheme of the Code the section provides that it could only do so if the transaction took place within 12 months. Here the dates exceed 15 months and it therefore makes the charge entirely illegal. He says that S.168 (2) has no application to counts 1, 2 & 7 as they cover a period of 14 months.

The 2nd objection is that as this offence is committed within a period of 15 months it is irregular to combine any of the other charges with them. He says there are 3 specific sums charged under the same section as dishonestly misappropriated and they are combined with the 1st charge which took place during a period of 15 months, so that it is impossible to say that these 3 charges took place within one year.

If on the other hand the charges, 1, 2 & 7 can stand, then the counts 3, 4, 5 & 6 cannot be joined with them under S.179 because they are not committed within the space of one year. He says there is nothing to indicate that there is any connection between any of these charges to say that they were committed in the course of the same transaction.

Mr. Hayley's submission is that the whole indictment is out of order and that the Crown must either withdraw it or choose some particular charge on which the trial can proceed.

40

Mr. Obeysekera says that he is prepared to withdraw counts 1, 2 & 7. He says he is prepared to admit that counts 3 & 4 are alternative and that 5 & 6 are also alternative.

Mr. Obeysekera formally withdraws counts 1, 2 & 7 and makes counts 3 & 4 and 5 & 6 alternative charges.

The indictment is amended accordingly and it is read out to the accused. The accused pleads not guilty to the amended indictment.

Special English Speaking Jury empanelled—6 sworn, 1 affirmed.

*In the
Supreme
Court of
Ceylon.*

No. 2.
Preliminary
proceedings
at Trial,
5th January
1931—*con-
tinued.*

No. 3.

Evidence of H. F. Ensor Harris.

Evidence.

10

Crown Counsel opens case & calls :—

H. F. ENSOR HARRIS—sworn.

No. 3.
H. F. Ensor
Harris.
Examina-
tion.

Proprietary Planter, Haluwella. In 1897 I was married to Miss Muriel Kennedy and at the date of marriage I entered into a marriage settlement (shown P1). This is a copy of it. Under the terms of that settlement I settled 40,000/- on trustees in trust for certain beneficiaries. I did that by executing a property known as Belmont estate. The original trustees were Messrs. Buck and Marshall. They left the Island and in 1920 by P2 I appointed Mr. Westland and Mr. Godamune as co-trustees of the same trust. Mr. Godamune was recommended to me by Mr. Liesching. I had not met Mr. Godamune professionally so far as I remember. Mrs. Harris died in 1906 and I was entitled to her interests of the trust money during my lifetime. In August 1920 I sold Belmont estate to Mr. H. W. Boyagoda for Rs. 85,000/-. I received more than 20,000/- in cash, and 2 mortgages of 10,000/- and 15,000/- each. He also executed a mortgage in favour of the trustees for 40,000/-. I understood that the property later passed on to a Syndicate consisting of Messrs. Peris, Batuwantudawa and others after going through other hands. Various sums were paid at different times but I cannot say whether it was on the 40,000/-. There were 3 mortgages.

30 There was an accumulation of interest on the Rs. 40,000/-. The trustees put that bond in suit in case No. 34987 District Court, Kandy. Plaintiff was dated 14th March 1927. Messrs. Liesching & Lee acted as Proctors for the trustees. They took instructions from the trustees. My wishes were ascertained before the bond was put in suit. I wanted it to be put in suit. Judgment was entered on the 30th March 1928 as prayed for. That decree would consist of the principal amount of the mortgage 40,000/- and accumulated interest. I was entitled to get the accumulated interest. I did not receive any portion of the accumulated interest. I got no interest before the assignment of the 40,000/- mortgage. I now know that Mr. Peris

40 and other members of the syndicate made certain payments of interest to

*In the
Supreme
Court of
Ceylon.*

Evidence.

—
No. 3.
H. F. ENSOR
Harris.
Examina-
tion—con-
tinued.

Mr. Godamune. I did not know that at the time the payments were made. I did not know that Mr. Godamune had received certain cheques at the time they were received (shown P3). I received this letter dated 15th September 1928 from Mr. Godamune (reads contents). I can't recollect what the interview was that he refers to in this letter. In September 1928 Mr. Godamune told me that he could get a certain amount if I would consent to give the defendants further time. Then he sent me letter P4 with copy of conditions (reads P4 and conditions). I wrote letter P5 dated 17th September 1928 to Mr. de Vos of Messrs. Liesching & Lee just after receiving letter P3. By the use of the word "Bogus" cheque I was referring to the cheque Mr. Godamune gave me for 10,000/- in payment of interest. He gave me a cheque for 10,000/- in March 1928. The previous bogus cheque which I refer to is the 10,000/- cheque in part payment of the 23,000/-. That is the cheque I received on the 21st January 1929 and which was dishonoured. I may have been thinking of his previous promises which I refused to accept. He wanted to stay execution of the writ if a certain amount was paid up and I refused. He wanted me not to sell the property but I refused unless cash in full was paid. If the 10,000/- cheque was paid in 1929 the "bogus" cheque which I referred to cannot be that. Then I cannot explain what I meant by "Bogus cheque." It must be some promise of payment which did not materialise. In November 1928, Messrs. Beven & Beven applied to the District Court to have the payments certified. The enquiry into that was fixed for 21st Jan. 1929. I remember I attended court on that date. Before I went to Court that morning the accused transferred his full interests of Lunuwila estate and gave me a cheque for 10,000/-. He came to my bungalow the night before and told me that he would get into trouble if he did not pay up the money or certify the money as being paid and that he hadn't the money, and asked me to accept a mortgage or a transfer of Lunuwila estate and a cheque for 10,000/- to cover the mortgage. I understood him to say that his interests in Lunuwila was 14/16. He told me that at the time there was a mortgage for 8,000/- in favour of Trinity College, I would not have accepted that transfer if I knew that he had a lesser interest in it. It was against my wish that I even consented to this transfer. After I got that transfer and the cheque I wrote letter P7 in Jan. 1929 to Messrs. Liesching & Lee saying that they might consent to payments being certified (reads P7). I sent the 10,000/- cheque P8 to the bank but it was returned to me with the endorsement "drawer's signature differs." I returned that cheque to Mr. Godamune and got a fresh cheque from him for 10,000/-. I sent that cheque P9 to the bank and that too was sent back to me with the endorsement "Stale cheque, refer to drawer." It is dated 20th Nov. 1929. I got Messrs. Liesching & Lee to investigate what I got under that transfer. (Witness is referred to P11.) This is a letter dated 14th May 1929 received by me from them. I cannot remember what I did on receipt of that. I did not take possession of the estate. I looked upon it as security for the amount due to me. I asked Mr. Godamune to pay up that amount on more than one occasion but he failed to do so. Eventually I sent a petition to the Inspector General of

Police (P13—reads same). When Mr. Marshall went home Mr. Creasy took over the trusteeship. I identify my signature on this petition P13. This was written out on my instructions. Statements of facts contained therein are correct. I have not received any part of the 23,000/- even now. There have been various talks of payments which have not materialised. I do not think offer of any payment was made, but subsequent to the proceedings in the Police Court a suggestion was made to re-transfer the estate on payment of the money. I replied that I would be pleased to re-transfer the estate if my money is paid up.

*In the
Supreme
Court of
Ceylon.*

Evidence.

No. 3.

H. F. ENSOR
HARRIS.

Examina-
tion—con-
tinued.

Cross-exa-
mination.

10 CROSS-EXAMINATION.

I did not write P13. I dictated the whole of it to Proctor George de Silva. My conductor suggested that I should see him. At that time I did not know that Proctor George de Silva was a violent political enemy of Mr. Godamune, but I knew it later. I did not know that Mr. Godamune had given evidence against Mr. Silva in an election petition enquiry, resulting in Mr. Silva being unseated. It was in consultation with Mr. George de Silva that I sent the petition to the Inspector General of Police. I told the District Judge some time before that that I was satisfied with the arrangements made to pay up the amount. A year after I said that, I sent the petition to the
20 Inspector General of Police. I also sent a petition to the Supreme Court at the same time and in the same terms. I have been in Ceylon for a long time and I am fairly familiar with the fact that if a person wants to make a criminal complaint against another he goes to the Police Court. I considered that to send a petition to the Inspector General of Police was a more suitable method. I thought it was more businesslike. I have never made a complaint against anybody in the Police Court. Mr. Silva advised that the best procedure was to inform the Inspector General of Police. He might have suggested that the Supreme Court would investigate into my complaint more than my complaint in the Police Court 12 months after. I knew that the
30 trustees had instituted this case against Mr. Boyagoda and others to enforce the mortgage. Under the trust I was entitled to receive interest. I did receive interest from myself mentally—but I did not pay myself from one bank a/c to another. I was the mortgagee of the estate. The mortgage interest, if any, would be payable by me until it was called up. I did not receive interest from other people during my lifetime, but I took the produce because I was the owner of the estate. When I sold it to Mr. Boyagoda he had to pay me interest during my lifetime because I was the owner. At a certain time in 1928 I discovered that certain sums had been paid to Mr. Godamune by others. If I had been paid fully by Mr. Boyagoda there
40 would be nothing due to me from Mr. Godamune. Before I sent the petitions Mr. Boyagoda filed an affidavit saying that I had received money from time to time as interest which I was claiming from Mr. Godamune. Mr. Boyagoda said that he paid interest to Mr. Godamune. Action was filed by the Trustees on the 40,000/- bond. All the defendants consented to judgment at a certain stage. Then came the question of executing this decree when Mr. Godamune consulted me as to whether they should be given

*In the
Supreme
Court of
Ceylon.*

Evidence.

No. 3.
H. F. Ensor
Harris.
Cross-exa-
mination—
continued.

time. The whole decree was assigned to a chetty who paid up the 40,000/- and more than 6,000/- balance interest. The chetty became the owner of the decree and he could enforce it against Boyagoda or whoever who held the property. The chetty applied to court to have himself substituted for the plaintiff in order that he might execute the decree which he got. Then Mr. Boyagoda came to court and opposed that the chetty cannot be substituted because in addition to the 23,000/- he (Mr. Boyagoda) paid 10,000/- to me. All the interest was paid to me. I do not think Mr. Boyagoda paid me any interest at all. The payments were made by Karuppen chetty. I am aware of the fact that Mr. Boyagoda claims to have paid more than the interest due after giving credit to the 23,000/-. I do not know that Mr. Boyagoda said that he paid that into my hands. I know that Mr. Boyagoda said in his affidavit that the assignment to the chetty had been made in breach of an understanding given by me. I understood that the fraud he suggested was in having assigned the decree. He had already consented to judgment. It is not a fact that Mr. Boyagoda paid me Rs. 10,000/- out of the interest on the 40,000/- (witness is referred to petition P13) " P13—Mr. Boyagoda appeared in court and said that he has been paying from time to time sums aggregating to 23,000/- to Mr. Godamune through his trustees." I suggest it is true. I do not know when he appeared in court. He had filed affidavit against me at that time. I do not know whether the wording in the petition is correct. I did not draft the petition but I signed it. I accept the statement "Mr. Boyagoda . . . through his trustees" in the petition as correct. I do not know on what day Mr. Boyagoda appeared in Court. I was not present when he appeared in court. I have no record that he appeared in court. Mr. Boyagoda paid Mr. Godamune through his trustee Mr. Batuwantudawa. I suppose Mr. Cooke was acting as Proctor. He did it in the place of Mr. Peris. He was acting for Mr. Boyagoda in paying this money. I saw in the papers that Mr. Boyagoda appeared in court and made the statement that he paid 23,000/- to Mr. Godamune. On the 19th April 1930 I sent a petition to Mr. Justice Akbar with reference to the previous petition. (Reads contents of petition to Mr. Justice Akbar): "The petitioner regrets that in making some of the representations appearing in his previous petition to Your Lordship's Court he has overlooked amongst others contents of certain correspondence between Mr. Cooke and Mr. Godamune." What I said there was true. If I had not overlooked the correspondence, it does not follow that I would not have sent the previous petition. The 2nd petition was sent to clear off any difficulty in my way to get back my money and reconvey the property. I would have included the correspondence in the previous petition if I had not overlooked that. It simply shows that the original petition was deficient of that excuse regarding the conditions between Mr. Godamune and Mr. Cooke. That should have been entered in the petition. I do not mean that I want to make the original petition stronger by including that correspondence. Reading the passage that was read out from the petition anybody might think that if I knew the correspondence between Mr. Cooke and Mr. Godamune I would not have sent the previous petition, but my idea was to get permission from the Supreme

Court to accede to their wishes to get back my money and withdraw the complaint of the non-payment of the money. I would have made those representations subject to the value of that correspondence which I had overlooked. That petition is dated 19th April and the prosecution was instituted on the 24th April. I would not have wished a prosecution instituted subject to the permission of the Solicitor General. (Mr. Hayley shows the petition D1 to witness.) This is the copy of the petition I sent to Mr. Justice Akbar. Shortly after the prosecution was instituted I understood that the money was brought into court. I appeared in court and said that

10 I was willing to accept the money and reconvey the property. Mr. Westland now lives somewhere in Trincomalie. I cannot say whether he played an active part as a trustee. Before the mortgage action was instituted Mr. Godamune and Mr. Westland were the trustees. I was pressing them to recover the interest before and after the institution of the case. It was at my suggestion that he instituted the action. I do not know whether Mr. Westland was here at that time. I wrote to him and asked him to sign a proxy. I believe I sent a man to Trincomalie to get the proxy signed by him to file the action. I was urging the trustees to get the money for me. It was due in 1924 but it was not paid till 1929. Karuppen chetty

20 paid me money presumably on Mr. Boyagoda's a/c (witness is referred to P3). Mr. Godamune must have seen me before he wrote this letter P3. He must have told me that he had received a sum of money. He told me that he was receiving monies from Mr. Boyagoda's trustees. By petition P13 I did not intend the I.G.P. to understand that it was only after Mr. Boyagoda came into court and mentioned the 23,000/- that Mr. Godamune admitted it, but what I wished to impress on him was that Mr. Godamune received this money without informing me. The statements in P13 are not misleading. Mr. Godamune did not disclose the payments when they were made.

30 6th January, 1931.

Accused present—same Counsel as before.

H. F. ENSOR HARRIS—sworn.

CROSS-EXAMINATION (continued).

(Witness is referred to letter P4 dated 5th October 1928.) I remember this letter which I received with an extract of the conditions. By the time I received this I was aware of the payments made by Mr. Cooke to Mr. Godamune. I did not ask Mr. Godamune to pay me the money. On the 21st January when the Kandy case was called regarding the certification I was present in court (record read out : “ Mr. Harris the life-renter who,

40 it is admitted, is entitled to the interest, admits that Mr. Godamune has since accounted to him for the 23,000/-.” That is a correct record. (Witness is referred to letter P7 dated 21st January from this witness to Liesching & Lee.) The statement in this letter that Mr. Godamune has settled the matter with me by transferring Lunuwila estate is correct.

*In the
Supreme
Court of
Ceylon.*

Evidence.

No. 3.

H. F. Ensor
Harris.

Cross-exa-
mination—
continued.

*In the
Supreme
Court of
Ceylon.*

Evidence.

No. 3.

H. F. Ensor
Harris.
Cross-exa-
mination—
continued.

Accused gave me a transfer of the estate and a cheque for 10,000/- for the balance. The letter was written as far as I remember by Proctor Halangoda. I read it before it was sent. Accused gave me the cheque afterwards—the same day, after the deed was written. It was not arranged that he should give it to me before the deed was written. As far as I remember he gave me a cheque of that date. I do not remember that that cheque was dated 7 days later—may have been. (Letter P8 from the Bank is referred to.) The cheque was given to me on the 27th January. According to the date given by the Bank. I take it as correct. The deed of transfer was attested by Proctor Halangoda. I have seen it. If Mr. Halangoda has certified as Notary at the end of that deed that the full consideration was acknowledged to have been received previously I suppose it was correct. The full consideration was 25,000/-. The consideration for the land subject to the mortgage was 25,000/-. The cheque was security against the mortgage. The cheque for 10,000/- did not form part of the transaction of the transfer. The accused gave me the cheque the same morning as the deed as far as I remember before I went to court. The letter to Liesching & Lee was written between the giving of the cheque and the transfer. It was a very short space of time. I went to Mr. Godamune's office and got the cheque. The transaction was done in Mr. Halangoda's office. I got the cheque about 10 minutes later. The writing of the deed and the cheque could not be done at once. The accused did not draw up the cheque while the Notary was drawing up the deed. I had already written the letter to Liesching & Lee by the time I got the cheque. I believe the cheque was post-dated for some days. I think the accused asked me to keep it for a week. I really thought he was going to pay the 10,000/- on the 27th January—at the end of the month. He said he was going to get bonds or payments of bonds or mortgages. I cannot remember now what he said. He did not say he would shoot himself. He suggested that if he got into trouble he would shoot himself. It was to obviate getting into trouble that he did all this. He could not pay it. He promised to pay the cheque on the 27th January. He may have told me to hold the cheque as security but not to cash it until he authorises me. I was not going to hold the cheque indefinitely. Unfortunately I am not a rich man. At one time I filed insolvency proceedings and withdrew. Although the cheque was dated 27th January I waited till February because I wanted to give him time. I can't remember whether I got the cheque dated 27th January not intending to cash it on that date. I held it back to give time. The petition is apparently not correct. Mr. Godamune transferred Lunuwila estate. I do not know the place. I believe it is near Kandy. I have a conductor called Gunasinghe. He has worked for me for a large number of years. I believe he has been to Lunuwila estate. I don't know whether he is well acquainted with it. At the time the deed of transfer was put through there was an agreement that I should not take possession but that I should re-transfer it as soon as Mr. Godamune paid the 25,000/-. I have not taken possession of the estate up to date. Mr. Godamune wanted to pay the 25,000/- rather than let me have the property. As far as I understood he would rather pay the

25,000/- than give up the land. That was my idea at the beginning. Before the transfer was written accused asked me to take a secondary mortgage, the property being already subject to a mortgage for 8,000/- in favour of Trinity College, but I did not agree to that. The talk about the mortgage was not 10 days before the 21st January so far as my memory goes. The deed was attested by Proctor Halangoda. I know that he was the Proctor who put through the Trinity College Mortgage. He should have been well aware of the title. I asked him whether the title was alright. Accused told me he owned 14/16 share of the land. I am sure. I mentioned it in the Police Court. I have no document—no letter—to prove that accused said he owned 14/16 share. I know that accused's main interest was a leasehold for 25 years. I do not recollect whether I asked Mr. Halangoda what the accused's interest in the property was. I asked him whether the title was alright. (Para. 4 of petition read out: "He transferred to the petitioner certain lands . . . Since the transfer was executed the petitioner has discovered that Mr. Godamune is only entitled to $\frac{3}{8}$."") I did not intend to suggest in that petition that he promised to sell the whole land. It was intended to convey that he had a larger share. I did not state in the petition that accused told me he owned 14/16 but I should have said so. When I drafted the petition it was in my mind that the accused said he owned 14/16 but I did not deliberately omit it. I said in the petition that he owned $\frac{3}{8}$ to $\frac{1}{4}$. I did not know even at the time of the petition what share the accused owned in the land. It is difficult to get the deed which is in Trinity College. As far as I remember Messrs. Liesching & Lee got the particulars for me and wrote to me P11 saying that accused owned a $\frac{1}{4}$ share. I don't think the extract they sent me contains the whole history of the land. As far as I remember I thought accused owned $\frac{3}{8}$ or a $\frac{1}{4}$ share. I may have worked it out myself. Mr. Godamune is not my trustee now. After the certification the whole of the 40,000/- on the mortgage has been paid to the trustees plus the 6,000/- extra interest, and they have deposited it in the bank in their names. That 40,000/- has been invested in consultation with me. Yesterday I said that no interest has been paid on the primary mortgage, but that is not correct. In the 1st two years interest was paid on the 3 mortgages separately and as far as I remember 4 years later when the secondary mortgage was called up all the interest that had been paid up was credited to the secondary mortgage. By primary mortgage I mean the Trust mortgage. I am only speaking from memory. The 40,000/- has been invested by Mr. Godamune and Mr. Westland who continued to be my trustees. There was a talk of new trustees after I sent the petition. I don't know that I requested Mr. Godamune to remain Trustee with my consent. There was a suggestion of new trustees but that fell through. I do not know why. It was a complicated motive. There was a suggestion that my son who was of age should join me to break the Trust and take the money and close up the Trust. Liesching & Lee are partners of Julius & Creasy in Colombo and they had instructions apparently from my son to have the whole of the money sent to England and therefore I did not wish that new trustees be appointed. The liquidation of the funds would come to the hands of

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Evidence.

No. 3.

H. F. Ensor
Harris.

Cross-exa-
mination—
continued.

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Ceylon.*

Evidence.

No. 3.

H. F. Ensor
Harris.
Cross-exa-
mination—
continued.

Liesching & Lee and Julius & Creasy. That was my idea. I preferred to remain as I was with Mr. Godamune and Mr. Westland as my trustees. I understood that Mr. D. L. Wijewardene had deposited the money, 21,000/- in court on condition that he was willing to become the purchaser of Lunuwila estate (petition D1 referred to). My object in sending that was that I personally had no grievance against the accused if he paid up the money. I did not want to take the money without the sanction of the Solicitor General. My idea was not to prevent criminal proceedings being instituted. I did not know that criminal proceedings were to be instituted. I do not think I went to see Mr. Rajaratnam, but he sent the petition to me. I went to him once or twice. I know that he had been advising Mr. Godamune. He was also acting for me in another case. I made alterations in the draft petition in pencil. The petition which was shown to me yesterday was the actual draft with my pencil alterations on it. The endorsement at the end asking Mr. Rajaratnam to send it with the alteration made by me is in my handwriting. Mid-country and low-country tea went down somewhat in 1929 than in 1927 and 1928. After the 1st cheque for 10,000/- was returned I got another cheque P9 but I don't think there was any condition on the 2nd cheque. I sent the cheque to Liesching & Lee and asked them to get a good cheque and they sent me a good cheque. I sent that cheque to the bank 8 or 9 months later. Mr. Halangoda had some correspondence with me about the registration of the land. I was trying to help him to get a purchaser. I may have told him that I propose to sell the land myself as he could not get a purchaser.

Re-exa-
mination.

RE-EXAMINATION.

(Petition P13 referred to.) I went to Proctor George de Silva and the petition was drafted on my instructions. I went to him in the capacity of a Proctor. I took legal advice from him. He acted for me professionally. He is a gentleman with a large criminal practice in Kandy. He advised me to send a petition to the Solicitor General and to the Police. I acted on professional and legal advice. The transfer of Belmont estate to Boyagoda was on 3rd August 1920. Interest would be payable by Mr. Boyagoda on the 40,000/- mortgage from that date. Interest was paid in the first two years but not in full, but I do not think interest was paid after that on the 40,000/- mortgage. Interest for 5 years had accumulated on the 40,000/- mortgage at the time this action was instituted. In the plaint 21,000/- was claimed as interest. The affidavit by Mr. Boyagoda was filed on the 14th November, 1929. That was long after the receipt of monies by Mr. Godamune. Mr. Boyagoda consented to judgment in that case and it was about 6 months after that he came out with the story that he had paid interest to me. I do not think I ever received any money direct from Mr. Boyagoda. I received money from Karuppen chetty and Batuwantudawa. (The following passage from petition P13 read:—"After decree was entered in the case against Boyagoda, Mr. Godamune had been receiving from time to time sums aggregating to 23,000/- out of the interest due from Mr. Boyagoda through his trustees C. Batuwantudawa and others.")

Q. What words do the words "due from Boyagoda" qualify?—A. That means the interest due from Mr. Boyagoda.

Q. From whom do you suggest that monies have been received?—A. From Batuwantudawa and others. Payments were made by them but I regarded the interest as due from Mr. Boyagoda.

(P13—"Mr. Boyagoda appeared in court and said that he has been paying from time to time sums aggregating to 23,000/- to Mr. Godamune"?) I do not remember how I came to get that information but it came to my knowledge. In that petition I refer to the fact that payments on account of interest were made through Mr. Boyagoda's trustees C. Batuwantudawa and others. I regarded the payments as having been made on behalf of Mr. Boyagoda. Before I sent the petition to the I.G.P. I made repeated requests for payments but without result. The Police Court proceedings in this case started on the 24th April 1930. That was about 5 months after my petition. During that period of 5 months no offer of payments was made to me. (Record of the D.C. case read out as follows:—"Messrs. Rajanathan & Raju on behalf of Mr. Wijewardene deposit 21,000/- as mentioned in the motion and produce Kachcheri receipt." The motion is read out.) The condition on which the money was deposited was that this prosecution may be withdrawn on the money being paid to me. It was not in my hands to withdraw the prosecution. The Police Court enquiry had gone on for several days when the money was deposited in court. I know that Mr. Wijewardene who deposited the money is a brother-in-law of this accused. (Petition to Mr. Justice Akbar referred to) Mr. Rajaratnam prepared this draft. He was acting on behalf of Mr. Godamune on his instructions and not on my instructions. He prepared this draft and sent it to me. (Shown petition D1.) This is the draft. I don't think I gave instructions to Mr. Rajaratnam to prepare this draft and send it to me. I made alterations in the draft and sent it to Mr. Rajaratnam. The statement in it: "The petitioner regrets that in making some of the representations appearing in his previous petition to Your Lordships' Court that he had overlooked amongst others the contents of certain correspondence," was in the draft as it originally came to me from Mr. Rajaratnam. (To Court: The original draft came from Mr. Rajaratnam.) I don't think I gave instructions for the preparation of the draft. Yesterday I said that I was not aware of the payments at the time they were made. I adhere to that statement (letter P4 referred to) I had an earlier letter from the accused P3 in which he refers to a further sum of 15,000/-. As far as I remember the circumstances, Mr. Godamune informed me that the money was available but has not been paid. I think he told me that the money was available on condition that the purchasers were given further time to pay up but I refused. Letter P5 dated 17th September was written by me to Mr. de Vos. The 15,000/- mentioned in P5 refers to the 15,000/- in P3.

Q. What do you mean by the bogus cheque?—A. Mr. Godamune said that the money was available on condition that I gave further time, but I began to doubt it at that time because the cheque was not available except on condition. The money was payable to me without any condition. I

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Evidence.

No. 3.

H. F. Ensor
Harris.

Re-examination—
continued.

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Evidence.

No. 3.

H. F. Ensor

Harris.

Re-exa-

mination—

continued.

took up the position that I was entitled to get the interest without any condition of giving any time. Therefore I called the cheque a bogus cheque. I did not know whether it was a genuine cheque. I called it a bogus cheque because he suggested payment on condition that time was given. I began to doubt whether this cheque was in existence at all and in referring to the second alleged payment of 15,000/- I referred to this original offer of payment on the same terms and I doubted that there were payments at all and that they were bogus cheques altogether and that they were not in existence. I was getting doubtful as regards the existence of the cheques.

At the time the payments were made to Mr. Godamune I was not aware that they had been made. Mr. Godamune says in P3 that he received a further sum of 15,000/-. I understood that the money was available but that it was not actually paid to Mr. Godamune. I did not ask Mr. Godamune to pay me the money because I wanted the full amount of the interest paid. He was making conditions that it should be paid up by instalments and I was not prepared to consent to those conditions. (Witness is referred to the events of 21st January 1929.) Mr. Godamune came to me the previous night. I don't think he saw me before that in connection with the certification of payments. Previous to the night of 20th January there could have been no talk of any arrangement between me and Mr. Godamune. The whole thing happened in a very short time. On the night of 20th January some agreement was reached. I don't remember what it was. Before I consented to have the payments certified I knew that Mr. Godamune could not pay the 23,000/-. He told me he could not pay. He did not say that he spent the money but he said he lent the money on mortgages to some chetties. The transfer of Lunuwila estate was only a security for what was due to me.

I received the 1st cheque for 10,000/- on the same morning as the deed was written. I swear to that, I received it before I went to Court. I have no doubt at all. The giving of the cheque for Rs.10,000/- was not apart from the transfer of the estate but I say it is one transaction. I got a transfer of the estate and a cheque to cover the existing mortgage. The giving of the cheque was part of the same transaction. It is untrue to say that I went some days later and asked Mr. Godamune for a cheque for 10,000/-. (Witness is referred to letter P7 dated 21st January.) I did not refer to the 10,000/- cheque in this letter because at that time only the deed had been written but the cheque had not been given. There was no talk of the cheque at that time. This letter P7 was sent in haste because it had to reach Liesching & Lee that morning as the proceedings were to begin that morning. (Witness is referred to the deed of transfer of Lunuwila estate.) What I understood by the words "consideration for the transfer" was the money due to me. Mr. Godamune represented to me that 14/16 freehold share belonged to him. He told me that a priest was the lessee of the balance share. I understood that Mr. Godamune was the owner of 14/16 freehold share and not subject to any lease. I did not understand it as a leasehold share. I presume the

balance 2/16 belonged to the priest who gave a lease of it to Mr. Godamune. I understood that Mr. Godamune held 14/16 freehold share and 2/16 leasehold share.

The 1st cheque for 10,000/- was returned to Liesching & Lee with a request that they should get a fresh cheque for me. I got a fresh cheque dated 10th March 1929. On the 30th March 1929 I wrote letter P10 to Liesching & Lee (reads P10). When I wrote that letter I had been told by Mr. Godamune that there were no funds to meet the cheque. Therefore there was no point in sending that cheque to the bank. Liesching & Lee
10 kept that cheque for a few days and returned it to me.

FURTHER CROSS-EXAMINATION.

(With permission of Court.) (Witness is referred to P5.) (Mr. Hayley reads his notes of this witness' evidence in this Court as follows:—" In P5 I meant the cheque was bogus because the money had not come to me being subject to the conditions imposed in Mr. Cooke's letter.") That is correct.

(To COURT: There was a proposal before the 15,000/- was mentioned that payment should be made to me subject to the conditions in Mr. Cooke's letter. As far as I can remember the condition was that the sale should be delayed further on condition that the money is being paid up.)

20 I thought the cheque was bogus because I was doubtful whether the money was there or not. I understood it was subject to conditions which would prevent me from accepting it. It would not prevent me from getting it if I acceded to the conditions, but I would not accept the conditions. In my mind the conditions may be the bogus payments because they were not acceptable. I understand that word "Bogus" as accompanied by conditions which are not acceptable by me. If Mr. Godamune had received the money and I said I would not accept the conditions there would be no question of the money being paid to me.

I now recollect that on the 14th Jan. 1929 I wrote to Mr. Godamune
30 to the effect that he was to understand that I was not agreeable to take a secondary mortgage on Lunuwila estate, that I owed 12,000/- to chetties and 12,000/- to the bank and that I wished him to mortgage his property to the chetty in order to pay up my debt to the chetty.

RE-EXAMINED.

(With permission.) The condition that I was not prepared to accept was that I was not prepared to give further time to pay up the money. I now remember that I wrote to Mr. Godamune to the effect that he should mortgage his property but I don't remember the date. It was in consequence of a conversation I had with him. I cannot remember whether at that time
40 the question of the certification of payments had arisen, but I think so.

To COURT: I think it was in connection with the certification of payments that I happened to write to Mr. Godamune to the effect that he should mortgage his property.

(This witness was recalled—see p. 40.)

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Evidence.

No. 3.
H. F. Ensor
Harris.
Re-exa-
mination—
continued.

Further
cross-exa-
mination.

Re-exa-
mination.

*In the
Supreme
Court of
Ceylon.*

No. 4.

Evidence of W. R. Westland.

Evidence.

No. 4.
W. R. West-
land.
Examina-
tion.

W. R. WESTLAND—sworn.

I am a planter. Mr. Harris is known to me for about 25 years. He is also a member of the planting community. In August 1920 I consented to act as co-trustee of a certain Trust along with this accused. That was under document P2 which was executed on the 2nd August 1920. At that time I was residing probably in Kandy. I was told to be a sinecure but not an active trustee. After I was appointed I don't remember a mortgage bond executed in our favour by Mr. Boyagoda for 40,000/-. I was told that that bond was put in suit in March 1929. At that time I was in Trincomalee. I had left the Kandy District. I was a joint plaintiff in that suit and my signature to the proxy was necessary. I remember Liesching & Lee sending some papers to me to be signed in connection with that case and I signed. They acted as Proctors on behalf of myself and Mr. Godamune. Apart from signing these papers I had nothing to do with the conduct of the action. I was not consulted in any way. I left the matter entirely in the hands of Liesching & Lee. I was not made aware of any payments of interest made to Mr. Godamune. My consent to the acceptance of the conditions given by Mr. Cooke was not obtained. I was told by Liesching & Lee about the same time that decree had been entered of consent. About 18 months or 2 years ago I was asked to come to Kandy to be present at an enquiry to be held by the District Judge of Kandy on the 21st Jan. 1929. I did not know what the enquiry was about. After I came here I was told that it was about some interest payments, but whatever particulars I gathered was at the enquiry itself but nothing before that. I was present in court at the enquiry and this accused admitted receipt of payments of 23,000/-. (Crown Counsel reads the minute on the record in that case with regard to the accused's admission of the payments.) I was ignorant of the payments and I was not informed of any payments. I wished to be relieved of the trusteeship because I did not want to be mixed up with the case. Before I went to court the accused asked me to sign a receipt to say that he had paid the money to Mr. Harris but I refused to sign it because I knew nothing about it. I know that the 40,000/- on the bond has since been paid to Liesching & Lee by a chetty but it did not pass to Mr. Godamune's a/c. I myself got a cheque for that amount from Liesching & Lee and I myself took it to the bank and deposited it. Mr. Godamune endorsed at the back of the cheque. Mr. Godamune and I invested that money in another mortgage. On the morning of 21st January Mr. Harris told me that he had adjusted matters but he did not say how. I think I personally arranged the investment of the 40,000/- with De Vos & Gratiaen of Colombo. The accused approved of the investment but I carried out the arrangements with his knowledge all the time.

Cross-exa-
mination.

CROSS-EXAMINATION.

I am co-trustee with this accused still. I could not get anybody else to take up my job. I am quite content to be with accused. In 1920 I was

asked to take this trusteeship and I good naturedly consented to do so. After that I went to a place 12 miles from Trincomalie. It is not very accessible from Kandy. From that time I left the whole matter in the hands of Liesching & Lee. My co-trustee was Mr. Godamune. So far as the work of a trustee was concerned I expected him to communicate with me if there was any work to be done. I thought he would advise me of any important step he took. The only step taken was the filing of the Kandy D.C. action. I cannot remember whether a messenger was sent to me with the proxy to be signed. My connection with the action was formal. I have
 10 no definite recollection that the accused asked me to certify the payments. If there is a note by Liesching & Lee in November 1928 that I refused to join in certifying the payments I would not contradict it. I did not want to certify because I did not receive any money. All that I had to do was to certify but as I did not receive any money I did not want to certify any payments. I heard the proceedings in court. I knew that the whole matter was settled. I did not like to be mixed up with the case. I did not like to appear as a defaulting trustee. It was not a pleasant business to be mixed up with the case. I believe it is within my right to be asked to be relieved of the trusteeship when I want to be relieved. I did not want to be
 20 dragged to Kandy courts as I was living in Trincomalie. At time the payments were certified in court I was satisfied that the whole matter was settled. I had nothing to say against it. Mr. Godamune asked me to sign a joint receipt to say that he had paid the money to Mr. Harris. I did not understand the details of certification. Liesching & Lee told me what it was and they advised me not to sign. Mr. Cooke's clients wanted the trustees to certify that payment had been made and Mr. Godamune wanted me to certify the payments with him, but I refused to do so because I knew nothing of the payments. The cheque for 40,000/- by Liesching & Lee was made payable to the trustees and I opened a joint account.

30 RE-EXAMINATION.

The only important step I had to take in the administration of the Trust was the filing of the D.C. action. The acceptance of the conditions was an important fact and my consent had to be obtained, but I was not aware of it (proxy dated 3rd February 1927 signed by this witness is shown to him.) The plaint is dated 14th March 1927. The proxy has been signed before the plaint was filed. If I signed a joint receipt myself I would also be acknowledging receipt of the money and I would be jointly liable with this accused. That is why I refused to sign it.

(To Court: My object in coming to Kandy was to join in certifying
 40 payments, but I refused to do so as I knew nothing. I don't think Mr. Godamune asked me to do anything else besides certifying payments.)

With the cheque for 40,000/- I opened a joint account in the bank and the signatures of both (Mr. Godamune and myself) were necessary if we wanted to operate on that account of accumulated interest.

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Court of
Ceylon.*

Evidence.

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No. 4.
W. R. West-
land.
Cross-exa-
mination—
continued.

Re-exa-
mination.

*In the
Supreme
Court of
Ceylon.*

No. 5.

Evidence of C. W. Peris.

C. W. PERIS—sworn.

Evidence.

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C. W. Peris.
Examina-
tion.

I am a merchant. I know the property known as Belmont estate. That property has been purchased from Mr. Harris by Mr. Boyagoda. Mr. Boyagoda said that he conveyed it in trust to Karuppen chetty. Karuppen chetty mortgaged it to Palaniappa chetty and he put the bond in suit. Messrs. C. Batuwantudawa, A. C. de Mel, D. J. B. Ferdinando and J. A. Fernando and myself purchased the property from Palaniappa chetty for 30,000/- subject to the existing mortgages. There were three mortgages—a primary mortgage for 40,000/- in favour of Mr. Harris' trustees and two other mortgages for 10,000/- and 15,000/- each in favour of Mr. Harris himself. We were liable to pay interest accrued on that property. The bond for 40,000/- was put in suit by the trustees in 34987 D. C. Kandy. Mr. Boyagoda the mortgagor was made the 1st defendant and the purchasers were also made defendants. The plaint was filed on 14th March 1927. On the 30th March 1928 judgment was entered for plaintiff as prayed for of consent. The claim in the plaint included a sum of 23,126/- on account of accumulated interest. As purchaser of the property we were anxious to prevent its sale. I entered into an agreement with Mr. Godamune to pay up the amount on behalf of myself and the other members of the syndicate. Two other members of the syndicate had seen Mr. Godamune with regard to getting some time for the payment of the judgment debt and by appointment Mr. Godamune came to see me at my office in Colombo. I believe we arrived at an arrangement that day. That must have been in November 1927. The arrangement was for us to make payments on account of interest and for the trustees to give us one year's time to pay the balance of the accumulated interest 23,000/- and they were not to advertise the estate for sale within that one year, and I believe that at the end of that year any further arrangement was to be made if we could not for any reason pay the full amount. The conditions were arrived at between me and Mr. Godamune in the first instance. The only condition was that the money we handed to Mr. Godamune was to be held but those payments were not to be certified of record. All the conditions were embodied in Mr. Cooke's letter. The only condition I made was that payments were not to be certified although the money was paid. He undertook to certify payments whenever we wanted. There was an action instituted by Mr. Boyagoda against the members of the syndicate alleging a trust with regard to the mortgaged property and that case was going on at that time and we were advised by our lawyers not to make any payments until the final issue of the case if possible. That is why the payments were not to be certified. Mr. Boyagoda asked for a re-conveyance. We did not want to be out of pocket in the event of our losing the property. That was our idea in making payments but not getting them certified. These terms were confirmed by Proctor Cooke who was acting on our behalf. The first of these payments

was made by a cheque P15 dated 26th November 1927 drawn by De Mel & De Mel in favour of Mr. Cooke for 10,000/-. The 2nd payment was made by a cheque P16 dated 30th March 1928 similarly drawn, for Rs. 5000/-. The 3rd payment was by a cheque P17 dated 28th August 1928 for 3000/- similarly drawn and the 4th payment was by cheque P18 dated 6th November 1928 for 5000/- totalling 23,000/-. All the cheques were drawn by De Mel & De Mel. (Shown P15 to P18). These are the cheques. I identify the signatures on them. I sign on behalf of the firm. The last of those payments was made on the 6th November 1928. All the payments were made within the year agreed upon. The agreement was that the property should not be advertised for sale, but in spite of that it was advertised for sale in November 1928, few days prior to the expiration of that year. Mr. Cooke had seen the advertisement in the Gazette and he informed me. I saw Mr. Cooke at once and got him to communicate with Liesching & Lee who were the Proctors acting for the trustees. I asked Mr. Cooke to take necessary steps to stay the sale. I met Mr. Godamune in Colombo about the same time—few days after I saw Mr. Cooke. Mr. Godamune was staying in some place in Dehiwela at that time. I went to see him. I asked him what all this was because it was contrary to the arrangement I had made with him. He was not quite well those days and he promised to come and see Liesching & Lee and make the necessary arrangements to stay the sale when he got well. I cannot remember what Mr. Cooke told me after communicating with Liesching & Lee, but I was aware of all that happened. I instructed Mr. Cooke to apply to court to have the payments certified. I know that he asked Beven & Beven to apply to court to have the payments certified. I came to court on 21st January 1929 for the enquiry and payments were certified on that day. At that time I did not know that Mr. Harris was entitled to the interest. I knew that Mr. Godamune and Mr. Westland had brought this action as trustees for Ensor Harris' son who was a minor.

30 CROSS-EXAMINATION.

I accepted everything that Mr. Cooke wrote and did as correct. He always acted on our instructions. If Mr. Cooke wrote saying that he paid the money to Mr. Godamune I would accept that as correct. I have seen the letter which Mr. Cooke wrote. That is correct. I and the 4 others had bought up the property. There had been some discussion with Mr. Boyagoda but not before we bought it. Before we bought the property we had no discussion whatever with regard to this particular estate but there were some other estates in which we bought some rights of Mr. Boyagoda from his own nominees. Before we bought this particular property we had some discussion with Mr. Boyagoda but not with regard to this property. There was an action in Colombo alleging that we had bought Belmont estate only as Mr. Boyagoda's nominee. He claimed that we must transfer it back to him. That action was filed somewhere in 1926—before the mortgage action in Kandy. It was a long trial in Colombo. Judgment had not been given in Colombo at the time I had a talk with Mr. Godamune about the Kandy case. I won the action in the D.C. of Colombo, but that was upset in appeal and the

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Appeal Court held that we were only nominees and we must transfer the estate to Mr. Boyagoda. While I was discussing with Mr. Godamune about the Kandy case I did not know what was going to be the result of the Colombo case. I did not want the payments certified as in case we lost the Colombo case we would be paying the money to him and he would have the benefit of our payments. On the other hand I wanted to get this mortgage sale postponed because if it went through some third party would take the estate and we would be left in the air.

Q. You and your friends were on the horns of a dilemma. You wanted to get the sale stayed and at the same time you dare not pay the money because if Mr. Boyagoda succeeded in the Colombo case you would be paying out money for his benefit?—A. That is so.

It is correct when Mr. Cooke wrote that his clients do not wish Mr. Boyagoda or anyone else to profit at their expense.

Mr. Godamune was persistent that we should consent to judgment in the Kandy case. In the first instance our party was ascertaining whether to file answer or not in the Kandy case. When we asked Mr. Godamune to certify the payments made to him it was done and we had nothing to quarrel with him. I and my friends have no complaint against anything which Mr. Godamune did. We relied on Mr. Cooke so far as the legal side of the matter was concerned. All the 4 cheques were in Mr. Cooke's favour and he sent them on to Mr. Godamune. So far as the exact legal obligation on Mr. Godamune was concerned, we left it in Mr. Cooke's hands. Mr. Ferdinando and Mr. J. W. S. Cooke came to Kandy in the first instance to see Mr. Godamune. That Mr. Cooke was not a party to the action but his nominee was a party to the action. Mr. Godamune came to see me in my office and both of us went to Mr. P. G. Cooke's office. It was after Mr. Cooke wrote to Mr. Godamune and after Mr. Godamune confirmed it that the matter ended. We asked Mr. Godamune to give time to pay up the amount. He wanted us to make some payments towards the interest so that interest may not get accumulated, the reason being that he would be taking a risk as a trustee. The arrangement was that we should be given a year's time. Nobody knew what was going to happen ultimately to the Colombo case and the Kandy case and this was all a special arrangement. I still say that the terms of the arrangement were fully set out in Mr. Cooke's letter. That letter does not add anything further to what we all discussed together. Mr. Godamune was to certify payments whenever we wanted him to do so. (Conditions as stated in letter P4 are read out to the witness.) There is nothing in this requesting that Mr. Godamune should certify payments. That is correct. There was no obligation on Mr. Godamune to certify payments. At that time we knew that the Colombo case would take a long time. We wanted a longer time than a year but Mr. Godamune was not willing to give us more than a year's time. The question of certification before the year was up did not enter my mind at that time. I met Mr. Godamune in Dehiwela few days after the sale was advertised. I met him by accident while he was walking along the sea beach. He was not well and he had been sent there for a change. He was quite surprised when

I told him that the property had been advertised for sale. I understood that Liesching & Lee had been taking that step without full reference to Mr. Godamune. The case was fixed for 21st January 1929 to decide whether the money should be certified. Mr. Godamune told me that if he had been in Kandy there would have been no question of certification. The question of certifying arose by the property being advertised for sale. If the advertisement had not taken place I would not have wanted him to certify the money. (P.C. Evidence of this witness read out :—"The accused being away in Colombo was one of the factors that induced us to apply to court for certification." That is correct. Mr. Cooke's letter was a confidential one. (P.C. Evidence read out :—"Mr. Godamune was to hold the monies in confidence.") That is correct. He was to hold the money in confidence without telling anyone.

RE-EXAMINATION.

Mr. Godamune was anxious that interest should not accumulate; the interest had already accumulated to such an extent as 23,000/- that he did not want that to go on indefinitely. Possibly he feared that the accumulated interest might exceed the security. The property was advertised for sale in Nov. 1928. I do not know that that followed upon an application for writ. When I said the accused was to hold the money in confidence I meant without certifying payments. He was to hold that money at our disposal. That is what I meant by confidence. I did not tell Mr. Godamune that he was free to spend the money. I did not regard him as free to spend the money. I never expected to call that money back but I expected him at some later date to certify payment—to account for it.

To COURT : I know that the accused was a trustee and that this money was paid to him as a trustee. I knew that he had to pay this money to Mr. Harris or his son. I intended that he should not pay the money to Mr. Harris. If he was to give the money to Mr. Harris or his son he had to certify payments and in the event of our losing the Colombo case which was going on we would have lost all that money. That is why we asked him to hold that money at our disposal without certifying payments. What we wanted him to do was to keep the money for himself and not to pay it to Mr. Harris. Accused was to hold the money at our disposal. The use of the payment was to satisfy Mr. Godamune who was asking something on account of the accumulated interest. At that time I did not know that the money was to be paid to Mr. Harris. At that time I was under the impression that the payments should be made to Mr. Godamune for the benefit of the minor. We wanted him to be satisfied with that money till a time when we asked him to certify payments. Our position at that time was that he was to hold that money in trust for ourselves until such time when we were prepared to ask him to certify payment. We wanted to show our bona fides that we were really prepared to pay the accumulated interest.

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No. 6.

Evidence of P. G. Cooke.

P. G. COOKE—sworn.

Evidence.

No. 6.
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tion.

I am a Proctor of the Supreme Court practising in Colombo. In this matter I acted as Proctor on behalf of Mr. Peris and the fellow members of the Syndicate. I was acting for them at the time they purchased Belmont estate from Palaniappa chetty subject to 3 existing mortgages—one for 40,000/- and 2 others for 10,000/- and 15,000/-. I know that the 40,000/- bond was put in suit by the trustees in March 1927. My clients were necessary parties to that action as purchasers. Mr. Boyagoda the mortgagor was the 1st defendant. The claim was 40,000/- principal and 23,000/- odd interest. My clients could not defend that action. Time was taken to file answer but no answer was filed. In November 1927 Mr. Godamune had met Mr. Peris and come to an agreement whereby they were given a year's time provided certain payments were made on account of interest. They came to my office and made the arrangements. My recollection is that Mr. Godamune was to give Peris and others one year's time to pay the 40,000/- mortgage provided they paid up the arrears of interest which amounted to about 23,000/- first by paying 10,000/- and the balance whenever they could within that year. (Shown P14.) This is the letter I wrote to the accused embodying the conditions. (Reads P14.) As a result of that arrangement I forwarded certain cheques to the accused. The 1st cheque was for 10,000/- drawn in my favour and endorsed to Mr. Albert Godamune. Similarly three other cheques were sent to him. (Shown P15 to P18.) The endorsements on the back of these cheques are mine. The conditions under which these payments were to be made were arrived at between Mr. Godamune and Mr. Peris before they came into my office. I put it into a legal form when they came to my office. There were 2 plaintiffs. I knew that they were trustees. I knew that this money was being paid to Mr. Godamune as trustee. The first condition was that my clients be given a year's time and during that year my clients were to make payments on account of interest and Mr. Godamune was to undertake not to certify or record these payments. At the time I was aware that there was an action brought against my clients by Mr. Boyagoda pending. This special arrangement was made because I wanted to safeguard my clients in case they lost that action. We did not want anybody else to benefit in the event my clients lost the case. Except those conditions we did not discuss anything else. I have heard the position now. Now I know that Mr. Harris the beneficiary is entitled to the interest. I would have objected to the accused having paid the money to Mr. Harris because if my clients lost the case they would lose the money. My clients wanted their money protected. I said that Mr. Godamune was to hold the money in terms of my letter. Being plaintiff I held him responsible for the money. I

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knew he was the trustee of a marriage settlement, but I did not know the terms. I knew that Mr. Westland was a co-trustee. I did not think it necessary to deal with Mr. Westland also. I thought that the accused being a professional man the money would be safe in his hands. I trusted him. I did not know him personally but I knew his father. If he was not a professional man I would have made some other arrangement. I saw in the Gazette that this property was advertised for sale in Nov. 1928. Mr. Peris saw me about it. When I saw the advertisement I wrote to Liesching & Lee asking them under whose instructions they were advertising the property for sale and they informed me that it was on instructions from Mr. Godamune. Thereafter I wrote to them letter P19. (Reads same.) They replied by a letter dated 24th Nov. I wrote to them another letter P20 dated 26th Nov. (Reads same.) When I saw this advertisement I wrote to Mr. Godamune and told him to certify payments but he did not do so immediately. That is why I expressed surprise in letter P20. I instructed Beven & Beven to apply to court to have the payments certified and the matter came for enquiry on the 21st Jan. 1929. Accused was to hold this money pending further instructions from me and I held the accused responsible for the money.

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tion—con-
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20 CROSS-EXAMINATION.

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mination.

Mr. Peris told me that Mr. Godamune was in Dehiwela but I dont know on what date he met Mr. Godamune. I wrote to Mr. Godamune about the same time I wrote to Liesching & Lee. I have not got Liesching & Lee's letter. The cheque from my clients were in my favour. Then I endorsed them to Mr. Albert Godamune. At that time I did not think whether I treated him in his personal capacity or as plaintiff. We dealt with him as "Mr. Godamune." I sent my clients copies of every letter I wrote with regard to this matter. I said in the Police Court that I did not care what happened to the money so far as Mr. Godamune accounted for the payments. That is correct. I paid the money to Mr. Godamune on his undertaking to carry out the conditions. There was no discussion with regard to whether the payments were to be earmarked in any particular person's name. I paid the money to Mr. Godamune on his credit to pay back if necessary. I paid the accused for repayment in terms of my letter. I marked the letter "Confidential" because I did not want anybody to know that these payments had been made on account of interest. If the payments were certified there would be an end of the money. If Mr. Harris or Mr. Boyagoda came to know of the payments they may have attempted to enforce certification. There was no positive obligation on Mr. Godamune's part to certify payments. At that time the property was Peris' and the money was Peris' and it is a ridiculous suggestion to say that Peris paid the money on behalf of Mr. Boyagoda when I marked the letter to accused "Confidential" so that Boyagoda or Harris may not come to know of the payments. It transpired in the case that Boyagoda claimed that he had paid personally over again to Mr. Harris but I dont know anything about it.

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RE-EXAMINATION.

I dealt with Mr. Godamune in his personal capacity. I really did not consider anything at that time but I treated him as "Mr. Godamune," a member of the legal profession. I knew he was acting as trustee and plaintiff. At that time Mr. Godamune did not tell me that he was acting on behalf of Mr. Harris. It was only after this prosecution that I came to know that he was acting on behalf of Mr. Harris.

To COURT: In my letter there was no condition that Mr. Godamune should not pay the money to the beneficiary. There was nothing in my letter to show that I put that condition on him. At that time I did not know that the money had to go to Mr. Harris. I wished the accused to have control over the money till the case was decided. but I did not know what the conditions of the trust was. I did not enquire into that. I relied more on accused's having the money to be accounted for at any time I called upon him to do so. 10

No. 7.
V. D. de
Vos.
Examina-
tion.

No. 7.

Evidence of V. D. de Vos.

7th January 1931. Accused present.—Same Counsel as before.

V. D. DE VOS—sworn.

Proctor, S.C.: I am an Assistant of the firm of Liesching & Lee who are themselves Proctors practising in Kandy. Our firm acted for the plaintiffs in 34987 D.C. Kandy. In that action we put in suit a mortgage bond for 40,000/- over Belmont estate in favour of the trustees of Mr. Harris' marriage settlement. The trustees were Messrs. Westland & Godamune. As regards the filing of the action we received instructions from this accused as far as I can remember. He came and saw Mr. Liesching and I was sent for. The plaint was written out by the accused in his office and we were asked to file it in court. I joined the firm in 1923. Between that date and the date this bond was put in suite we had nothing to do with the trust so far as I remember. The proxy in that case was signed by Mr. Westland and this accused. The proxy is signed by Mr. Westland on the 3rd Feb. 1927. Plaint was filed on 14th March 1927. I dont know personally how Mr. Westland came to sign the proxy, because the papers were handed to me by Mr. Liesching. Mr. Godamune told me that he had filed a plaint originally in which he appeared as plaintiff and as Proctor for Mr. Westland the other plaintiff, which plaint he said was rejected by Mr. V. M. Fernando the acting D.J. Therefore a fresh plaint was filed. In para. 6 of the plaint we claim 23,126/- as accumulated interest. I cannot remember whether we examined the Trust deed before we filed papers. On the face of the bond interest was payable to the trustees. Under the marriage settlement during the lifetime of Mr. Harris and his wife the interest was payable to them and on the death of either of them it was 20 30 40

payable to the survivor. I know that Mrs. Harris was dead and that the interest was due to Mr. Harris. The principal was to be held in trust for the children. The decree in the case was entered on 30th March 1928. Judgment was entered of consent for plaintiff as prayed for. The defendants in that action were Mr. Boyagoda the mortgagor and the 5 members of the syndicate. We were not aware of the arrangement between Mr. Godamune and Mr. Peris at that time. Till about August or September 1928 I did not know that certain payments were made on account of interest under the arrangement. The 1st payment of interest was in 10 Nov. 1927 and the last in Nov. 1928. I was not aware of the payments at the time they were made, but I learnt of it from Mr. Cooke's letter later. On instructions from the pltffs we advertised the property for sale. Before that there was an application for writ. On the 13th Aug. 1928 Messrs. Liesching & Lee for the plaintiffs moved the court that the sum of 64,217/- with interest be realised by an issue of order to sell. The order to sell was issued on 21st Aug. 1928. On the 12th Sept. 1928 we moved that the Fiscal N.W.P. be ordered to sell the estate. The Fiscal wanted extension on the 3rd Nov. and eventually on the 6th Nov. the court extended time and made the writ returnable on the 28th March 1929. The sale was fixed 20 for the 8th Dec. On the 30th Nov. 1928 Messrs. Beven & Beven were instructed by Mr. Cooke who was acting for some of the defendants to have certain payments certified. They filed papers moving the court to have the 23,000/- paid to accused certified and the matter was fixed for enquiry on the 21st Jan. 1929. We took instructions from Mr. Westland and Mr. Godamune—verbally from Mr. Godamune and in writing from Mr. Westland—that must have been before the 13th Aug. 1928. Early in September when the question of instructing the Fiscal to advertise the property for sale arose Mr. Godamune mentioned to me that he had received a cheque from either Mr. Cooke or some of the defendants and that cheque 30 was only to be realised if the defendants were given further time and he said that he was taking Mr. Harris' instructions on the point and that if Mr. Harris did not agree to accept the cheque and grant further time the property would be advertised for sale. I believe accused's communication was that Mr. Harris refused to grant further time and that the sale must be put through. Mr. Godamune gave me verbal instructions originally and on the 17th Oct. he gave me instructions in writing to instruct the Fiscal to advertise the property for sale. Shortly after the property was advertised for sale my firm received a letter P19 from Mr. Cooke in which he alleged certain payments and requesting us to certify payments and to take steps 40 to have the sale stayed. I went over to see Mr. Godamune at his office. His clerk said that Mr. Godamune was away in Colombo to consult a Doctor; then I dropped a Postcard to Mr. Westland who was living about 1½ miles from Kandy asking him to come and see us. He saw me some time on the 24th and I showed him Mr. Cooke's letter and asked whether he knew anything about the payments. He said he knew nothing and as regards the certification of payments he said he had no objection to the sale being stayed for a month or two provided the money was paid into the hands

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of Liesching & Lee. The minute on P19 to the effect that Mr. Westland refused to certify payments as he knew nothing of the payments and that the sale must proceed is in my handwriting. Those were his instructions in short. We replied to Mr. Cooke to that effect and we received letter P20 dated 26th Nov. in which Mr. Cooke expressed surprise that Mr. Godamune had not accounted for the payments and Mr. Cooke said there that he wanted to apply to court to have the payments certified. Shortly before I received P19 Mr. C. W. Peris came to the office and wished to know from me whether we would consent to the sale being stayed. When he came I did not know who he was. I asked him who he was. He said he was one of the defendants I said we could not stay the sale because the parties are clamouring to have the sale fixed and recall the monies and I said that in any case I would not discuss with him but asked him to communicate with us through his Proctor. At that time the advertisement to sell the property had appeared in the Gazette. Some days before the payments were certified Mr. Godamune came and saw me in the office and I mentioned this letter to him and told him that I went to see him but that he was away in Colombo and asked him about these payments. I said that if they are not accounted Mr. Cooke threatened to get the payments certified. He said he had come to certain arrangements with Mr. Cooke as representing some of the defendants and that they agreed to pay him certain sums of money on account of interest and that one of the conditions was that he (Godamune) was not to certify payments. I asked him whether I could have a copy of Mr. Cooke's letter embodying the arrangements which he had come to with Mr. Cooke. He sent me a copy of it. As regards the payment of the money he said that as he misunderstood the condition under which the payments were made he had invested the money in bonds to safeguard himself, and that he would have the matter adjusted before the enquiry. I did not go into details with him My recollection is that accused said he had invested the money in bonds. I had no reason to doubt that. On the day of the enquiry Mr. Harris and Mr. Godamune both came to our office and Mr. Harris wrote the letter P7 dated 21st Jan. 1929. Mr. Harris was not a party to the mortgage bond action. We were acting for the trustees and whatever arrangements come to had to be put down on paper so that we may show Mr. Westland. We cannot on our own certify payments until Mr. Westland agrees. In our interests we thought that we ought to have something in writing. That is why we got Mr. Harris to write P7. When the matter came up for enquiry I was in court. Payments were certified on that date. I was not aware of the 10,000/- cheque which Mr. Harris received at that time but I believe Mr. Lee showed it to me later. I would not undertake to say in what connection it came to our office. I believe that a 2nd cheque was sent to Mr. Harris in lieu of the 1st cheque which was dishonoured. I dont know personally. (Shown P10.) I dont know this letter which is written to our firm by Mr. Harris. Mr. Lee attended to it. He receives all the letters. He instructed the Head Notarial clerk to make a search of the encumbrances with regard to Lunuwila estate. (Shown P11.) This is a letter written by our firm to Mr. Harris. This is signed by me. I believe Mr. Lee asked me, when the result of the

search came in, to forward this letter to Mr. Harris with a copy of the notes of the search. We sent the letter P11 with the annexure P21 which is a copy of the entries in the Register. (Reads P11.)

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CROSS-EXAMINATION.

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Mr. Godamune told me that he had invested the money in bonds. That is my recollection. So far as my recollection goes I have an idea he used the word "Bonds." He might have used the word "Bond." (Reads P.C. Evidence on this point.) I used the word "Bonds" in the Police Court also. I cannot be certain that the accused used the word
10 "Bonds" in the plural. My recollection is that he said the money was invested in lands. Mr. Westland and Mr. Godamune gave me instructions personally to apply to court to ask for an order for sale. Originally Mr. Godamune gave me instructions verbally when he came with regard to the question of advertising the property for sale which he cancelled. There was no question of a sale but only an order to issue. More often than not Mr. Westland spends his time in Trincomalie. I would not undertake to say that only Mr. Godamune gave me instructions. With regard to the advertisement to sell, accused gave me instructions verbally and cancelled them. Subsequently he gave me instructions in writing that we should
20 instruct the Fiscal to advertise the sale. When we wrote to the Fiscal originally to have the sale advertised accused cancelled it by telegram and letter. On the 17th October accused wrote to us to instruct the Fiscal to advertise the sale. It takes few weeks between the time of making the application to order the sale and the actual sale. In Mr. Cooke's letter the undertaking was that the land was not to be sold for a year. If the year was up in November steps had to be taken in October to have the sale advertised.

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mination.

I cannot say with any positive certainty that Mr. Godamune joined Mr. Westland in giving instructions in August. Mr. Godamune mentioned
30 to me about the beginning of September that he had received a cheque from Mr. Cooke. He said that a payment had been made to him. Rightly or wrongly the impression created in my mind was that if Mr. Harris had consented to time being given the cheque could be handed over to him. Accused never showed me a cheque. I did not see the letter from Mr. Godamune to Mr. Harris in which he says that he received a further sum of 15,000/-. The impression created in my mind by what the accused said was that the cheque was to be passed on to Mr. Harris if he was to give time. I believe the amount he mentioned was a cheque for 3000/- and certain conditions were laid down—that if Mr. Harris was prepared to
40 give time the cheque could be realised. He did not show me the cheque. He did not say specifically that he was going to hand over the 3000/- cheque to Mr. Harris. He said he was going to get instructions from Mr. Harris on the point.

RE-EXAMINATION.

Re-exa-
mination.

It is not necessary to apply for an order to sell in August if the sale is to be advertised at the end of Nov. or early in December. We made

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mination—
continued.

the application to sell on the 13th Aug. 1928. If it reached the Fiscal about the 15th August I should have presumed the sale would have taken place about the middle of September. There was no money available for the advertisement charges. Though the order to sell was issued Mr. Godamune did not furnish us with the advertisement charges which were some Rs. 300/-. Mr. Westland said he had no money. Mr. Harris said that it was to his interest the sale should take place and he paid the Rs. 300/- about the end of September. We asked the accused to pay for the advertisement charges and he said he had no money to pay for it. The application for an order to sell was the 13th August. It is not likely that I would have taken a step of that kind on my own initiative. Mr. Westland gave us instructions before the 13th Aug. Some time in September he said that he understood from Mr. Harris that the sale should proceed and that if there was any further delay the trustees would suffer. When Mr. Godamune referred to a cheque he mentioned a cheque for 3000/-. That was the only cheque he referred to. That was early in September. Even at that time he did not tell us about any other payments he had received. We knew nothing about it. 10

No. 8.
N. I. Lee.
Examina-
tion.

No. 8.

Evidence of N. I. Lee.

20

N. I. LEE—sworn.

I am a solicitor practising in Kandy. I am a member of the firm of Liesching & Lee. Our firm acted for the plaintiffs in D. C. Kandy No. 34987 in which a mortgage bond was put in suit on behalf of the trustees. I remember the question of certifying certain payments coming up for enquiry in the Kandy District Court. I had practically nothing to do with the Court work. Mr. Harris either sent me or gave me a cheque he had received within a fortnight of the enquiry. He gave the cheque to me because it was either dishonoured or I was to get him a fresh cheque. I was shown the advice he had received from the bank to the effect that the drawer's signature differed and I was instructed to get a fresh cheque from Mr. Godamune; after some time I got a fresh cheque for 10,000/- shown P9). This is the fresh cheque dated 28th March 1929 (shown P38). This is a carbon copy of my letter to Mr. Harris (reads P38). It is dated 28th March 1929. After I got the fresh cheque I sent it to Mr. Harris and sent the old cheque to Mr. Godamune (shown P10 dated 30th March 1929). I remember having received this letter from Mr. Harris (reads P10). On receipt of P10 Mr. de Vos searched the title deeds (shown P12). This letter dated 17th May from Mr. Harris is addressed to our firm and probably I must have seen it because I open the letters (reads P12). The cheque referred to therein is the original cheque. 30 40

CROSS-EXAMINED—Nil.

No. 9.

Evidence of C. Wijesinghe.

C. WIJESINGHE—sworn.

Clerk, Eastern Bank, Colombo. (Shown cheques P15 to P18). These are cheques drawn by the firm of De Mel & De Mel on the Eastern Bank in favour of Mr. P. G. Cooke. They have been endorsed by Mr. Cooke in favour of Mr. Godamune and they have been presented for clearing by Mr. Godamune. The full amount of the 4 cheques aggregating to 23,000/- have been paid by our bank.

10 CROSS-EXAMINATION.

The cheque dated 6th November was presented for payment on 22nd November.

*In the
Supreme
Court of
Ceylon.*

Evidence.

—
No. 9.
C. Wijesinghe.
Examination.

Cross-examination.

No. 10.

Evidence of A. Angunuwala.

A. ANGUNUWALA—affirmed.

Clerk, National Bank of India, Kandy. I produce P23 which is a certified copy of the accused's account with the National Bank of India, Kandy. It was opened on the 1st Dec. 1927. The 1st credit was a cheque for 10,000/-, less commission—the amount credited is Rs. 9975/- (shown cheque P15). I identify this cheque as the cheque which was paid into Mr. Godamune's account and credited on the 1st Dec. 1927. He opened the account with that cheque. This account goes up to end of June 1929. I produce 357 cheques (marked in a bundle as P22) issued by this accused against his account. The next credit to his account was on 31st Jan. 1928—a sum of 200/- in cash. His credit balance on 31st Jan. before the 200/- was credited was 445/88. By the 31st Jan. he had drawn the whole of 9975/- leaving only a balance of 445/88.

On 3rd February 100/- in cash, credited to his account.

7th Feb.—183/80 by Money order & a cheque credited to his account
30 20th Feb.—150/- cash do.
29th Feb.—100/- do. do.
10th March—100/-do. do.

On the 31st March he deposited a Colombo cheque for 4987/50 that is less commission. That would represent a cheque for 5000/- (shown P16). This is a cheque dated 30th March 1928 for 5000/-. It had gone to the National Bank Colombo on 2nd April and come to the Kandy National Bank on 1st April. 1st April may be a Sunday. Cheques go to Colombo on the same day. I identify the cheque P16 as the cheque which is credited to accused's a/c on 31st March. Mr. Godamune has endorsed the cheque and I identify the Bank Manager's signature. The payee of the cheque is P. G. Cooke. The Manager's endorsement is "Placed to the credit of 2nd payee's a/c—2nd payee is Mr. Godamune. Mr. Godamune's credit

No. 10.
A. Angunuwala.
Examination.

*In the
Supreme
Court of
Ceylon.*

Evidence.

No. 10.
A. Angunu-
wala.
Examina-
tion—con-
tinued.

balance on 31st March including the 5000/- cheque was 5151/36. On the 31st March the accused had only 163/86 to his credit in addition to what was credited on that date by the 5000/- cheque. On the 10th April there was a cheque for 2700/- credited to his a/c. The balance on 10th April excluding the 2700/- is 372/36. Out of the 4987/50 credited on 31st March he had by the 10th April spent the whole of it less 208/50. Between the 31st March and 10th April he had expended 4779/- out of the 4987/50 credited on 31st March. There were various credits between the 10th April and 30th June 1928. His balance on 30th June was 1/61. On the 3rd July he credited his a/c with 330/- in cash. On the 30th Aug. a Colombo cheque for 3000/- less commission, *i.e.*, 2992/50 was credited to his a/c. There is a double entry relating to this cheque. The Colombo cheque has been returned by the Colombo bank and it has been received on the 1st Sept. and accused's a/c was debited with 3000/- and again on the same day the same cheque has been deposited to his a/c and 2992/50 has been credited to his a/c. On the 30th Aug. the credit balance was 2992/50 (shown P17). This is a cheque for 3000/- dated 28th Aug. 1928. This is in Mr. Cooke's favour and drawn by De Mel & De Mel. Mr. Cooke has endorsed it "Pay Alfred Godamune or order without recourse." It has been signed "Alfred Godamune—credit Albert Godamune." The bank endorsement shows "2nd endorsement guaranteed for the National Bank." It shows that it went to Mr. Albert Godamune's a/c. I identify cheque P17 as the cheque which was credited on the 31st August. On the 30th Aug. excluding 2992/50 Mr. Godamune's balance was 16/23. The next credit was a sum of 1980/- in cash on the 18th Sept. On the 18th Sept. excluding the 1980/- his balance was 42/42. Between the 30th Aug. 1928 and 18th Sept. the accused has drawn to the extent of 2983/35 against the 2992/50. Various sums have been credited between the 18th Sept. and 5th November. On 21st Nov. a Colombo cheque for 4987/50 was paid into his a/c. That would represent a cheque for 5000/- less commission (shown P18). This cheque dated 6th Nov. 1928 is drawn in favour of Mr. Cooke for 5000/-. It is endorsed by Mr. Cooke to Albert Godamune and endorsed by Albert Godamune. The Bank manager's endorsement shows "Placed to the credit of 2nd payee's a/c." 2nd payee is Mr. Godamune. I identify P18 as the amount credited on 21st Nov. The next deposit was on 7th Dec. of a sum of 74/75 in cash. His balance on that date excluding the 74/75 was 1644/37. The a/c is continued with various other credits. On 21st Jan. 1929 his balance was 1213/58 (shown P22). Q.—Is there a single cheque in this bundle issued in favour of a Mr. Harris (Mr. Hayley says to save time he admits that there is no cheque in favour of Mr. Harris (shown P32) cheque for 100/- drawn by Mr. Godamune on the Central Medical Stores. This cheque was paid by our bank (shown P33—cheque drawn by Mr. Godamune in favour of Hasaram Motumal for 80/-). This is also paid (shown P36—cheque for 304/86 drawn by Mr. Godamune in favour of H. A. C. Wickramaratna). This was credited to his a/c. (shown P37—cheque for 45/- drawn by Mr. Godamune in favour of Dr. Beven. This was also paid by the bank.

CROSS-EXAMINATION.

(Shown P23.) The grand total of all the credits paid into Mr. Godamune's a/c from 1st Dec. 1927 to 21st Jan. 1929 is 41792/55. The amount paid in excess of 23,000/- is 18792/55 excluding one item of 3000/- entered twice on 1st Sept. On the 30th Aug. the owner of the account brought in a Colombo cheque for 3000/- on which he was at once given credit for 2992/50. The cheque was sent to Colombo where it was dishonoured, the endorsement being out of order and the cheque was returned to Kandy on 1st September. Then the owner of the account was debited
 10 with 3000/-. The cheque was sent to the owner of the a/c and he was asked to endorse it properly. He did so properly and brought it to the bank the same day and got a re-credit of 3000/-.

*In the
Supreme
Court of
Ceylon.*

Evidence.

No. 10.
A. Angunu-
wala.
Cross-exa-
mination.

No. 11.

Evidence of A. Kirk.

A. KIRK—sworn.

Government Assessor. I held that appointment since 6th Dec. 1928. Before I came to Ceylon I was the Government Valuator Hongkong for 7 years. Before that I had experience of valuation work in England. By profession I am a valuator. I am a Fellow of the Chartered Surveyors
 20 Institution, and hold the special Rating Diploma granted by that body. I have made valuations of property in the Central Province before this for Estate Duty purposes and also for acquisition purposes. I have valued tea estates before. I keep in my office records of prices of tea and cost of production. I have to keep in touch with these matters professionally. I visited Lunuwila estate to make a valuation of it on the 21st Aug. last year and also on the 2nd Sept. On my first visit this accused was present and he handed me plan P3 (as being a plan of the property). I valued the property on the basis that it was in extent 65 acres, 3 roods and 10 perches.
 30 That is the figure referred to in the lease of the property. I was furnished with a transfer deed No. 341, mortgage deed No. 385 and an assignment of lease No. 345. The estate consists of portions of old tea stated to be about 10 acres, a block of new tea stated to be 36 acres, 2 acres of paddy field and the remainder is unplanted land. I was supplied by the accused with his crop figures and prices realised each year. There is no factory on the estate and it is the green leaf that is sold. In making my valuation I acted on the facts supplied by Mr. Godamune. The estate was in a neglected condition. The tea was poor and weeding, etc. was required and the drains required cleaning up. A Kangany was in charge of the estate. Lunuwila estate adjoins a Company estate known as Uduwela estate. The tea on
 40 Lunuwila compares very unfavourably with the tea on the adjoining estate. Both are about the same elevation. On the basis of the crop figures supplied to me I would value the whole property treating it as freehold and free from all encumbrances at 29,000/- as on the 21st Jan. 1929. 1/4 of that amount would be 7250/-. In arriving at a total valuation of the accused's

No. 11.
A. Kirk.
Examina-
tion.

*In the
Supreme
Court of
Ceylon.*

Evidence.

No. 11.
A. Kirk.
Examina-
tion—con-
tinued.

interests I would make a deduction for the fact that this share is undivided. The usual deduction is 5 per cent. Therefore I would have to deduct 362/50, leaving the nett value of the accused's freehold interest at 6887/50. At the date 21st Jan. 1929 I would value the leasehold interest of the whole estate at 19,000/-; 3/4 would be 14250/-, 1/4 freehold 6887/50 and 3/4 leasehold 14250/- would aggregate to 21,137/50; in round figures it would be 21,000/-. Rs. 21,000/- value is on the assumption that the land is free from all encumbrances and other mortgages. If I was told that there was a mortgage for 8000/- I would have to deduct that and any interest outstanding from the valuation. The accused's interest in that property on that date I valued at about 13,000/- deducting the mortgage of 8000/- but making no allowance for the interest. I produce my report P40 and I swear to its accuracy and that is my opinion in the matter.

10

Cross-exa-
mination.

CROSS-EXAMINATION.

I have no planting experience either in Ceylon or elsewhere. I was given some figure as the amount Mr. Godamune had spent on the property. I believe it was 21,000/- (P.C. Evidence on the point read). That is correct. I consider it obvious that the land is neglected. I came to Ceylon about 2 years ago and I was employed to make this valuation about August last year. I did not spend the whole of that time in Colombo. I did a good deal of work in Colombo. I had long litigation in connection with some valuations which I had made. It did not take a very good portion of my time in Colombo. I had been up-country on a good few occasions. A gentleman who wants to buy a tea estate valued at 3 lakhs might ask me to value the estate. I have come in contact with good many people after I came here. I would not say that people in Ceylon are shrewd but they have optimistic views about the values of land. My valuations have not varied from 50 to 100 per cent. in very many cases, but in a very few cases. I did valuation work in connection with the Colpetty road widening. In certain cases the offers were increased by about 50 per cent. but not my valuations which I had made myself. It is a fact that some offers based on my valuation were ultimately increased by about 50 per cent. or more. In some cases my valuations were increased but not to the extent of 50 per cent. I cannot say the percentage by which it was increased. There is no book to guide valuations of tea estates.

20

30

Q. Suppose Mr. Godamune says I would have this piece of land rather than 25,000/- in cash, would you take that into consideration in considering the value?—*A.* No, I don't think I would take that into consideration.

Re-exa-
mination.

RE-EXAMINATION.

In the capacity of Government Assessor I have to go to court very frequently to support valuations made by me. In land acquisition cases I am the expert called by the Crown. Valuations made by me have been accepted outside court in hundreds of cases.

40

No. 12.

Evidence of E. H. Seneviratna.

*In the
Supreme
Court of
Ceylon.*

E. H. SENEVIRATNA—affirmed.

Additional Registrar of Lands, Kandy. I produce P35 which is a certified extract of the encumbrances relating to Lunuwila estate. That property is described as of the extent of 66 A. 3 R. and 25 P. by one survey and by a later survey as 66 A. 3 R. and 10 P. or 65 A. 3 R. and 31 P. According to this extract Mr. Godamune is entitled to a 1/4 freehold share of the entire land. He is also entitled to certain leasehold interests in the remainder of the land on an assignment by one Samaratunga. He got a lease from certain priests. The extracts show that there is an undischarged mortgage over this property created by Mr. Godamune in favour of Trinity College for 8000/-. That still remains undischarged.

Evidence.

No. 12.
E. H. Seneviratna.
Examination.

I also produce P41 Indenture No. 385 of 3rd Dec. 1927. That is a mortgage by Stephen Samaratunga in favour of Albert Godamune of his leasehold in this land.

I also produce P42 deed No. 345 of the 26th May 1928. That is an assignment of the leasehold interest of Stephen Samaratunga to Albert Godamune.

I also produce P43, deed 341 of the 4th May 1928, being a transfer of his share of the lease by one UkkuBanda in favour of Godamune. The consideration paid on that transfer is said to be 650/-. That appears to be a 1/4 share of the land. By an earlier deed he is entitled to 1/4 share.

CROSS-EXAMINATION.

Mr. Godamune got a leasehold of the whole land.

Cross-examination.

No. 13.

Evidence of A. S. Gunawardene.

No. 13.
A. S. Gunawardene.
Examination.

A. S. GUNAWARDENE—sworn.

Recordkeeper, District Court, Kandy. I produce record in D.C. Kandy 34987, P42, which is an action on a mortgage bond brought by Mr. Westland and Mr. Godamune against Mr. Boyagoda and 5 others. The plaint was filed on 14th March 1927. Decree was entered of consent on 30th March 1928. Judgment as prayed for was for 63,126/- and costs. On 30th March 1928 Liesching & Lee moved for an order to sell the mortgaged property. The order was issued on 21st May 1928. On 12th Sept. Liesching & Lee moved that the Fiscal be ordered to sell the whole estate. On 3rd Nov. the Fiscal returned the writ and asked for extension of time. On 6th Nov. writ was extended and made returnable on 28th March 1929. On 30th Nov. 1928 Beven & Beven acting for the 3rd defendant moved to

*In the
Supreme
Court of
Ceylon.*

Evidence.

*No. 13.
A. S. Guna-
wardene.
Examina-
tion—con-
tinued.*

have certain payments certified and the application was fixed for enquiry on 21st Jan. 1929 (record made on 21st Jan. 1929 is read out). A copy of the Gazette notice is not filed of record.

I also produce case No. 33783, D.C. Kandy, P25; action by C.M.M. Perera of Galle against Mr. Godamune. The claim was for rent 585/-. The action was settled.

I also produce case No. 35569 D. C. Kandy, P28; action brought by Arthur Jayasinghe against Albert Godamune on a promissory note claiming a sum of 1208/-. Decree was entered for the whole amount and writ issued. The decree is dated 6th October 1927. Writ was issued on 24th October 1927. The record does not show that the writ was satisfied. The writ was returned at the request of the Proctor for the plaintiff. 10

I also produce P29, record of case No. 37909 D.C. Kandy, action by Dr. Hay as proprietor of the Imperial Motor works claiming 481/51 on account of goods sold. Judgment was entered as prayed for. Writ was not taken out.

I also produce P30, record in case No. 38177 D.C. Kandy; action by A. E. Fernando against Albert Godamune on a promissory note for 1300/-. Judgment was entered for 1000/-. Writ was not taken out.

I also produce P31, record in case No. 39278 D.C. Kandy; action by Narayan chetty against Godamune claiming 465/- on a note. Judgment was entered and writ issued. 20

*Cross-exa-
mination.*

CROSS-EXAMINATION.

P25, case No. 33783 was instituted on 5th March 1926 and the case was settled on the 12th May 1926. Summons was served almost immediately and the defendant was present at once. Summons was served on 29th March. It is unusual to serve summons in such a short time.

P28, case No. 35569 was instituted on 25th August 1927. The plaintiff in the case died. There is a petition by the widow dated September 1929 saying that her husband was dead and that he had told her that a sum of 400/- only remained unpaid. There is an endorsement by the District Judge to refer it to Mr. Godamune for report. There is a letter from Mr. Godamune explaining that only 55/- remained unpaid. There is also a letter from the widow to the District Judge thanking him for the information and saying that as Mr. Godamune says 55/- only remains unpaid, she accepts that as correct. 30

P29, case No. 37909 was instituted on 20th April 1929 and judgment was given on 18th July 1929. No writ has been taken out.

P30, case No. 38177 was instituted on 18th June 1929. Claim was for 1300/- it was an action over some transaction of timber. Judgment of consent was entered in February 1930 for 1000/-. Writ has not been taken out. 40

P31, case No. 39278 was instituted on 21st February 1930. Judgment was entered on 26th March 1930. Summons was served on 7th March 1930. It was a summary case. Time expired and judgment was entered. Writ was issued on 27th May 1930.

P29, case No. 35569 was withdrawn at the instance of the plaintiff. P31 is the only case in which writ is outstanding. The C.I.D. Inspector Silva came and went through these records.

*In the
Supreme
Court of
Ceylon.*

RE-EXAMINATION.

(Shown P29). This is an action in which the Imperial Motor Works sued this accused for work done. From the plaint it would appear that the debt was incurred between 12th May 1928 and 16th October 1928. Judgment remains unsatisfied so far as the record goes. Judgment was entered on condition that writ was not to issue for 3 months. In P30
10 action was filed on 6th May 1929. Judgment remains unsatisfied in this case also. In P31 the date of the promissory note is 22nd January, 1929. That would be the day following the day on which the question of certifying payments came up for enquiry in the other case.

Evidence.

No. 13.
A. S. Guna-
wardene.
Re-exa-
mination.

No. 14.

Evidence of C. Gomez.

C. GOMEZ—sworn.

Manager of Gomez & Co., Kandy. This accused had an account with our firm and he paid this cheque P22 dated 16th December 1927 for 100/-. This cheque has been credited to our account. This accused still owes
20 us 76/-.

No. 14.
C. Gomez.
Examina-
tion.

CROSS-EXAMINATION.

Accused paid the cheque on 16th December 1927. He might have paid the cheque for 100/- in payment of a bill for 34/- and taken the balance. The debt of 76/- was incurred from May 1929.

Cross-exa-
mination.

RE-EXAMINATION.

The accused owed us 34/- at the time he paid the cheque for 100/- and probably he must have taken the balance in cash.

Re-exa-
mination.

No. 15.

Evidence of Joseph Perera.

30 JOSEPH PERERA—sworn.

In 1927 I was the Manager of the Central Medical Stores. On the 16th December 1927 this accused paid cheque P32 for 100/-. I endorsed it and it was paid into our account. He paid part of the account and got cash for the balance.

No. 15.
Joseph
Perera.
Examina-
tion.

CROSS-EXAMINED—Nil.

*In the
Supreme
Court of
Ceylon.*

No. 16.

Evidence of H. A. C. Wickramaratna.

Evidence.

H. A. C. WICKRAMARATNE—Affirmed.

No. 16.
H. A. C.
Wickra-
maratne.
Examina-
tion.

Proctor, S.C., practising in Kandy (shown P36). This is a cheque dated 3rd December 1927 for 304/86 issued by this accused Godamune in my favour. I don't remember on what account he paid it. It might have been in satisfaction of a decree. I cannot say whether it was paid in satisfaction of a personal debt of this accused or a client of his.

Cross-exa-
mination.

CROSS-EXAMINATION.

I cannot remember on what account this cheque was paid. I don't 10
keep accounts.

Re-exa-
mination.

RE-EXAMINATION.

It was not paid to me on account of anything due to Mr. Harris. It has nothing to do with Mr. Harris.

No. 17.
Dr. H.
Beven.
Examina-
tion.

No. 17.

Evidence of Dr. H. Beven.

DR. H. BEVEN—sworn.

I am a Doctor practising in Kandy. P37 is a cheque issued by this accused in my favour dated 10th January 1928 for 45/- being rent for his office. 20

Cross-exa-
mination.

CROSS-EXAMINATION.

Accused was a tenant of mine for about 3 or 4 years and he paid the rent regularly.

No. 18.
M. J. Tay-
lor.
Examina-
tion.

No. 18.

Evidence of M. J. Taylor.

M. J. TAYLOR—sworn.

Proctor practising in Kandy (shown P29—record in 37909 D.C. Kandy). I appeared for the plaintiff Dr. G. B. Hay of the Imperial Motor Works. The defendant was this accused Mr. Godamune. He was sued for 481/51 on account of repairs and other accessories supplied. That is a debt incurred 30
between May 1928 and October 1928. Judgment was entered against the accused and writ was not to issue for 3 months. This decree has not been satisfied to my knowledge. I believe I had instructions from the plaintiff to the effect that writ should not issue after the expiration of the three months.

Cross-exa-
mination.

CROSS-EXAMINATION.

The plaintiff asked me not to issue writ. I don't keep accounts.

No. 19.

Evidence of A. P. Hay.

A. P. HAY—sworn.

10 Manager of the Kandy Imperial Motor Works and plaintiff in D.C. Kandy No. 37909. My father was the actual plaintiff, but at the time I was the Manager. Accused was the defendant. Decree was entered against him but writ was not to issue for 3 months. Mr. Godamune saw our Proctor and asked us to stay execution of writ. I have no personal knowledge of it. Up to date the decree has not been satisfied. We were requested to hold on the writ indefinitely. We did not think we would get any money.

CROSS-EXAMINATION.

I do not think this litigation had anything to do with the issue of writ. Mr. Taylor is our Proctor. Writ was not issued at the request of the plaintiff.

RE-EXAMINATION.

Writ has not been issued even now because the accused has no assets from which we could recover that amount.

*In the
Supreme
Court of
Ceylon.*

Evidence.

No. 19.
A. P. Hay.
Examina-
tion.

Cross-exa-
mination.Re-exa-
mination.

No. 20.

Evidence of C. E. A. de Silva.

20

C. E. A. DE SILVA—sworn.

Proctor, S.C., practising in Kandy (shown P31). Our firm Messrs. Beven & Beven appeared for the plaintiff in D.C. Kandy 39278. I appeared for the firm. The defendant was this accused. Judgment was entered against him. Judgment was not satisfied. Writ was issued. It is still outstanding.

CROSS-EXAMINATION.

Plaintiff in this case is one Narayan chetty. Writ was issued on 27th March 1930.

No. 20.
C. E. A. de
Silva.
Examina-
tion.

Cross-exa-
mination.

*In the
Supreme
Court of
Ceylon.*

No. 21.

Evidence of John Halangoda.

JOHN HALANGODA—sworn.

Evidence.

No. 21.
John Halan-
goda.
Examina-
tion.

Proctor, S.C. & Notary, practising in Kandy (shown P6). This is a deed of transfer executed by Mr. Godamune in favour of Mr. Harris of his interest in a property known as Lunuwila estate. It was executed on the morning of 21st January 1929. I was the Notary who attested the signatures. The parties came to me together at about 8 a.m. on the 21st January and said they wanted a deed of transfer to be signed by about 10 a.m. I said it was difficult to do that if I went through all the formalities. I could not even do a search by that time, but nevertheless they wanted a transfer to be signed by that time. I said "it is possible to do that if you permit me to do so." I drafted the deed and got Mr. Godamune's clerk to write it out and the parties then signed it. I should have searched the encumbrances but I did not. I should have made an abstract of title, but I did not, but of course I had the knowledge of these things because I had drawn a deed for the Trinity College and the title deeds relating to Lunuwila estate were with me as I am the College lawyer. Deed P6 is written on a printed form belonging to Mr. Godamune. I don't have printed forms but I write out deeds or type them. I don't keep printed forms for ordinary Bills of Sale. Notaries who have a bulk work keep printed forms but I have a very small practice. The vendor in deed P6 warrants and defends title. The share which Mr. Godamune conveyed is not specified in the deed. The subject matter of the deed is described as "all my right, title & interest etc. to the said land." I should have really given an assignment of the leasehold interest and a transfer of his freehold interest; then I should have had to draw up two deeds. I could not do that in two hours. They wanted a transfer. So I could give all what Mr. Godamune had in the manner I did and that was the best way of transfer. It was written out by Mr. Godamune's clerk. The deed was not brought to me written up. If it had been brought to me written up I would not have it. I told Mr. Harris that Mr. Godamune owned 1/4 share of the land as a freehold—about 17 acres? I am sure I said that. I swear to that. Mr. Harris was there reading the deed as it was being written. In the attestation clause I say that the consideration is acknowledged to have been received previously. In this case the money was received by Mr. Godamune. He did not say in what form. I did not enquire.

Cross-exa-
mination.

CROSS-EXAMINATION.

I am still the lawyer for Trinity College. When the 8000/- mortgage was put through I was not merely acting in the formal capacity of Notary but as the College lawyer also. I formally attested the deed and also put through the transaction. I have been the Adviser of Trinity College for a long time and I have been advising them for investment of large sums of money. For an institution of that kind I would be particularly careful to

see that the deeds were in order. I thoroughly investigated Mr. Godamune's title to this property before I put through the 8000/- mortgage. When the parties came to me on the 21st morning I was fully conversant with Mr. Godamune's interest in this property. I had the title deeds with me. I have been to this property. I have been with the College Authorities also to inspect the land. Mr. Godamune and Mr. Harris came together. I cannot say who gave me the instructions. One agreed to what the other said. They were there for a long time. It took very little time for me to tell Mr. Harris what interest Mr. Godamune had in this property. He was
 10 there for a long time going through the deed. He asked me questions. I was anxious to get the deed drawn up as soon as possible. I had no idea of the subsequent developments.

*In the
Supreme
Court of
Ceylon.*

Evidence.

No. 21.
John Halan-
goda.
Cross-exa-
mination—
continued.

(This witness was recalled, *see* p. 40.)

No. 22.

Evidence of PUNCHI BANDA.

PUNCHI BANDA—Affirmed.

No. 22.
Punchi
Banda.
Examina-
tion.

26. Proctor's clerk. In January 1929 I was employed under Mr. Godamune as his clerk attending to his professional work. (Shown P6.) The body of this deed is in my handwriting. It was written in Mr.
 20 Halangoda's office on the 21st January. I made three copies of it. I cannot exactly remember the time at which I wrote them, but it was about 8.30 a.m. I started to write at about 8 a.m. and I completed the three copies in about $\frac{3}{4}$ hour. I live at Ampitiya. I come to work at about 7 or 7.30 a.m. Mr. Halangoda's clerk came to me and told me that Mr. Godamune wanted me at Mr. Halangoda's office, and I went there. Mr. Halangoda has one clerk. His clerk was also in the office when I wrote out the deed. P6 is written on one of Mr. Godamune's forms. After I went to Mr. Halangoda's office I was asked to bring Mr. Godamune's forms. I was sent for to Mr. Halangoda's office. When I went there I was asked to go
 30 back and bring Mr. Godamune's forms. The deed was dictated to me by Mr. Halangoda. At that time Mr. Halangoda, Mr. Harris, Mr. Godamune, Mr. Halangoda's clerk and another man by the name of Gunasinghe were there. I was not one of the attesting witnesses.

CROSS-EXAMINATION.

I heard that Gunasinghe who was in the office is Mr. Harris' conductor. I know the man. I know who he is. I don't know whether he is a relation of Mr. Gunasinghe who is the Chairman of the Ceylon Labour Union.

Cross-exa-
mination.

*In the
Supreme
Court of
Ceylon.*

No. 23.

Evidence of John Halangoda (recalled).

Evidence.

JOHN HALANGODA, recalled—sworn.

No. 23.
John Halan-
goda.
(recalled).
Examina-
tion.

Sometimes I have 2 clerks and sometimes one. I cannot say how many clerks I had in January 1929. I had at least one. He must have been present in my office on the 21st January morning. If the last witness says he was present I will not contradict him. I must have employed Mr. Godamune's clerk to write out the deed P6 because my clerk must have had some work at the time. The parties thrust this work on me and I had to attend to my regular routine work; therefore I got Mr. Godamune's clerk to write it out. I was not going to do it in 2 hours for 1000/-. I did this for professional etiquette without any charge. I got Mr. Godamune's clerk to write this deed to expedite work. If it was necessary I would have put six clerks to the job. I did not put two clerks to this job because I thought one was sufficient. 10

CROSS-EXAMINED—Nil.

No. 24.
H. F. Ensor
Harris (re-
called).
Examina-
tion by
Court.

No. 24.

Evidence of H. F. Ensor Harris (recalled).

H. F. ENSOR HARRIS, recalled—sworn.

To Court: I remember the night of the 20th January 1929. Accused came to my bungalow that night and said that he would get into trouble if he did not pay up the money or certify the money as being paid. I cannot remember what else he said. He said words to that effect. He said that he had a wife and children and that he would get into trouble. The next morning I met Mr. Godamune in Kandy and with him I went to Mr. Halangoda's office. I know that Mr. Halangoda was the lawyer for Trinity College and in that capacity he executed a mortgage on Lunuwila estate. I cannot remember whether Mr. Halangoda told me about accused's interest in the land. I believe I asked him what other portions had been purchased after his original purchase and he showed me some extracts which were very difficult for me to follow. I don't think I enquired in the office at that time what share Mr. Godamune owned in this property. I don't remember whether Mr. Halangoda told me what share Mr. Godamune owned in the property. I don't remember whether he told me that Mr. Godamune owned only $\frac{1}{4}$ share of the property. If he had said it I would have noted it. At that time I understood that Mr. Godamune owned more than that. I have 30

no recollection of Mr. Halangoda having told me that Mr. Godamune owned 1/4th share in this property. If he had told me that accused owned 1/4th share it would have effected me. I don't remember hearing Mr. Halangoda having said that.

*In the
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CROSS-EXAMINATION.

I knew Mr. Halangoda fairly well. I had borrowed money through him on properties of my own. Trinity College had invested money on my own properties in which Mr. Halangoda acted as Proctor and Notary.

Evidence.

No. 24.

H. F. Ensor
Harris (re-
called).
Cross-exa-
mination.

No. 25.

10

Deposition of C. H. Wambeek.

No. 25.
Deposition
of C. H.
Wambeek.

Death certificate of Mr. C. H. Wambeek put in evidence.

Deposition of Mr. C. H. Wambeek (*read in evidence*).

28.7.30.

Accused present.

Same appearance for accused.

C. H. WAMBEEK—sworn, Proctor S.C.

I am a partner in firm of Jonklaas and Wambeek. In D.C. 35569 I appeared for plaintiff. As far as I know the debt has not been satisfied by defendant. In D.C. 38177 too judgment was entered for plaintiff and as far
20 as I know this debt remains unsatisfied.

(Sgd.) WAMBEEK.

(Sgd.) S. T. A. RAHAMAN.

Read over, etc.

(Sgd.) S. P. WICKREMASINHA,

P.M.

*In the
Supreme
Court of
Ceylon.*

No. 26.

Evidence of Kema Chandra.

Evidence. **KEMA CHANDRA—Affirmed.**

No. 26.
Kema
Chandra.
Examina-
tion. I remember Mr. Hasaram Motumal who gave evidence in this case in the Police Court. He went to India on 31st December, 1930. He is not at all coming back.

CROSS-EXAMINED—Nil.

No. 27.
Deposition
of Hassaran
Motumal.

No. 27.

Deposition of Hassaran Motumal (read in evidence).

HASSARAN MOOTUMAL affirmed, Manager of Mootumal & Co. Kandy. 10

This cheque L. 52125 has been paid to us by accused probably on account of purchases made by him.

CROSS-EXAMINED—Nil.

(Sgd.) HASSARAN MOOTUMAL.

(Sgd.) S. T. A. RAHAMAN.

Read over, etc.

(Sgd.) S. P. WICKREMASINHA.
P.M.

No. 28.

Accused's statement (read in evidence).

Crown case closed.

Adjourned.

STATEMENT OF ACCUSED.

Name of Accused : Albert Godamune.

The particulars of the offence charged are explained to the accused as follows : as per plaint.

The accused is addressed, etc., states : " I am not guilty. I did not
10 commit the offences named or any other offence in respect of the monies referred to in the charge. The terms and conditions on which the monies were sent to me are set out in the letter from Mr. Cooke—letter dated 18th November, 1927—who made the payments on behalf of his client. I did not understand when I received these payments that I was expected to keep the identical cash realised by the cheques in my custody. What I did understand was that I was to be responsible for the disbursement of the amount according to the alternative contingencies mentioned in Mr. Cooke's letter or according to any subsequent instructions he might give me on
20 behalf of his clients. When Mr. Cooke later desired me to have satisfaction entered to the extent of these payments I complied and satisfaction was entered of record on 21st January, 1929. I made arrangements with Mr. Harris to whom the moneys were ultimately due to be present in Court and to consent to the minute of satisfaction being entered. Mr. Harris to whom I conveyed one of my properties called Lunuwilla has already informed the Supreme Court and my lawyers that he is prepared to execute a conveyance on payment of consideration. I have been and am still prepared to have the reconveyance effected as desired. I shall file a list of witnesses."

(Sgd.) A. GODAMUNE.

30 Interpreted.

(Sgd.) S. T. A. RAHAMAN.

I do hereby certify, etc., in English.

(Sgd.) S. P. WICKREMASINHA.

P.M.

Date, 2.5.30.

*In the
Supreme
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Evidence.

No. 28.
Accused's
statement.

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Supreme
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No. 29.

Submission of Accused's Counsel that there was no case to answer.

8th January, 1931. Accused present—same Counsel as before.

No. 29.
Submission
of Accused's
Counsel that
there was no
case to
answer,
8th January
1931.

Mr. Hayley says he does not wish any of the prosecution witnesses submitted for cross-examination.

Mr. Hayley submits that there is no case to go to the Jury on the charges. He states that in view of Mr. Peris' and Mr. Cooke's evidence that the money, in no event, during the year was to be paid to Mr. Harris, the present 2nd and 4th charges cannot stand on the ground that the money never was drawn when it was the property of C. Ensor Harris. In regard to the 1st and 3rd charges he says that in view of Mr. Cooke's and Mr. Peris' evidence to the effect that they did not care what the accused did with the monies so long as he was prepared to account for it at the end of the year his contention would be that what the accused did with the money during the year was immaterial and that therefore he could not have criminally misappropriated it. 10

Court suggests that questions of law might also be involved in the discussion and therefore the Jurors are asked to retire while a discussion follows:—

MR. HAYLEY says: "My contention is that there is now as the case stands no case to go to the Jury. The position both on the evidence of Mr. Cooke and Mr. Peris and particularly on the letter P14 is this. The money was not to be certified. The letter is specific on that point. What does it mean, taking the accused as a plain plaintiff, not as trustee; he sues two defendants. He cannot make a compromise with both. One wants time. The plaintiff says: "Pay me certain portions of the debt and I will give you time." Second defendant says: "I will pay you a portion in order to protect you but I won't pay it into this case because I am at loggerheads with 1st defendant." My point is that the money was not to be paid into the case. My submission is that the money cannot become Harris' until it had become a payment under the judgment in the case. Harris could not get a beneficial interest in it and Mr. Godamune would have held it on behalf of Harris until it became a credit against the decree. This is a case where there is a good deal of law, but my submission is that if it is not Mr. Harris' money there is nothing to go to the Jury on these charges and so far as Peris and Cooke were concerned they both said, "He (accused) never misappropriated our property and we have no claim." I say that we must accept what they say. They have nothing to gain by saying that. 20 30

No. 30.

Reply of Crown Counsel and Judge's decision.

*In the
Supreme
Court of
Ceylon.*

No. 30.
Reply of
Crown
Counsel and
Judge's
decision,
8th January
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MR. OBEYSEKERE replies: "I must confess that I do not yet see that my learned friend's submission amounts to a question of law. They really involve consideration of the evidence and the interpretation to be placed upon the evidence and they involve questions of law and I think it is convenient to thrash them out now.

As regards counts 4 and 6, my submission is on the evidence it is clear that this money was paid to Mr. Godamune on account of accumulated interest. The question would arise, "If Mr. Godamune was not the plaintiff or trustee would he have received this money?" Obviously not. If he received this money as trustee I say he received it on somebody's behalf. A trustee could not have a beneficial interest over which he holds the trust. Mr. Harris had a beneficial interest in the property and I submit a beneficial interest is sufficient to bring it within this charge and to make it the property of Mr. Harris. Criminal breach of trust is included in criminal misappropriation. In so far as Mr. Harris had a beneficial interest, although the money was paid to Mr. Godamune it was Mr. Harris' property. We are not concerned with the conditions imposed on him. Even in accepting the money conditionally he was violating his position as trustee. Once I prove that the money was Mr. Harris' property all that I got to prove that there was misappropriation is—the accused admits he spent the money—that it was dishonest. To prove dishonesty I am relying on certain circumstances, and whether it is dishonest is a question of fact. My submission is that long before the certification came up the offence was completed.

The other point that my friend makes is that it was not the property of Peris. I put it alternatively. I first say that the money was paid to Godamune. From that time Mr. Harris had a beneficial interest in the money and I say that from that standpoint it is the property of Mr. Harris, but I say alternatively that if it was just a payment made by Peris it was the money of Peris because Peris said in his evidence: "The accused was to hold the money at our disposal." Then obviously it was Peris' money. The position is this. The money is paid to Mr. Godamune. He holds that as trustee but on the happenings of future events—let us say the property was sold and did not realise the full amount—the money was to go to Mr. Harris. To that extent he had a beneficial interest. As regards the alternate charges I submit they are proved in this way. I prove the misappropriation and to prove dishonesty I have to prove that the accused acted with the intention of causing wrongful loss or wrongful gain to somebody. I say in this case there is wrongful gain to himself in the sense he had a wrongful use of the money to which he was not entitled and I say there has been wrongful loss to Mr. Harris. The property may have been Peris' but as a result of this misappropriation somebody had lost. That is sufficient. My submission is that as a result of this Mr. Harris is the poorer man to-day. In fact he has

*In the
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No. 30.
Reply of
Crown
Counsel and
Judge's
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tinued.
Judge's
decision.

lost and I say that that is sufficient for me to prove dishonesty. That is what I have to prove legally. My submission is that the intention must be presumed by the consequences that follow. Accused spends the money and gets certain gain? You have to infer that his intention was wrong. Apart from spending the money Mr. Harris has lost because he got a worthless cheque and property.

His Lordship says this case must go to the Jury.

Crown Counsel says he is entitled to address the Jury after the accused has given evidence, but Mr. Hayley says that the Crown Counsel has to address the Jury before the accused gives evidence. Crown Counsel cites 10 22 N.L.R., p. 468. Mr. Hayley cites S. 237.

Court holds that Crown Counsel is entitled to address the Jury after the accused has given evidence.

Evidence.

No. 31.

Evidence of Albert Godamune.

No. 31.
Albert
Godamune.
Examina-
tion.

MR. HAYLEY calls—

ALBERT GODAMUNE—Affirmed.

38. I am a Kandyan. My father was Punchi Banda Godamune. He was in the Ceylon Civil Service and was a Police Magistrate. He died. I am a Proctor S.C. and I was admitted in 1917 but I began practice in 1918. 20 In my junior days I worked with Liesching & Lee. At the time I was an assistant in their firm I was requested to become one of the Trustees of Mr. Harris' marriage settlement. I can't remember who suggested it. I did not know Mr. Harris before. I think the firm suggested it to me. They were not Proctors for the trust. This necessity for a new Trust arose on the sale of Mr. Harris' land to Mr. Boyagoda. Previous trustees had died or given up. I think the transfer to Boyagoda was put through by Liesching & Lee. I was asked to take this trust up with Mr. Westland. I had no interest in the matter at all. I consented. That was in 1920. I was appointed Trustee practically the same time as Boyagoda's mortgage, by 30 successive deeds. Harris sold the land on 21st March, 1920. I and Westland were made new trustees on 2nd August, 1920. The next day Boyagoda executed the mortgage in our favour by the next deed. Under that mortgage Boyagoda should have paid us interest. He did not do so. Westland gave me no help in this matter. He disappeared. We subsequently found out that he was staying some miles away from Trincomalie in some inaccessible place. I did not see him after the day we signed the Trust deed. No interest was paid for a long time. Action was filed on that mortgage bond on 14th March, 1927. That was my idea? Interest was accumulating and I did not know whether the property was worth that amount. I was 40 greatly worried and I was realising that I was responsible if anything went

wrong because Westland was not taking any interest in this matter at all. When I took up the trusteeship I did not realise the responsibilities but I realised it only when the interest was accumulating. Westland had to be a party to the action. I tried to get his address. I got various addresses and I posted letters and proxies but I never got replies. I went to Mr. Harris and he gave me a man called Gunasinghe who took a proxy to Westland. He brought it back signed. Boyagoda, Peris and the other four members of the syndicate were made parties to the case. They appeared to be the legal owners at the time. At the time I instituted the action I was not aware of all the intermediate steps of the title between Boyagoda and Peris. After the case was filed we had to take lot of trouble to serve summons. It took about 9 months to serve summons. Boyagoda and the members of the syndicate were evading summons and we had to get Gunasinghe to go and hide and serve summons. One night one J. W. S. Cooke and a man called Ferdinando came and saw me at my house and said they wanted to make arrangements about the mortgage action and they wanted time. They told me their position was very insecure, that they had spent lot of money for Boyagoda and that Boyagoda was claiming back the land he had transferred in a case instituted in Colombo. They said the other members of the syndicate were in Colombo and they asked me to come over and meet them. I went to Colombo and had an interview in Peris' office. They then repeated the request. My answer was that I would give them a year's time provided they paid the accumulated interest and provided they consented to judgment immediately. They wanted further time, but I think I fixed the year. At that date no judgment at all had been entered. Summons had been served and answer was due on 26th November. They had applied for time through Beven & Beven and between the application for time to file answer and the 26th November they came and saw me. Just before that I had discovered that there was a defect in the plaint. There were two intermediary purchasers—one Karuppen chetty and Palaniappa chetty. They had not been made parties to the action. I saw that it was possible that one of them may be adjudged owners of the land, but not Boyagoda or the syndicate. The deed from Palaniappa chetty to the syndicate had not been registered. If I gave time and the interest that accumulated was above the value of the land, I thought in my position as a trustee I would be liable to make good the deficit. I thought I was getting over a grave difficulty in getting them to consent to judgment. At the same time I thought I was risking personal liability if I gave time. Peris and I discussed our relative positions and then went to Mr. Cooke who was acting for the syndicate and discussed the matter again with Mr. Cooke. We came to an arrangement that day. The arrangement was that Mr. Cooke was to make provisions for any risk I ran in giving him time. I insisted on the interest being paid. Mr. Cooke put it to me that he could not advise his clients to pay any interest at that stage, that the Colombo case was then pending trial and that he was not at all sure as to what was going to happen to it, that his clients had already spent lot of money in Boyagoda's transactions and that they were not willing to sacrifice any more money over that

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Examina-
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matter, and further Mr. Cooke said he wished to have the decree intact in order that they may take an assignment of it in case they lost the case against Boyagoda and thereby lost the land. They did not want the decree to be split up. They wanted the decree for the whole sum as prayed for to stand on record. The idea was that in case they took an assignment they would have the judgment for the whole amount against Boyagoda. Mr. Cooke made a suggestion that the money should be paid to me personally in order to secure myself of any risks I ran, that I should give them a year's time to pay, and that they would not file answer, but would consent to judgment. I accepted that suggestion. When I came to Kandy Mr. Cooke sent me letter P14. He did not send a cheque with that letter. I replied agreeing, and a few days afterwards he sent me the first cheque for 10,000/-. Subsequent cheques were sent to me on the same contract. I did not meet Westland to tell him about this arrangement and the receipt of the payments. He was nowhere about to get at. I did not think it necessary to tell Liesching & Lee. It was I who was attending to the case and Liesching & Lee practically assisted me in the work. They did the formal part of the work. I am a Proctor myself and I prepared the papers and passed it on to them. I had no money. Nobody provided money for this trust and it was big sums that were wanted. Nobody had given me money to start this action. Rs. 70/- was the price of a document which I had to find out of my own pocket. I filed a plaint which was rejected by the D.J. and Mr. V. M. Fernando the D.J. spoke to me and said that it would be better if I filed a plaint through another Proctor. 10

Mr. Cooke was very insistent that I should not let out this arrangement to anybody. Mr. Boyagoda's matters were so complex and complicated that everybody in Kandy and Colombo had something to do with these things and Mr. Cooke was very insistent that nobody should know anything about these arrangements. The monies paid to me were payments to indemnify me against any risks I ran. If I ran any liability this was to indemnify me against that. Mr. Cooke's express desire was that if the sale was necessary it should be for the full amount of the decree, interest and all, and not to take this 23,000/- into account. I opened an account in the bank with the 1st payment of 10,000/-. About December, 1927, one Samaratunga who had been working under me for some years wanted 5000/- to develop a land that he had acquired near Kandy. That was Lunuwila estate. I took a mortgage of that land and lent him the money—not the whole amount. There was an existing mortgage for 2500/-, P41, in favour of some Tamil woman. I kept back that amount and paid a cheque for the balance. I deposited the money in the District Court subsequently on behalf of that Tamil woman. A day or two afterwards Samaratunga returned and said that the money I had given him was not sufficient to work a big land about 60 acres and he put another proposition to me—that I should take it over and work it and he would be on the spot and work it for me. I agreed to that. He held a lease for 25 years and he said that the owners were willing to give him a further lease of 25 years. I agreed to take an assignment and I took charge of the property early in December, 30 40

1927. I at once began spending money on the property. I went and saw the land. It was a very good proposition. It is 4 miles from Kandy—on the Hantane road—very good estate road—there are large Company estates all round—there are factories all round the place. I ran short of funds and I wanted to mortgage it to Trinity College. Just prior to executing that mortgage I took an assignment from Samaratunga, P42, somewhere in May or June 1928 that year. One of the co-owners was constantly pressing for money. I advanced on two mortgage bonds previously and subsequently got a transfer from him of a $\frac{1}{4}$ share. My expectation was to buy up the whole interest. If not for this case I would have been the owner of a fairly large portion. I expected this to be a very valuable property when it was all opened up. I spent nearly 21,000/- or 22,000/- in opening it. Investment on the 5000/- mortgage bond and the taking over was done with monies received from Mr. Cooke. Into the account I opened I put various sums that came into my hands. I was continuing my work as a Proctor at that time. In 1922 or thereabouts I started my own practice leaving Liesching & Lee. I have another account in another bank in my wife's name. I have certain funds there and some funds in this account. I spent most of the money I received from Mr. Cooke in opening up this land and on investments. I did not think I was doing anything contrary to what Mr. Cooke or Mr. Peris said in spending that money. It was their desire that this money was not to be made part of the trust, but that I should keep it to indemnify myself. This land when developed was a valuable land to be sold at a good figure. The adjoining estate, Hantane, is valued at 3000/- an acre. Mr. Boyagoda filed answer on the day answer was due. The syndicate did not file answer. It was fixed for trial on (?) March I think. On that day Mr. Boyagoda appeared in court and consented to judgment. In August there was a motion in the case by Liesching & Lee for an order to sell. I don't think I instructed them to do that because as soon as I came to know about it I stopped it. It is not likely that I gave them instructions to move for an order to sell. I heard in evidence that Mr. Cooke wrote to me and Liesching & Lee to have the payments certified. I received a letter from Mr. Cooke some time later, but not at the time it was written. I was at Dehiwala at that time. I went down to Colombo about the end of October 1928. I was having constant trouble with my head and the Doctor advised me to take an immediate change by the seaside. The Doctor suggested that I might lose my memory if I continued to stay here. I rented out a house in Dehiwela and lived there till about 10th January. One evening Peris came to the beach and told me about the certification of payments. I had intended to remain in Colombo till end of January, but I came back to Kandy by about 10th January. I think the day after I came to Kandy I went to see Mr. Harris. Some time before that I had told Mr. Harris that I had given time but I had not given him the terms I had come to. At that time Mr. Harris was living somewhere in Matale. I mentioned to him about the giving of time about a month or two before the 15th September, when I wrote to him. Subsequently I sent him letters P3 and P4. I told him in the letters about the receipt of the

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tion—con-
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Sic.

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tinued.

monies. Mr. Harris was pressing me to have the sale. Then I thought he would misunderstand me if I did not disclose to him how matters stood. Therefore I told him about the receipt of the monies in spite of Mr. Cooke's request not to mention it to anyone. Prior to January 1929 Mr. Harris was well aware that I had received these monies. When I went to see him on the 11th January I told him that these people wanted certification entered and that we will have to come to some arrangement about this money, that Mr. Westland was not available, that Liesching & Lee wanted instructions from both before they got certification entered and that as the money has to come—as the interest is payable to Mr. Harris (this answer is interrupted) I asked Mr. Harris to take security of this place on which I had spent the money. I told him I had spent the money on that place and asked him whether he would consent to judgment or whether he would give me a short time to collect the money and pay him to certify payments to satisfy Mr. Cooke's clients. If I had been in Kandy the question of certification at such short notice would not have taken place. What I understood from Mr. Cooke's letter was that the only thing contemplated was the sale and after that to find out what the deficiency was if the sale realised less than the amount. I understood that until the sale was over I hadn't to account for the money to Mr. Cooke or to anybody else. A sale might take some time to go through. It has to be advertised, and after the sale certain number of days must pass before the court confirms it. I had no difficulty whatever in raising the money required by the sale of the estate. I told Mr. Harris to take a secondary mortgage of the land. He agreed. Subsequently he wrote to me a letter saying that he had reconsidered the matter. I was expecting him daily and on the 21st January morning he came and said he wanted a transfer of the land and not a mortgage as his money had been spent on that land. His man Gunasinghe had been there several times but Mr. Harris had not gone there. Gunasinghe attends to all his affairs. That is the man who went to Trincomalie and got the proxy signed by Mr. Westland. This Gunasinghe and Mr. Gunasinghe the Labour Leader are first cousins. Mr. George de Silva and Mr. Gunasinghe the Labour Leader went to England to represent the Ceylon Labour Party at a Labour conference. I did not like Mr. Harris' suggestion at first but subsequently I agreed on his undertaking to re-transfer the land to me. I told him that the land was worth more and that I would transfer it to him on condition that he would re-transfer it to me when I paid him the money. It is not true that I told Mr. Harris that I owned 14/16 share. I explained it to Mr. Harris and Mr. Halangoda also explained to him in the office what my interest in the land was. It is not true that I went to Mr. Harris on the night of 20th January. On the night of 20th January or at any other time I did not tell Mr. Harris that I was going to shoot myself. There was no necessity. I did not appeal to him on the ground that I had a wife and children. I did not intend to act dishonestly towards anybody in dealing with the money which I had received from Mr. Cooke. It is not a fact that at the time of the transfer to Mr. Harris anything was said about 10,000/- or a 10,000/- cheque. Some days after the transfer I gave him the 10,000/- cheque which

was returned. I gave the cheque to him on the date on the cheque. He came and saw me and said that perhaps the land may not fetch the money due to him and also the Trinity College mortgage. I told him that it would fetch the money due. Then he asked whether I could give him some further security. As I intended to buy back the land I gave him the cheque for 10,000/- to be held by him—to be used in case the land did not fetch his money. There was no understanding when I gave him that cheque that it was to be presented on that day or at any other time. I know somewhere in March that the cheque was presented subsequently. That was when

10 Mr. Lee asked me to give a fresh cheque as it was stale. The cheque is said to have been returned by the bank not being in order. I gave a fresh cheque P9 on the 28th March. The 2nd cheque was to be held on the same terms as the 1st cheque. Mr. Lee undertook to return the old cheque to me and I handed him the new one. Mr. Lee sent the old cheque to me some time later. Now it is lost. I had it during the P.C. proceedings. I handed all the papers to my Advocate, Mr. Rajaratnam and some papers have gone astray. Mr. Harris wanted to go and take possession of the land in April last year as transferee. I told him that the arrangement was that I was to have it back and I would like to keep it in my hands as it was a young estate

20 and required careful supervision. He did not in fact take possession. He was very good. I think I could have sold the land for 30 or 35,000/- about January 1929 but to-day it is worth more. Now it is difficult to sell lands. About the middle of 1929 it was very difficult to sell. Mr. Harris and I both tried to sell it towards the end of the year. I know Proctor George de Silva. He takes a great interest in politics. Outwardly I am on good terms with him. In politics I think we are keen rivals. His interests and the interests that I represent clash. I have been taking part in Kandyan politics. I was the President of the Kandyan National Assembly at one time. I remember an election petition enquiry which resulted in Mr. George de

30 Silva being unseated. I gave evidence in that enquiry against Mr. George de Silva. I don't deny the fact that I have paid some cheques out of the bank account that I opened with the 10,000/- cheque. I don't deny that there are some actions brought against me and that in one case writ is still outstanding. At the time I received the original 10,000/- cheque—November 1927—I cannot say that I was heavily indebted. I owed about 3 or 4,000/- the most. I had money coming in of my own. I was making money by my practice. Money was coming into me from my father-in-law's estate through my mother-in-law. My father-in-law was very well off but there was no money coming in regularly from his estate but I used

40 to take money whenever I wanted.

*In the
Supreme
Court of
Ceylon.*

Evidence.

No. 31.
Albert
Godamune.
Examina-
tion—con-
tinued.

CROSS-EXAMINATION.

I was admitted a Proctor in 1917 and till about 1922 I worked as an assistant in the firm of Liesching & Lee. Then I commenced private practice. I practiced more on the civil side. I developed a fairly good practice. At one time I commanded the 2nd best practice in Kandy—that was about a Rs. 1000 or 2000/- a month. That was in 1923, 1924–1925.

Cross-exa-
mination.

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Supreme
Court of
Ceylon.*

Evidence.

No. 31.

Albert
Godamune.
Cross-exa-
mination—
continued.

I got a sudden practice. It was the best about 1923. In 1923 I was taking lot of interest in social service work but I started political work about three years ago—about 1927 or 1928. My outside activities interfered in my practice to a certain extent. In 1927 my practice was not so good as before. It was declining at that time but not for the reason that I did not give much time to my practice. I was appointed a Trustee with Mr. Westland in August 1920 and the only Trust property which we had to administer was this mortgage bond. It was a very simple trust. Interest was not paid to us during the first two years. If interest was paid during the first two years it must have been paid to Mr. Harris. I am sorry for having said that Mr. Westland disappeared. What I mean is that he left Kandy and bought some property near Trincomalie and he went there. I was not in possession of his address. Liesching & Lee were not connected with this trust all along. They had not been acting in connection with this trust before. Mr. Liesching executed the trust. They executed the instrument by which we were appointed, but I don't know whether they attested the transfer to Boyagoda. I think the mortgage bond was attested by them. The transfer was done some months before. Except the two deeds in 1920 Liesching & Lee had not been doing any work with regard to this trust. I was appointed through my association with Liesching & Lee. I was in their firm for two years after I was appointed. Apart from the attesting of the deed I do not know that they did anything else with regard to this trust. Liesching & Lee did not know Mr. Westland's address. I commit myself to that. I hunted for his address all over the place—that was just about March 1927. I don't remember whether I asked Liesching & Lee for his address. I must have gone to them because I asked for his address from everyone. I don't think it is right when Mr. Westland says that some papers were sent to him for signature by Liesching & Lee. I heard his evidence. I think his memory is not correct. If his evidence is correct Liesching & Lee must have been in possession of his address just before March 1927. Mr. Westland is possessed of property in Kandy. I don't know whether he came to Kandy in connection with his property. What I meant when I said that I wrote several letters to Westland is that I sent him 3 proxies to 3 different addresses but I don't remember the addresses. I picked up addresses here and there. I enquired for the address and I got 3 addresses and wrote to him. I instructed my counsel on that point. Shortly before March 1927 I decided to put the bond in suit. That was solely on my initiative. I consulted Mr. Harris about it. It was on my own initiative but I went and asked him whether he had received any interest and he said he had not received any interest. I could not consult Mr. Westland because I could not communicate with him. Therefore I decided to put the bond in suit without consulting him. I was in the position of a joint trustee. I got legal advice that I could act alone on behalf of the trust. By "act" I mean taking legal proceedings. I was advised that I alone could sue on the bond. If I did not get the proxy I would have put the bond in suit alone. I tried to get at Mr. Westland and if I failed I would have acted alone. After summons was served in the mortgage bond action, Mr. Cooke and Ferdinando

came to see me at my house in Kandy. I cannot be quite definite about the date but it was between the 16th and 30th November 1927. They told me that at that time an action against the syndicate was pending trial. Boyagoda represented that he had transferred this land to somebody else either on trust and he wanted the land back. I read it in the papers some time ago but I am not definite. Boyagoda took writ and he is in possession of the land to-day. I don't know that the decree in that case was that Boyagoda could get a reconveyance only on payment of what the syndicate had spent. I only know that he got judgment in that case but I don't know

10 the terms of the decree. In deciding to put the bond in suit I was actuated by the fact that I must safeguard myself. If the interest accumulated, and after the sale the land did not fetch the full amount I might be held liable for the delay in putting the bond in suit. I may have been held liable for negligence. I would not be solely liable, but with my co-trustee. The land is a very valuable land. I held it on a primary mortgage. I know that Boyagoda bought it for 85,000/- in 1920. I heard that the land was neglected because Boyagoda had transferred it to several others and there was litigation and various complications. What I heard was that the land was neglected. I inspected the land in 1926, and I found it neglected. I

20 could not place a value on it. The amount of our decree was about 69,000/-. Possibly the security covered that amount in 1927, because I was holding a primary mortgage. The interest was accumulating and ultimately it was 12%. I would have been personally liable if positive negligence or breach of trust on my part was proved. A delay may amount to negligence. My liability would be with my co-trustee, but that would not remove my liability. When these persons saw me in Kandy I said I would consider the matter and see them in Colombo. Eventually I met Peris and 2 or 3 others in Peris' office. They were very anxious to prevent a sale on the primary mortgage and they wanted time. I was the person in a position to give time

30 or hold it because Mr. Westland was away in Trincomalie and these persons were not dealing with him. I came to terms with Peris and others. I insisted on payment on account of accumulated interest. I thought that so long as the claim for interest was reduced the land would be worth. Peris knew me as the plaintiff in the case. I don't know as what else he knew me. I can't remember whether I told him that I was a trustee nor can I remember whether I told him that Mr. Harris was the person entitled to the interest. I may or may not have said that. I deny that if I withheld Mr. Harris' name from Peris I did so to prevent their getting his assent to this arrangement. I think they knew everything and they had all the

40 documents with them and they were fighting a case in Colombo. After speaking with Peris we went to Mr. Cooke's office and this arrangement was put in a legal form. I don't think Mr. Harris' name transpired there. I don't remember whether I mentioned Mr. Harris' name to Mr. Cooke. Mr. Cooke trusted me.

Q. If it became necessary to take out writ the idea was the property should have been sold for the amount of the whole decree?—A. That was the understanding.

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Court of
Ceylon.*

Evidence.

No. 31.

Albert
Godamune.
Cross-exa-
mination—
continued.

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Evidence.

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Godamune.
Cross-exa-
mination—
continued.

If I had paid this money to Mr. Harris how could I have accounted to Mr. Cooke and satisfy the contingencies in his letter. In case the sale realised the amount of the decree or something in excess, it follows that I would then have to pay back this money to Peris and others.

Q. Suppose you paid the money to Mr. Harris and held his receipt. Out of the proceeds of sale you could have paid back Peris and others?—

A. That is a possible way.

Q. Suppose the property did not fetch the amount of the decree and there was a deficit. Then you were permitted by Peris and others to utilise this money to make up that deficiency?—A. Yes.

Q. You recover 50,000/- at the sale. There would be a deficit of 19,000/- to cover the amount of the decree. You would be entitled to make use of 19,000/- out of the 23,000/- to make up the balance?—A. That is so.

Q. As against that you would have a receipt for 23,000/- from Mr. Harris?—A. What is the use of that receipt. First of all the 40,000/- must be safeguarded. The Trust covers only the 40,000/-.

Q. If you held a receipt from Mr. Harris and if there was a little difference between 19,000/- and 23,000/-, I suggest you could have got that back from Mr. Harris?—A. I would not run that risk.

If it did not become necessary to sell the property the position would have been different as it happened. My impression was that Mr. Harris was entitled to the interest. I asked to be paid interest. They said they could not pay it into the trust or into the case. They did not agree to pay interest. What was paid was not interest. (Crown Counsel reads out letter P14—"I understood from you at the interview you had with Peris at my office some days ago that provided you were paid 10,000/- on account accumulated interest you would get the case to lay by for one year and during that year the balance interest should be paid from time to time.")

Q. What does that mean?—A. Take that with the lower sentence and see the meaning of it. They were to pay me sums equivalent to the interest. It was not to be certified and if it was not to be certified it was not to go to the case. Your question suggests that this money was paid into this case, but I say no. What Peris and others agreed to pay was a sum equivalent to the interest to cover any risks I ran in giving them time.

Q. The statement in letter P14 that the money was paid on accumulated interest and again the reference to the balance interest shows beyond any doubt that that was paid as interest on account of interest?—A. That is not how I understood it. It was security given to me personally to protect me. That is the implication in the whole letter. My reasons for saying that that is the inference to be drawn by that letter are (1) because the payments were not to be certified and (2) if the land was to be sold the writ was to be for the full amount and this was not to be taken into account. By those two reasons I suggest that the money was paid not to be taken as interest in this case. If I had to sell the land for the full amount it necessarily follows that this amount was not to be used for that till certain contingencies arose. I made a long statement in the Police Court. My position is that these were payments made to me to cover personal risks I took. (Crown

Counsel reads accused's statutory statement.) That is what I am stating to-day. The very same statement "These payments were made to me to cover personal risks I took" may not have been used in the Police Court statement. Mr. Cooke's letter is referred to in my statutory statement and all that is important. I cannot see the difference between what I say now and what I said in the Police Court. I deny that my statement "that this money was paid to cover personal risks I took" is an afterthought. I understood Mr. Peris' evidence to mean that this money was paid to me as security. (His Lordship reads Peris' evidence given in this court with
10 reference to the payments made.)

Q. Mr. Peris' evidence does not bear out your present statement that the money was paid to indemnify you?—A. I do not know. I disagree.

Q. I also suggest that Mr. Cooke does not support you in that?—A. I think he does.

In September 1927 my wife had a bank account but I hadn't another bank account besides the one I opened in December 1927. I opened an account with the first cheque for 10,000/-. I operated a little against that account on personal matters but not a good deal.

Q. You will admit that it was open to you to place this amount on fixed
20 deposit?—A. I dealt with it as if it was a payment to me. If I took it to be a separate payment on professional matters I would have kept it separate. I would agree that there wasn't a single contingency by which I would become entitled to this money. There was no possibility. At some time I had to account for it to somebody. I had the temporary use of the money. Mr. Peris is a lay man. He does not understand legal matters. I took this money as a personal payment to me to indemnify the risks I ran. I was to have the money available. There are various things that I could have done with the money. If it was to be ear-marked I would have placed it on
30 fixed deposit. Mr. Harris is not let down by Rs. 23,000/-. He has got that land which is worth more than that. I am still spending money on that land. I would not admit that Mr. Harris is kept out of possession of the land and that what he has got is only a piece of paper. A large portion of this money was spent on Lunuwila estate. Mr. Kirk saw the amount that I had spent. On the cheques you could see how much I have spent on the estate. Samaratunga was looking after the estate for some time. I have paid him by cheque Rs. 850/-. He was not the only man there. The others to whom I made payments were S. V. Joseph the conductor on the land and a man called Ukkurala who was also on the land. Sometimes I gave Samaratunga cheques and sometimes cash. I took a mortgage for 5000/-
40 and paying off an existing mortgage I paid the balance to the mortgagor. I made those payments by cheque. Samaratunga returned the mortgage bond and that part cheque. There were 2 cheques for the 5000/- mortgage. Some payments were made in cash.

(Shown P.41.)

Q. How was the consideration on that bond paid?—A. Of the consideration mentioned therein a sum of 2750/- was paid by cheque

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continued.

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Cross-exa-
mination—
continued.

No. 521198 of 3rd December 1927 drawn by me on the National Bank. A sum of 250/- is acknowledged to have been paid previously. The balance was not paid in my presence. There was a mortgage to a Tamil woman. That money was brought into court. That was out of the 10,000/-. The other cheque for 2750/- was brought back to me. Samaratunga asked me to take over the land saying that he would work it for me. I took an assignment of it. I deny that most of the cheques produced went in payment of my personal matters. I spent up to 21,000/- on Lunuwila estate. I have not produced accounts here to prove that. Mr. Kirk saw the land and my account books. I took the mortgage bond and the assignment of the land in my name and I regarded Lunuwila estate as my property. If my Proctors got any information they ought to give it to me, but I see no reason why I should give information to them. I don't admit that Liesching & Lee were entitled to be informed of what was taking place. The responsibility was mine Mr. Westland was entitled to know it. I did not think it absolutely necessary to get Mr. Westland's concurrence to the arrangements which I made with Peris and others; if possible I would have got it. Because there was no time and because he was not accessible I did not get his concurrence. This was between the 14th and 16th November. The defendants would have filed answer on 30th November if this did not go through. The date to file answer could have been extended if I was prepared to give time and I could have communicated with Mr. Westland in the meantime. There was a defect in the plaint. I would have been liable not only for the 23,000/- but also for the 40,000/-. If they filed answer and proved title in Karuppen chetty or Palaniappa chetty we could not have sold Belmont estate. As the law stood at that date—it has been amended since—the party who was entitled to the land and in possession must be mentioned in the decree. If the decree is not against that person it is not enforceable and more than that it was irremediable. I realised the defect before the decree was entered while the people had taken time to file answer. Peris and others could have said "Deed to us is not registered; the title is in Palaniappa chetty." Boyagoda was the principal debtor and he had sold to Karuppen chetty and other people and ultimately one Palaniappa chetty sold to the syndicate. Then Boyagoda filed a caveat. The deed in favour of the syndicate was not registered. At that time I understood that the title may be in the syndicate or Palaniappa chetty. Boyagoda has filed action claiming certain trusts. The only defect in my plaint was that I did not call Palaniappa and Karuppen chetties as parties. I was anxious to get them to consent to judgment at once to prevent them from giving time to file answer. Peris and the syndicate may have filed answer to say that they were not the owners of the land. I don't know whether it is foolish to say that. There are various ways in which the syndicate could have filed answer. At that time I got a proxy signed from Mr. Westland by sending the proxy to him by a messenger. I handed the papers to Mr. de Vos. I had sent letters to Mr. Westland and I did not receive replies. That was in November 1927. The application for order to sell is dated 13th August 1928. I cannot contradict if Mr. de Vos says

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that they had instructions before that date from Mr. Westland to apply for an order to sell. So far as I know he took no interest in the land. Application for an order to sell was made and the order was issued by court some time later. I was anxious that the sale should not take place because I had given an undertaking not to sell it for one year. Mr. Westland was inaccessible. I told Mr. de Vos about the arrangements made with Peris. That was about the time I wrote to Mr. Harris. I told Mr. de Vos about the conditions arranged and the payments received. That was when the last cheque for 3000/- came. When Mr. de Vos says that I told him that a cheque
 10 for 3000/- was available if Mr. Harris was prepared to give time it is incorrect. I don't say he is giving false evidence but he cannot remember. I told him not to advertise the sale. I deny that that was because the stamp money was not available. There was the difficulty about the money. I was not willing to give my money. Mr. Harris was not giving the money. Liesching and Lee were unwilling to hand the money. The sale was fixed for 8th December. The year expired in November and as Mr. Harris wanted the sale hurried up I fixed the sale for that date, and satisfied both parties. I admit that Mr. de Vos asked me for money to advertise the sale and that I said I had no money.

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Cross-exa-
mination—
continued.

20 9th January 1931. Accused present—same Counsel as before.

CROSS-EXAMINATION—(continued).

Liesching & Lee were not aware of the arrangements I had come to with Peris. I had instructions from Mr. Cooke to keep it private and I did not think it necessary to tell them. I did not think whether I should tell them or not. It was Mr. Cooke's injunction that operated in my mind. It did not strike me to inform them. I did not keep away from them the fact that payments had been made when the question of certification came up. It is incorrect when Mr. de Vos says that I said that money was available if Mr. Harris gave time.

30 Q. If his statement is correct I suggest that you deliberately kept these payments away from Mr. de Vos?—A. If you accept that statement as correct I suppose that inference is right. It is not at all correct to say that when the principal of the bond 40,000/- was returned, Liesching & Lee and Mr. Westland insisted that the money should remain in a bank on a joint account. Mr. de Vos and I went to Liesching & Lee's office. We signed the deed. We asked them to write out 2 cheques—one for 40,000/- in the name of the trustees and one for 6,000/- odd in name of Mr. Harris. Mr. Harris was also there. Mr. de Vos and I went to the National Bank and handed them the cheque and asked the Manager to open a joint account.
 40 When that transaction fell through no part of that money came to me personally.

Q. I suggest that Mr. Westland and perhaps Liesching & Lee were acting on their past experience in this matter?—A. There are suggestions you can make but I deny that.

*In the
Supreme
Court of
Ceylon.*

Evidence.

No. 31.
Albert
Godamune.
Cross-exa-
mination—
continued.

Q. Mr. de Vos says that after this question of certification arose and you met him in Kandy you told him that you invested this money in bonds?—A. You mean you lay stress on bonds. I did not tell him that. I used the word “investment.” I may have used the word “lands” too. I deny that I used the word “bond.” Lunuwila was worth about 35,000/- about Jan. 1929. I had an offer for that in May 1929 and that is within Mr. Harris’ knowledge also. I wanted to get more. Mr. Harris was not pressing for the money at the time. At that time we agreed to sell the property and for him to take his money and for me to take anything extra. When the question of certification came I was not pressed for funds. Mr. Harris was not pressing me for his money. I suggest he agreed to take a mortgage and at the last moment he pressed me to give a bond. He did not ask for the 23,000/-. He asked me to give him security for the money. I told him I was ill in Colombo and was not able to collect the money at once. I told him I hadn’t the cash to pay at that time and I offered to give him security. I cannot say whether he was prepared to have the cash. That was about a week or 10 days before the certification. In Jan. 1929 there was no talk of selling the land. I could have borrowed 23,000/- on that land at that date. I spoke to Mr. Harris. He wanted me to wait a little while to get that money. In Jan. 1929 there was a mortgage of 8000/- on the property. That is why I went to Mr. Halangoda. With a mortgage of 8000/- I could have raised a further 23,000/- on this property in Jan. 1929. Mr. Halangoda agreed. In Jan. 1929 I could have got 31,000/- on this property. On the 26th May 1929 I raised a mortgage from Trinity College. At that time 2 payments had been made to me. I wanted the 8000/- at once to buy tea plants. That was the planting season and I ran short of money. In May 1929 I had got 15,000/- through Mr. Peris. That was almost finished and I wanted another 8000/-. Since these complications arose I did not pay interest. Mr. Harris did not pay interest and I think that bond has been put in suit last month. If Mr. Harris takes over the property he will have to pay interest and if I take it over I will have to pay. That was my opinion even when I was the owner. The whole of the 21,000/- which I spent on Lunuwila must have come from the 23,000/-, but yet I borrowed 8000/- from Trinity College. 15,000/- had been spent on the land. I paid a few cheques on my personal matters also. I cannot say that the whole of the 21,000/- I say I spent on the land came from the 23,000/-. It was a running account and other monies were also there. Lunuwila estate was not my only asset in Jan. 1929. I own the house and land where I live in Ampitiya. It is in my wife’s name today. In 1929 January, I had the following property in my name :— $\frac{1}{3}$ th share of the land in Godamune village worth Rs. 7 or 8000/-; $\frac{1}{3}$ th share of my mother’s lands in Badulla worth the same. I had bought certain small properties round where I live in my name, in extent about 15 acres and worth about 200/- an acre. I bought that about that period. I bought it fairly recently. I cannot remember whether it was before or after Jan. 1929—may have been bought after Jan. 1929. That is about all the lands I owned in my name at that time. I was developing lands and spending money on these things and I was

constantly in need of cash. I earn from my profession and there was the income from my properties and my wife's properties, and it was with that money I bought the 15 acres in Ampitiya. I contest the position that I was pressed financially in Jan. 1929. I got lot of money into my hands and I spent lot of money. My liabilities were not in excess of my assets at that time. On the 22nd January 1929 I borrowed 400/- on a promissory note from a chetty at 18 per cent. interest—that was fairly low interest for chetties. Ordinarily it is high interest. After these complications I could not attend to any of these things, and the decree in the 400/- note case is not satisfied as yet. As soon as these things got abroad—that there was a criminal case pending over my head—the people to whom I owed money became troublesome and the chetty took out writ immediately after action was filed. The petition was out and the Police were all about the place by that time. Mr. Cooke wrote to me letter D2 asking me to certify payments. I saw that letter after I met Peris. (Reads D2.) When I was in Dehiwela, once a fortnight I used to come to Kandy and attend to the correspondence and go back. On one of these visits here this letter was lying in my office. I saw it somewhere in December. In Nov. 1927 when Mr. Cooke made this arrangement with me their case in the District Court was pending trial. About August that year they got judgment and his clients became owners of the land temporarily. So when Mr. Cooke wrote this letter about this time they changed their front. No certification was in contemplation when this arrangement was made. It was only in case of a sale. (Crown Counsel reads D2.) I did not want to take up an attitude that would either effect this side or that. It did not affect me. If Mr. Harris did not consent to this arrangement I would have said that this money should remain till the sale took place. I say that when they asked me to certify payments on account of interest they were changing their front. D2 reached me before the certification. I could have then asked them why they asked me to certify, but I did not ask. I did not want to place Mr. Cooke or his clients in an awkward position. I did not take upon myself an awkward position. I made arrangements with Mr. Harris. If he did not agree I had the alternative to tell Mr. Cooke that in terms of his letter the sale must take place. I wanted to help him. If Mr. Harris refused the terms proposed by me I would not have told the court that the sale should take place. If the payments were certified the decree would be stayed to that extent. I hoped to induce Mr. Harris to consent to certification. If he refused I would have told the court various possibilities. I take up the position that this was a payment made to me to indemnify me. I dont know what I would have done if Mr. Harris refused to certify payments, but one of the things would have been to mention the arrangement. I tried to raise the money. Then I went to see Mr. Harris. He agreed to these things. If he did not agree, various other things were possible. I hadn't any grievance against Mr. Cooke. It is not correct to use the expression that Mr. Cooke changed his front. What I meant to say was that Mr. Cooke never contemplated a certification when he sent me the letter P14. The subsequent letter D2 suggests me doing something which he did not originally contemplate.

*In the
Supreme
Court of
Ceylon.*

Evidence.

No. 31.

Albert
Godamune.
Cross-exa-
mination—
continued.

*In the
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Evidence.

No. 31.

Albert
Godamune.
Cross-exa-
mination—
continued.

The payment was an amount equivalent to the interest. It was a payment to indemnify me. He did not want it to be used as interest in the case. It is a mis-statement of fact when D2 states that the money was on account of interest. He never talked about certification and no certification is contemplated in the original letter and agreement. It was outside the agreement. Mr. Cooke was receding from the agreement to a certain extent when he wrote letter D2 and yet I have no grievance against him. If Mr. Harris refused to certify payments I would have told the court what had happened if the necessity arose. I would have thought out the whole problem and taken the best course in the interests of the Trust and in my own interests. I have not thought of other possibilities up to now. Liesching & Lee wanted me and Mr. Harris to give them an authority to certify payments. I arranged with Mr. Harris and we went to Liesching & Lee's office. Then Mr. de Vos wanted a letter from Mr. Harris and he gave a letter and then we came to court. That letter of Mr. Harris was written in Mr. de Vos' office and it was drafted by Mr. de Vos at Mr. Harris' suggestion. It is written on Liesching & Lee's notepaper. I agree that Mr. Harris' consent was necessary. If Mr. Westland and I agreed we could have certified payments without Mr. Harris at all. He did not come into it at all. When the Trust came to be executed—when the monies were recovered, first we had to safeguard the 40,000/- and any balance above that we had to pay to Mr. Harris. The payments had not been certified at that time. I don't know whether it should go to Mr. Harris when they were certified. Once the 23,000/- was certified, if Mr. Westland had joined in it, both of us were liable to account for the money when the time came. I would not have waited till the rest of the money was realised, but I would have held it on behalf of the Trust. Any interest accumulated on that would have to go to the benefit of the trust. Once it was certified it became part of the case and part of the trust. In May 1928 we came to the arrangement that we would jointly sell it. The idea between us before was that I was to buy the property back from Mr. Harris. Then the depression set in and we could not sell it. The application for an order to sell Belmont estate was made on 20th Aug. 1928. Before that I met Mr. Harris and told him about these arrangements and that I have to wait for a year. I did not show him Mr. Cooke's letter but I said I had given an undertaking not to sell it for a year and that I got them to consent to judgment and I said that I did that in the best interests of the Trust. I did not tell Mr. Harris that money was available to him if he would consent to give time. The understanding was that I was to buy back Lunuwila from Mr. Harris within a reasonable time after paying him the money. He took the transfer and at my request he agreed to re-transfer the property to me if I paid him the amount. I did not want to give him possession of the property. The property was a young plantation and it wanted attention. I wanted to keep it because my whole intention was to buy it back. Mr. Harris got the transfer for the 23,000/-. The title was in him. When he pressed for the land in August, 1929, I went and told him that I would like to have the property back. He was very good. There were very little

profits at that time from the land. Before April 1929 I may have told him I expect monies. After April several times I had seen him about prospective buyers. I did not keep him up with the promise of paying the money. His man used to visit the place once a week or fortnight and I was spending for the upkeep to his interest. If he took it over he would have had to spend for it. I must have spent a fairly large sum. It was about 7 or 8 months ago that it came into full bearing. I valued the transfer at 25,000/-. It is not fiction. I had the money for it. The understanding was that I was to pay him 25,000/- on a reconveyance.

*In the
Supreme
Court of
Ceylon.*

Evidence.

No. 31.
Albert
Godamune.
Cross-examination—
continued.

10 Q. Before the petition was sent to the Inspector General of Police you received more than one letter from Mr. George de Silva who was acting on behalf of Mr. Harris asking you to pay up?—A. The petition was sent and Mr. Silva pretended to be saving me. He telephoned to my relations in Colombo. Wherever he met people he pretended that somebody else was creating trouble and he was trying to stop it. Till the petition was sent he did not ask me to pay up. My mother-in-law came to my place in Kandy seriously ill in 1929, and we went with her to Colombo. I was more often there than in Kandy during that period. My mother-in-law died on 26th Jan. It was during that time that this petition had gone; if I had been in Kandy and Mr. Harris
20 had seen me this would never have happened. Mr. Harris is a reasonable man. He is a tool. He has got the value for the money. The petition is dated 11th Dec. 1929. Mr. George de Silva may or may not have asked me to pay up the money before that. I deny that he wrote to me more than one letter before that suggesting that the matter should be settled. After my mother-in-law's funeral I came to Kandy and I found the whole place ablaze with this. In Feb. 1930 I knew that the Criminal Investigation Department was going into this matter. The case went to court at the end of April 1930. My mother-in-law died, and the burden of the estate was in my hands, leaving 5 children; it was a complicated estate. In the meanwhile certain
30 other developments took place in the family and we had to go hanging about the Gampaha courts almost weekly. That was in April. At that time I had no time to see Mr. Harris or make arrangements.

Q. Up to the date when the matter went to court no offer of payments was made?—A. I always put to Mr. Harris that I wanted the land and I wanted my own money or a purchaser. I was very much worried about this case. Whenever I came to Kandy I told Mr. Rajaratnam that there was such and such a thing and asked him to do what he could about it. About the middle of April I got counsel to interview the Attorney General. Before 30th May when things took this turn I wanted to take back the
40 land and pay Mr. Harris his money. He said he must get the permission of the Attorney General once he has sent a petition. After the matter came to the Police Court the suggestion was made whether I could find a purchaser. I persuaded my brother-in-law to deposit the money and take the land in his name till I was able to pay and take it back. 23,800/- was deposited in court. Mr. Harris wanted that sum. I wanted the prosecution to be withdrawn if that was to be done. After the record from the Attorney General came and the case was going on, my brother-in-law said he wanted

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Court of
Ceylon.*

Evidence.

No. 31.
Albert
Godamune.
Cross-exa-
mination—
continued.

the money badly and the money was withdrawn. It is absolutely untrue to say that I represented to Mr. Harris that I owned 14/16 of the land. He was giving false evidence on that point. Mr. Harris is a very nice man. He is in a corner. That petition has been drafted absolutely different to the facts of the case and he has now to support the original petition. The petition implies that I transferred the whole interest. When Mr. Harris got into the witness box he had to say something because he knew about the lease I had. The petition is worded very cleverly. Anybody reading it would not understand that there is anything about a lease mentioned in it. A lease is not a transfer of a land. I deny that the 1st cheque for 10,000/- which I gave Mr. Harris was given on the morning of 21st Jan. When the cheque is dated 26th or 27th Jan. the inference that one could draw is that it is given on the same day—namely, the 26th or 27th Jan. There is a method of postdating a cheque. You mention on the back of the cheque the date on which it should be presented. That is the usual way it is done. It is not the practice here when a cheque is postdated to write that date on the face of it. I gave that cheque as security intending that he should not present it for payment. When the cheque was returned to me I saw that it had been presented. I gave a 2nd cheque dated 28th March, and the old cheque was returned to me about a month after that. After Jan. 1929 Mr. Harris bought a property in Matale with a mortgage on it and he found the interest prohibitive and from that time he wanted money. Naturally he would like to have his 23,000/-. The election petition of George de Silva was in 1924 I think.

Re-exa-
mination.

RE-EXAMINATION.

As trustees Mr. Westland and I at first were only the trustees of a mortgage in our favour. There was no cash or property in our hand. The only right and duty was to collect the 40,000/- before the bond expired. Until the 40,000/- came into our hands, paid by Boyagoda or by the sale of the property, there was no question of interest arising at all.

Q. You said to my learned friend that you consider that you had to first safeguard the 40,000/- and then only the balance, if any, should go to Mr. Harris?—*A.* Yes.

Q. Supposing owing to a slumping market this property was sold at an auction sale for 17,000/- and you had this 23,000/- out of Mr. Cooke to apply, you regarded as your duty to keep that total 40,000/- in trust for the minor or to pay the 23,000/- to Mr. Harris?—*A.* I regarded that I had to keep the whole 40,000/- for the minor.

Defence case closed.

No. 32.

Court Proceedings after close of defence.

Obeysekera addresses the Jury.

Hayley addresses the Jury.

Adjourned.

After the Jurors are asked to go away some discussion takes place.

His Lordship enquires whether he could direct the Jury under §182 that if criminal breach of trust had been committed and not criminal misappropriation, they could convict him of that offence. Crown Counsel
10 says it is open to His Lordship to do so. He says that if it is found there was criminal breach of trust, there is criminal misappropriation also. He says that he might add a charge of criminal breach of trust in that case, and that it is open to His Lordship to do so.

*In the
Supreme
Court of
Ceylon.*

No. 32.
Court
Proceedings
after close
of defence,
9th January
1931.

No. 33.

Notes of discussion relating to further charge.

10th January 1930.* Accused present—same Counsel as before.

The Jurors are asked to retire and in their absence a discussion takes place.

Mr. Obeysekera moves to add a charge in the following terms :
20 “ That on a date between the 30th March 1928 and 21st Jan. 1929 at Kandy, within the jurisdiction of this court, you did commit criminal breach of trust in respect of a sum of Rs. 5,000/- entrusted to you by Mr. P. G. Cooke on behalf of Mr. C. W. Peris and others, and that you have thereby committed an offence punishable under S. 389 of the Penal Code.”

Mr. Obeysekera says that this is a charge that can be considered on the material before the court and that no further evidence is required. He submits that if the Jury find that the accused is not the owner of the money and that he misappropriated that property, it is sufficient to convict him of misappropriation. Further he says that the section dealing with
30 criminal misappropriation does not say that the property must be the property of any particular person. He says that directly the money was paid to accused it was paid to him on account of accumulated interest and in payment of balance interest. That is a question of fact for the Jury to find. Taking that as a promise his submission is that if that were so, inasmuch as Mr. Harris was entitled to the payment of the interest it became Harris' property. He says that it was paid to accused as the agent of Harris and that the condition that it was not to be certified merely affects the question of the time of payment.

He further submits that on Peris' evidence that the accused was to hold
40 the money at their disposal, it is the property of Peris. If it was Peris' money, the offence of criminal misappropriation was complete long before

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Notes of
discussion
relating to
further
charge,
10th Janu-
ary 1931.
**Sic.*

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Notes of
discussion
relating to
further
charge,
10th Janu-
ary 1931—
continued.

the certification came up. Then there remains the question whether it was dishonest. That is again a question of fact.

Mr. HAYLEY'S submissions :

I submit Your Lordship cannot charge the Jury under S. 182. (Reads S. 182.) Refers to Sohoni's Criminal Procedure Code 12th Ed. p. 586, Note 2—that S. 236 which is our S. 181—does not apply to cases where there is any doubt as to the facts but only to a question as to which section of the law is to apply to the facts. In the offences of criminal breach of trust and criminal misappropriation ordinarily the facts are different, and in this case there is no doubt with regard to the application of the law. The doubt is as to the facts which have been proved. The additional charge refers to a breach of trust of monies paid by Mr. Cooke. The question is whether the facts disclose that the property was the property of Mr. Harris or that of Mr. Cooke. Your Lordship is now asked to say whether the property was that of Harris or Cooke or of the minor. Those are questions of facts primarily. I submit it is not merely the question whether we could apply an alternative section of the Penal Code to the facts proved, but the question is whether the facts show one state of things or another. I submit in any event Your Lordship cannot give any alternative to the Jury because there was no trust here except the trust created by Mr. Cooke. There can be no breach of trust in respect of Harris. S. 388 of the Penal Code requires that there should be the entrusting of the property. It requires the active creation of a trust. The first item of proof is whether there was a trust. Having been entrusted by Mr. Cooke it must be shown that he dishonestly converts the money to his own use in violation of any directions of law describing the mode in which such trust is to be discharged, or in the alternative, of any legal contract expressed or implied in such trust. So far as Mr. Cooke was concerned it cannot be held that we committed a breach of the trust because there was a condition as to how we should use the money.

To come to my learned friend's suggestion, I would submit that Your Lordship would not apply S. 172 to add any charge at this stage, in the middle of my speech to the Jury. The section gives certain powers to Your Lordship. They, of course, must be carefully applied and if there is a question of prejudice, Your Lordship will not alter it. If this case is altered to a charge of criminal breach of trust, all the material witnesses would have to be recalled and re-examined. If Your Lordship desires to leave the case to the Jury under S. 182, Your Lordship could do so, but if my learned friend moves to add the charge I would have to ask for a re-trial.

With regard to my friend's suggestion to alter the charge with the addition of the words "property of the trust" I say it is essential that the property must have an owner. If there is an owner we must be told who he is against whom we misappropriated the money.

No. 34

Order of Mr. Justice Lyall Grant.

*In the
Supreme
Court of
Ceylon.*

In view of what Counsel for the defence has stated I think it is inadvisable at this late stage of the case to allow a new charge to be added to the indictment.

On the question, however, of whether it is open to me on the existing indictment to charge the Jury that they can find the accused guilty of criminal breach of trust, I have formed an opinion in the affirmative. Sec. 181 of the Criminal Procedure Code provides that if a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with all or any one or more or such offences and any number of such charges may be tried at one trial and . . . may be included in one and the same indictment etc. Sec. 182 provides that if in the case mentioned in the last preceding section the accused is charged with one offence and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed although he was not charged with it. The illustration to that section is a charge of theft and on such a charge it is stated that a person may be convicted of criminal breach of trust though he was not charged with such offence.

Mr. Hayley referred me to Sohoni's Commentary on the Indian Code of Criminal Procedure. The commentary on the section corresponding to Sec. 181, namely, Sec. 236 of the Indian Code states that the section applies only where the application of the law to the proved facts is doubtful and not where the facts are doubtful. If I may say so, I entirely agree with the Commentator's statement, but in the present case the question is not what facts are doubtful, but what is the application of the law to the facts. It is for the Jury to arrive at a finding on the facts, and the only matter of doubt is whether if certain set of facts is found to be the case the offence amounts to criminal misappropriation as charged on the indictment or to criminal breach of trust. This being so, I consider that it is open to me to direct the Jury that if they find certain facts to be proved they may find the accused guilty of criminal breach of trust.

I do not think that such a direction will prejudice the accused. I suggested at an early stage of the case and again subsequently that the facts appeared to indicate a charge of this nature. Crown Counsel did not accept the suggestion but I think sufficient intimation was given to the accused's counsel that the provisions of Sec. 182 might be utilised.

40

(Sgd.) R. W. LYALL-GRANT,
Puisne Justice.

After the above order is delivered, the Jurors are called back and Mr. Hayley proceeds with his address to the Jury.

No. 34.
Order of
Mr. Justice
Lyall Grant,
10th January
1931.

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No. 35.
Verdict and
sentence,
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ary 1931.

No. 35.

Verdict and Sentence.

Court sums up.

Verdict : Unanimous—Accused guilty on the 2nd and 4th counts.

Mr. Hayley addresses the Court in mitigation of the sentence.

Sentence : One year's rigorous imprisonment on the 2nd count.

One year's rigorous imprisonment on the 4th count.

Sentences to run concurrently.

No. 36.
Accused's
Counsel's
request to
Court for
reference
and dis-
cussion
thereon and
Order of
Court,
10th Janu-
ary 1931.

No. 36.

**Accused's Counsel's request to Court for reference and discussion thereon
and Order of Court.**

10

Mr. Hayley asks the Court under S. 355 to refer for the decision of a Court consisting of 2 or more Judges certain questions which have arisen during the trial. He states :—“ We have had before Your Lordship long discussions on certain points and I think I may assume that they are points of considerable difficulty and which want careful drafting to be submitted to Your Lordship. I was going to ask Your Lordship whether Your Lordship would allow the full points which we would ask Your Lordship to refer to be submitted in chambers at another time, but I would like to indicate now at least one of those points because I think that unless Your Lordship will at once consent to refer the points it would be necessary for the accused to be remanded in the meantime. Subject to Your Lordship's approval I would request that the accused be allowed to stand out on bail as provided by the section. The bail he has furnished is Rs. 25,000/-. One of my points is—Your Lordship, for instance, charged the Jury that they could bring in a charge of criminal breach of trust and in relation to that directed the Jury that it was open to them to consider the accused as an Agent of Mr. Harris. All those questions are involved in our discussions. That might have had a very material bearing on the finding of the Jury.

20

I take up these two points if I might at once submit—that the evidence in the case, particularly that of Mr. Cooke and Mr. Peris, show that the money was at no time the property of Mr. Harris. The 2nd point was discussed before Your Lordship, namely, the facts proved in the case do not disclose an offence under S. 386 inasmuch as the property was delivered to the accused by the person having a right so to deliver it.

30

These are the points that I submit now but there are other points which I would like to submit later if Your Lordship permits me to take that course. My junior Mr. Rajaratnam will submit them to Your Lordship early some day next week.

40

Mr. Obeysekera says that His Lordship will be required to state a case on a question of law, and it is within His Lordship's discretion. His Lordship says that in a case like this there are undoubtedly difficult questions of law.

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Court of
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Mr. Obeysekera says that so far as the questions submitted are concerned, the first is a question of fact more than of law.

No. 36.
Accused's
Counsel's
request to
Court for
reference
and dis-
cussion
thereon
and Order
of Court,
10th Janu-
ary 1931—
continued.

HIS LORDSHIP says: "I would not commit myself to the exact form. I think this is a point—whether there was evidence or not. It was a crucial point in the case and I did give a ruling of certain events the Jury
10 could find. I think that is a point which I am inclined to refer to a Full
Court."

MR. OBEYSEKERA: "With regard to the 2nd point I understand that it is suggested that in no circumstances can you convict of criminal misappropriation where criminal breach of trust is disclosed, but I rather gather that it was conceded by my learned friend. It was not submitted as a question of law in the course of the trial."

HIS LORDSHIP: "I rather understand that Mr. Hayley did not press it. An early reference was made to it and he agreed that the case in Gower pointed to the opposite result. If the case is going to the Supreme Court,
20 perhaps this is a point."

MR. OBEYSEKERA: "I do not know whether it is open to Your Lordship to certify a point which was not raised at the trial and where Your Lordship is not bound to give a ruling."

HIS LORDSHIP: "It arises in this way. Mr. Hayley drew my attention to it and I ignored it."

MR. OBEYSEKERA: "As regards the operation of S. 365 (2) that discretion arises only after the actual certification."

ORDER OF THE COURT.

"I am prepared to reserve the first point raised by Counsel for the
30 defence. I will have a further opportunity of considering the exact terms of the reference with Counsel but the effect of it is that there is no evidence to support the finding that the money was the property of Mr. Harris and I am prepared to state the case on that point, and any other matters can be considered later. In the meantime the accused can stand out on the same bail."

*In the
Supreme
Court of
Ceylon.*

No. 37.
Reference,
17th January 1931.

No. 37.

Reference.

REX *v.* ALBERT GODAMUNE.

S.C. No. 41.

P.C. Kandy No. 32498.

On Saturday 10th January 1931, At the Kandy Assizes, one Albert Godamune was convicted of dishonestly misappropriating on a day between the 30th of March 1928 and the 21st of January 1929 at Kandy, a sum of Rs. 5000/-, the property of Mr. C. Ensor-Harris and of having thereby committed an offence punishable under section 386 of the Penal Code. He was also convicted of having dishonestly misappropriated a sum of Rs. 3000/- belonging to the same person on a day between the 28th of August 1928 and the 21st of January 1929. 10

Various points of law were argued in the course of the trial, one of which was that there was no evidence in the case upon which the jury could find that the money in question was at any time the property of Mr. Harris. In the circumstances of the case this question is not without difficulty and owing to the absence of authorities in Kandy it was not argued before me with the fullness which it deserved.

Although there was not very much direct conflict of evidence, there was great divergence in the course of the trial between the inferences which Crown Counsel and Counsel for the defence respectively sought to draw from the facts which have been proved. 20

These facts are shortly and omitting details as follows :—The accused, a Proctor, was co-trustee of a marriage settlement. The trust funds were invested in a mortgage over lands.

2. The trustor was Mr. Harris. During his lifetime the interest accruing from the mortgage was payable to him. No interest was paid for a number of years and the trustees put the bond in suit. Mr. Harris was not a party to the action, but it was instituted with his consent. The claim was for Rs. 23,000/- accrued interest and for the principal sum lent on the mortgage, Rs. 40,000/-. The principal defendant was the mortgagor, but there were also joined as defendants certain puisne encumbrancers. Judgment was entered by consent of all parties on the 30th of March 1928. Payments were made to the accused in the name of accrued interest and for the amount of that interest, namely Rs. 23,000/-. These payments were made to the accused by the puisne encumbrancers under an agreement of November 1927 entered into between him and them, and the payments were made at different times, being completed within a year from that date. The first payment was of Rs. 10,000/- on the 26th of November 1927 and the payments in respect of the misappropriation of which he was convicted were made later. The accused undertook not to certify these payments on the record of the mortgage action. 30 40

The accused concealed the fact of these payments not only from Mr. Harris, but also from his co-trustee and also from the lawyers who were agents for the plaintiffs in the mortgage action. There was evidence to show that the first intimation that any of these persons had of the payment of the money to the accused was a letter received by the plaintiffs' lawyers, Messrs. Liesching and Lee, from Mr. Percy Cooke, the proctor for the puisne encumbrancers. About this time the puisne encumbrancers who had paid over the money to the accused asked that these payments should be certified in the mortgage action.

*In the
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10 3. The 21st of January 1929 was fixed as the date on which the plaintiffs were required to certify payments. There was evidence that the accused had spent the whole of the money on his private affairs. His co-trustee refused to certify that payments had been made on the ground that he was in ignorance of any such payments, although he was pressed by the accused to join in certifying, the accused telling him that he had paid either the money or its equivalent to Mr. Harris. The Court certified the payments in consequence of a note from Mr. Harris being produced in Court informing the plaintiffs' proctors that with reference to the sum of Rs. 23,000/- paid to Mr. Godamune on account of interest in the case
20 and for which the defendants were claiming credit Mr. Godamune had settled the matter with him as life renter by transferring Lunuwila Estate in his favour. There was evidence that just before the case came up in Court for certification of the amount paid to the accused, the accused made desperate efforts to compound with Mr. Harris, and Mr. Harris' evidence was to the effect that he accepted the transfer of Lunuwila Estate—a transfer which was made on the morning of the 21st of January—in lieu of the Rs. 23,000/- in consequence of misrepresentations made to him by the accused.

I instructed the Jury that if they found it proved that the money in
30 question was paid to the accused as Mr. Harris' agent for the purpose of being handed over to Mr. Harris and that the property had passed from Pieris and others, they might consider it to be the property of Mr. Harris from the time it reached the hands of the accused. That ruling has been objected to and it is argued that there was no evidence on which Jury could have been directed to find that it was the property of Mr. Harris.

4. It was further argued that there was no evidence to show that it was the duty of the accused to pay over the money to Mr. Harris.

There are other points of law upon which Counsel for the defence asked for a reference; for instance, whether it was open to the Court to direct
40 the Jury that they could find the accused guilty of criminal breach of trust.

I do not think it necessary to go into that point as in fact the Jury did not find the accused guilty of criminal breach of trust, and my direction to them was that as the charge of criminal breach of trust appeared on the indictment they should not consider that question unless they were unable to find that the sums in question were the property either of Mr. Harris or of Pieris and others.

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The question whether on the indictment the accused could be found guilty of criminal breach of trust is therefore purely academic, and I do not think it necessary to refer it for fuller consideration.

Another point raised by the defence was one which may perhaps be conveniently considered by the Court in this case, though personally I have not much doubt on the matter. The defence contended that there could be no offence under section 386 where the property in question was delivered to the accused by a person having a right to deliver it. In support of this argument I was referred to a case reported in 4 Thambyah's Reports, p. 71, where in an *obiter dictum* Layard C.J. appears to have given expression 10 to this view.

5. On the other hand cases cited by Gour in his Commentary on the Indian Penal Code clearly show that in India the section is held to apply in cases where an agent failed to deliver to his principal a sum of money which had been given to him.

It seems desirable that as the point has come up and as there appear to be conflicting decisions it should be definitely settled. Accordingly I desire to refer for the opinion of two or more Judges the following two questions :—

(1) Was there evidence upon which the Jury could find that 20 the property was the property of Harris ?

(2) Can a person be convicted of criminal misappropriation of money which has been entrusted to him ?

(Signed) R. W. LYALL GRANT,
Puisne Justice.

Kandy, 17th January 1931.

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IN THE MATTER OF THE REFERENCE BY LYALL-GRANT J. UNDER SECTION 355 (2) OF THE CRIMINAL PROCEDURE CODE IN CASE No. 32498 OF 30 THE POLICE COURT OF KANDY.

(S.C. No. 41)

Present : MACDONELL C.J., GARVIN S.P.J. and DALTON J.

Argued on 23rd, 24th, 25th and 26th February, 1931.

(a) MACDONELL C.J.

This is a case stated under the provisions of section 353 (2) of the Criminal Procedure Code by Lyall Grant J. sitting as Assize Judge at Kandy Criminal Sessions, raising two questions for the consideration of this Court.

The accused has been convicted of dishonestly misappropriating on a day between 30th March 1928 and the 21st January 1929 at Kandy the sum of Rs. 5000/- the property of Mr. C. Ensor Harris, and on another count of dishonestly misappropriating on a day between 28th August 1928 and 21st January 1929 the sum of Rs. 3000/- the property of the same person, contrary to section 386 of the Penal Code. There were also two alternative counts charging the same offence on the same facts but laying the property in one Peris, but on these alternative counts the jury found the accused not guilty.

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10 The points reserved for the opinion of the Court were the following :—

(1) Was there evidence upon which the jury could find that the property was the property of Harris ?

(2) Can a person be convicted of criminal misappropriation of money which has been entrusted to him ?

The facts were these. The accused, a proctor, became in 1920 joint trustee with one Mr. Westland of the marriage settlement of the Mr. Harris whose property he was charged with misappropriating. The settlement was Rs. 40,000/- secured by a property called Belmont. This property was sold in August 1920 to a Mr. Boyagoda for Rs. 85,000/-. The purchaser
20 paid Rs. 20,000/- in cash and executed a primary mortgage bond to trustees for Rs. 40,000/- besides puisne mortgages of Rs. 10,000/- and Rs. 15,000/- to Mr. Harris himself. The accused and Mr. Westland became joint trustees of this mortgage for Rs. 40,000. Recurrent interest was due on this sum and it seems clear that this interest was due to Mr. Harris either in his own right or as trustee for a minor child, one of the *cestuis que trust* under the marriage settlement. The interest fell into arrear and by March 1927 it amounted to Rs. 23,000/- or a little more. The trustees, the accused and Mr. Westland, put the bond in suit by plaint dated 14th March 1927. Mr. Boyagoda, the mortgagor, was made defendant and the members of a
30 certain syndicate of 5 of whom Mr. Peris the witness was one were also made defendants since they claimed to have bought the property from Mr. Boyagoda; at the moment the latter had an action pending against them to have them declared trustees of it for him. The day for filing answer to this mortgage suit was 26th November 1927 and just prior to this the witness, Mr. Peris a member of the syndicate mentioned above, came to the accused and requested him to suspend proceedings in the mortgage suit. Other interviews took place about this time November 1927, between the accused and the same Mr. Peris and Mr. Cooke, the proctor for the syndicate. As a result of these interviews the accused agreed to postpone
40 further steps in the mortgage action for a year and Mr. Cooke on behalf of the syndicate paid him Rs. 23,000/- as follows :—On 26th November 1927 Rs. 10,000/-, on 30th March 1928 Rs. 5,000/-, on 28th August 1928 Rs. 3000/- and on the 6th of November 1928 Rs. 5000/-, on certain conditions. It was proved that the accused has spent this money and that it is no longer available. He kept the agreement he had entered into with these persons secret from his co-trustee Mr. Westland, the proctors

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in the suit Messrs. Lieching and Lee and from his *cestui que trust* Mr. Harris.

The evidence as to the agreement under which accused received these monies is that of Mr. Peris and Mr. Cooke and a letter P14 of 26th November 1927 from Mr. Cooke to the accused. The important passage in Mr. Peris' evidence are as follows:—"The claim in the plaint included a sum of Rs. 23,126/- on account of accumulated interest. As purchasers of the property we were anxious to prevent its sale. I entered into an agreement with Mr. Godamune to pay up the amount" (*i.e.*, interest) "on behalf of myself and the other members of the syndicate . . . The arrangement was for us to make payments on account of interest and for the trustees to give us one year's time to pay the balance of the accumulated interest Rs. 23,000/- and they were not to advertise the estate for sale within that one year . . . The only condition was that the money we handed to Mr. Godamune was to be held but those payments were not to be certified of record . . . He undertook to certify payments whenever we wanted . . . We were advised by our lawyers not to make any payments until the final issue of the case" (*i.e.*, brought by Mr. Boyagoda) "if possible . . . We did not want to be out of pocket in the event of our losing the property . . . I did not want the payments certified as in case we lost the Colombo case we would be paying the money to him and he would have the benefit of our payments. On the other hand I wanted to get this mortgage sale postponed because if it went through some third party would take the estate and we would be left in the air . . . We asked Mr. Godamune to give time to pay up the amount. He wanted us to make some payments towards the interest so that interest may not get accumulated, the reason being that he would be taking a risk as a trustee . . . The latter does not add anything further to what we all discussed together. Mr. Godamune was to certify payments whenever we wanted him to do so . . . There was no obligation on Mr. Godamune to certify payments . . . We wanted a longer time than a year but Mr. Godamune was not willing to give us more than a year's time . . . He was to hold the money in confidence without telling anyone . . . Mr. Godamune was anxious that interest should not accumulate. The interest had already accumulated to such an extent as Rs. 23,000/-. That he did not want that to go on indefinitely." In answer to the Court Mr. Peris said "I knew that the accused was a trustee and that this money was paid to him as a trustee. I knew that he had to pay this money to Mr. Harris or his son. I intended that he should not pay the money to Mr. Harris . . . What we wanted him to do was to keep the money for himself and not to pay it to Mr. Harris. Accused was to hold the money at our disposal. The use of the payment was to satisfy Mr. Godamune who was asking something on account of the accumulated interest . . . We wanted to show our bona fides that we were really prepared to pay the accumulated interest."

The important passages in Mr. Cooke's evidence were:—"The claim was Rs. 40,000/- principal and Rs. 23,000/- odd interest. My clients could not defend that action . . . In November 1927 Mr. Godamune had

met Mr. Peris and come to an agreement whereby they were given a year's time provided certain payments were made on account of interest . . . My recollection is that Mr. Godamune was to give Peris and others one year's time to pay the Rs. 40,000/- mortgage provided they paid up the arrears of interest which amounted to about Rs. 23,000/- first by paying Rs. 10,000/- and the balance whenever they could within that year. This letter P14 is the letter I wrote to the accused embodying the conditions . . . I knew that this money was being paid to Mr. Godamune as trustee. The 1st condition was that my clients be given a year's time and during that year
 10 my clients were to make payments on account of interest and Mr. Godamune was to undertake not to certify of record these payments . . . I would have objected to the accused having paid the money to Mr. Harris because if my clients lost the case they would lose the money . . . I knew Mr. Godamune was the trustee of a marriage settlement, but I did not know the terms . . . I marked the letter P14 "Confidential" because I did not want anybody to know that these payments had been made on account of interest . . . If Mr. Harris or Mr. Boyagoda came to know of the payments they may have attempted to enforce certification. There was no positive obligation on Mr. Godamune's part to certify payments." To the Court
 20 Mr. Cooke said "In my letter there was no condition that Mr. Godamune should not pay the money to the beneficiary. There was nothing in my letter to show that I put that condition on him. At that time I did not know that the money had to go to Mr. Harris. I wished the accused to have control over the money till the case was decided, but I did not know what the condition of the trust was."

I can only conclude that these statements were evidence from which the jury could conclude that there was a payment of interest fettered by conditions, but still a payment of interest. If the monies paid were interest, then, as admitted in argument, they would be the property of Mr. Harris.
 30 A distinction was attempted to be taken between a payment of interest and a payment on account of interest, but I cannot see that any distinction exists. If I owe a debt to a tradesman and pay him something on account of that debt, I am paying that debt *pro tanto*.

It is necessary perhaps to notice the position between the parties. The accused was safeguarding himself, he says so, by insisting that if time be given interest should be paid, but in giving time and in agreeing not to pay over interest he was preferring the advantage of himself and others to that of his *cestui que trust* when his duty was either to get him the interest at once, or to proceed with the action and enforce payment, and so he was
 40 committing, it seems to me, a breach of his duties as a trustee. The syndicate knowing he was a trustee, Messrs. Peris and Cooke say so, were inducing him to prefer their advantage to that of his *cestui que trust* and so to commit a breach of trust.

Now the agreement was embodied in letter P14 from Mr. Cooke to the accused and it is important to see whether that letter contradicts the oral evidence of the agreement between the parties. It is as follows: "I understand from you at the interview you had with Mr. C. W. Peris at my office

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some days ago that provided you were paid Rs. 10,000/- on account accumulated interest you would get the case to lay by for one year and that during that period the balance interest should be paid from time to time as my clients were able. Further that you would undertake not to certify of record any payments made by my client on account should it become necessary for you to enforce writ for the recovery of the claim. Of course if the amount realised by the sale of the property does not fetch the amount of your claim, then you could appropriate the moneys paid by my clients towards the deficiency. The reason for this as explained to you is that my clients do not wish Mr. Boyagoda or anyone else to profit at their expense as the mortgage was one that was executed by Boyagoda. On receiving your confirmation of this I shall send you a cheque for Rs. 10,000/-." 10

I can only conclude on the best light I can obtain that this letter does not contradict the oral evidence but is in accord with it. Construing it as best I can it seems to say, we pay interest but you must not certify it on the record. This is not inconsistent with it being interest, for it would still be the duty of the accused to keep it safe for his client, though the fact of the payment was to be concealed for a year from him and from everybody else; it remains interest none the less. The sentence "If the amount realised by the sale of the property does not fetch the amount of your claim, then you could appropriate the moneys paid by my clients towards the deficiency" has been pressed in argument as showing that these payments would only become interest at all on a certain possibility. I do not so read it. One possibility is selected out of a number that might happen that, namely, that before the year of concealment had elapsed, it might "become necessary" for the accused "to enforce writ for the recovery of the claim" (see preceding sentence of the letter) in which case what had been paid would supplement a deficiency if there was one, so that Mr. Harris would be secured of the interest whatever happened, and would in the meanwhile remain a deposit of interest available to be paid him as such when the year had elapsed. Thus whether this possibility occurred or not, the money paid would remain what the writer has called it, a payment on account of interest if an earlier payment, a payment of the balance of interest if the final payment, and the interpretation of the sentence contended for would ignore what seems to be the purport of what has gone before, namely that at the end of a year accused would be free to pay over the interest to Mr. Harris. I cannot see that this sentence negatives what has gone before so as to make that payment not to be interest which the earlier part of the letter has declared in the clearest terms to be interest. 20

In so construing the letter I seem to find myself in complete agreement with the construction put upon it by the witnesses Mr. Peris and Mr. Cooke; they do not seem to have any doubt that what they were paying was interest. Also Mr. Cooke in answer to the Court said that there was nothing in the letter debarring the accused from paying the money to the beneficiary. If paid it could only be paid as interest. 30

One must never lose sight of the fact that according to the evidence the accused was only prepared to give these people time if they paid interest.

They got the time, and what they paid for it was, it seems, the interest accumulated.

Construing the letter and the oral evidence as best I can it seems to me beyond question that there was evidence for the Jury from which they could, if they were so minded, determine that these payments were the property of Mr. Harris as charged in the indictment.

I would add one thing further. The accused having yielded to this solicitation to commit breach of trust was in this position. If he kept faith with the syndicate, he was doing so to the damage of his *cestui que trust*.
 10 If he decided on second thoughts to prefer his paramount duty as trustee and pay over the interest to Mr. Harris, then he would have been breaking faith with the syndicate. It is not perhaps necessary to decide the point but I doubt they could have claimed the money back either from the accused or from Mr. Harris, had the former paid it over in breach of the agreement for the agreement seems to have been based on an illegal consideration and if so the rule *in pari delicto* would apply. But however this may be, it seems to me that there was clear evidence from which the Jury could infer that the accused had received something the property of Mr. Harris, namely, interest.

20 My answer to the first question put to us is then that there was evidence from which the Jury could find that the property, *i.e.*, the money paid to the accused was the property of Mr. Harris, and that being so I am of opinion that the conviction and sentence in this case should be affirmed.

The second question put to us does not seem, on the view I take of the case, to require answer, so I express no opinion thereon.

The case seems to me to call for some remarks. In *Barber v. Abdulla*, 7 C.W.R. 144, de Sampayo J., said, "The offence of criminal misappropriation consists in the dishonest conversion to the use of the party charged of the property of another." In *Reg v. Parbutty*, 14 W.R. Cr.P. 13, the Calcutta
 30 High Court even held that the charge itself should specify the person to whom the property belonged. In this connection I do not think it absolutely necessary that the actual owner should be disclosed in all cases. It may be sufficient if there is some person entitled to the possession of the goods misappropriated." If it be not absolutely necessary to designate in the indictment the owner of what has been misappropriated, then I think that it would have been better in the present case to have charged the accused with misappropriating such and such money "the property either of Mr. Cooke or of Mr. Harris." With the dates and amount of money duly set out, I
 40 cannot see that an indictment so drawn would have been vague or in any way embarrassing to the defence. Yet another possible way, as it seems to me, of drawing the indictment would have been to omit any assertion as to ownership of the money and simply to aver that the accused "received between certain dates certain sums of money from Mr. Cooke which money he did thereafter dishonestly misappropriate." Again, I apprehend that such an indictment would have been definite and in no way embarrassing to the accused.

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I must leave it to those it concerns to say whether the Penal Code would not be the better of a section framed on the lines of the English Larceny Act, 1901, now sect. 20 (1) (iv), (a) and (b) of the Larceny Act, 1916. That enactment makes it punishable for any person fraudulently to convert to his own use, or to that of any other person, any property, or the proceeds of any property which he solely or jointly with some other person, has been entrusted with, either for or on account of any other person or in order that it or any part of it or any proceeds of it may be retained by him in safe custody or may be applied or paid or delivered by him for any purpose or to any person. The acts specified in that Statute as amounting, if done fraudulently, to a misdemeanour, may very possibly be implicit in section 386 or section 388, but the Statute referred to in making it punishable fraudulently to convert property "to the use of another," does seem to provide for a possibility as to which these sections 386 and 388 are not explicit. 10

Colombo, 2nd March, 1931.

(Sgd.) P. J. MACDONELL.
Chief Justice.

(b) Dalton
J.

(b) DALTON J.

The facts upon which this Court has been asked to express an opinion are set out in the case stated and in the judgment of my Lord the Chief Justice and it is not necessary for me to set them out again. Upon these facts this Court is asked to answer the following two questions:— 20

(1) Was there evidence upon which the jury could find that the property was the property of Harris?

(2) Can a person be convicted of criminal misappropriation of money which has been entrusted to him?

The property mentioned in the indictment is the sums of Rs. 5000 and Rs. 3000, alleged to be the property of H. C. E. Harris. It is not contested by Mr. Perera for the Accused that if these payments by Peiris to the accused Godamune were interest due upon the mortgage to which Harris was entitled, then the matter was rightly left to the jury. The argument for the accused very shortly put is as follows:—The terms of the agreement between Peiris and the accused as to the payments were settled at an interview between them and were subsequently put into writing by Peiris' proctor Mr. Cooke. That letter is the document P14. It is as follows:— 30

Confidential.

18th November, 1927.

Albert Godamune, Esq.,
Proctor,
Kandy.

Dear Mr. Godamune,

D. C. KANDY, No. 34987,

I understand from you at the interview you had with Mr. C. W. Peiris at my office some days ago that provided you were 40

paid Rs. 10,000 on account accumulated interest you would get the case to lay by for one year, and that during that period the balance interest should be paid from time to time as my clients were able. Further that you would undertake not to certify of record any payments made by my clients on account, should it become necessary for you to enforce writ for the recovery of the claim. Of course if the amount realised by the sale of the property does not fetch the amount of your claim, then you could appropriate the moneys paid by my clients towards the deficiency. The reason for this, as explained by you, is that my clients do not wish Mr. Boyagoda or any one else to profit at their expense as the mortgage was one that was executed by Boyagoda. On receiving your confirmation I shall send you a cheque for the Rs. 10,000.

10

Yours sincerely,

(Sgd.) P. G. COOKE.

Mr. Perera argues, so I understand, that this letter can only possibly mean one thing, namely that Peiris in return for one year's delay given by the accused to him and his co-defendants agreed to put into the hands of the accused sums of money, which happened to coincide with the amount of accumulated interest on the mortgage due, but which were in fact sums which in certain eventualities he might use to recoup himself for any loss or damage he might sustain by allowing this time to the defendants, in other words as security to indemnify him for the risks he ran in being negligent in his duty as trustee.

20

The references therein to the payment being made for "accumulated interest," and to payments of "balance interest" being made from time to time as Peiris and his syndicate were able, it is urged, must and can only be interpreted having in view the clearly expressed intention contained in the latter part of the letter that it was not to be a payment of interest at all, since the payers did not wish Boyagoda or anyone else to profit at their expense. The argument, so far as it went to suggest that this letter was only capable of one meaning and that advanced by counsel for accused, I fear, quite failed to convince me. Further, why it should be necessary to ask the accused to undertake not to certify a payment as a payment in the mortgage action when in fact it was a personal payment to him for quite another purpose, does not appear. A very good reason for this request as disclosed in the evidence would be the wish of the payers to obtain their year's delay, since if payment was certified, their objects in obtaining the delay would be defeated.

30

There is no doubt from the letter that Peiris and his syndicate, although they had no difficulty in asking for and obtaining for themselves an improper benefit from the trustee at the expense of the beneficiary to the trust, did not wish Boyagoda or any one else to benefit at their expense, but whether they could in law, under the circumstances here, prevent Harris obtaining the benefit of the payments in any event, had he come to know of it is in my opinion doubtful. The letter must be read as a whole. It must

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further be remembered that it is written by their proctor, who must have understood the ordinary meaning of the various terms he used, and who, as his evidence shows, was fully aware that Godamune was a trustee in the matter.

If we examine the evidence of Peiris as to what took place at his interview with the accused at which the agreement was made, we find he states—

“ The claim in the plaint included a sum of Rs. 23126 on account of accumulated interest. As purchasers of the property we were anxious to prevent its sale. I entered into an agreement with Godamune to pay up the amount on behalf of myself and the other members of the syndicate The arrangement was for us to make payments on account of interest and for the trustees to give us one years time to pay the balance of the accumulated interest Rs. 23000, and they were not to advertise the estate for sale within that one year The only condition was that the money we handed to Mr. Godamune was to be held, but those payments were not to be certified of record. All the conditions were embodied in Mr. Cooke’s letter. The only condition I made was that payments were not to be certified although the money was paid. He undertook to certify payments whenever we wanted.”

He goes on to say that Boyagoda had brought an action against the syndicate alleging the syndicate held the mortgage property Belmont in trust for them, and in the event of Boyagoda being successful in that action they would lose the property. “ We did not want to pay out of pocket in the event of our losing the property. That was our idea in making payments but not getting them certified.”

Of the Rs. 23000, Rs. 10000 was paid to the accused on November 26th 1927 and Rs. 5000 on March 30th 1928. These payments were concealed by accused from Harris, from Boyagoda, and from his own proctors in the mortgage action, Messrs. Liesching & Lee. Early in September 1928, for the first time according to Mr. de Vos, a member of the firm of Liesching & Lee, accused told him (de Vos) that he had received a cheque, apparently for Rs. 3000/—, from Mr. Cooke or some of the defendants in the action and asking for time, accused adding that he was taking Harris’ instructions on the matter. Accused did in fact receive Rs. 3000 from Mr. Cooke on August 28th, but he denies that he ever told de Vos Rs. 3000 was available for Harris; it is clear however from the letter P3 that on September 15th accused wrote to Harris saying—“ After I saw you I have received a further sum of Rs. 15000 to be held by me on the same terms as was suggested first. I have mentioned this to Mr. de Vos and I would like to know what your wishes are.” It is not denied of course that accused’s letter P3 contained a false statement, for the Rs. 15000 had been received from Cooke very much earlier, Rs. 10000 on 26th November 1927 and Rs. 5000 on March 30th 1928, and had been used by the accused for his own purposes at the time he wrote. The further fact that he asked Harris what Harris’

wishes were with regard to the money is also a matter that has to be taken into consideration in ascertaining the nature of the payments.

The evidence of Mr. Cooke, Peiris' proctor and the author of the letter P14 is of importance on this question. He admits that he knew the accused, so far as he was concerned in the mortgage action, was a trustee and he states he knew the payments he was making to the accused were made to him as trustee, although he only knew later that Harris was the beneficiary. He states that the conditions under which the payments were to be made were arrived at between Peiris and accused, and that he put it into legal form. "The first condition was that my clients be given a year's time, and
10 " during that year my clients were to make payments on account of interest
" and Mr. Godamune was to undertake not to certify of record these
" payments. I marked the letter 'confidential' because I did not want
" anybody to know that these payments had been made on account of
" interest . . . If Mr. Harris or Mr. Boyagoda came to know of the
" payments they may have attempted to enforce certification."

These are of course only extracts from this witness's evidence, but they are most important statements by him bearing upon the intention of the parties. He further points out, as Peiris did, that he wanted to prevent
20 his clients losing money, if they lost the action. How he could under the
circumstances do it by these means I have great difficulty in seeing, his
clients claiming to be the owners of the land that was subject to the mortgage
and Godamune a trustee and receiving the payments as such. The witness
at any rate nowhere suggests that he made the payments to Godamune as
security for any damage or loss he might suffer for committing a breach of
his trust, or to indemnify him in any other way, and perhaps one need not
express surprise that such suggestions were not made to Mr. Cooke, for if
true they would clearly show that he was fully cognisant of the breach of
trust involved in the transaction whichever view of the payments be
30 accepted. Upon this evidence a reasonable inference that may be drawn
is that the chief intention of Peiris and the defendants was to gain time in
the mortgage action by the payment of the accumulated interest, otherwise
the property would be sold under the decree and be lost to them. Added to
this is their expressed desire as far as possible not to let anyone else benefit
by these payments to Godamune, if the property was sold.

The correspondence that passed between Cooke and Godamune's
proctors Liesching and Lee later in 1928 is further relevant to this question
of the real nature of the payments. In November 1928 Mr. Cooke states
he saw an advertisement in the Gazette that the property was to be sold.
40 In reply to his enquiry he received certain information from Messrs.
Liesching and Lee as a result of which he wrote the letter P19 to the proctors
and D2 to the accused, both on November 23rd. He asked the accused to
instruct the proctors to certify "the following payments made to you on
" account of interest by the defendants in the above action" (*i.e.*, the
mortgage action) without delay. The payments were the Rs. 23000 paid
in four sums to accused by Peiris and his syndicate through Mr. Cooke.
To Messrs. Liesching and Lee he wrote (P19) asking them to have the four

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payments “made to the 2nd plaintiff Mr. Alfred Godamune on account “of interest amounting to Rs. 23000” certified of record. Mr. Cooke adds in this letter that “when these payments were made Mr. Godamune was “asked not to certify any of the payments of record, but as the decree “had been assigned the defendants wished it to be done now.” When Messrs. Liesching and Lee replied that they knew nothing about the payments and the sale must proceed, Mr. Cooke wrote in reply the letter P20 of November 26th headed “D. C. Kandy No. 34987, Belmont Estate,” expressing his surprise that accused had not accounted for the Rs. 23000, “I had paid him on account of the above action,” and stating that he proposed to apply to the court to certify the payments, asking for a stay of sale. 10

Against this evidence on the one side as to the nature of the payments made is the evidence of accused and so it is urged the latter part of the letter P14 upon which so much stress has been laid.

Mr. Perera urged as I have stated that as the letter contained the essential terms of the agreement between Peiris and the accused, it is only capable of one meaning, that although called a payment on account of accumulated interest it was not in any view of the agreement a payment of interest inasmuch as it was clearly not a payment of Boyagoda’s debt, and if it was not that, it was not a payment of interest on the mortgage. He further urged it was nothing but a payment of a sum of money to Godamune for him to hold at the disposal of the payors, and from which he could recoup himself in case he incurred any risk in giving the payors a year’s time in the mortgage action. That the letter is only capable of the construction put upon it in this argument I am unable to agree. I agree however that it was the duty of the judge, if in his opinion the letter could not on any reasonable interpretation afford evidence that the payment was a payment of interest, to have so instructed the jury. In my opinion he was correct here in not doing so. If a document is capable of two or more meanings, with regard to the transactions being entered into, it is in my opinion the duty of the judge, whilst leaving it to the jury as a question of fact to decide what was the meaning intended by the parties as expressed in the document, to state to the jury the legal effect of any reasonably possible meaning having regard to the words used. For this purpose the whole document must be carefully looked at, greater regard being had to the intention of the parties rather than to the precise words used. 20 30

Great stress has been laid in the course of the argument upon the provisions of s. 244 1 (b) of the Criminal Procedure Code, where it is laid down that it is the duty of the judge to decide upon the meaning and construction of all documents given in evidence at the trial, but it is clear from the provisions of s. 245 that it is the duty of the jury to decide all questions that are to be deemed in law to be questions of fact and to decide which view of the facts is true. Having regard to the terms of this letter and the other evidence led to which I have referred, it seems to me to be eminently a question of fact for the jury to decide what was the true nature of the transaction between Peiris and the accused, in other words what 40

was the nature of the payments made to Godamune, and that the learned judge correctly directed them that there was evidence for them to consider that the money was interest and as such the money of the beneficiary Harris.

I would therefore answer the first question referred for the opinion of this Court in the affirmative.

Having regard to the answer I would give to this first question submitted for our opinion, it is not necessary for me to consider the two further questions raised in the course of the argument by Crown Counsel in the event of the answer to the first question being in the negative, first whether it is in any case necessary in a charge of criminal misappropriation to specify the person whose property is alleged to have been misappropriated following the decision of de Sampayo J., in *Barber v. Abdulla* (7 Ceylon W.R. 114), and secondly whether on the present indictment, in the absence of any charge of criminal breach of trust the learned trial Judge applying the provisions of s. 182 of the Criminal Procedure Code, was correct in charging the jury that if they took a certain view of the facts they could find the accused guilty of criminal breach of trust.

With regard to the second question submitted for our opinion, Mr. Perera stated that, having regard to the Indian authorities on the point, he was not prepared to argue that a person could not be convicted of criminal misappropriation of money that had been entrusted to him. It is not necessary therefore for this Court to deal with this question.

3rd March 1931.

(Sgd.) L. C. DALTON,
Puisne Justice.

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This is a reference under the provisions of section 355 of the Criminal Procedure Code. At the close of the evidence learned Counsel for the defence submitted that there was no evidence to go to the jury that the money which the accused is alleged to have misappropriated was the property of Mr. Harris. The learned presiding Judge over-ruled the objection and directed the jury "that if they found it proved that the money in question was paid to the accused as Mr. Harris' agent for the purpose of being handed over to Mr. Harris, and that the property had passed from Peiris and others, they might consider it to be the property of Mr. Harris from the time it reached the hands of the accused."

The jury found the accused guilty on the second and fourth counts of the Indictment, of criminal misappropriation of two sums of money alleged to be the property of Mr. Harris. But on the application of learned Counsel for the accused, the Judge has reserved for the consideration of this bench, the question "whether there was evidence upon which the jury could find that the property was the property of Mr. Harris."

The Indictment originally presented against this accused contained seven counts. The 1st, 2nd and 7th counts were withdrawn and the remaining four counts were re-numbered accordingly. The 1st and 2nd counts of the amended indictment relate to a sum of Rs. 5000/-. It is

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alleged in the 1st count, that the accused, between the 30th March 1928 and the 21st January 1929, did dishonestly misappropriate this sum "the property of Mr. C. W. Peiris and others." The 2nd count which is expressed to be in the alternative, refers to the same sum of money as being "the property of Mr. H. F. Enser Harris." Similarly the 3rd and 4th counts relate to a sum of Rs. 3000/- alleged to have been misappropriated between the 28th August 1928 and the 21st January 1929, the said sum being referred to in the 3rd count as "the property of Mr. C. W. Peiris and others," and alternatively in the 4th count as "the property of Mr. H. F. Enser Harris."

Though no formal verdict appears to have been entered of record in respect of the 1st and 3rd counts on this indictment, we must take it that inasmuch as the jury have found the accused guilty on the alternative counts 2 and 4, they have found him "not guilty" of the 1st and 3rd counts. 10

It is convenient at this stage to note the submission made by the learned Deputy Solicitor General, that if we took the view that there was no evidence to support the finding that the property alleged to have been misappropriated was "the property of Mr. Harris" that it was still open to us to enter a conviction of criminal misappropriation or criminal breach of trust against the accused upon yet another alternative, viz., that he has committed one or the other of those offences in respect of these two sums not being his property but paid into his hands by Mr. Cooke who was acting on behalf of Mr. C. W. Peiris and others. This is a course which is not open to us. The only question submitted for our decision is "whether or not there is evidence to support the finding that this is the property of Mr. Harris" and if that question be answered in the negative then the logical and necessary consequence is that the conviction is bad. There is no power at this stage to frame a new charge or to consider the question of the guilt or innocence of the accused in relation to a charge which was never tried and upon which no verdict has been returned by the jury. It is by no means clear that had the verdict of the jury been invited upon such a charge, that they would have found the accused guilty. Indeed there is every indication that throughout the trial the main endeavour of the prosecution was to prove that the money which reached the hands of the accused was money which had been paid to him and received by him under circumstances which transferred the property in the money from the person who paid it to the accused, as trustee for Mr. Harris, and that he dishonestly misappropriated the same. The only question therefore with which we are concerned is whether there was evidence to support the finding of the jury that these sums of money were the property of Mr. Harris in the sense that it was money which Mr. Harris was entitled to receive from the accused as beneficiary of the trust of which the accused was the trustee. 20 30 40

Mr. Enser Harris the virtual complainant in this case was once the owner of Belmont Estate. By the terms of a marriage settlement made by Mr. Enser Harris, he settled a sum of Rs. 40,000/- upon certain trustees in trust for certain beneficiaries. In August 1920 Mr. Harris sold Belmont Estate to one Boyagoda and the trust fund was invested and secured by

a mortgage of Belmont Estate created by Boyagoda in favour of the trustee. The original trustees having left the Island, the accused Mr. Godamune, and a Mr. Westland, were appointed in their places. It is admitted that at the dates material to this prosecution, the accruing interest was payable to Mr. Harris. No interest appears to have been paid on the bond and on the 14th of March 1927 an action was instituted in the District Court of Kandy bearing No. 34987 to recover the principal sum of Rs. 40,000/- and the accumulated interest which at that date amounted to Rs. 23126/-. Prior to the institution of the action Boyagoda had executed a conveyance of Belmont Estate in favour of Messrs. Peiris, Batuwantudawe and certain others whom it is convenient to group together and refer to as they have been referred to throughout these proceedings as the "Syndicate." The members of this Syndicate were made parties to this action for the purpose of affecting the property in their hands with liability to be taken and sold in execution of the hypothecary decree which the trustees were seeking. At the time of the institution of this action there was pending in the District Court of Colombo case bearing No. 19574 instituted by Boyagoda against the Syndicate alleging that they were holding Belmont Estate in trust for him. The 26th of November 1927 was appointed by the District Judge of Kandy for the filing of the answer of the defendants in case No. 34987.

The position of the Syndicate was an extremely difficult one. If they paid and discharged the principal and interest secured by the mortgage on Belmont Estate for the recovery of which the Kandy case had been instituted, and the litigation between them and Boyagoda should result in their being declared to be only trustees and not absolute owners, they stood in grave risk of losing both the land and the sum of Rs. 63,000/- and probably more, paid to relieve it of the burden of the mortgage. If on the other hand, they let a hypothecary decree be entered and ultimately succeeded in the litigation with Boyagoda, they stood in grave risk of losing the fruits of that litigation by a sale which might in the meantime be held of Belmont Estate under the hypothecary decree. Before filing answer therefore, they took the step of approaching Mr. Godamune with a view to obtaining time. Certain negotiations took place between Mr. Peiris who was apparently the most active member of the Syndicate and the accused and later the negotiations were continued and concluded in the presence of Mr. Cooke a proctor of the Supreme Court, who was acting on behalf of Peiris and the Syndicate. An arrangement was made by which the Syndicate was allowed one year's time. It was a condition of the arrangement that they should consent to judgment. This they did, and judgment was formally entered on the 30th March 1928 in favour of the trustees, and in compliance with the terms of the arrangement Mr. Cooke acting on behalf of the Syndicate, from time to time sent to the accused Godamune the following cheques. On the 26th November 1927 Rs. 10,000/- on 30th March 1928 Rs. 5000/- on 28th August 1928 Rs. 3000/- and on 6th November 1928 Rs. 5000/-. These cheques were duly received by the accused and are proved and admitted to have been paid into his

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banking account. The sums of Rs. 5000/- and Rs. 3000/- respectively, referred to in the 2nd and 4th counts of the indictment, for the misappropriation of which the accused has been convicted, are the proceeds of the two cheques for these respective amounts dated 30th March 1928 and 28th August 1928, sent to the accused by Mr. Cooke in pursuance of this arrangement.

Now, the only evidence of the purposes for which, the circumstances under which and the conditions upon which these cheques were sent by Mr. Cooke to the accused consists of the letter P14, the evidence of the witnesses Peiris and Cooke, the statutory statement of the accused and the evidence given by him at the trial. The cheques were all drawn by Peiris and endorsed by Cooke. They were paid out of Peiris' funds. It is therefore proved that the money was originally the property of Peiris. Before a single cheque was sent by Cooke to the accused he wrote him letter P14 dated the 18th of November 1927, setting out the terms and conditions upon which the monies were being placed in his hands. The letter is as follows :—

Dear Mr. Godamune,

D. C. Kandy No. 34987.

I understood from you the interview you had with Mr. C. W. Peiris at my office some days ago that provided you were paid Rs. 10,000/- on account of accumulated interest you would get the case to lay by for one year, and that during that period the balance interest should be paid from time to time as my clients were able. Further that you would undertake not to certify of record any payments made by my clients on account, should it become necessary for you to enforce writ for the recovery of the claim. Of course if the amount realised by the sale of the property does not fetch the amount of your claim, then you could appropriate the moneys paid by my clients towards the deficiency. The reason for this, as explained to you, is that my clients do not wish Mr. Boyagoda or any one else to profit at their expense as the mortgage was one that was executed by Boyagoda. On receiving your confirmation of this I shall send you a cheque for the Rs. 10,000/-.

Yours sincerely,
(Sd.) P. G. COOKE.

The arrangement was confirmed by the accused and in due course, the cheque for Rs. 10,000/- was sent, and thereafter the other cheques on the dates specified. This letter therefore embodies the conditions upon which these moneys were sent to Godamune and upon which he received them. It is not suggested that they were altered by any subsequent arrangement.

It is necessary therefore to construe this letter with a view to ascertaining whether it can fairly be said that these moneys were sent to Godamune with the intention of transferring the property in the money, from Peiris to Godamune, so that they may go in payment of the interest due by Boyagoda, and in discharge of his obligation to pay the same.

Great emphasis was laid throughout this hearing on the words "paid," "payments," and "on account of accumulated interest," which appear in this letter, and it was urged that these words must be given their full legal value and be construed to mean that the moneys sent by Cooke on behalf of Peiris were intended to be received by the accused and applied by him as legal "payment" of interest in discharge of an obligation which was Boyagoda's and not theirs.

The first sentence in this letter taken apart from the rest of the letter is undoubtedly susceptible of the interpretation that the money referred to therein would be paid in discharge of the interest due and payable on the mortgage bond. But the rest of the letter cannot be ignored. A well-established rule of construction requires that the letter should be read and construed as a whole. The words "pay" and "payment" with reference to money are sometimes used—perhaps misused—to indicate the transfer or delivery of money without obligation to do so and without any intention to transfer the property in that money in discharge of a legal obligation. Whether the words in the opening clause are to be given their full legal significance or effect or whether they are loosely used or misused must depend upon a consideration of the rest of the letter which contains the conditions which Mr. Cooke required the accused to accept before he sent him the money. The first condition was that these "payments" were not to be certified of record "should it become necessary (for you) to enforce writ for the recovery of the same." The writer here contemplates the possible case of Godamune, notwithstanding that he had given time, being compelled by some unforeseen circumstance "to enforce writ" for the recovery of his claim, and insists that these were not to be treated as "payments" made in part satisfaction of the decree and certified as such. He next contemplates the possibility of a sale in execution not realising the full amount of the decree and costs, and he says to the accused "then you could appropriate the moneys paid by my clients towards the deficiency." It is clear therefore that the moneys were not to be appropriated immediately as "payments" of interest or "payments" against the amount of the decree, but that they were only to be appropriated if upon a sale for the realisation of the claim, there was a deficiency, and to the extent of that deficiency. To make what appears to me to be clear on the face of the document, still clearer, the accused is reminded that Mr. Cooke's clients "do not wish Mr. Boyagoda or anyone else to profit at their expense as the mortgage was one that was executed by Boyagoda." The debt secured by the mortgage was one which Boyagoda alone was under a legal obligation to discharge, however much it may be in the interests of the Syndicate to do so, if and when their position as legal and beneficial owners of Belmont Estate was definitely established. It has been urged that the condition that when applying for execution the accused was not to certify these as payments is not inconsistent with the money having in fact been paid in discharge of the liability to pay interest. To this there is a sufficient answer in the very next sentence which authorises the accused to "appropriate" the moneys so paid towards any deficiency on sale.

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Money paid in discharge of interest has been appropriated and is not available to be again appropriated towards a deficiency on sale. Moreover I see no justification for adopting the suggested interpretation which involves the assumption that having paid the money in discharge of the interest due Mr. Cooke entered into a compact with the accused to conceal that fact from the Court and by the practice of a deceit to obtain execution for the full amount of the claim. Such a compact would be wholly unnecessary and futile since the interests of all parties were amply secured by placing in the hands of the accused moneys up to the amount of the accrued interest with authority to appropriate the whole or such part as may be necessary to make up the deficiency on sale. If when reading this letter we remind ourselves of the situation in which the members of the Syndicate found themselves at the time, it is manifest that their sole purpose was to obtain time by an arrangement which would enable them to await the decision of their litigation with Boyagoda before they were compelled to decide whether they would discharge the debt charged upon the property. The most obvious course was, to place in the hands of Godamune a sum of money equivalent to the amount of the accumulated interest. The property was mortgaged to secure the original loan of Rs. 40,000/- The amount of interest which had accrued up to the time of the decree was Rs. 23,126/- To this would have to be added costs of the action and a sum of about Rs. 3,000/- for yet another year's interest. A plaintiff was bound to contemplate the possibility of the property not realising sufficient to pay that aggregate amount. But if a sum of Rs. 23,000/- was placed in his hands with the right to appropriate from that amount so much as was necessary to meet any deficiency upon sale, then his position was not merely as good, but possibly even better than it would have been had he proceeded to execution at once. By such an arrangement the accused would have secured not only the original trust fund, but all the accumulated and accruing interest and the costs of action, in consideration of which he was to refrain from proceeding to execution for one year. This it is said is the purpose of this letter, and the sense in which it should be construed, and for my own part, it seems to me, that it is the plain meaning of this letter, that Peiris and the other members of the Syndicate were to make "payments" to the accused up to the amount of the accumulated interest, taken for the purpose of the arrangement at a round figure of Rs. 23,000/- upon the condition that it was not to be treated as a "payment" in discharge of the liability to pay interest or in part extinction of the decree to be entered thereafter, but to be held by the accused and "appropriated" in one contingency only, the event of a deficiency upon sale and execution of the property under mortgage.

It may be legitimate as the learned presiding Judge has done to refer to these as "payments" made to the accused "in the name of accrued interest and for the amount of that interest," but they were payments made under conditions which make it impossible to say that it was the intention either of Mr. Cooke or Mr. Peiris that it should go in discharge

of Boyagoda's debt, and that the property in the money be thus transferred to Godamune as trustee for Harris. It was of course possible, notwithstanding that the obligation to pay was Boyagoda's and not theirs, for the members of the Syndicate to pay his debt, but it is only possible to say that they did this, if they made the "payments" in his name, and in his discharge. But this can not be said when the letter states expressly and explicitly that Mr. Cooke's clients do not wish Boyagoda or any one else to profit at their expense, and also that the moneys "paid" by them into his hands may be "appropriated" in the event of a deficiency upon

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10 sale.

The terms and conditions upon which this money was placed in the hands of the accused are those set out in P14, and if this letter is construed as I think it must be, as meaning that these sums of money were placed in his hands as a security for any loss which he may sustain by granting to the Syndicate the concession of a year's time, and not in discharge of the interest payable by Boyagoda, then it is impossible to say that there is evidence upon which the jury could have legitimately found that these moneys were in any sense the property of Mr. Harris.

20 Whatever Mr. Cooke or Mr. Peiris both of whom have been called by the prosecution may now say the terms and conditions upon which they expressed their willingness to send these moneys to the accused and which they insisted upon his accepting before any money was sent, are contained in the letter P14. It is not suggested that these conditions were modified, added to or varied by any subsequent agreement. The question therefore so far as it affects the accused depends upon the correct construction of the letter P14.

This is a question for the Judge and not one for the jury—*vide* Criminal Procedure Code, section 244 (b). In the view I take of this letter there was no evidence to be submitted to the jury on which they could
30 find that the money which the accused is alleged to have misappropriated was the property of Mr. Harris. If as is suggested the letter is still not clear and its meaning doubtful or ambiguous there is still no evidence to go to the jury upon which they can hold affirmatively that these moneys were the property of Mr. Harris. In such a view of the letter only two courses were possible—one, to direct the jury that there was no evidence, the other to admit evidence of the sense in which the ambiguous words were used and should be understood in construing the letter as a whole. The second of these alternatives I am merely considering in view of the course which the trial has taken and I must not be understood to hold
40 that in the circumstances of this case such a course might legitimately have been taken. Neither Mr. Cooke nor Peiris appear at any stage of their examination to have been asked any questions for the purpose of clearing up the supposed ambiguities in the letter P14. Neither of them was apparently asked at any time whether the words "paid" and "payments" on account of interest in the letter P14 were intended to imply that the moneys sent to the accused were to be applied in satisfaction of

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the amount due as interest. Their examination indicates that they were examined generally for the purpose of establishing, if possible independently, by their parole evidence that the moneys were paid in immediate discharge of the accrued interest. I am by no means satisfied that even if in their evidence they do say anything which militates against the meaning to be attached to the letter P14, such statements can be legitimately admitted in evidence or submitted for the consideration of the jury in a case where the terms and conditions upon which the money was placed in the hands of the accused were submitted to him in writing in the letter P14, and accepted by him. But it is unnecessary to consider this question more fully since I can find nothing in the evidence of either of these witnesses (Cooke and Peiris) which is in conflict with, or varies in any material particular the terms of the letter P14. Indeed both these witnesses accept the letter P14 as correctly setting out the conditions upon which these "payments" were made, and I can find nothing in the evidence of either of them which would justify a jury in holding that this was an absolute "payment" in discharge and not one which was made upon the conditions set out in P14. 16

It is perfectly true that as in his letter, so in his evidence Mr. Cooke uses the word "paid" and "paid on account of interest." He states early in his evidence "Mr. Godamune was prepared to give a year's time 'provided they' (his clients) paid up the arrears of interest which amounted to about Rs. 23,000/-." But in the very next sentence he says, "This is the letter P14 I wrote to the accused embodying the conditions." A little lower down he says, "The conditions under which these 'payments' were to be made were arrived at by Mr. Godamune and Peiris before they came into my office." He then states that the first condition was that his clients be given a year's time, and that during that year they were to make "payments on account of interest" and Mr. Godamune was to undertake not to certify these "payments of interest" adding in explanation "At that time I was aware that there was an action brought against my clients by Mr. Boyagoda, pending. This special arrangement was made because I wanted to safeguard my clients in case they lost that action. We did not want anybody else to benefit in the event my clients lost the case." Then again almost immediately afterwards he adds "I would have objected to the accused having paid the money to Mr. Harris because if my clients lost the case, they would lose the money. My clients wanted their money protected. I said that Mr. Godamune was to hold the money in terms of my letter. Being plaintiff I held him responsible for that money." Later in his evidence he says, "Accused was to hold this money pending further instructions from me, and I held the accused responsible for the money." And at the end of his evidence, in answer to the Court he said, "I wished the accused to have control over the money till the case was decided but I did not know what the condition of the trust was. I did not enquire into that. I relied more on accused having the money to be accounted for at any time I called upon him to do so." These 30 40

statements, and the objects, purposes and the intention in the minds of those who placed this money in the accused's hands as revealed by these statements are irreconcilable with the suggestion that they intended that those moneys should go immediately as they were paid, in discharge of the interest payable on this mortgage. The argument that Mr. Cooke says one thing at one time and another thing at another is one which I can neither understand nor admit. If Mr. Cooke has in his evidence talked of "payments" on account of interest he has consistently stated that these payments were made subject to conditions specified by him and which are
 10 irreconcilable with the suggestion that those moneys were paid in discharge of any liability on the part of the Syndicate or of Boyagoda to pay the interest due on the bond. The evidence of a witness must be read as a whole. Mr. Cooke has not said nor is there anything in his evidence from which it can fairly be inferred that he intended to say that the accused was free to appropriate these moneys and apply them in payment of the interest due by Boyagoda.

Similarly the evidence of Peiris read as a whole cannot fairly be construed in any other sense. Early in his evidence he has said in answer to Counsel for the prosecution "We were liable to pay interest accrued on
 20 that property." In the sense that it was in his interest to do so rather than suffer the property to be sold and purchased by another this statement is understandable. But as a statement of his legal position it is manifestly incorrect. Peiris then refers to the payments and like Cooke proceeds to state the conditions upon which these "payments" were made. "The only condition was that the money we handed to Mr. Godamune was to be held but these payments were not to be certified of record. All the conditions were embodied in Mr. Cooke's letter." He next says "the only condition I made was that payments were not to be certified although the money was paid." The letter P14 speaks for itself and contains other conditions.

30 He speaks of the action then pending between Boyagoda and the Syndicate and adds "we were advised by our lawyers not to make payments "until the final issue of the case if possible. That is why the payments "were not to be certified. . . . That was our idea in making payments "but not getting them certified."

In answer to the Court, he said :—

40 "I knew that the accused was a trustee and that this money was paid to him as trustee. I knew that he had to pay this money to Mr. Harris or his son. I intended that he should not pay the money to Mr. Harris. If he was to give the money to Mr. Harris or his son he had to certify payment and in the event of our losing the Colombo case which was going on we would have lost all that money. That is why we asked him to hold that money at our disposal without certifying payment. What we wanted him to do was to keep the money for himself and not to pay it to Mr. Harris. Accused was to hold the money at our disposal. The use of the payment was to satisfy Mr. Godamune who was asking something

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on account of the accumulated interest. At that time I did not know that the money was to be paid to Mr. Harris. At that time I was under the impression that the payments should be made to Mr. Godamune for the benefit of the minor. We wanted him to be satisfied with that money till a time when we asked him to certify payments. Our position at that time was to hold that money in trust for ourself until such time when we were prepared to ask him to certify payment. We wanted to show our bona fides that we were really prepared to pay the accumulated interest."

Mr. Peiris is not a member of the legal profession and it is not surprising that he should find it difficult to speak clearly with reference to the exact legal relationship which came or were intended to come into existence upon the conclusion of the arrangement with Godamune. But whatever be the defects in his evidence he says nothing from which it can fairly be inferred that the right to these moneys was transferred or intended to be transferred to Mr. Godamune under such circumstances as would affect them in his hands with a trust to pay the same to Mr. Harris. Further it is clear that the "payments" were made upon conditions and to use his own words "I still say that the terms of the arrangements were fully set out in Mr. Cooke's letter. That letter does not add anything to what we all discussed together." The letter referred to is the letter P14. 10 20

In the result therefore the evidence of both Mr. Cooke and Mr. Peiris is consistent with the interpretation I have placed on the letter P14. Neither of them has said that these moneys were to go immediately as they were received in discharge of the interest due on the bond. Their evidence on the contrary militates strongly against any such suggestion. Both of them abide by the letter P14 as correctly setting out the terms and conditions which they insisted on prior to acceptance by the accused before they sent him any money. The matter is therefore brought back to the position in which it stood before I entered upon a consideration of the evidence of these two witnesses. The question at issue turns upon the construction of the letter P14 which sets out the conditions upon which the accused received the money. I have already discussed that aspect of the matter and have stated my own view of the letter. But if as has been contended the letter is ambiguous and its meaning cannot be arrived at with certainty, then there was no evidence upon which the jury could have found affirmatively that the money was "the money of Mr. Harris." 30

The order I would make upon this reference is that the conviction be set aside and the accused acquitted.

(Sgd.) THOMAS F. GARVIN, 40
Senior Puisne Justice.

Colombo, 2nd March, 1931.

No. 39.

Order in Council granting special leave to appeal to His Majesty in Council.

AT THE COURT AT BUCKINGHAM PALACE

The 29th day of June, 1931.

Present,

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT
EARL OF ATHLONE
LORD AMULREE

LORD COLEBROOKE
LORD SOUTHBOROUGH
SIR WILLIAM JOWITT.

No. 39.
Order in
Council
granting
special leave
to appeal to
His Majesty
in Council,
29th June
1931.

10 WHEREAS there was this day read at the Board a Report from the
Judicial Committee of the Privy Council dated the 18th day of May 1931,
in the words following, viz. :—

20 “ WHEREAS by virtue of His late Majesty King Edward the
Seventh's Order in Council of the 18th day of October 1909 there
was referred unto this Committee a humble Petition of Albert
Godamune in the matter of an Appeal from the Supreme Court of the
Island of Ceylon between Albert Godamune Appellant and Your
Majesty Respondent setting forth (amongst other things) that the
Petitioner prays for special leave to appeal from the Judgment and
Order of the Supreme Court delivered on the 3rd March 1931 upon a
case stated on the 17th January 1931 under the provisions of
Section 355 (2) of the Criminal Procedure Code by Lyall-Grant J.
sitting as Assize Judge at Kandy Criminal Sessions : that the
30 Petitioner was indicted at the Sessions upon seven counts whereof
the first charged him with dishonestly misappropriating Rs. 10,000
the property of C. W. Peiris and others the second charged him with
dishonestly misappropriating the same sum therein laid as the
property of H. C. Ensor-Harris and the seventh charged him with a
criminal breach of trust in respect of the same sum : that these three
counts were withdrawn by Counsel for the Crown at the outset of
the trial : that the third and fifth counts charged the Petitioner with
dishonestly misappropriating Rs. 5,000 and Rs. 3,000 respectively
the property of C. W. Peiris and others and the fourth and sixth
counts charged him with dishonestly misappropriating the same sums
respectively therein laid as the property of H. C. Ensor-Harris : that
at the close of the case for the Crown it was submitted on behalf
of the Petitioner that there was no case to go to the Jury but this
submission was overruled by the learned Judge and the Jury finally
found the Petitioner guilty upon the fourth and sixth counts (which

No. 39.
Order in
Council
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special leave
to appeal to
His Majesty
in Council,
29th June
1931—*con-
tinued.*

had been re-numbered second and fourth) whereupon he was sentenced to one year's rigorous imprisonment on each count to run concurrently : that at the conclusion of the trial the learned Judge agreed that the crucial question whether there was any evidence upon which the Jury could find that the sums in question were at any time the property of Harris was not without difficulty and he therefore referred for the opinion of two or more Judges the following questions :—(1) Was there evidence upon which the Jury could find that the property was the property of Harris? (2) Can a person be convicted of criminal misappropriation of money which has been entrusted to him? : that the Supreme Court has not thought it necessary to deal with the second of these questions : that as regards the first question they differed in their opinion : that Macdonell C.J. and Dalton J. were of opinion that there was evidence upon which the Jury could find that the sums in question were the property of Harris as charged in the indictment whilst Garvin S.P.J. was clearly of the contrary opinion and held that the conviction ought to be set aside : that the Petitioner submits that the majority of the Supreme Court have failed to distinguish between the categories of civil and criminal liability in that they have taken the view that if the Petitioner committed a breach of trust by entering into an improper arrangement with third parties whereby he was to receive sums of money unknown to his *cestui que trust* and to hold such sums for his own or the third parties' benefit the sums so received in pursuance of such arrangement might be found by the Jury for the purpose of a criminal charge of dishonest misappropriation to be the property of the *cestui que trust* : that he further submits that they have created a dangerous precedent for the future by allowing the meaning and construction of a document to be left to the Jury to determine contrary to Section 244 (1) (b) of the Criminal Procedure Code : and reciting the facts of the case at length : And humbly praying Your Majesty in Council to grant to him special leave to appeal from the Judgment and Order of the Supreme Court of the 3rd March 1931 or to make such other Order as to Your Majesty in Council may seem fit :

“ THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and for Your Majesty Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment and Order of the Supreme Court of the Island of Ceylon dated the 3rd day of March 1931 :

“ AND THEIR LORDSHIPS do further report to Your Majesty that the proper officer of the said Supreme Court ought to be directed to transmit to the Registrar of the Privy Council without delay an

authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same." No. 39.

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution. Order in Council granting special leave to appeal to His Majesty in Council, 29th June 1931—*con-*

Whereof the Governor or Officer administering the Government of the Island of Ceylon for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly. *tinued.*

M. P. A. HANKEY.

Exhibits

EXHIBITS.

P1.

Indenture
No. 294/
2970, being
Marriage
Settlement
of H. F.
Harris,
17th April
1897.

P1—Indenture No. 294/2970 being Marriage Settlement of H. F. Harris.

No. 294/No. 2970.

THIS INDENTURE made the Seventeenth day of April One thousand eight hundred and ninety seven BETWEEN Harry Frederick Harris of Dunnottar Estate Maskeliya in the Island of Ceylon of the one part Muriel Kennedy of St. Rule Hatton Ceylon aforesaid Spinster of the second part and David Robert Marshall of Colombo Ceylon aforesaid and William Armstrong Buck of Colombo Clerk in Holy Orders of the third part.

WHEREAS a marriage has been agreed upon and is intended to be shortly had and solemnized between the said Harry Frederick Harris and Muriel Kennedy. 10

AND WHEREAS the said Harry Frederick Harris is seised and possessed of or otherwise well entitled to ALL THAT Estate called and known as "Belgodde" situate in the Village Belgodde of the Tiragandahe Korle in Seven Korales SUBJECT however to a mortgage on part thereof No. 2820 dated the twenty-fourth July 1896 attested by V. A. Julius of Colombo Notary Public in favour of Noel Hamlyn Harris of 3 Neville Terrace Kensington a retired General of Her Majesty's Army for securing a sum of Rupees Seventeen thousand (Rs. 17,000/-) and interest. 20

AND WHEREAS upon the treaty for the said intended marriage it was agreed that the said Harry Frederick Harris should give to the said David Robert Marshall and William Armstrong Buck a secondary mortgage over the said Estate for the sum of Rupees Forty thousand (Rs. 40,000/-) to be held by the said David Robert Marshall and William Armstrong Buck upon the trusts hereinafter declared and that the property of the said Muriel Kennedy should be held by her as her separate property free from the debts and control of the said Harry Frederick Harris.

AND WHEREAS in pursuance of the said agreement by deed No. 293 dated the 17th day of April 1897 and attested by Lionel Paston Fisher Notary Public the said Harry Frederick Harris did mortgage and hypothecate the said Belgodde Estate to and with the said David Robert Marshall and William Armstrong Buck to secure to them the repayment of Rupees Forty thousand (Rs. 40,000/-) subject however to the above in part recited mortgage bond. 30

NOW THIS INDENTURE WITNESSETH that in consideration of the said intended marriage and in pursuance of the said agreement it is hereby agreed and declared between and by the parties hereto as follows:—

1. That all present and future acquired property of the said Muriel Kennedy shall belong to and be her sole and separate Estate free from the debts and control of the said Harry Frederick Harris. 40

2. The said David Robert Marshall and William Armstrong Buck or the survivor of them or the heirs executors or administrators of such survivor their or his assigns or other the trustees or trustee for the time being of these presents (hereinafter called the "Trustees or Trustee") shall upon receipt of the sum of money secured by the above mentioned bond with the consent in writing of the said Harry Frederick Harris and Muriel Kennedy during their joint lives and of the survivor of them during his or her life and after the decease of such survivor at the discretion of the Trustees or Trustee invest the same in some or one of the modes of investment hereinafter authorised with liberty from time to time with the like consent or at the like discretion to vary the said investment into or for others of the same or a like nature the said sum of Rupees forty thousand (Rs. 40,000/-) and the investments for the time being representing the same are hereinafter called the said trust funds.

3. The Trustees or trustee shall during the joint lives of the said Harry Frederick Harris and Muriel Kennedy pay the income of such of the said trust funds as shall have been received by them to the said Harry Frederick Harris (or at the request of the said Harry Frederick Harris and Muriel Kennedy invest the same and hold the investments thereof upon the trusts herein declared) and after the decease of such one of them the said Harry Frederick Harris and Muriel Kennedy as shall die first shall pay the income of such of the said trust funds as shall have been received by them to the survivor of them during his or her life and after the decease of such survivor shall stand possessed of all the said trust funds IN trust for all or such one or more exclusively of the other or others of the children and remoter issue of the said intended marriage (such remoter issue being born during the lives of the said Harry Frederick Harris and Muriel Kennedy or the life of the survivor of them) at such ages or times or age or time (not being earlier as to any object of this power than his or her age of twenty-one years or day of marriage) in such shares if more than one upon such conditions and in such manner as the said Harry Frederick Harris and Muriel Kennedy shall by any deed or deeds with or without power of revocation and new appointment or by their joint will jointly appoint. AND in default of such appointment and so far as such appointment shall not extend then as the survivor of them the said Harry Frederick Harris and Muriel Kennedy shall by any deed or deeds with or without power of revocation and new appointment or by his or her will appoint AND in default of such appointment and so far as any such appointment shall not extend IN trust for all the children of the said intended marriage who being a son or sons shall attain the age of twenty-one years or being a daughter or daughters shall attain that age or marry under that age in equal shares and if there shall be but one child then the whole to be in trust for such one child BUT so nevertheless that no child who or any one of whose issue shall take any part of the trust funds under such appointment as aforesaid shall be entitled to any share of the unappointed part of the trust funds without bringing the share or share appointed to him or her or to his or her issue

Exhibits.

P1.

Indenture
No. 294/
2970, being
Marriage
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17th April
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tinued.

Exhibits.

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Pl.

Indenture
No. 294/
2970, being
Marriage
Settlement
of H. F.
Harris,
17th April
1897—con-
tinued.

into hotchpot and accounting for the same accordingly unless the persons or person making such appointment shall thereby direct the contrary.

4. If at the decease of the survivor of the said Harry Frederick Harris and Muriel Kennedy any child or remoter issue of them entitled for the time being in expectancy to a share of the several trust funds hereby settled under the trusts or powers of these presents shall be under the age of twenty one years and being a female shall be also unmarried then and in every such case and in default of any appointment to the contrary the Trustees or Trustee may pay and apply the whole or such part as they or he shall think fit of the income of the expectant share of such minor for or towards his or her maintenance or education with liberty for the trustees or trustee to pay the same to the guardian or any of the guardians of such minor for the purpose aforesaid without being liable to see to the application thereof and shall invest the residue (if any) of the said income and the resulting income thereof so as to accumulate at compound interest to the intent that such accumulations shall be added to the principal share from which the same shall have arisen and follow the destination thereof BUT the trustees or trustee may at any time resort to the accumulations of a preceding year or years and apply the same for or towards the maintenance or education of any child or remoter issue for the time being presumptively entitled thereto. 10 20

5. The trustees or trustee may at any time or times with the consent in writing of the said Harry Frederick Harris and Muriel Kennedy during their joint lives and of the survivor of them during his or her life and after the decease of such survivor at the discretion of the trustees or trustee raise any part or parts not exceeding together one moiety of the vested or presumptive share of any child or remoter issue of the said intended marriage under the trusts or powers of these presents and may either pay the money to be so raised as aforesaid to such child or remoter issue or otherwise apply the same for his or her advancement preferment or benefit as the trustees or trustee with such consent or at such discretion as aforesaid shall think fit. 30

6. If there shall be no issue of the said intended marriage in whom the said trust funds shall become absolutely vested under the foregoing trusts and powers then and in such case and subject to the foregoing trusts and powers the trustees or trustee shall hold the trust funds IN trust for the said Harry Frederick Harris his heirs executors administrators and assigns.

7. All moneys liable to be invested under these presents may be invested in or upon any stocks funds or securities of or guaranteed by the Government of the United Kingdom or India or Ceylon or of any British Possession or of any foreign state or in stock of the Bank of England or Ireland or in or upon any stock shares or securities of any Railway or other Company whether in the United Kingdom or in India or Ceylon or in any other British Possession or in any foreign country or upon the securities 40

of any Municipal or other Corporation or public body or upon real or heritable or leasehold securities in any part of the United Kingdom or Ceylon or in any British Possession or upon the security of any life interest in real or personal property together with a policy or policies of assurance on the life or lives of the person or persons for whose life or lives such interest is holden. And in lending money on any mortgage security the trustees or trustee may accept whatever title or evidence of title shall appear to them or him sufficient without being answerable for any loss arising thereby.

8. The trustees or trustee may compromise or compound any action
 10 suit proceeding difference or demand relating to the trust funds or any part thereof upon any terms which they or he shall think proper and may refer any such difference or demand to arbitration and may execute and do all instruments and things expedient for such purposes or any of them and in all cases in which any question of law or equity shall arise relating to the said trust funds or any part thereof may settle and arrange the same in such manner as they or he shall think fit and may abandon or relinquish any claim and may adjust settle and approve all accounts relating to the said trust funds or any part thereof and may determine whether any money
 20 shall for the purposes of these presents be considered income or otherwise and may execute and do all releases and things relating to the said trust funds as fully and absolutely as the trustees or trustee could do if they or he were or was the absolute owners or owner thereof and without being answerable for any loss which may be occasioned thereby.

9. The trustees or trustee may on receipt of any sum or sums of money they may think sufficient release the said Belgodde Estate from the above recited mortgage without being answerable for any loss occasioned thereby and they or he shall not in any way be responsible or liable in case the securities charged by the said mortgage bond should not be of the value
 30 of or shall not realize the said sum of Rupees Forty thousand (Rs. 40,000/-) and the trustees or trustee shall at any time on being required by the said Harry Frederick Harris and Muriel Kennedy or the survivor of them postpone their mortgage to any mortgage or mortgages over the said estate which may hereafter be granted by the said Harry Frederick Harris.

10. If and so often as any of the trustees hereby appointed or any future trustees or trustee of these presents shall die or go to reside abroad or shall desire to retire from or refuse or become incapable to act in the trusts of these presents it shall be lawful for the said Harry Frederick Harris and Muriel Kennedy during their joint lives and for the survivor of them during his or her life and after the decease of such survivor for the
 40 continuing trustees or trustee for the time being of these presents or if there shall be no continuing trustee then for the retiring or refusing trustees or trustee or the executors or administrators of the last acting trustee to appoint any other person or persons to be a trustee or trustees in the place of the trustee or trustees so dying or going to reside abroad or desiring to retire or refusing or becoming incapable to act as aforesaid with liberty upon any such appointment to alter the number of trustees and upon every

Exhibits.

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 Pl.

Indenture
 No. 294/
 2970, being
 Marriage
 Settlement
 of H. F.
 Harris,
 17th April
 1897—con-
 tinued.

Exhibits.
 —
 Pl.
 Indenture
 No. 294/
 2970, being
 Marriage
 Settlement
 of H. F.
 Harris,
 17th April
 1897—con-
 tinued.

such appointment the trust funds hereby settled shall be so transferred as to become vested in the new trustees or trustee or solely as the case may require AND every such new trustee (as well before as after the said trust premises shall have become vested in him) shall have all the powers and authorities of the trustee in whose place he shall be substituted.

11. The trustees or trustee shall not be answerable the one for the other of them nor for the insufficiency of any security which they or he may acquire under the trusts or powers of these presents nor for any other involuntary loss and they may reimburse themselves out of the trust premises all costs and expenses incurred in or about the execution of the trusts of these presents. 10

12. If the said intended marriage shall not be solemnized within twelve calendar months from the date hereof these presents shall be null and void and the said Belgodde Estate shall (if requested) be released from the said mortgage.

IN WITNESS whereof the said parties have hereunto and to two others of the same tenor and date as these presents set their hands the said Harry Frederick Harris at Talawakele this Seventeenth day of April the said Muriel Kennedy at Talawakele this Seventeenth day of April the said David Robert Marshall at Colombo this Twenty Sixth day of April and the said William Armstrong Buck at Colombo this eleventh day of May One thousand eight hundred and ninety seven. 20

Witnesses to the signatures of
 HARRY FREDERICK HARRIS and
 MURIEL KENNEDY. (Sgd.) H. F. HARRIS.
 (Sgd.) MURIEL KENNEDY.

(Sgd.) J. C. KENNEDY,
 „ S. A. MIGUL PERERA. (Sgd.) LIONEL P. FISHER,
 Notary Public.

Witnesses to the signature
 of DAVID ROBERT MARSHALL. (Sgd.) D. R. MARSHALL. 30

(Sgd.) A. R. NELSON,
 „ H. B. FONSEKA. (Sgd.) V. A. JULIUS,
 Notary Public.

Witnesses to the signature
 of WILLIAM ARMSTRONG BUCK. (Sgd.) W. A. BUCK.

(Sgd.) A. R. NELSON,
 „ H. B. FONSEKA. (Sgd.) V. A. JULIUS,
 Notary Public. 40

I, LIONEL PASTON FISHER, of Kandy in the Island of Ceylon Notary Public do hereby certify and attest that the foregoing Instrument having

been duly read over by the therein named Harry Frederick Harris and Muriel Kennedy the same was signed by them and by James Calzeane Kennedy presently of St. Rule Hatton and Suria Aratchige Migul Perera of Talawakele the subscribing Witnesses thereto (and all of whom are known to me) in my presence and in the presence of one another all being present at the same time at Talawakele aforesaid on this Seventeenth day of April One thousand eight hundred and ninety seven AND I Do further certify and attest that stamps of the aggregate value of Two hundred and ten Rupees (Rs. 210/-) are affixed to the Duplicate of this Instrument and a stamp of the value of One Rupee to the Original thereof which stamps were supplied by Messrs. Julius and Creasy Notaries &c Colombo.

Exhibits.
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P1.
Indenture
No. 294/
2970 being
Marriage
Settlement
of H. F.
Harris,
17th April,
1897—con-
tinued.

Dated the 17th April 1897.

WHICH I ATTEST

(SEAL) (Sgd.) LIONEL P. FISHER,
Notary Public.

Notary's attestation follows.

(Not printed.)

P2—Indenture No. 681 Appointment of new trustees of Marriage Settlement
of H. F. Harris.

Drawn by me
(Sgd.) ALBERT GODAMUNE,
Notary Public.

P2.
Indenture
No. 681.
Appoint-
ment of new
trustees of
Marriage
Settlement
of H. F.
Harris,
2nd August
1920.

20

No. 681.

This Indenture made the 2nd day of August One thousand Nine Hundred and twenty between Harry Frederick Harris of Doolwela Estate in the Kulugammanasiya Pattu of Harispattu in the Kandy District of Ceylon of the first part and Wallace Rennie Westland of Kandy and Albert Godamunne of Kandy of the other part.

Whereas by an Indenture numbered two hundred and ninety four upon two thousand nine hundred and seventy dated the 26th April One thousand eight hundred and ninety seven and 11th May One thousand eight hundred and ninety seven and made between the said Harry Frederick Harris of the first part and Muriel Kennedy of the second part and David Robert Marshall of Colombo Ceylon and William Armstrong Buck of Colombo aforesaid of the third part being a settlement made in consideration of the marriage shortly afterwards solemnised between the said Harry Frederick Harris and the said Muriel Kennedy whereby a sum of forty thousand rupees secured by a mortgage over the Estate called and known as Belgodde situate in the village Belgode of the Tiragandahe Korale in the Seven Korales in Ceylon was assigned to the said David Robert Marshall

Exhibits.
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 P2.
 Indenture
 No. 681
 Appoint-
 ment of new
 trustees of
 Marriage
 Settlement
 of H. F.
 Harris,
 2nd August
 1920—con-
 tinued.

and William Armstrong Buck upon certain trusts thereby declared and in the said settlement was contained a covenant to this effect.

“ If and so often as any of the trustees hereby appointed or any future trustees or trustee of these presents shall die or go to reside abroad or shall desire to retire from or refuse or become incapable to act in the trusts of these presents it shall be lawful for the said Harry Frederick Harris and Muriel Kennedy during their lives or for the survivor of them during his or her life to appoint any other person or persons to be a trustee or trustees in place of the Trustee or Trustees so dying or going to reside abroad or desiring to retire or refusing or becoming incapable to act as aforesaid with liberty upon any such appointment to alter the number of trustees and upon every such appointment the trust funds hereby settled shall be so transferred as to become vested in the new Trustee or Trustees.” 10

And whereas the said Muriel Kennedy died on the 20th day of January 1906.

And whereas the said David Robert Marshall and William Armstrong Buck had left the Island and have gone to reside abroad.

And whereas the said Harry Frederick Harris is desirous of appointing the said Wallace Rennie Westland and the said Albert Godamunne to be Trustees of the said settlement in place of the said David Robert Marshall and William Armstrong Buck. 20

Now This Indenture Witnesseth as follows :—

In exercise of the power in that behalf given to him the said Harry Frederick Harris do hereby appoint the said Wallace Rennie Westland and Albert Godamunne to be Trustees of the said settlement and they accept such appointment.

In witness whereof we the said Harry Frederick Harris and the said Wallace Rennie Westland and Albert Godamunne do hereby set their hands to these presents and to two others of the same tenor and date.

Signed in the presence of us

30

(Sgd.) W. R. SIRISENE,
 „ W. M. SIRISENE.

(Sgd.) Illegibly,
 „ WALLACE R. WESTLAND,
 „ ALBERT GODAMUNNE.
 (Sgd.) F. LIESCHING,
 N.P.

Notary's attestation follows.

(Not printed.)

P34—Lease No. 645.

(COPY.)

Prior Registration G.91/30 49/315.

No. 645.

Exhibits.

P34.

Lease
No. 645,
18th Dec-
ember 1925.

This Indenture of Lease made and entered into at Kandy this 4th day of December one thousand nine hundred and twenty-five between Pothenegama Siri Gooneratne Nayaka Unnanse of Uduwela Hantane Vihare in the Gan Dahe Korle of Pata Hewa Hetta in the Kandy district of the Central Province of the Island of Ceylon, Wellewe Attadassi Unanse, 10 Nawinne Sumana Unnanse, Yatawatte Dammaratne Unanse, Medagama Gunaratne Unnanse, Polgahaange Dhammasiddi Unanse, Ambanwela Sumangala Unnanse, Ambuwangala Dhammapala Unanse, Ambuwangala Dhammapala Unanse, all of Asgiri Vihare in Kandy in the said District of Kandy, and Ambahira Tennakoon Jayawardena Mudiyanse Ukku Banda Aratchi of Petiagoda in the Gangapalata of Udu Nuwara in the said Kandy district (hereinafter called the lessors) of the one part and Stephen Samaratunga of Ampitiya in Gandahe Korle aforesaid (hereinafter called the lessee) of the other part WITNESSETH :—

The lessors in consideration of eight hundred and fifty-four rupees 20 (Rs. 854) paid in advance to the lessors by the lessee (the receipt whereof is hereby acknowledged) and of the further rents and covenants hereinafter on the part of the lessee to be paid and performed do hereby let and demise unto the lessee his heirs, executors, administrators and assigns all that land called Lunuwella of 65 acres 3 roods and 31 perches (65a. 3r. 31p.) in extent according to the plan dated November 1925 by C. D. Jayasinghe Licensed Surveyor situated at Uduwella in the Gandahe Korle of Patahewaheta and more fully described in the schedule hereto. Together with all the plantations easements rights and advantages appertaining or reputed to appertain to the said land.

30 To hold the said land unto the lessee and his aforewritten for a term of 25 years commencing from the 1st December One thousand nine hundred and twenty-five, yielding and paying therefor the rental as follows :—

For the new unplanted forty four acres, seven rupees and fifty cents a year per acre, from First December One thousand nine hundred and thirty-one to 1st December One thousand nine hundred and forty-one and from that date up to the expiry of the lease twenty rupees per acre per year.

40 For the six acres now planted in tea one hundred rupees a year for all the six acres from the 1st December One thousand nine hundred and twenty-seven to 1st December One thousand nine hundred and forty-one and twenty rupees an acre from that date till the expiry of the lease. For

Exhibits.
 ———
 P34.
 Lease
 No. 645,
 18th Dec-
 ember 1925
 —continued.

the asweddumised portions now forming about one acre forty rupees a year. The lessee hereby covenants with the lessors that the lessee shall pay to the lessors the said rent as they fall due. That the lessee shall plant the said land with tea or rubber according as he finds it suitable.

That the lessee shall take care of the plantations and houses in the said land and on the expiry of the lease shall return the same to the lessors without claiming any compensation therefor. That the lessee shall plant the said land within 10 years unless any unforeseen depression in business arises. The lessors hereby covenant with the lessee that the lessee paying the rent herein reserved and performing the covenants herein contained shall and may peaceably and quietly hold and enjoy the said premises during the said term without any interruption or hindrance from the lessors or any person. The parties hereto bind themselves their heirs executors and administrators by these presents. 10

IN WITNESS WHEREOF we the said parties do hereunto and to two others of the same tenor and date as these presents set our hands at Kandy on this fourth day of December One thousand nine hundred and twenty-five.

SCHEDULE ABOVE REFERRED TO.

1. All that allotment of land called Lunu Elle Watta alias Lunuvilla Estate including the field called Lunu Elle Aswedduma of one timba in paddy sowing extent and Lunu Ella Aswedduma of seven lahas in paddy sowing extent (exclusive of Lunu Elle Aswedduma previously sold as aforesaid) the said fields lying within the hereinafter mentioned boundaries, bounded on the east by Oya, Ela, Limit of Land belonging to villagers, Oya, Rankeriyagolle Oya, limit of land belonging to villagers, South by Rankerigolle Oya on the west by the boundary of Codewella estate and on the North by Kehelgolle Oya and Dungolla Oya containing in extent sixty-six acres three roods and ten perches (66a. 3r. 10p.) situated at Uduwela Hantana in Gandahe Korle of Pata Hewaheta, in the district of Kandy, Central Province. 20

2. All those undivided three fourths shares of and in all that allotment of land situate near Uduwela in Gandahe Korle aforesaid marked D in the Crown Title Plan No. 51175 and bounded on the North and North east by land claimed by Mr. Newman and by land called Pokuney Hena claimed by natives, on the east and south east by the land called Pokunahena claimed by natives, on the south and south west by the Gunumilia Ella and by land claimed by Mr. Newman and on the west and north west by land claimed by Mr. Newman in extent 4 acres 2 roods and 37 perches (4a. 2r. 37p.) which said lands are more correctly depicted in the plan 40

dated November 1925 made by C. D. Jayasinghe Licensed Surveyor, which plan is hereto attached. Exhibits.

Signed in the presence of us and we do hereby declare that we are well acquainted with the within named executants and know their proper names occupation and residence. } This is the signature of P. SIRI GUNARATANA. (Sgd.) } Lease P34. No. 645, 18th December 1925 —continued.

(Sgd.) B. P. WANNI ARACCI. } (Sgd.) N. SUMANA. } This is the signature of YATAWATTE. (Sgd.) } (Sgd.) M. SRI GUNARATANA. (Sgd.) P. DHAMMASIDDI. (Sgd.) A. SUMANGALA.

20 (Sgd.) B. M. P. BANDA. } This is the signature of UKKU BANDA. (Sgd.) } (Sgd.) ALBERT GODAMUNE. N.P.

Signed by the said 8th lessor and the lessee at Kandy on this 18th day of December 1925 in the presence of us. } (Sgd.) A. DHAMMAPALA. (Sgd.) S. SAMARATUNGA.

This is the signature of PUNCHI BANDA. (Sgd.) (Sgd.) G. S. W. PUNCHI BANDA. (Sgd.) ALBERT GODAMUNE, Notary Public.

30 Notary's attestation follows. (Not printed.)

Exhibits.

P14—Letter, P. G. Cooke to C. W. Peiris and enclosure.

P14.

Colombo, Ceylon,

18th November, 1927.

Letter, P. G.
Cooke to
C. W. Peiris,
and enclo-
sure,
18th Nov-
ember 1927.

C. W. Pieris Esq.,
Colombo.

Dear Sir,

D. C. KANDY No. 34987.

With reference to the conversation you had with me this afternoon,
I enclose for your information copy of my letter of date to Mr. Godamunne.

Messrs. Beven & Beven inform me that answer is due on the 10
30th instant and I trust that Mr. Godamunne will let us have a reply before
that date.

Yours faithfully,
(Sgd.) P. G. COOKE.

(Enclosure to P14.)

18th Nov. 1927.

Confidential.

ALBERT GODAMUNNE Esquire,
Proctor, Kandy.

D. C. Kandy No. 34987.

20

I understood from you at the interview you had with Mr. C. W. Peris
at my office some days ago that provided you were paid Rs. 10,000 on
account accumulated interest you would get the case to lay by for one
year and that during that period the balance interest should be paid from
time to time as my clients were able. Further that you would undertake
not to certify of record any payments made by my clients on account,
should it become necessary for you to enforce writ for the recovery of the
claim. Of course if the amount realised by the sale of the property does
not fetch the amount of your claim then you could appropriate the moneys
paid by my clients toward the deficiency. The reason for this as explained 30
to you is that my clients do not wish Mr. Boyagoda or any one else to
profit at their expence as the mortgage was one that was executed by
Boyagoda. On receiving your confirmation of this I shall send you a cheque
for the Rs. 10,000.

Yours sincerely,
(Sgd.) P. G. COOKE.

P15—Cheque drawn by de Mel & de Mel for Rs. 10,000.

Exhibits.

No. A 50445.

Colombo, 26th November, 1927.

P15.

**THE EASTERN BANK LIMITED,
COLOMBO.**

Pay P. G. Cooke Esq., or order Rupees Ten Thousand only.
Belmont Group.

Cheque drawn by de Mel & de Mel for Rs. 10,000; 26th November 1927.

Rs. 10,000/-

(Sgd.) **DE MEL & DE MEL**
Agents.

10

National Bank of India Ltd: Colombo
Clearing House.

2nd December, 1927.

National Bank of India Ltd: Kandy
22262.

Endorsement.

Pay Albert Godamunne Esq., or order (without recourse)

(Sgd.) **P. G. COOKE.**
" **P. G. COOKE.**

(Sgd.) **ALBERT GODAMUNNE.**

P36—Cheque (out of P22) by Albert Godamunne.

20

No. L. 521208.

Kandy, 3rd December, 1927.

P36.
Cheque (out of P22) by Albert Godamunne, 3rd December 1927.

NATIONAL BANK OF INDIA LIMITED.

Pay H. A. C. Wickremaratne Esq. or order Rupees three hundred and four and cents eighty-six.

Rs. 304/86.

(Sgd.) **ALBERT GODAMUNNE.**

(Endorsement at back)

Credit to my a/c.

<p>NATIONAL BANK OF INDIA LTD. P A I D 5th Dec 1927. KANDY.</p>

30

(Sgd.) **H. A. C. WICKREMARATNE.**
H. A. C. WICKREMARATNE.

Exhibits.

P41—Mortgage Bond No. 385.

P41.
Mortgage
Bond
No. 385,
3rd Dec-
ember 1927.

Application No. 965.
8.10.30.

Copy. Prior Registration. G.130/140; 85/216. 91/30
49/315.

No. 385.

KNOW all men by these presents that I, Stephen Samaratunga of Ampitiya in Gandahe Korale of Patahewahetta in the district of Kandy, Central Province, (hereinafter calling myself the obligor) am held and firmly bound unto Albert Godamune of Ampitiya aforesaid (hereinafter called the obligee) in the sum of Rs. Five Thousand (Rs. 5000/-) of lawful money of Ceylon for money borrowed and received by me from the said obligee. 10

Therefore, hereby renouncing the beneficium non numeratae pecuniae, I do hereby engage and bind myself my heirs executors and administrators to pay on demand unto the said obligee or to his heirs executors administrators or assigns, the said sum of Rs. 5000/- together with interest thereon at and after the rate of nine per centum per annum to be computed from this date till payment in full such payment of interest to be paid quarterly in advance. 20

And for securing the payment of the said amount with interest accruing thereon I the said obligor do hereby specially mortgage and hypothecate to and with the said obligee and his aforesaid as a first or primary mortgage free from all encumbrances, the following property with all my estate rights title interest claim and demand whatsoever therein and thereto, to wit :—

All my right title and interest in and to the lease bond No. 645 dated the 4th and 18th days of December 1925 attested by A. Godamune Notary Public in respect of the following premises to wit :—

(1) All that allotment of land called Lunu Ela Watte alias Lunuvilla estate including the field called Lunu Ella Aswedduma of one timba in paddy sowing extent and Lunu Ella Asweddumma of seven lahas in paddy sowing extent (exclusive of Lunu Ella Aswedduma previously sold as aforesaid the said fields lying within the hereinafter mentioned boundaries bounded on the east by Oya, Ela, limit of land belonging to villagers, Oya, Rankeriyagalle Oya, limit of land belonging to villagers, south by Rankeriyagalle Oya, on the west by the boundary of Codewella estate and on the north by Kehelgelle Oya and Dungelle Oya, containing in extent 66 acres 3 roods and 10 perches (66a. 3r. 10p.) situated at Uduwela Hantanein Gandahe Korle of Pata Hewahetta in the district of Kandy, Central Province. 30 40

(2) All those undivided 3/4ths shares of land in all that allotment of land situate near Uduwela in Gandahe Korle aforesaid marked "D" in the Crown Title Plan No. 5 1175 and bounded on the north and north east

by land claimed by Mr. Newman, and by land called Pokunehena claimed by natives, on the east and south east by the land called Pokunehena claimed by natives, on the south and south west by the Gurumeliya Ela and by land claimed by Mr. Newman and on the west and north west by land claimed by Mr. Newman in extent 4 acres 2 roods and 37 perches (4a. 2r. 37p.) which said lands are more correctly depicted in the plan dated November 1925 made by C. D. Jayasinghe Licensed Surveyor and I the said Obligor do hereby further engage and bind myself, my heirs, executors and administrators for the payment of any balance sum that may be due and payable under and by virtue of these presents, if the proceeds to be realised by the sale of the premises hereby mortgaged be found to be insufficient to cover the above mentioned debt;

Exhibits.
P41.
Mortgage
Bond
No. 385,
3rd Dec-
ember 1927
—continued.

And I the said obligor for myself and my heirs, executors, administrators do hereby covenant with the said obligee his heirs executors administrators and assigns that the said premises hereby mortgaged are not subject to any prior charge encumbrance or claim whatsoever, and that I will at all times hereafter during the continuance of this mortgage keep up and maintain the said premises in proper order and repair, and that I have good power to mortgage the said premises hereby mortgaged and hypothecated to the said obligee his heirs executors administrators and assigns in manner aforesaid and that I will at all times hereafter during the continuance of this mortgage at my own cost and expense do and execute or cause to be done and executed all such further and other acts and deeds for better and more perfectly assuring to the said obligee his heirs executors administrators and assigns by way of mortgage and hypothecation the said premises and every part thereof, as shall or may be reasonably required.

In witness whereof I the said obligor have hereunto and to two others of the same tenor and date as these presents set my hand at Kandy on this third day of December in the year One thousand nine hundred and twenty-seven.

Signed and delivered in the presence of us and we declare that we are well acquainted with the within named... executant and that we know his proper name occupation and residence.....(Sgd.)

S. SAMARATUNGA.

(Sgd.) Illegibly in English.

(Sgd.) B. P. RANASINGHE.

(Sgd.) ALFRED FERNANDO.
N.P.

40

Notary's attestation follows.

(Not printed.)

Exhibits.

P33—Cheque (out of P22) by A. Godamune on National Bank of India.

P33.
Cheque (out of P22) by A. Godamune on National Bank of India, 11th December 1927. No. L. 521215.

2

THE EASTERN BANK, LTD.

TRANSFER

C

Kandy, 11th December, 1927.

THE NATIONAL BANK OF INDIA LIMITED
Kandy.

Pay Hassaram Motoomull & Co., or Bearer
Rupees eighty only.

Rs. 80/-.

(Sgd.) ALBERT GODAMUNE.

THE EASTERN BANK, LTD.

10

(Endorsement at back.)

Credit.

HASSARAM MOTOOMULL.

NATIONAL BANK OF INDIA, LTD.
P A I D
13th Dec 1927.
KANDY.

NATIONAL BANK OF INDIA, LTD.
COLOMBO.

P32—Cheque (out of P22) by A. Godamune on National Bank of India.

Exhibits.

No. L. 521217.

2

Kandy, 16th December, 1927.
 NATIONAL BANK OF INDIA LIMITED.
 Kandy.
 Pay Central Medical Stores or order
 Rupees One Hundred only.
 Rs. 100/-.
 (Sgd.) ALBERT GODAMUNE.

P32.
 Cheque (out of P22) by A. Godamune on National Bank of India, 16th December 1927.

10 (Endorsement at back.)

THE CENTRAL MEDICAL STORES

Kandy.

NATIONAL BANK OF INDIA LTD.
 PAID
 16th Dec. 1927. KANDY.

(Sgd.) M. JOSEPH PERERA,
 Manager.

P37—Cheque (out of P22) by A. Godamune.

P37.
 Cheque (out of P22) by A. Godamune, 10th January 1928.

No. L. 532032.

2

Kandy, 10th January, 1928.
 NATIONAL BANK OF INDIA LIMITED.
 Kandy.
 20 Pay Dr. H. Beven or Order
 Rupees forty five only.
 Rs. 45/-.
 NATIONAL BANK OF INDIA LTD.
 PAID
 11th January, 1928.
 KANDY.
 (Sgd.) ALBERT GODAMUNE.

(Endorsement at back.)

(Sgd.) HERBERT BEVEN.

Exhibits.

P16—Cheque by de Mel & de Mel for Rs. 5,000.

P16. No. A. 72536.
Cheque
by de Mel &
de Mel for
Rs. 5,000,
30th March
1928.

No. A. 72536.

Colombo, 30th March 1928.

THE EASTERN BANK LIMITED
COLOMBO.

Pay P. G. Cooke Esq., or order Rupees Five thousand only,
Belmont Group.

Rs. 5,000/-

& Co.

(Sgd.) DE MEL & DE MEL.
Agents.

National Bank of India Ltd. : Colombo
Clearing House.

10

and April, 1928.
National Bank of India Ltd. : Kandy.
6173.

Endorsement.

Pay Albert Godamune Esq., or Order (without recourse).

(Sgd.) P. G. COOKE.
" P. G. COOKE.

(Sgd.) ALBERT GODAMUNNE.
" ALBERT GODAMUNNE.

20

Placed to credit of 2nd payee's A/c.
For the National Bank of India Ltd.

(Sgd.)
Manager.



D1 (Police Court)—Letter, P. G. Cooke to A. Godamune.

Colombo,
Ceylon.
31st March, 1928.

Albert Godamunne Esqr.,
Proctor, Kandy.

Dear Mr. Godamunne,

I received your letter of the 29th this morning which has evidently crossed my letter of yesterday's date forwarding you a cheque for 10 Rs. 5000/-. Your letter was the first intimation I had that Boyagoda had filed answer and the case fixed for trial. I have just seen Mr. Peiris who informs me that he has no recollection of your ever having mentioned to him that answer had been filed or the case fixed for trial, as otherwise he would have understood the reference in your telegram.

Will you kindly send me a copy of Boyagoda's answer for reference and let me know what the result of the trial was.

As far as my clients are concerned I presume that the original arrangement made by me with you on their behalf stands good whatever the result of Boyagoda's case may be.

20

Yours faithfully,
(Sgd.) P. G. COOKE.

Exhibits.

D1.
(Police
Court)
Letter, P. G.
Cooke to
A. Goda-
mune,
31st March
1928.

P43—Indenture of Transfer No. 341.

Application—No. 965.
8.10.30.

Prior Registration :—G130/140 ;
135/13.

COPY.

No. 341.

P43.
Indenture
of Transfer
No. 341,
4th May
1928.

30 Know all men by these presents that I Ratnayaka Mudiyansele
Ukku Banda of Embowe in Dewamedde Korale of Dewa Meda Hat Pattuwa
in the District of Kurunegala in the North-Western Province (hereinafter
called the Vendor) for and in consideration of the sum of Rupees Six
hundred and Fifty (650/-) only of lawful money of Ceylon well and truly
paid to me by Albert Godamunne of Ampitiya in Gandahe Korale of Pata
Hewaheta in the District of Kandy, Central Province (hereinafter called
the vendee) the receipt whereof I the said vendor hereby acknowledge
do hereby grant convey assign transfer set over and assure unto the said
vendee his heirs executors administrators and assigns the following premises
in the schedule hereto fully described.

Exhibits.

P43.
 Indenture
 of Transfer
 No. 341,
 4th May
 1928—con-
 tinued.

SCHEDULE ABOVE REFERRED TO :—

1. All my right title and interest in and to all that allotment of land called Lunu Ella Watte alias Lunu Wille Estate including the field called Lunu Ella Aswedduma of one timba in paddy sowing extent and Lunu Ella Aswedduma of seven lahas in paddy sowing extent exclusive of Lunu Ella Aswedduma previously sold as aforesaid the said fields lying within the hereinafter mentioned boundaries bounded on the East by Oya, Ela, Limit of land belonging to Villagers, Oya, Rankeeriyagolla Oya, limit of land belonging to villagers, South by Rankeeriyagolle Oya, West by the boundary of Udawela Estate and on the North by Kehelgelle Oya and Dungalle Oya ; containing in extent sixty-six acres three roods and ten perches (66a. 3r. 10p.) situate at Udawela Hantana in Gandahe Korale of Pata Hewaheta in the District of Kandy Central Province. . 10

2. All my right title and interest in and to all that allotment of land situate near Uduwela in Gandahe Korale aforesaid marked D in the Crown Title plan No. 51175 and bounded on the North and North-east by land claimed by Mr. Newman and by land called Pokuna Hena claimed by natives, on the East and South-east by the land called Pokunehena claimed by natives, on the South and South-west by the Gurmeliya Ella and by land claimed by Mr. Newman and on the West and North-West by land claimed by Mr. Newman in extent four acres two roods and thirty seven perches (4a. 2r. 37p.) which said lands are more correctly depicted in the plan dated November 1925 made by C. D. Jayasinghe, Licensed Surveyor, which said premises have been held and possessed by me upon deed of Gift No. 16173 dated 30th October 1923 attested by E. M. B. Seneviratne Notary Public, together with all easements rights and advantages whatsoever appertaining or reputed to appertain to the said premises or any part thereof or occupied or enjoyed with or reputed or known as part and parcel thereof or appurtenant to the same or any part thereof and all the estate right title interest claim and demand whatsoever of me the said vendor in to upon or out of the said premises : 20 30

To have and to hold the said premises hereby granted or intended so to be unto the said vendee and his aforewritten for ever :

And I the said vendor hereby for myself my heirs executors and administrators covenant and declare with and to the said vendee and his aforewritten that I have good right to convey the said premises in manner aforesaid and that the said premises are free from encumbrances whatsoever and that I and my aforewritten shall and will always warrant and defend the title to the same and every part or portion thereof against any person or persons whomsoever ; and I and my aforewritten shall and will at all times hereafter at the request but at the cost and charges of the said vendee and this aforewritten do and execute or cause to be done and executed all such further and other acts deeds matters and things which may be necessary or expedient for the better or more perfectly assuring the said premises or any part thereof unto the said vendee and his aforewritten as shall or may be reasonably required. 40

In witness whereof I the said vendor do hereunto and to two others of the same tenor and date as these presents set my hand at Kandy on this Fourth day of May One thousand nine hundred and Twenty-eight.

Exhibits.
—
P43.
Indenture
of Transfer
No. 341.
4th May
1928—con-
tinued.

Signed in the presence of us and we do hereby declare that we are well acquainted with the within named executant and know his proper name occupation and residence

(Sgd.) R. M. U. B. RATNAYAKE.

10 (Sgd.) Illegibly (in English).

(Sgd.) Illegibly (in English).

(Sgd.) J. A. HALANGODA.

Notary Public.

Notary's Attestation follows.

(Not printed.)

P42—Assignment of Lease No. 345.

Application No. 965.
8.10.30.

Copy.

20 No. 345.

Prior Registration—G130/140;
85/226.

P42.
Assignment
of Lease
No. 345,
26th May
1928.

This Indenture made at Kandy on this twenty-sixth day of May One thousand Nine Hundred and Twenty-eight between Stephen Samaratunga of Ampitiya in Gandahe Korale of Pata Hewaheta in the District of Kandy of the one part and Albert Godamunne of Ampitiya aforesaid of the other part witnesseth—

Whereas by an Indenture of lease No. 645 dated the 4th and 18th days of December 1925 attested by A. Godamunne, Notary Public, Potanagama Sri Gooneratne Nayake Unnanse of Hantana Vihare in Udawela, Wellawe Attadassi Unnanse, Nawinne Sumana Unnanse, Yatawatte Dammaratane Unnanse, Medagama-Goonaratne Unnanse, Polgahaange Dhammasiddi Unnanse, Ambanwela Sumangala Unnanse, Ambuwangala Dhammapala Unnanse, all of Asgiriya Vihare in Kandy, and Ambehera Tennakoon Jayawardena Mudiyanse Ukkubanda Aratchy of Petiyagoda let and demised unto the said Stephen Samaratunga the lands fully described in the schedule

Exhibits.
 ———
 P42.
 Assignment
 of Lease
 No. 345,
 26th May
 1928—*con-
 tinued.*

hereto for the term of Twenty-five years commencing from the 1st day of December 1925 and subject to the lessee's covenants therein contained.

And whereas the said Stephen Samaratunga has agreed with the said Albert Godamunne to assign to him the said Indenture of lease for the consideration hereinafter mentioned.

Now this Indenture witnesseth that the said Stephen Samaratunga (hereinafter called the assignor) for and in consideration of the sum of Rs. 1000.00 the receipt whereof I do hereby acknowledge doth hereby assign and set over unto the said Albert Godamunne (hereinafter called the assignee) his heirs executors administrators and assigns all that the said Indenture of lease and all the benefit and advantage thereof and all the estate right title interest claim and demand whatsoever of the said assignor, in to upon or out of the same and the said premises. To hold the said lands and premises unto the said assignee and his aforewritten during the residue now expired of the said term subject to the rent reserved by the said Indenture of lease and the covenants therein contained which henceforth on the part of the lessee ought to be paid and performed and the said assignee for himself and his aforewritten hereby covenants with the said assignor his heirs executors and administrators that the said assignee and his aforewritten shall pay the rent reserved by the said Indenture of lease and perform the covenants therein contained which henceforth on the part of the lessee ought to be paid and performed and the said assignor for himself his heirs executors administrators and assigns hereby covenants and declares with and to the said assignee and his aforewritten that the assignor has good right to make this assignment in the manner aforesaid and that the said premises are free from any encumbrance created by the said assignor.

In witness whereof we the said parties do hereunto and to two others of the same tenor and date as these presents set our hands at Kandy on this twenty-sixth day of May one thousand nine hundred and twenty-eight.

THE SCHEDULE ABOVE REFERRED TO :—

1. All that allotment of land called Lunu Ella Watte alias Lunu Villa Estate including the field called Lunu Ella Aswedduma of one timba in paddy sowing extent, and Lunu Ella Aswedduma of seven lahas in paddy sowing extent (exclusive of Lunu Ela Aswedduma previously sold as aforesaid the said fields lying within the hereinafter mentioned boundaries bounded on the East by Oya, Ela, limit of land belonging to villagers, Oya, Rankeeriyagolle Oya limit of land belonging to villagers, South by Rankeeriyagolle Oya, on the West by the boundary of Codewella Estate and on the North by Kehelgolle Oya and Dunugolle Oya; containing in extent sixty-six acres three roods and ten perches (66a. 3r. 10p.) situate at Uduwela Hantane in Gandahe Korale of Pata Hewaheta in the District of Kandy, Central Province.

2. All these undivided three-fourths shares of and in all that allotment of land situate near Uduwela in Gandahe Korale aforesaid marked D in the Crown Title Plan No. 51175 and bounded on the North and North-east

by land claimed by Mr. Newman and by land called Pokunehena claimed by natives on the East and South-east by the land called Pokunehena claimed by natives on the South and South-west by the Gurumeliya Ella and by land claimed by Mr. Newman and on the West and North-west by land claimed by Mr. Newman; in extent four acres two roods and thirty-seven perches (4a. 2r. 37p.) which said lands are more correctly depicted in the plan dated—November 1925 made by C. D. Jayasinghe Licensed Surveyor which plan is hereto attached.

Exhibits.
—
P42.
Assignment
of Lease
No. 345,
26th May
1928—*con-
tinued.*

Signed in the presence of us.

10

(Sgd.) P. B. SAMARATUNGA.

(Sgd.) S. SAMARATUNGA.

(Sgd.) B. M. P. BANDA.

(Sgd.) ALBERT GODAMUNNE.

Notary's Attestation follows.

(Not printed.)

Exhibits.

P17—Cheque by de Mel & de Mel for Rs. 3,000.

P17.
Cheque by
de Mel &
de Mel, for
Rs. 3,000,
28th August
1928.

No. A.111314.

Colombo, 28th August, 1928.

THE EASTERN BANK LIMITED,
COLOMBO.

Pay P. G. Cooke, Esq., or Order Rupees Three thousand only.

Belmont Group
(Sgd.) DE MEIS & DE MEL,
Agents.

National Bank of India Ltd.: Kandy
14844.

National Bank of India Ltd.: Kandy

National Bank of India Ltd.: Kandy
31st August 1928.

National Bank of India Ltd.: Colombo
3rd September 1928.

2nd endorsement irregular 31/8/28.

10

Endorsement.

Pay Alfred Godamunne Esq., or Order (without recourse).

(Sgd.) P. G. COOKE.

„ P. G. COOKE.

20

(Sgd.) ~~Alfred Godamunne~~

„ ~~Alfred Godamunne~~

Credit

(Sgd.) ~~Alfred Godamunne~~

„ ALFRED GODAMUNNE.

Credit

(Sgd.) ALBERT GODAMUNNE.

2nd endorsement guaranteed.

For The National Bank of India, Ltd.

(Sgd.)

30

Manager.

P3—Letter, A. Godamune to H. F. E. Harris.

Exhibits.

Kandy 15th September 1928.

Dear Mr. Harris,

After I saw you I have received a further sum of Rs. 15,000 to be held by me on the same terms as was suggested first. I have mentioned this to Mr. De Vos and I would like to know what your wishes are. The defendants want us not to sell the land till after November.

Yours sincerely,
(Sgd.) A. GODAMUNNE.

P3.
Letter, A.
Godamune
to H. F. E.
Harris,
15th Sept-
ember 1928.

10

P5—Letter, H. F. E. Harris to De Vos (Proctor).

Watagoda. 17.9.28.

Dear Mr. de Vos,

Mr. Godamunne says a further bogus cheque for Rs. 15,000 has been sent him. Full cash for interest and costs to date is necessary to delay sale and I have replied to that effect to Mr. Godamunne today.

I am yours,
(Sgd.) ENSOR HARRIS.

P5.
Letter,
H. F. E.
Harris to
De Vos
(Proctor),
17th Sept-
ember 1928.

P4—Letter, A Godamune to H. F. E. Harris.

Kandy 5th October 1928.

20 Dear Mr. Harris,

Here is a copy of the conditions I have been given. Please keep them confidential as the letter sent me is marked confidential.

Yours sincerely,
(Sgd.) A. GODAMUNNE.

P4.
Letter, A.
Godamune
to H. F. E.
Harris,
5th October
1928.

1. That you (meaning me) would undertake not to certify of record any payments made by my clients of record should it become necessary for you to enforce writ for the recovery of the claim.

2. If the amount realized by the sale of the property does not fetch the amount of the claim then you could appropriate the moneys paid by my clients toward the deficiency.

3. The reason for this is that my clients do not wish anyone to profit at their expense.

Exhibits.

P18—Cheque by de Mel & de Mel for Rs. 5,000.

P18.
Cheque by
de Mel &
de Mel for
Rs. 5,000,
6th Nov-
ember 1928.

No. A.111348.

Colombo, 6th November, 1928.

THE EASTERN BANK LIMITED,
COLOMBO.

Pay P. G. Cooke Esq., or order Rupees Five thousand only.

Belmont Group
(Sgd.) DE MEL & DE MEL.
Agents.

Rs. 5000/-.

National Bank of India Ltd.: Colombo 10
Clearing House.

22nd November 1928.

National Bank of India Ltd.: Kandy 19181.

Endorsement.

Pay Albert Godamunne Esq., or Order (without recourse).

(Sgd.) P. G. COOKE.

,, P. G. COOKE.

(Sgd.) ALBERT GODAMUNNE.

,, ALBERT GODAMUNNE.

Placed to credit of payee's a/c.
For the National Bank of India Ltd.

(Sgd.)

Manager.

P19—Letter, P. G. Cooke to Leisching & Lee.

Colombo 23rd November 1928.

Messrs. Leisching & Lee Proctors, Kandy.

Dear Sirs,

D. C. Kandy 34987.

Belmont.

I write to inform you that arrangements are being made for a client of mine to take over an assignment of the decree in the above action and for this purpose I shall feel obliged if you will have the following payments
 19 made to the 2nd plaintiff (Mr. Albert Godamunne) on account of interest amounting to Rs. 23,000 certified of record, namely :—

26.11.27	-	-	-	Rs. 10,000/-
30. 3.28	-	-	-	5,000/-
28. 8.28	-	-	-	3,000/-
6.11.28	-	-	-	5,000/-

				Rs. 23,000/-

I may mention that when these payments were made Mr. Godamunne was asked not to certify any of these payments of record but as the assignment is taking place the defendants wish this done so that the assignee of the
 20 decree would only be entitled to recover the balance due under the judgment.

Please arrange the sale to be stayed and let me know when I shall immediately proceed to prepare the assignment of the decree in favour of my client and send you the draft for your approval.

An early reply will oblige.

Yours faithfully,

(Sgd.) P. G. COOKE.

Mr. Westland co-trustee and co-plaintiff refuses to certify payment as he knows nothing of payments.
 30 Sale must proceed.

Exhibits.

P19.
 Letter, P. G.
 Cooke to
 Liesching
 & Lee,
 23rd Nov-
 ember 1928.

Exhibits.

D2—Letter, P. G. Cooke to A. Godamune.

D2.
Letter, P. G.
Cooke to A.
Godamune,
23rd Nov-
ember 1928.

D2.

Registered.

Colombo,
Ceylon.
23rd Novr. 1928.

Albert Godamunne Esqr.,
Proctor,
Kandy.

Dear Mr. Godamunne,

Belmont.

10

D. C. Kandy No. 34987.

Please be so good as to instruct Messrs. Liesching & Lee without delay to certify the following payments made to you on account of interest by the defendants in the above action as under, namely :—

26.11.27	-	-	-	Rs. 10,000/-	
30. 3.28	-	-	-	5,000/-	
28. 8.28	-	-	-	3,000/-	
6.11.28	-	-	-	5,000/-	Rs. 23,000/-

You must see that this is done without delay to enable me to have the assignment of the Decree drawn up for the balance.

20

I hope you will also arrange to have the sale stayed.

Yours sincerely,

(Sgd.) P. G. COOKE.

P.S.—You have not sent me an acknowledgment for the cheque for Rs. 5,000/- forwarded to you with my letter of the 6th instant.

(Sgd.) P. G. COOKE.

P20—Letter, P. G. Cooke to Leisching & Lee.

Colombo, 26th Nov., 1928.

Messrs. Leisching & Lee Proctors, Kandy.

Dear Sirs,

D. C. Kandy 34987 Belmont Estate.

I am in receipt of your letter of the 24th instant and was surprised to hear that Mr. Godamunne had not accounted for the Rs. 23,000 I had paid him on account of the above action. Your offer to stay the sale provided Mr. Godamunne paid the Rs. 23,000 into your hands is a matter
10 over which I have no control, and leaves the matter in rather a doubtful position.

Pending receipt of a letter definitely undertaking to stay the sale I propose instructing Messrs. Beven & Beven to apply to Court to certify the payment and to ask for a stay of sale. It will not do to leave matters till it is too late in case you are unable to arrange matters with Mr. Godamunne.

In the meantime will you please send me the title deeds to enable me to proceed with the preparation of the assignment of the decree.

Yours faithfully,

(Sgd.) P. G. COOKE.

20

P6—Transfer deed by A. Godamunne to H. F. E. Harris transferring Lunuwila Estate No. 363.

Registered G144/285.

Kandy, 4th February, 1929.

Prior Registration.

(Sgd.)

Registrar of Lands.

Land Registry

No. 2797

30 4th February 1929

Kandy.

No. 363.

KNOW ALL MEN BY THESE PRESENTS THAT I Albert Godamunne of Ampitiya in Gandahe Korale of Pata Hewahetta in the District of Kandy Central Province (hereinafter called the vendor) for and in consideration of the sum of Rupees Twenty-five thousand (Rs. 25,000/-) of lawful money of Ceylon well and truly paid to me by Harry Frederick

Exhibits.

P20.

Letter, P. G.
Cooke to
Leisching
& Lee,
26th Nov-
ember 1928.

P6.
Transfer
deed by A.
Godamunne
to H. F. E.
Harris,
transferring
Lunuwila
Estate
No. 363,
21st Janu-
ary 1929.

Exhibits.
 ———
 P6.
 Transfer
 deed by A.
 Godamune
 to H. F. E.
 Harris,
 transferring
 Lunuwila
 Estate
 No. 363,
 21st Janu-
 ary 1929—
continued.

Ensor Harris of Doolwelakanda Estate in Doolewala in Kulugammanasiya-
 pattu of Harispattu in the District of Kandy aforesaid (hereinafter called
 the vendee) (the receipt whereof I the said vendor hereby acknowledge)
 do hereby grant convey assign transfer set over and assure unto the said
 vendee his heirs executors administrators and assigns the following premises
 in the schedule hereto fully described.

SCHEDULE ABOVE REFERRED TO.

All my right title and interest in to and upon all that land called and
 known as Lunuwila Estate of Sixty-five acres Three roods and Thirty-one
 perches in extent (65a. 3r. 31p.) situated at Uduwela in Gandahe Korale 10
 of Pata Hewahetta in the District of Kandy Central Province and depicted
 in the Plan attached to the original of these presents dated November 1925
 made by C. D. Jayasinghe Licensed Surveyor and bounded as follows :
 on the North by Kehelgolle Oya and Dungolle Oya on the East by an Ela,
 an Ela separating this land from a village, Rankeeriyagolle Oya and by
 village land on the South by the Oya and on the West by Oduwela Estate
 (subject however to a mortgage created by Bond No. 346 dated 26th May
 1928—attested by J. A. Halangoda, Notary Public of Kandy for Rupees
 Eight thousand (Rs. 8,000/-).

Together with all easements rights and advantages whatsoever apper- 20
 taining or reputed to appertain to the said premises or any part thereof
 or occupied or enjoyed with or reputed or known as part or parcel of or
 appurtenant to the same or any part thereof and all the estate right title
 interest claim and demand whatsoever of me the said vendor in to upon
 or out of the said premises which said premises have been held and possessed
 by me.

TO HAVE AND TO HOLD the said premises hereby granted or
 intended so to be unto the said vendee and his aforewritten for ever AND I
 the said vendor hereby for myself my heirs executors and administrators 30
 covenant and declare with and to the said vendee and his aforewritten
 that I have good right to convey the said premises in manner aforesaid
 and that the said premises are free from encumbrances whatsoever and
 that I and my aforewritten shall and will always warrant and defend the
 title to the same and every part or portion thereof against any person or
 persons whomsoever AND I and my aforewritten shall and will at all times
 hereafter at the request but at the cost and charges of the said vendee and
 his aforewritten do and execute or cause to be done and executed all such
 further and other acts deeds matters and things which may be necessary or
 expedient for the better or more perfectly assuring the said premises or any
 part thereof unto the said vendee and his aforewritten as shall or may be 40
 reasonably required.

IN WITNESS whereof I the said vendor do hereunto and to two
 others of the same tenor and date as these presents set my hand at Kandy

on this twenty-first day of January One thousand nine hundred and twenty-nine. Exhibits.

Signed in the presence of us and we do hereby declare that we are well acquainted with the within named executant and know his proper name occupation and residence.

(Sgd.) ALBERT GODAMUNNE.

10 (Sgd.) A. GOONESINGHE.
 „ A. C. M. HANIFFA.

(Sgd.) J. A. HALANGODA,
 Notary Public.

P6.
 Tranfer deed by A. Godamune to H. F. E. Harris, transferring Lunuwila Estate No. 363, 21st January 1929—
continued.

Notary's Attestation follows.

(Not printed.)

P7—Letter, H. F. E. Harris to Liesching & Lee (Proctors).

January 21st 1929.

Messrs. Liesching & Lee
 Kandy.

Dear Sirs,

20 With reference to the sum of Rs. 23,000 paid to Mr. Godamunne on account of interest D. C. Kandy 34987 and for which the defendants are now claiming credit I beg to inform you that Mr. Godamunne has settled this matter with me as life rentor by transferring Lunuwilla estate in my favour. You can therefore credit the decree in the sum of Rs. 23,000.

Yours faithfully,
 (Sgd.) ENSOR HARRIS.

P7.
 Letter, H. F. E. Harris to Liesching & Lee (Proctors), 21st January 1929.

Exhibits.

P8—Advice Notice from Imperial Bank of India.

P8.
Advice
Notice from
Imperial
Bank of
India,
11th Febru-
ary 1929.

H. F. E. Harris Esquire

Watagoda Estate Haloluwa Kandy,

The Imperial Bank of India beg to return herewith the undernoted cheque payment having been refused by the National Bank Kandy. An acknowledgement is requested.

Imperial Bank of India.

Colombo. 11.2.1929.

Drawer	Amount	On whom drawn	Answer on cheque
A. Godamunne's cheque of 27th January held over till 10th Feby. cheque No. L607856	Rs. 10,000.	N. B. Kandy.	"Drawer's signature differs." 10

P9.
Cheque by
A. Goda-
mune for
Rs. 10,000,
28th March
1929.

P9—Cheque by A. Godamune for Rs. 10,000.

State cheque and refer to drawer 20.11.29.

P.9. No.L613604. (2)

Kandy, 28th March 1929.

NATIONAL BANK OF INDIA LIMITED.
KANDY.

Pay H. F. E. Harris Esq., or Order Rupees Ten thousand only.
Rs. 10,000/- (Sgd.) ALBERT GODAMUNNE.

(Imperial Bank of India) (Imperial Bank of India) 20
Imperial Bank of India, Colombo. No. R.C. 845.

Endorsement.

(Sgd.) H. F. ENSOR HARRIS

Credit.

(Sgd.) H. F. ENSOR HARRIS c/o Imperial Bank, Colombo.
Payees account will be credited on realisation.
For Imperial Bank of India.

(Sgd.)

Agent, Colombo.

P38—Letter to H. F. E. Harris.

Exhibits.

28th March 1929.

Dear Sir,

We have today received from Mr. Godamune a fresh cheque for Rs. 10,000/- in lieu of the one previously given to you.

If you will kindly return the old cheque we will forward this to you.

Yours faithfully,

(Initialled.)

10 H. F. Ensor Harris Esq.,
Watagoda Estate,
Halloluwa,
Kandy.

P38.
Letter to
H. F. E.
Harris,
28th March
1929.

P10—Letter, H. F. E. Harris to Liesching & Lee (Proctors).

Watagoda Estate,
Haloluwa Kandy 30.3.29.

Messrs. Leisching & Lee Kandy.

Dear Sirs,

20 I note from yours of 28th that Godamunne had given you a new cheque for Rs. 10,000 but as he came here in a great hurry to explain that there are no funds to meet the cheque and that it was only given as security it is of no value that I can see and I would prefer you to keep it. Mr. Godamunne agreed to pay up the Rs. 25,000 and interest at 15% from January or hand over the estate into my charge or to my selling same.

So as 1st and 3rd propositions are improbable of action within reasonable time I would suggest you might go with me and Godamunne about 7th instant and take our formal charge in case you are satisfied that the title is genuine and in order. If you have a better alternative to suggest will you kindly let me know.

Yours faithfully,

(Sgd.) ENSOR HARRIS.

30

P10.
Letter,
H. F. E.
Harris to
Liesching
& Lee
(Proctors),
30th March
1929.

Exhibits.

P11—Letter, Liesching & Lee (Proctors) to H. F. E. Harris.

Kandy 14th May 1929.

P11.
Letter,
Liesching
& Lee
(Proctors)
to H. F. E.
Harris,
14th May
1929.

Dear Sir,

We have your letter (undated) sent in to us by your Conductor some days ago also transfer by Mr. Godamunne to you of Lunuwilla estate. We delayed writing to you as we wished to have the registers searched so as to be able to answer your question.

Yes, you can sell what rights you have acquired under the deed in your favour but the question is whether you will find a buyer.

It would interest you to know that Mr. Godamunne had purchased a small interest in this land while his right to the major portion of the estate is under a lease for a period of 25 years commencing from 1st December 1925. 10

We enclose a copy of the extracts taken by us from the land registry for your information.

With a primary mortgage of Rs. 8,000 in favour of Trinity College over the estate you will realise that the transfer in your favour is not worth Rs. 25,000 placed upon the estate by Mr. Godamunne. We return herewith Deed No. 363 receipt of which please acknowledge.

Yours faithfully,

20

(Sgd.) LIESCHING & LEE.

H. F. Ensor Harris Esquire,
Watagoda Estate Haloluwa,
Kandy.

P21.

P21—Extract from Land Registry.

Extract
from Land
Registry,
14th May
1929.

H. F. Ensor Harris Esquire,
14.5.29.

G 91/30. Lunuwilawatte of 66 acres 3rds 10 perches situated at Uduwela Hantane.

1. Transfer 8675/12.8.1912 Mr. E. L. Siebel N.P. Raki and 10 others to Ambagaswewe Ratnajothi Nayaka Thero and three other priests Y Dharmaratna and P Gunaratana. 30

2. Transfer 462/18.7.22 Mr. A. Godamunne N. P. Administrators of Estate of Ambagaswewe Nayaka Thero to W. Attadasi and Sumana Unnanse of $\frac{1}{4}$.

carried to

G 123/249. Gift 1411/24.7.23 Mr. M. B. E. Senewiratne N. P. P. Vipassi Unnanse to M. Gunaratana, P. Dharmasiddi A. Summangala and A. Dharmapala of $\frac{1}{4}$ share.

Gift 16173/30.10.23 Mr. E. M. B. Senewiratne N. P., P. Gunaratana to Ukku Banda Ratnayake of $\frac{1}{4}$. (P.R.M. Udawakayu Banda). 40

Mortgage 17227/20.11.24 Mr. E. M. B. Senewiratne N. P., M. Gunaratana P. Dharmasiddi A. Sumangala and A. Dharmapala Unansea to Arrattana Dewamitta Unnanse of $\frac{4}{5}$ shares of $\frac{1}{4}$ for Rs. 850 interest at 12%
carried to

G 130/140 lease 645/18.12.25 Mr. A. Godamunne N. P., P. Gunaratana Nayake Thero W. Attadasi Unnanse P. Dharmasiddi Unnanse N. Sumana Unnanse Y Dharmaratne Unnanse M. Gunaratne Unnanse A. Sumangala Unnanse A. Dharmapala Unnanse and Ukku Banda Aratchi of Pitiyegoda to Stephen Samaratunga of Ampitiya for 25 years from 1st December 1925 at annual rental of Rs. 7/50 per acre for the unplanted 44 acres. Rs. 100 a year for the six acres now planted with tea and for the aswedumised portion now forming one acre Rs. 40 a year.

Mortgage 385/3.12.27 Mr. A. Fernando N.P. S. Samaratunga to Mr. A. Godamunne of Grantors interest under lease No. 645 for Rs. 5,000 interest at 9%.

carried to

G.141/58 Mortgage 840/25.1.28 Mr. A. Godamunne N.P. Ratnayake Mudiyanseelage Ukku Banda to Soma Godamunne of Grantors interest for Rs. 500 interest at 12%.

20

Notice of addresses.

Transfer 341/3.4.28 Mr. J. A. Halangoda N.P. R. M. Ukkubanda to Mr. A. Godamunne of Grantor's interests in above.

Assignment 345/26.5.28 Mr. J. A. Halangoda N.P. S. Samaratunga to Mr. A. Godamunne assignment of above lease No. 645.

Mortgage No. 346/26.5.28 Mr. J. A. Halangoda N.P. Mr. A. Godamunne to Rev. J. M. Campbell of Trinity College for Rs. 8,000 interest at 10%.

Notice of address carried to

G.144/285 transfer 363/21.1.29 Mr. J. A. Halangoda N.P. Mr. A. Godamunne to Mr. H. F. Ensor Harris for Rs. 25,000.

30 G.79/384 Lunuwilla Asveduma of 12 lahas paddy sowing. Transfer 7853/23.6.19 E. S. Rajasekera N.P. W. Horatala to W. Bilanda of above.

No other dealings.

G.2/275 Lunuwilla estate 66 acres 3r. 25p. and 6 amunams of paddy. Transfer No. dated 30.11.71 F. J. de Saram N.P. George Wall & Co. to Dawudu Saibo of above.

Exhibits.

P21.

Extract
from Land
Registry,
14th May
1929—con-
tinued.

Exhibits.

P12—Letter, H. F. E. Harris to Liesching & Lee (Proctors).

P12.
Letter,
H. F. E.
Harris to
Liesching
& Lee
(Proctors),
17th May
1929.

Watagoda Estate,
Halloluwa, Kandy,
17.5.29.

Messrs. Liesching & Lee,
Kandy.

Dear Sirs,

I beg to thank you for yours of 14th re Godamunne's encumbrances on Lunuwilla Estate. I also return cheque L607853 returned from Bank, as requested, drawn on 27th January and presented on 10th February. 10
home

Please let me know particulars of house property—viz: valuation if freehold and present rent on which 40,000 (or 30,000) is proposed to be placed on mortgage by my trustees?

Yours faithfully,
(Sgd.) H. F. ENSOR HARRIS.

D3.

D3—Letter, W. R. Westland to A. Godamunne.

Letter,
W. R. West-
land to A.
Godamunne,
13th Sept-
ember 1929.

Talwatta,
Kandy.
13th Sepr. 1929.

Dear Mr. Godamunne,

20

I visited the estate offered as security by Mr. Jayakoddy, yesterday. I find it to be well worth double the amount asked for and have accordingly asked Messrs. de Vos & Gratiaen to draw up the deeds. On receipt of them and approval by us we shall send the cheque to them and so finish the business.

Trusting this meets with your approval,

Sincerely yours,
(Sgd.) W. R. WESTLAND.

P13—Petition by H. F. E. Harris to the Inspector General of Police, Colombo.

To The Inspector General of Police,
Colombo.

Exhibits.

P13.

Petition by
H. F. E.
Harris to
Inspector-
General of
Police,
Colombo,
11th Dec-
ember 1929.

The petition of H. E. ENSOR HARRIS of Watagoda Halloluwa Kandy respectfully states as follows :—

1. The said petitioner created a trust in favour of his wife and children and earmarked a sum of Rs. 40,000/- for this purpose. He appointed Messrs. Harry Creasy and Marshall as Trustees. Sometime ago, these two gentlemen retired from the trusteeship and in succession to them, the petitioner appointed Messrs. A. Godamunne, Proctor of Kandy and W. Westland as Trustees. These two gentlemen accepted the trust.

2. The petitioner was the owner of the Estate called and known as Belmont Estate. He sold it to one Mr. H. W. Boyagoda for a sum of Rs. 85,000/-. Out of this, a sum of Rs. 20,000/- was paid to him by Mr. Boyagoda, and as security for the balance Rs. 65,000/- executed three mortgage bonds : one for Rs. 40,000/- in favour of the said trustees and the other two for Rs. 10,000/- and Rs. 15,000/- in favour of the petitioner.

3. The amount due on the mortgage bonds was not paid by Mr. Boyagoda and therefore Messrs. Liesching & Lee, Proctors for the Trustees filed suit in D.C. Kandy case No. 34987 against the said H. W. Boyagoda for the recovery of the mortgage debt. After decree was entered in the case against the said Boyagoda, Mr. A. Godamunne has been receiving from time to time sums aggregating to Rs. 23,000/- out of the interest due from Mr. Boyagoda, through his trustees, Mr. C. Batuwantudawe and others. This fact was not disclosed by Mr. Godamunne to Messrs. Liesching & Lee nor to the petitioner. Messrs. Liesching & Lee issued writ against Mr. Boyagoda for the recovery of the money due on the mortgage bonds. Mr. Boyagoda appeared in Court and said that he has been paying from time to time sums aggregating to Rs. 23,000/- to Mr. A. Godamunne.

4. Mr. Godamunne admitted having received the said sum of Rs. 23,000/- but he told the petitioner that he had spent the money and begged of me to consent to the amount being certified in the case, and that if the petitioner were to disclose the fact that he had spent the money, in Court, that the said Mr. Godamunne would commit suicide. In deference to his prayer, I consented to do so, if he would repay the amount due to me. The said Mr. Godamunne had no money to pay at the time. He gave the petitioner a cheque for Rs. 10,000/- to be cashed in a short time and for the balance amount he transferred to the petitioner certain lands in Deed No. 363 attested by John Halangoda, Notary Public on the 21st January 1929 for the consideration of Rs. 25,000/-, the lands to be in his possession till the amount due to the petitioner was settled. At the time the lands were transferred to the petitioner, there was an existing mortgage on the lands for Rs. 8,000/-. Time and again he asked the petitioner for extension of time to repay the amount due to the petitioner.

5. Since the transfer was executed, the petitioner has discovered that Mr. Godamunne is only entitled to three-eighth shares of the said lands

Exhibits. and that he has only a lease-hold interest for the balance. The cheque was also dishonoured.

P13.
Petition by
H. F. E.
Harris to
Inspector-
General of
Police,
Colombo,
11th Dec-
ember 1929
—continued.

Wherefore the petitioner prays that the said A. Godamunne has committed a breach of trust and that steps may be taken to prosecute the said Godamunne for criminal breach of trust and misappropriation and for such other and further relief as shall seem meet.

(Sgd.) H. F. ENSOR HARRIS.

Petitioner.

11th December, 1929.

D1.
(Supreme
Court)
Petition by
H. F. E.
Harris to
Mr. Justice
Akbar,
19th April
1930.

D1 (Supreme Court)—Petition by H. F. E. Harris to Mr. Justice Akbar.
To The Hon'ble, Mr. M. T. Akbar.
Justice of the Supreme Court,
Colombo.

10

The humble petition of H. F. ENSOR HARRIS, presently of Watagoda Estate, Haloluwa, Kandy, states:—

Your Lordship's petitioner presented a petition to the Hon'ble the Supreme Court in December 1929 embodying certain allegations against Mr. Albert Godamune of Kandy regarding certain sums of money which had been paid to him by Mr. P. G. Cooke, Proctor of Colombo and which the latter subsequently desired Mr. Godamune to pay to the petitioner. In lieu of the amount so payable to the petitioner, at Mr. Godamune's request, the petitioner accepted the conveyance to him of a land. At the time of the conveyance it was agreed between Mr. Godamune and the petitioner that the land should be reconveyed by the petitioner on his being paid the consideration. Mr. Godamune has now notified to the petitioner through his lawyers that he desires the reconveyance of the land on paying the petitioner the consideration. This the petitioner is willing to do.

The petitioner regrets that in making some of the representations appearing in his previous petition to your Lordships' Court he had overlooked amongst others, the contents of certain correspondence between Mr. Cooke and Mr. Godamune which set out the conditions and terms on which the moneys were paid to Mr. Godamune and held by him.

The petitioner has deemed it his duty to let your Lordship's Court know of this, as this matter has been the subject of the previous petition and addresses himself to your Lordship as he understands that you have the disposal of the same.

Wherefore the petitioner prays that your Lordship will be pleased to grant him permission to re-convey the land on his being paid the consideration thereof, and stop further proceedings regarding the former petition.

Haloluwa, Kandy.
April 19, 1930.

Petitioner.

P40—Valuation of Lunawella Estate.

Exhibits.

VALUATION REPORT OF LUNEWELLA ESTATE.

P40.

I visited the above Estate for the first time on 21.8.30 and again on 2.9.1930. The estate is situated in the Hantana district about 5 miles out of Kandy and is about 1/2 a mile from the private estate road which runs through the adjoining estate of Oudewella. Approach to the estate from Kandy over this road is, I am informed, only by sufferance. There is no cart road access to the estate and the only legitimate access appears to be by Gansabawa paths leading to villages in the vicinity.

Valuation of
Lunawella
Estate,
16th Sept-
ember 1930.

10 It is a Tea estate situated in a good tea growing district an elevation of approximately 3,000 feet and is in immediate proximity to well known high class estates.

The total area of the estate according to a survey made in 1925 is 65a. 3r. 31p. and I have adopted this area for my valuation.

An earlier survey plan produced to me by Mr. Godamune on the occasion of my first inspection shows the area to be 66a. 3r. 10p. but this appears to include an area of 6a. 0r. 0p. in the south west corner of the estate which is claimed and cultivated by the adjoining Ouduwella estate. On the occasion of my second visit Captain Greenhow, the Superintendent of
20 Oudewella estate, pointed out to me on the ground the boundary at this point.

2. The acreage statement as given to me by Mr. Godamune was as follows :—

About 10 acres of old tea.
About 36 acres of new tea.
2 acres of paddy land.
Remainder unplanted land.

The crop and sale figures furnished me by Mr. Godamune were as under :—

30	1926	-	-	-	11,486 lbs. green leaf sold for	1647·61
	1927	-	-	-	11,855 lbs. „	1398·10
	1928	-	-	-	11,245 lbs. „	1360·64
	1929	-	-	-	12,525 lbs. „	1398·10

This gives an average crop of 11,778 lbs. and an average selling price slightly less than 12½ cents per lb.

3. It is purely a green leaf estate there being no factory on it. The green leaf is conveyed by coolies to the Factory at Bogahalanda about 1½ miles across the valley to the north of Lunewella. The only buildings on the estate consist of one set of cooly lines measuring 62' 3" × 18' 6" with
40 mud whitewashed walls, mud floor and corrugated iron roof on sawn timber and a conductor's house measuring 42' 6" × 11' 0" built in mud with a cadjan roof.

4. The estate generally appears to be in a neglected condition and not to have been well worked, though the land appears to be generally suitable

Exhibits.
P40.
Valuation of
Lunawella
Estate,
16th Sept-
ember 1930
—continued.

for tea growing and a fair number of shade trees have been planted. The old tea compares unfavourably in appearance with that on the adjoining estate of Udewella and the new tea, which at the date of inspection was 3-4 years old, is poor in appearance. There are a fair number of vacancies.

5. On the basis of the crop figures and sale prices supplied to me for 1926-1929 for the old planted area and proportionate figures for the newly planted and unplanted areas (on the acreage previously referred to) I estimate the total value of the estate considered as freehold and free from all encumbrances at Rs. 29,000/- as on 21.1.1929.

6. Considered as a leasehold interest with approximately 22 years to run on 21.2.29, I value the whole estate at Rs. 19,000/- free from all mortgages or other encumbrances. 10

This figure is arrived at by taking the freehold value of Rs. 29,000/- as the basis and making the usual allowance on the sinking fund tables for the return of capital on the expiration of the lease; also taking into account the rents reserved under the lease.

7. Mr. Albert Godamune's interest in Lunewella estate as on 21.1.29, I value at Rs. 21,000/- taking it to consist of:—

(i) Interest under deed of assignment No. 345 dated 26.5.1928 attested by J. A. Halangoda, N.P. 20

(ii) Interest under deed of Transfer No. 341 dated 4.5.1928 attested by J. A. Halangoda N.P. assuming that such interest consists of an undivided 1/4th share of the total freehold interest.

The figure of Rs. 21,000/- is arrived at as follows:—

1/4th of freehold value of whole estate—Rs. $\frac{29000}{4}$	7250·00
Less 5 per cent. for undivided nature of share -	362·50
	<u>6887·50</u>
3/4ths of value of leasehold interest of whole estate = $\frac{3}{4} \times 19,000/-$ - - - - -	14250·00
	<u>21137·50</u>

Say, 21,000/- if free from all mortgages or other encumbrances. 30

(Sgd.) A. KIRK,
Government Assessor.
September 16th, 1930.

P22—List of Three hundred and Fifty-three Cheques drawn on National Bank by Exhibits.

A. Godamune.

(Originals not printed.)

P22.

List of
353 cheques
drawn on
National
Bank by A.
Godamune
(Originals
not printed).

No.	Date.	Amount.	No.	Date.	Amount.
521196	3.12.27	250/-	532052	1. 2.28	200/-
199	3.12.27	811/76	053	2. 2.28	16/67
200	3.12.27	300/-	054	2. 2.28	275/-
201	3.12.27	405/-	055	3. 2.28	40/-
203	4.12.27	40/-	056	7. 2.28	50/-
10 204	5.12.27	200/-	057	8. 2.28	32/-
205	5.12.27	200/-	058	10. 2.28	70/-
206	5.12.27	169/-	059	10. 2.28	13/85
207	5.12.27	135/-	060	14. 2.28	30/80
209	5.12.27	88/-	061	20. 2.28	52/50
210	6.12.27	200/-	062	20. 2.28	100/-
211	7.12.27	150/-	063	21. 2.28	25/-
212	8.12.27	50/-	064	23. 2.28	250/-
213	9.12.27	200/-	065	24. 2.28	15/-
214	11.12.27	100/-	067	28. 2.28	35/-
20 202	13.12.27	15/-	066	29. 2.28	20/-
216	13.12.27	100/-	068	1. 3.28	22/50
218	19.12.27	55/-	069	1. 3.28	15/-
219	20.12.27	700/-	070	2. 3.28	100/-
220	21.12.27	400/-	570525	2. 3.28	50/-
532021	22.12.27	50/-	521	31. 3.28	200/-
022	23.12.27	100/-	522	31. 3.28	70/-
023	23.12.27	100/-	523	31. 3.28	25/-
024	27.12.27	100/-	524	31. 3.28	45/-
025	30.12.27	100/-	526	2. 4.28	50/-
30 026	31.12.27	50/-	527	2. 4.28	50/-
027	1. 1.28	40/-	528	3. 4.28	100/-
028	4. 1.28	30/-	529	3. 4.28	10/-
030	8. 1.28	80/-	530	3. 4.28	85/-
031	10. 1.28	100/-	531	3. 4.28	175/-
033	11. 1.28	50/-	532	3. 4.28	200/-
034	12. 1.28	165/-	533	3. 4.28	30/-
035	12. 1.28	78/-	534	3. 4.28	45/-
036	12. 1.28	150/-	535	3. 4.28	100/-
037	13. 1.28	26/-	536	3. 4.28	30/-
40 038	13. 1.28	50/-	537	3. 4.28	30/-
039	13. 1.28	100/-	538	4. 4.28	50/-
040	14. 1.28	2500/-	539	4. 4.28	3000/-
041	18. 1.28	50/-	542	4. 4.28	60/-
042	18. 1.28	71/-	543	5. 4.28	50/-
043	19. 1.28	25/-	544	5. 4.28	40/-
044	20. 1.28	100/-	545	5. 4.28	35/-
045	21. 1.28	16/-	546	5. 4.28	15/-
047	23. 1.28	50/-	547	6. 4.28	109/-
048	23. 1.28	150/-	548	7. 4.28	25/-
50 049	24. 1.28	65/-	549	10. 4.28	250/-
050	25. 1.28	25/-	550	10. 4.28	20/-
051	26. 1.28	5/-	551	10. 4.28	30/-

Exhibits.	No.	Date.	Amount.	No.	Date.	Amount.	
P22.	570553	10. 4. 28	25/-	573363	31. 5. 28	100/-	
List of	554	10. 4. 28	99/-	364	31. 5. 28	40/-	
353 cheques	555	10. 4. 28	125/-	366	6. 6. 28	300/-	
drawn on	556	13. 4. 28	50/-	367	6. 6. 28	39/-	
National	557	18. 4. 28	95/-	368	7. 6. 28	60/-	
Bank by A.	558	19. 4. 28	150/-	369	7. 6. 28	25/-	
Godamune	559	19. 4. 28	140/-	370	7. 6. 28	100/-	
(Originals	560	21. 4. 28	50/-	562721	9. 6. 28	50/-	
not printed)	561	21. 4. 28	95/-	722	10. 6. 28	50/-	10
—continued.	562	23. 4. 28	30/-	723	11. 6. 28	27/-	
	564	28. 4. 28	50/-	724	12. 6. 28	80/-	
	565	28. 4. 28	70/-	725	12. 6. 28	56/30	
	566	30. 4. 28	25/-	726	13. 6. 28	50/-	
	567	1. 5. 28	32/-	727	13. 6. 28	20/-	
	568	1. 5. 28	150/-	728	13. 6. 28	100/-	
	569	2. 5. 28	25/-	729	13. 6. 28	53/-	
	570	3. 5. 28	350/-	730	13. 6. 28	50/-	
	573321	5. 5. 28	90/-	731	14. 6. 28	250/-	
	322	5. 5. 28	100/-	732	14. 6. 28	135/-	20
	323	5. 5. 28	32/-	735	20. 6. 28	50/-	
	324	5. 5. 28	42/-	575320	21. 6. 28	50/-	
	325	5. 5. 28	50/-	562739	1. 7. 28	76/38	
	326	6. 5. 28	44/-	740	3. 7. 28	100/-	
	327	8. 5. 28	150/-	741	5. 7. 28	50/-	
	328	8. 5. 28	186/-	619862	21. 8. 28	15/-	
	329	8. 5. 28	41/-	821	1. 9. 28	75/-	
	331	8. 5. 28	25/-	822	1. 9. 28	100/-	
	336	9. 5. 28	100/-	823	3. 9. 28	30/-	
	332	9. 5. 28	190/-	824	3. 9. 28	200/-	30
	334	9. 5. 28	75/-	825	3. 9. 28	150/-	
	335	10. 5. 28	40/-	826	3. 9. 28	130/-	
	337	14. 5. 28	98/-	827	4. 9. 28	50/-	
	338	15. 5. 28	25/-	828	4. 9. 28	364/81	
	339	15. 5. 28	15/-	829	4. 9. 28	10/25	
	341	16. 5. 28	10/-	830	4. 9. 28	200/-	
	342	18. 5. 28	50/-	831	4. 9. 28	44/-	
	344	19. 5. 28	110/-	832	5. 9. 28	100/-	
	345	21. 5. 28	160/-	833	5. 9. 28	30/-	
	346	21. 5. 28	40/-	834	5. 9. 28	75/-	40
	347	24. 5. 28	53/-	835	5. 9. 28	75/-	
	349	28. 5. 28	2500/-	836	5. 9. 28	25/-	
	350	28. 5. 28	25/-	837	5. 9. 28	40/-	
	351	29. 5. 28	50/-	838	5. 9. 28	100/-	
	352	29. 5. 28	56/70	839	6. 9. 28	50/-	
	353	29. 5. 28	60/-	840	6. 9. 28	50/-	
	354	30. 5. 28	60/-	841	7. 9. 28	35/-	
	355	30. 5. 28	70/-	842	8. 9. 28	100/-	
	356	30. 5. 28	200/-	843	10. 9. 28	67/-	
	357	30. 5. 28	31/25	844	10. 9. 28	50/-	50
	358	30. 5. 28	64/-	845	10. 9. 28	64/-	
	359	31. 5. 28	15/-	846	11. 9. 28	126/-	
	360	31. 5. 28	81/-	847	11. 9. 28	26/-	
	361	31. 5. 28	120/-	848	11. 9. 28	50/-	
	362	31. 5. 28	200/-	849	11. 9. 28	50/-	

No.	Date.	Amount.	No.	Date.	Amount.	Exhibits.
619850	12. 9.28	50/-	603321	27.11.28	25/-	P22. List of 353 cheques drawn on National Bank by A. Godamune (Originals not printed) —continued.
851	13. 9.28	147/-	322	29.11.28	100/-	
852	13. 9.28	50/-	323	29.11.28	25/-	
854	13. 9.28	35/-	630324	30.11.28	70/-	
855	13. 9.28	25/-	325	1.12.28	96/-	
856	15. 9.28	150/-	326	1.12.28	100/-	
857	15. 9.28	50/-	327	3.12.28	200/-	
858	18. 9.28	100/-	328	3.12.28	15/-	
10 859	18. 9.28	100/-	329	3.12.28	20/-	
860	18. 9.28	50/-	330	4.12.28	30/-	
861	20. 9.28	1900/-	331	4.12.28	100/-	
863	21. 9.28	30/-	332	4.12.28	75/-	
864	21. 9.28	50/-	333	4.12.28	60/-	
865	24. 9.28	300/-	335	5.12.28	500/-	
867	24. 9.28	100/-	336	7.12.28	110/-	
870	26. 9.28	37/-	337	7.12.28	200/-	
598621	28. 9.28	25/-	338	7.12.28	45/-	
20 622	28. 9.28	80/-	339	8.12.28	100/-	
623	28. 9.28	10/50	340	11.12.28	97/20	
624	28. 9.28	20/-	341	11.12.28	15/-	
625	29. 9.28	10/-	342	13.12.28	30/-	
626	30. 9.28	50/-	343	13.12.28	150/-	
629	1.10.28	15/-	344	14.12.28	50/-	
630	1.10.28	10/-	345	14.12.28	30/-	
633	3.10.28	10/-	605621	14.12.28	25/-	
634	4.10.28	40/-	624	14.12.28	80/-	
635	4.10.28	25/-	622	15.12.28	15/-	
636	5.10.28	10/-	623	17.12.28	100/-	
30 637	6.10.28	250/-	625	17.12.28	25/-	
638	7.10.28	25/-	626	18.12.28	110/-	
639	7.10.28	30/-	627	18.12.28	100/-	
640	8.10.28	21/-	628	18.12.28	30/-	
641	10.10.28	50/-	629	19.12.28	87/-	
642	10.10.28	150/-	630	20.12.28	41/-	
643	10.10.28	10/-	631	20.12.28	30/-	
644	10.10.28	15/-	632	20.12.28	1900/-	
645	13.10.28	150/-	633	20.12.28	50/-	
40 600746	23.10.28	200/-	634	20.12.28	175/-	
751	24.10.28	100/-	635	21.12.28	130/-	
752	24.10.28	28/-	636	21.12.28	100/-	
756	25.10.28	10/-	637	26.12.28	10/50	
758	1.11.28	400/-	638	26.12.28	200/-	
759	1.11.28	150/-	641	28.12.28	100/-	
760	2.11.28	100/-	640	29.12.28	17/50	
761	21.11.28	350/-	642	29.12.28	30/-	
762	21.11.28	224/30	643	2. 1.29	35/-	
763	21.11.28	20/-	644	3. 1.29	100/-	
764	21.11.28	40/-	645	10. 1.29	100/-	
50 765	23.11.28	25/-	607846	11. 1.29	26/-	
766	23.11.28	35/-	847	15. 1.29	119/-	
767	23.11.28	50/-	848	15. 1.29	200/-	
768	23.11.28	50/-	849	15. 1.29	22/34	
769	26.11.28	100/-	850	15. 1.29	20/-	
770	26.11.28	29/25	851	17. 1.29	100/-	

Exhibits.	No.	Date.	Amount.	No.	Date.	Amount.
P22.	607852	17. 1.29	10/50	610101	13. 2.29	175/-
List of	853	18. 1.29	50/-	103	28. 2.29	55/-
353 cheques	855	21. 1.29	400/-	105	1. 3.29	25/-
drawn on	857	21. 1.29	200/-	106	2. 3.29	20/-
National	858	21. 1.29	100/-	107	2. 3.29	25/-
Bank by A.	859	22. 1.29	31/50	114	6. 3.29	55/-
Godamune	860	22. 1.29	50/-	115	6. 3.29	20/77
(Originals	861	23. 1.29	70/-	116	6. 3.29	15/-
not printed)	862	26. 1.29	40/-	117	7. 3.29	25/-
—continued.	863	26. 1.29	50/-	118	7. 3.29	50/-
	864	26. 1.29	50/-	119	18. 3.29	50/-
	865	26. 1.29	100/-	613597	21. 3.29	100/-
	867	2. 2.29	900/-	598	21. 3.29	50/-
	868	2. 2.29	25/-	603	27. 3.29	48/50
	869	2. 2.29	30/-	605	28. 3.29	200/-
	870	4. 2.29	45/-	613	12. 4.29	30/-
	610096	5. 2.29	25/-	614	15. 4.29	55/-
	097	6. 2.29	50/-	615	15. 4.29	20/-
	098	7. 2.29	50/-	618	20. 4.29	120/-
	099	8. 2.29	50/-	620	2. 5.29	66 -
	100	12. 2.29	25/-			

P23.
Statement
of account
of accused
with
National
Bank,
1st Dec-
ember 1927
to 17th Dec-
ember 1929.

P23—Statement of account of accused with National Bank.

Dr.

MR. ALBERT GODAMUNNE in account current with THE NATIONAL
BANK OF INDIA, LIMITED.

Cr.

Kandy Branch.

1927.

1927.

Decr. 1

Decr. 1

Cheque book

Colombo cheque

1.50

9975.00

521 196 250.00

205 200.00

204 200.00

206 169.00

208 304.86

210 200.00

203 40.00

200 300.00

209 88.00

207 135.00

201 405.00

211 150.00

212 50.00

199 811.76

214 100.00

215 80.00

202 15.00

217 100.00

216 100.00

213 200.00

218 55.00

Cheque book 3.00

30

40

1927.				
Decr. 20		219	700.00	
21		220	400.00	
23	532	021	50.00	
29		023	100.00	
		022	100.00	
30		024	100.00	
31	Balance		4566.88	
			<u>Rs. 9975.00</u>	
10 1928.				
Jany. 4	532	026	50.00	
		027	40.00	
		025	100.00	
11		032	45.00	
12		035	78.00	
13		030	80.00	
		038	50.00	
		033	50.00	
		036	150.00	
20		039	100.00	
16		031	100.00	
		028	30.00	
		037	26.00	
18		040	2500.00	
19		042	71.00	
20		041	50.00	
		044	100.00	
		034	165.00	
23		047	50.00	
30 24		048	150.00	
		045	16.00	
		049	65.00	
26		051	5.00	
27		050	25.00	
28		043	25.00	
Feby. 1		052	200.00	
3		053	16.67	
6		055	40.00	
7		056	50.00	
40 9		057	32.00	
10		058	70.00	
15		059	13.85	
20		060	30.80	
24		065	15.00	
27		062	100.00	
Mar. 1		067	35.00	
		066	20.00	
2		069	15.00	
6		061	52.50	
50		054	275.00	
		063	25.00	
9		070	100.00	
10		068	22.50	
31	Cheque book		2.50	

1927				Exhibits.
Decr. 31	Balance		4566.88	P23.
			<u>Rs. 9975.00</u>	Statement
				of account
				of accused
				with
				National
				Bank,
				1st Dec-
				ember 1927
				to 17th Dec-
				ember 1929
				—continued.
1927.				
Decr. 31	Balance		4566.88	
1928.				
Jany. 31	Cash		200.00	
Feby. 3	Cash		100.00	
7	M.O. & Col. Chq.		183.80	
20	Cash		150.00	
29	Self		100.00	
Mar. 10	Cash		100.00	
31	Col. Chq.		4987.50	

Exhibits.	1928.				1928.				
P23.	July	3	562 739	76.38	June	30	Balance	1.61	
Statement of account of accused with National Bank, 1st Dec- ember 1927 to 17th Dec- ember 1929 —continued.				50.00	July	3	Cash	330.00	
		4		100.00	Aug.	30	Col. Cheque	2992.50	
		5		39.00	Sep.	1	Col. cheque	3000.00	
		6		50.00				10	
		Sep.	1	Col. Chq. Retd.	3000.00				
				821	75.00				
				822	100.00				
			4	Cheque book	2.50				
				826	130.00				
				825	150.00				
				824	200.00				
				823	30.00				
				827	50.00				
				828	364.81				
			5	833	30.00				
				831	44.00				
				832	100.00				
				838	100.00			20	
			6	834	75.00				
				837	40.00				
				839	50.00				
		Sep.	6	830	200.00	Sep.	18	Cash	1980.00
			7	835	75.00		20	do.	90.00
			8	842	100.00		24	Cheque	100.00
				840	50.00			Cash	100.00
			10	843	67.00		26	do.	245.00
			841	35.00		27	do.	300.00	
			836	25.00	Oct.	2	Cheque	100.00	
		11	844	50.00		4	Cash	7.50	
			845	64.00		5	do.	25.00	
			846	126.00		6	do.	15.00	
			847	26.00		8	do.	152.00	
		12	848	50.00					
			849	50.00					
		13	852	50.00					
		14	854	35.00					
			855	25.00					
		15	856	150.00				40	
			851	147.00					
		17	857	50.00					
		18	850	50.00					
		20	829	10.25					
			861	1900.00					
		21	862	15.00					
			863	30.00					
			859	100.00					
		25	858	100.00					
			867	100.00					
		27	865	300.00				50	
			864	50.00					
		28	Cheque book	1.25					
		29	598 621	25.00					
			622	80.00					
	Oct.	1	870	37.00					

				Exhibits.			
				P23.			
				Statement of account of accused with National Bank, 1st Dec-			
1928.		626	50.00				
		860	50.00				
	2	624	20.00				
	3	629	15.00				
		630	10.00				
	4	623	10.50				
		633	10.00				
		625	10.00				
10		634	40.00				
	Oct. 5	598 635	25.00	Oct. 15	Cash	110.00	ember 1927
	8	640	21.00	16	do.	50.00	to 17th Dec-
		636	10.00	23	do.	200.00	ember 1929
		639	30.00	25	do.	250.00	—continued.
	11	641	50.00		do.	100.00	
		638	25.00	26	do.	30.00	
		644	15.00	Nov. 5	do.	100.00	
		643	10.00	21	Col. cheque	4987.50	
	16	645	150.00				
20	23	Cheque book	1.25				
		600 746	200.00				
	25	637	250.00				
		751	100.00				
	26	752	28.00				
		756	10.00				
	Nov. 6	760	100.00				
	22	764	40.00				
	23	766	35.00				
		759	150.00				
30		Cheque book	1.25				
		762	224.30				
		763	20.00				
		767	50.00				
		758	400.00				
		768	50.00				
		765	25.00				
	27	642	150.00				
	28	769	100.00				
		761	350.00				
40	29	770	29.25				
		322	100.00				
	30	323	25.00				
		324	70.00				
		321	25.00				
	Decr. 4	329	20.00				
		326	100.00				
		325	96.00				
		328	15.00				
		330	30.00				
50		331	100.00				
	5	333	60.00				
		332	75.00				
	7	603 335	500.00	Decr. 7	Cash	74.75	
		327	200.00	21	Cheque	4750.00	
		336	110.00				
		337	200.00				

Exhibits.	1928				
Dec.	8	338	45.00		
P. 23.	11	339	100.00		
Statement	13	340	97.20		
of account		343	150.00		
of accused	14	341	15.00		
with		342	30.00		
National		Cheque book	1.25		
Bank,		344	50.00		
1st Dec-		345	30.00		10
cember 1927		605 621	25.00		
to 17th Dec-	15	622	15.00		
ember, 1929	17	624	80.00		
—continued.	18	625	25.00		
		627	100.00		
	19	623	100.00		
		Half year com.	7.50		
		629	87.00		
		628	30.00		
	20	630	41.00		20
	21	635	130.00		
		633	50.00		
		634	175.00		
		626	110.00		
	22	632	1900.00		
	28	636	100.00		
		631	30.00		
	29	638	200.00		
	31	641	100.00		
		Balance	2645.17		30
			<u>Rs. 20090.86</u>		
					<u>Rs. 20090.86</u>
1929.				1928.	
Jany.	3	640	17.50	Decr.	31
	4	642	30.00	Balance	
	5	637	10.50		2645.17
	7	643	35.00		
	8	644	100.00		
	11	Cheque book	1.25		
	11	605 645	100.00	1929.	
	15	607 847	119.00	Jany.	23
		846	26.00	Feb.	5
	16	850	20.00		13
		849	22.34	Mar.	1
	17	851	100.00		4
		848	200.00		7
	18	853	50.00		8
	21	855	400.00		20
		857	200.00		21
	22	858	100.00		22
	23	859	31.50		27
		860	50.00	Apr.	3
		861	70.00		4
	26	863	50.00		
		862	40.00		
					40
					50

1929.					
Jany.	28	Cash	50.00		
	29	865	100.00		
Feb.	2	867	900.00		
		852	10.50		
	4	868	25.00		
		869	30.00		
	5	870	45.00		
		Cheque book	1.25		
10	6	097	50.00		
		096	25.00		
	8	099	50.00		
	11	098	50.00		
	13	100	25.00		
Mar.	1	103	55.00		
	4	107	25.00		
		101	175.00		
		105	25.00		
	5	106	20.00		
20	7	116	15.00		
		114	55.00		
		118	50.00		
	11	115	20.77		
	14	117	25.00		
	19	Cheque book	1.25		
	20	119	50.00		
	22	598	50.00		
	27	597	100.00		
Apr.	3	603	48.50	Apr. 15	Cash 30.00
30	4	605	200.00	16	do. 75.00
	15	613	30.00	22	do. 120.00
	16	614	55.00	May 3	do. 66.00
	18	615	20.00		
	22	618	120.00		
May	3	620	66.00		
June	30	Balance	1.81		
			<u>Rs. 4343.17</u>		
					<u>Rs. 4343.17</u>

Exhibits.
 P.23.
 Statement
 of account
 of accused
 with
 National
 Bank
 1st Dec-
 ember 1927
 to 17th Dec-
 ember 1929
 —continued.

1929.			1929.		
Decr.	17	Half year com.	June 30	Balance	1.81

40 I certify that the foregoing is a true extract from the books of this Branch of the National Bank of India Limited and that such books are still in our possession.

(Sgd.) ANDREW PATON,
 Agent,
 National Bank of India Ltd.,
 Kandy,
 7th May 1930.

Exhibits.

P24—Record of District Court Kandy, Case No. 34987.

P24.

IN THE DISTRICT COURT OF KANDY.

Record of
District
Court,
Kandy,
Case No.
34987.

No. 34987.

Class : 6.

Amount : Rs. 63,126/-

W. R. WESTLAND and ANOTHER
*Plaintiffs.**Vs.*

Nature : Money.

Procedure : Regular.

H. W. BOYAGODA and 5 OTHERS
Defendants.

Journal.

JOURNAL.

10

The 14th day of March 1927.

Messrs. Liesching & Lee file appointment and Plaint together with
M. B. No. 682 dated 3rd August 1920 marked "A".

Plaint accepted and summons ordered for 12.4.27.

(Initialled) V. M. F.
District Judge.

18.3.27

Summons issued with Precept returnable the 10th day of April 1927.

(Initialled) (Illegibly)
Secretary. 20

12.4.27

Summons served on 3rd. Not served on 1, 4, 5 and 6. No return re
2nd Proxy of 2 and 3 filed.Answer } 24th May 1927.
reissue }

(Initialled) V. M. F.

29.4.27.

Summons reissued.

(Initialled) (Illegibly)

24.5.27.

* Sic. ?
Coom-
araswamy.Answer of 2nd and 3rd due. Not served on 5, 4 and 6 served on 1st. 30
Proxy of 1st filed (Coomy.*). Reissue and answers 5th July.(Initialled) P. P.
D.J.

27.5.27.

Notice—reissued.

(Initialled) (Illegibly).

- 5.7.27.
Summons not served on 4, 5 and 6.
Answers of 1, 2 and 3 due.
Reissue and answers 23rd August.
(Initialled) P. P.
D.J.
- 12.7.27.
S.S. reissued.
(Initialled) (Illegibly)
- 10 23.8.27.
Summons served on 5 and 6, not served on 4.
Answers of 5 and 6 filed. Reissue and answer 28th September.
(Initialled) P. P.
D.J.
- 30.8.27.
Ss. reissued.
(Initialled) (Illegibly)
- 28.9.27.
Summons not served on 4th. Answers of others due. Reissue and
20 answers 16th November.
(Initialled) P. P.
D.J.
- 13.10.27.
Vide motion filed by Messrs. Liesching & Lee for plaintiff. Lot S.S. on
the 4th defendant be reissued for substituted service.
(Initialled) P. P.
D.J.
- 19.10.27.
Ss. re-issued.
30 (Initialled) (Illegibly)
- 16.11.27.
Summons affixed to 4th defendant's house. Answer 30th November.
(Initialled) P. P.
D.J.
- 30.11.27.
Answer of 4th filed. Trial 30th March.
(Initialled) P. P.
D.J.
- 29.3.28.
40 Messrs. Silva & Coomaraswamy file 1st defendants list.
(Initialled) (Illegibly)

Exhibits.

P24.
Record of
District
Court,
Kandy,
Case No.
34987.
Journal—
continued.

- Exhibits. 30th March 28.
 P24. Of consent judgment for plaintiff as prayed for with costs.
 Record of District Court, Kandy. (Initialled) P. P.
 Case No. 34987. D.J.
 Journal—
continued.
- 20.6.28. Plaintiff takes out certified copy of decree.
 (Initialled) (Illegibly) Secretary.
- 23.7.28. Plaintiff's costs taxed as under :— 10
 Costs incurred - - - - Rs. 422·85
 Costs of execution - - - - 57·50
 Costs of realization - - - - 39·45
 (Initialled) (Illegibly)
- 13.8.28. Messrs. Liesching & Lee for plaintiff move that the sum of Rs. 64217/77
 with interest be realised by issue of an order to sell.
 Allowed. (Initialled) P. P.
 D.J. 20
- 21.8.28. Order to sell issued Returnable 23rd November 1928.
 (Initialled) (Illegibly)
- 12.9.28. As some of the allotments of land forming part of the estate to be sold
 fall within the Kegalle District. Messrs. Liesching & Lee. Proctors for
 plaintiff, move that the Fiscal N.W.P. to whom the order to sell has been
 issued be directed to sell the whole estate including the lots falling within
 the Kogalle District.
 Allowed. (Initialled) P. P. 30
 D.J.
- Copy of order taken out.
 (Initialled) (Illegibly) Secretary.
- 3.11.28. The Fiscal returns writ to Court for an extension.
 (Initialled) (Illegibly)
- 6.11.28. Writ extended and reissued returnable 28th March 1928.
 (Initialled) (Illegibly) 40

30.11.28.

Messrs. Beven & Beven, proctors for 3rd defendant, file petition and affidavit and move (1) that the Court do certify of record the payment of Rs. 23,000/- made by 3rd defendant; (2) That the sale fixed for 8th December may be stayed and (3) That the 3rd defendant be granted three months time to pay and settle the balance claim.

Allowed. Defendants to pay Fiscal's Charges.

Fix for inquiry for 21.1.29 for inquiry on application to certify payments.

(Initialled) W. E. B.
D.J.

Exhibits.
P24.
Record of
District
Court,
Kandy,
Case No.
34987.
Journal—
continued.

10

E. O. dio

Sale stayed.

(Initialled) (Illegibly)

21.1.29.

Vide proceedings. Payment of Rs. 23,000/- on a/c interest to be certified. If the balance due on the decree is not paid within a month from today sale of property to be re-advertised. Mr. Westland to take action if he wants to be relieved of his trusteeship.

(Initialled) W. E. B.
D.J.

20

26.2.29.

Decree amended as per motion filed by Messrs. Liesching & Lee for plaintiff.

(Initialled) W. E. B.
D.J.

6.3.29.

Messrs. Liesching & Lee for plaintiff file a minute of consent from the 4th defendant in this case consenting to the amendment of the Decree in this case and ratifying and confirming the amendment dated the 26th February 1929 and move that the said minute of consent be filed of record.

Allowed. File of record.

(Initialled) W. E. B.
D.J.

30

18.4.29.

The writ is returned unexecuted on order of Court No. 1079 of December 192...

(Initialled) (Illegibly)

12.9.29.

Mr. M. J. Taylor files proxy, petition, affidavit certified copy of deed of assignment. No. 1023 dated 8th March 1929, minute of consent from 6th Respondent and minute of consent from the proctors of 1st, 2nd, 4th, 5th,

40

Exhibits. <hr style="width: 20px; margin-left: 0;"/> P24. Record of District Court, Kandy, Case No. 34987. Journal— <i>continued.</i>	7th and 8th Respondents, and moves that the petitioner be substituted as plaintiff in this case. He further moves that the Court may be pleased to direct notice on the 3rd Respondent be served on his Proctors Messrs. Silva & Coomaraswamy. Notice 3rd Respondent for 2.10.29.	(Initialed)	W. E. B. D.J.	
	20.9.29. Noticed.	(Initialed) (Illegibly)		19
	2.10.29. Notice served on 3rd, 22nd October.	(Initialed)	W. E. B. D.J.	
	22.10.29. Objections filed. Inquiry 20th November.	(Initialed)	W. E. B.	
	14.11.29. Order No. B31832 for Rs. 15/- issued to 1st defendant.	(Initialed) (Illegibly)		20
	16.11.29. Vide receipt No. B105579 for Rs. 15/-.	(Initialed) (Illegibly)		
	14.11.29. Messrs. Silva & Coomaraswamy file defendant's list of witnesses and take out 2 subpoenas.	(Initialed) (Illegibly)		
	20th November 29. Of consent call on the 4th December.	(Initialed)	W. E. B. D.J.	30
	4.12.29. Fix for inquiry on 8th January 30.	(Initialed)	W. E. B. D.J.	
	19.12.29. Messrs. Silva & Coomaraswamy take out 1 Subpoena.	(Initialed) (Illegibly)		

8th January 30.

Vide proceedings and minute of consent filed. Application allowed in terms of minute of consent filed. Costs to abide the result of the inquiry on an application for execution of the decree. Vide application for execution filed. Notice other respondents and fix for inquiry provisionally on the 25th February 1930, giving date of inquiry to respondents.

(Initialled) W. E. B.
D.J.

Exhibits.
P24.
Record of
District
Court,
Kandy,
Case No.
34987.
Journal—
continued.

19.2.30.

10 Messrs. Silva & Coomaraswamy for petitioner file petition and affidavit and move for a notice on the Respondents to show cause why the petitioner should not be granted the relief he has asked for in the petition.

Allowed—call for the case.

(Initialled) W. E. B.
D.J.

E.O. dio.

Messrs. Silva & Coomaraswamy for petitioner move to file notice, list of witnesses and documents.

Allowed.

20

(Initialled) W. E. B.
D.J.

25th February 1930.

Vide proceedings. Further examination of Mr. Westland on the 10th March 1930.

(Initialled) W. E. B.
D.J.

7.3.30.

Reissue and objection 25/3.

Notices on 3rd and 4th respondents reissued.

30

(Initialled) (Illegibly)

8.3.30.

Mr. Taylor takes out one subpoena.

(Initialled) (Illegibly)

10th March 1930.

Vide proceedings. Mention case tomorrow at 2 p.m. to fix date for recording further evidence of Mr. Westland.

(Initialled) W. E. B.
D.J.

11th March 1930.

40 Fix further examination of Mr. Westland for the 28th March 1930.

(Initialled) W. E. B.
D.J.

Exhibits. 25.3.30. <hr style="width: 20px; margin-left: 0;"/> P24. Record of District Court, Kandy, Case No. 34987. Journal— <i>continued.</i>	Notice not served on 5 and 7 Respondents. Objections of 4th Respondent filed. Proxy of Mr. Ensor Harris filed. Reissue for statement 20th May.	(Initialled)	Proxy. W. E. B. D.J.
28th March 1930. Vide proceedings. The evidence of Mr. Westland is concluded. Call 10 on the 20th May 1930.			
			(Initialled) W. E. B. D.J.
2/4/30. N reissued.			
			(Initialled) (Illegibly)
20.5.30. Notice served on James Alfred Fernando. Absent. Not served on 5th Respondent. Objections of 3rd Respondent filed. Reissue for 26th June.			
			(Initialled) W. E. B. D.J.
3rd July 1931. The record of the above case having returned from the Supreme Court, Messrs. Silva & Coomaraswamy for 1st defendant move to reissue notice on the 5th respondent. Allowed for 24.8.31.			
			(Initialled) W. E. B. D.J.
15/7/31. N. reissued.			
			(Initialled) (Illegibly)
24.8.31. Notice served on 5th respondent. Inquiry 23rd October.			
			(Initialled) W. E. B. D.J.

20

30

PLAINT.

IN THE DISTRICT COURT OF KANDY.

Money case.

Claim. Rs. 63,126.00.

Class : 6.

1. WALLACE RENNIE WESTLAND of Opar Estate, Trincomalie;
2. ALBERT GODAMUNE of Kandy - - - - Plaintiffs
- S. R. M. M. R. M. R. M. VALLIAPPA CHETTY

Substituted-Plaintiff

10 No. 34987.

Vs.

1. HENRY WILLIAM BOYAGODA of Rambukkana in Kegalle District;
2. CHARLES BATUWANTUDAWA of Colombo;
3. CHARLES WILFRED PEIRIS;
4. JAMES ALFRED FERNANDO;
5. AUSTIN CHRISTOPHER DE MEL;
6. DON JOSEPH BARTHOLOMEUSZ FERDINANDO, all of
Queens Street, Colombo - - - - Defendants.

On this 14th day of March 1927.

The plaintiff of the above-named plaintiffs appearing by their Proctors
20 Francis Charles Liesching and Nigel Inglesant Lee carrying on business in
partnership under the name and style of Liesching and Lee and their
Assistant Victor Denzil de Vos states as follows :—

1. By a writing obligatory No. 682 dated 3rd August 1920 herewith
filed marked A executed at Kandy within the jurisdiction of this Court the
1st defendant bound himself to pay the plaintiffs as Trustees the principal
sum of Rs. 40,000.00 on or after the 21st March 1924 on demand with interest
thereon at the following rates to be paid in advance, viz :—two and half
per centum per annum from 21st September 1920 to 21st March 1921.
Five per centum per annum from 21st March 1921 to 21st March 1922.
30 Seven and half per centum per annum from 21st March 1922 to 21st March
1923. Ten per centum per annum from 21st March 1923 to 21st March 1924
and at the rate of 12 per centum per annum for every subsequent half year.

2. For securing the payment of the said sum of Rs. 40,000.00 the
1st defendant specially mortgaged to and with the plaintiff the property
described in the sections A, B, C and D and of the schedules hereto annexed
as a primary mortgage.

3. The 1st defendant subsequent to the above mortgage sold and
transferred the said lands to one M. K. R. Caruppen Chetty through whom
the 2nd, 3rd, 4th, 5th and 6th defendants have acquired title and are in
40 possession of the said lands and therefore made parties to this action.

Exhibits.

P24.

Record of
District
Court,
Kandy,
Case No.
34987—con-
tinued.
Plaint.

Exhibits.
 —
 P24.
 Record of
 District
 Court,
 Kandy,
 Case No.
 34987.
 Plaint—
continued.

4. There is now due and owing plaintiffs upon the said bond the said sum of Rupees Forty Thousand as principal and Rs. 23,126.00 as interest up to 21st January 1927 together making the sum of Rs. 63,126.00 which the defendants have failed and neglected to pay though thereto often requested.

5. It was further agreed in the said bond that if default shall be made in the payment of interest for a period of thirty days after any of the days or dates on which the same shall fall due or if the said Belgoda Estate and premises or the said machinery, houses, bungalows, stores and other buildings shall be allowed to fall into bad order or repair or shall not be kept and maintained in good cultivation and order or if the said trustees or their Agent or their Attorney in the said Island be at any time hindered or prevented from visiting and inspecting the said Belgoda Estate and premises as aforesaid or any part thereof shall be seized or taken in execution of any judgment against the said Henry William Boyagoda the 1st defendant his heirs executors administrators, or if the wages of any of the Canganies, Coolies or labourers of the said Belgoda Estate and premises shall be in arrear to such extent or for such an amount as will entitle them or any of them to have a first charge on the said Belgoda Estate and premises or any part or portion thereof, or if any suit or proceedings shall be instituted by such Canganies, coolies or labourers or any of them for the recovery of any such arrears of wages and for the enforcement of any such first charge and judgment shall therein be obtained or in case the said Henry William Boyagoda the 1st defendant shall at any time during the continuance of the mortgage affected by these presents be declared or adjudicated insolvent or bankrupt then it shall be lawful for the Trustee, their Agent or Attorney in the said Island to enter upon and take possession of the said Belgoda Estate and premises and to manage and cultivate the same themselves or himself until the whole of the money due under these presents including all costs and expense of such management and possession, or in any way incidental thereto have been fully paid and liquidated or at once to sue for and recover payment of all moneys payable under these presents, or if the said Trustee shall think fit so to do also at any time to adopt both the above remedies simultaneously for recovering payments or the said moneys.

6. The defendants have failed to pay interest as stipulated and have contravened the conditions above stated.

Wherefore the plaintiffs pray :—

(a) That the defendants be decreed to pay the plaintiffs the said sum of Rs. 63126.00 with further interest on Rs. 40,000.00 at 12 per centum per annum from 21st January 1927 until the date of decree and thereafter legal interest on the aggregate amount until payment in full and the costs of this action on some day to be named by the Court and in default that the said premises may be sold and the proceeds applied in and towards the payment of the amount of the said principal, interest, and costs and that if such proceeds shall

not be sufficient for the payment in full of such amount, the defendants do pay to the plaintiffs the amount of the deficiency with interest thereon at the rate aforesaid until realisation and that for that purpose all proper directions may be given and accounts taken by the Court, and that the plaintiffs be allowed to bid for and purchase the said premises at the sale thereof and that the plaintiffs be given credit to the extent of their claim, interest and costs, and if there be no bids for the said premises at its appraised value, the said premises be sold without reserve;

10 (b) that the plaintiffs be immediately placed and quieted in possession of the said lands and for such other relief as to this Court shall seem meet:

(Sgd.) LIESCHING & LEE,
Proctors for plaintiffs.

Documents filed with the plaint :—

Writing Obligatory No. 682 dated 3rd August 1920.

(Sgd.) LIESCHING & LEE,
Proctors for Plaintiffs.

ANSWER.

Answer.

20 On this 30th day of November 1927.

The answer of the first defendant abovenamed appearing by George Edmund de Silva, Nallatamby Coomaraswamy and Algernon Stanley Karunaratne practising in partnership under the name style and firm of Silva and Coomaraswamy his Proctors states as follows :—

1. This defendant admits the allegations in the 1st and 2nd paragraphs of the plaint.

2. Answering to the 3rd paragraph of the plaint this defendant admits that he sold the land to M. K. R. Caruppen Chetty but upon an agreement to reconvey the property upon certain terms and conditions set out in the
30 said agreement.

3. Further answering this defendant says that one Palani Appa Chetty who is alleged to have purchased the property agreed with the 2nd defendant who was acting as this defendant's legal adviser to convey the property to him and the said 2nd defendant agreed with this defendant to purchase the said property in trust for him.

4. The said 2nd defendant in breach of that trust conveyed to the 3rd, 4th, 5th and 6th defendants and to himself who were aware and bound by the said trust and an action No. 19574 has been instituted in the District Court of Colombo against the said 2nd, 3rd, 4th, 5th and 6th defendants
40 to compel them to reconvey the property to the 1st defendant and the said action is now pending trial in the said Court.

5. Answering to the allegations in the 4th and 5th paragraphs of the plaint this defendant says that on a correct accounting of the payments made by him and Caruppen Chetty to Mr. Harris on account of the bond, this

Exhibits.
 P24.
 Record of
 District
 Court,
 Kandy,
 Case No.
 34987.
 Answer—
continued.

defendant is ready and willing to pay all sums due on the bond and redeem the said property and enter into possession of the said premises in terms of the said bond.

6. This defendant further says that 2nd, 3rd, 4th, 5th and 6th defendants who repudiate the trust in D.C. Colombo case No. 19574 are bound by their answer to pay all claims due on the mortgage in suit in the above case if their claim is bona fide as this defendant apart from any other consideration is still liable to pay any deficiency arising from a sale in execution in the event of the mortgage property failing to realise the amount to be decreed in this case. 10

7. Answering to the allegation in the 6th paragraph of the plaint this defendant says that he is not liable for the acts of the 2nd, 3rd, 4th, 5th and 6th defendants and this defendant is entitled to pay and redeem if the said defendants have not acted in terms of the bond in suit.

Wherefore this defendant prays that he may be declared entitled to pay and redeem the mortgaged premises and to be placed in possession thereof in terms of the bond, and

(2) that the 2nd, 3rd, 4th, 5th and 6th defendants may be decreed to pay all costs of this action.

This defendant also prays for such further and other relief as to this Court shall seem meet. 20

(Sgd.) SILVA AND COOMARASWAMY,
 Proctor for 1st defendant.

Decree.

DECREE

This action coming for final disposal before Paul E. Peiris, Doctor of Letters, District Judge Kandy, on the 30th day of March 1928 in the presence of Messrs. Liesching & Lee on the part of the plaintiffs and of Messrs. Silva and Coomaraswamy on the part of the 1st defendant and of Messrs. Beven and Beven on the part of the 2nd, 3rd, 5th, and 6th defendants.

It is ordered and decreed of consent that the defendants do pay to the plaintiffs the sum of Rupees Sixty-eight thousand eight hundred and forty-five and cents Nil (Rs. 68845/-) being the aggregate amount of the principal and costs due in respect of mortgage Bond No. 682 dated 3rd day of August 1920 and attested by Mr. Frank Liesching of Kandy Notary Public, with interest thereon at the rate of nine per cent. per annum from this date till payment in full and costs of this action (Rs.) as taxed by the Officer of the Court, on or before the 30th day of April 1928. 30

It is further ordered that in default of payment of the said amount, interest, and costs within such time, the premises mortgaged by the said bond, as per schedule hereunder be sold by the Fiscal and the proceeds applied in and towards the payment of the said amount interest and costs and if such proceeds shall not be sufficient for the payment in full of such amount that the said defendants do pay to the plaintiffs the amount of the deficiency with interest thereon at the aforementioned rate until realization. 40

It is further ordered that in the event of a sale of the said premises the plaintiffs be allowed to bid for and purchase the said premises and they be given credit to the extent of their claim, interest, and costs.

It is further ordered that if there be no bid for the said premises at its appraised value, the said premises be sold without reserve.

And it is further ordered that the plaintiffs be immediately placed and quieted in possession of the said lands.

(Sgd.) P. E. PEIRIS.
District Judge.

Exhibits.
—
P24.
Record of
District
Court,
Kandy,
Case No.
34987.
Decree—
continued.

10 The 30th day of March 1928.

P25—Record of District Court, Kandy, Case No. 33783. P25.

(Not printed.)

P28—Record of District Court, Kandy, Case No. 35569. P28.

(Not printed.)

P29—Record of District Court, Kandy, Case No. 37909. P29.

(Not printed.)

P30—Record of District Court, Kandy, Case No. 38177. P30.

(Not printed.)

P31—Record of District Court, Kandy, Case No. 39278. P31.

(Not printed.)

P35—Extracts of Encumbrances relating to Lunuwila Estate. P35.

(Not printed.)

In the Privy Council.

No. 124 of 1931.

*On Appeal from the Supreme Court of the Island
of Ceylon.*

BETWEEN

ALBERT GODAMUNE - - *Appellant*

AND

THE KING - - - *Respondent.*

RECORD OF PROCEEDINGS.

O. A. CAYLEY,

30, Bedford Row, W.C.1.

Solicitor for the Appellant.

BURCHELLS,

5, The Sanctuary,

Westminster, S.W.1.

Solicitors for the Respondent.